

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

907 CIVIL APPLICATION NO. 2587 OF 2017
IN FAST/33839/2016

SHANTAYYA APPAYYA SWAMI
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr. Santosh N. Patne.
AGP for Respondent No.1,2 : Mr. R. B. Bagul.
Advocate for Respondent No.3 : Mr. S. G. Sangle.
...

CORAM : K.K. SONAWANE, J.

DATED : 22ND AUGUST, 2017.

Order :-

Issue notice to the respondents. Learned AGP waives notice for respondents No. 1 and 2. Mr. Sangale, learned counsel waives notice for respondent No.3 Acquiring Body.

2. Heard learned counsel for parties at length. Perused the application.

3. It is contended that, the delay caused in preferring appeal was not an intentional or deliberate, but due to poor financial condition of the claimant-appellant, the meagre amount of compensation was granted in favour of the claimant. There were fruit bearing trees, pipe-line, bore-well and the other structures in the acquired land, but the market value of the same is not determined in proper manner. The applicant is a senior citizen and there is no source of income except the agricultural income. After collecting the sufficient funds for incurring court expenses, applicant filed the present First Appeal, but there is a

delay. Hence, learned counsel requested to condone the delay in the interest of justice. The learned counsel also fervidly contends that the applicant is ready to waive the statutory benefits as well as amount of interest for the period sought to be condoned, in case, the applicant succeeds in appeal on merit for enhancement of compensation amount for the acquired land.

4. Learned AGP and the learned counsel for respondent Acquiring Body raised objection and submits that, there are no reasons mentioned in the application being a sufficient cause to condone the delay. According to learned AGP, there is inordinate delay caused for filing the appeal, hence, both prayed to dismiss the application.

5. I have heard rival submissions on behalf of both sides. Perused documents produced on record. Admittedly, the matter pertains to determination of market value of the lands of claimants acquired for public purpose. After award passed by the Land Acquisition Officer (LAO), applicant-claimant filed reference petition under Section 18 of the Land Acquisition Act, 1894, for enhancement of compensation amount. According to applicants, amount awarded by the Reference Court was inadequate, meagre and not as per the market value during the relevant period. The applicant-original claimant is intending to agitate the findings recorded by the learned Reference Court on the issue of market value arrived at by the learned Reference Court.

6. In view of the attending circumstances on record, I find that the reasonable opportunity is required to be given to the claimant to ventilate his grievances before the Appellate Court for substantial justice. In case, the delay is not condoned, it would cause injustice to present applicant for approaching the Appellate Forum.

7. In addition, the claimant also shown inclination to waive the statutory benefit as well as interest amount as contemplated in the Land Acquisition Act, 1894, for the period sought to be condoned in this application, if the applicant succeeded in appeal for enhancement compensation in future. In the circumstances, I do not find any impediment to allow the application. In case, the application is not granted, it would cause injustice and prejudice to applicant. Therefore, in the interest of justice, application deserves to be allowed.

8. Hence, application for condonation of delay stands allowed in terms of prayer clause 'B'. The delay to file First Appeal against the impugned Judgment and Award passed by the Reference Court is hereby condoned. The Registry to take requisite steps for further process.

9. On registering the appeal, the same is **Admitted**.

10. Issue notice to respondents. The learned A.G.P. waives service of notice for respondents No. 1 and 2. The learned counsel waives notice for respondent No.3 Acquiring Body.

11. The claimant to file private paper book on record and after requisite compliance. List the appeal for final hearing on merit in due course.

12. The Civil Application for condonation of delay stands disposed of in aforesaid terms.

Sd./-

[K. K. SONAWANE]
JUDGE

RRD.