

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2099 OF 1999
AND
CIVIL APPLICATION NO. 2100 OF 1999
IN
FIRST APPEAL (ST.) NO. 6887 OF 1998
IN
(L. A. R. No. 44 of 1988)**

The State of Maharashtra
(through the Special Land Acquisition Officer
Irrigation No. 1, Nashik) .. Applicant/Appellant

vs.

Karbhari Balwant Bhalerao
Age 65 years, Occ. Agri
r/o. Vadner Bhairav, Tal. Chandwad, Dist. Nashik.
(Power of Attorney holder
Shri. Fakira Karbhari Bhalerao,
Age 40, Occ. Agri.
r/o. Vadner Bhairav, Tal. Chandwad Dist. Nashik) ..Respondent

WITH

**CIVIL APPLICATION NO. 2107 OF 1999
AND
CIVIL APPLICATION NO. 2108 OF 1999
IN
FIRST APPEAL (ST.) NO. 6891 OF 1998
IN
(L. A. R. No. 38 of 1988)**

The State of Maharashtra
(through the Special Land Acquisition Officer
Irrigation No. 1, Nashik) .. Applicant/Appellant

vs.

1. Rama Pakharu Boraste, Age 40 Yrs. Occ. Agri.
 2. Bhika Pakharu Boraste, Age 38 Yrs. Occ. Agri.
 3. Laxman Pakharu Boraste, Age 30 Yrs. Occ. Agri.
 4. Smt. Haushabai Pakharu Boraste, Occ. Agri.
 5. Smt. Kaushabai Pakharu Boraste, Age 26 Yrs.
- Occ. Agri.

All r/o Bhondgavhan Tal. Chandwad,
Dist. Nashik

..Respondents

WITH

**CIVIL APPLICATION NO. 2109 OF 1999
AND
CIVIL APPLICATION NO. 2110 OF 1999
IN
FIRST APPEAL (ST.) NO. 6868 OF 1998
IN
(L. A. R. No. 39 of 1988)**

The State of Maharashtra
(through the Special Land Acquisition Officer
Irrigation No. 1, Nashik) .. Applicant/Appellant

vs.

Kashinath Shivram Tidke, Age 45,
r/o. Vadner Bhairav, Occ. Agri.
Tal. Chandwad, Dist. Nashik. . Respondent

Mr. A. A. Palkar, Asst. Government Pleader for the Applicant/
Appellant.

**CORAM : M. S. SONAK, J.
DATE : 07 FEBRUARY 2017.**

P.C. :-

1. Heard Mr. Palkar, learned Asst. Government Pleader (AGP) for the
Applicant - State. Learned counsel for the parties' state and agree that

common issues of law and fact arise in this batch of appeal and civil applications, and therefore, it would be appropriate, if this batch of petitions is disposed of by common judgment and order. For the sake of convenience, reference will be made to the facts and circumstances of Civil Application 2099 of 1999 and Civil Application 2100 of 1999, both in FA (ST.) 6887 of 1998.

2. This Civil Application seeks condonation of delay of 860 days in instituting appeal against land acquisition award dated 27 March 1995, made in Land Acquisition Reference No. 44 of 1988. The primary reason for this delay is attributed to delay on account of procedural requirements and the scrutiny required for instituting the appeal. By Civil Application 2100 of 1999, the applicant prays for a stay on the operation of the impugned award..

3. The appeal was instituted on 21 February 1998. Though the appeal was barred by inordinate delay, no application for condonation of delay was filed along with memo of appeal. The application seeking condonation of delay was filed only on 04 March 1999. Though, whenever an appeal is proposed to be instituted beyond the prescribed period of limitation, an application seeking condonation of delay has to normally

accompany the memo of appeal. In the present case, this aspect is not being held against the applicant.

4. Mr. Palkar submits that four months time was spent in order to obtain certified copy of the award. The certified copy was ultimately obtained on 19 July 1995. Thereafter, the matter was referred to the State Government, which resolved to institute the present appeal on 23 September 1995 and communicated such resolution to the office of the Government Pleader on 25 September 1995. The Government Pleader called upon the dealing hand to supply certified copy of the award. After a period of almost two years i.e. on or about 13 October 1997, the certified copy of the award was actually furnished to the office of the Government Pleader, High Court. There was some delay in obtaining amounts towards payment of Court Fee. On this basis Mr. Palkar submits that there is sufficient cause for condonation of delay. Mr. Palkar submits that the State Government is an impersonal agency which has to rely upon its officers and therefore, some delay is inevitable. Mr. Palkar pointed out that there were twenty other matters and it was felt that it would be in the interest of justice if all appeals are instituted together. For all these reasons, Mr. Palkar submitted that there is sufficient cause for condonation of delay.

5. On the perusal of the Civil Application, it can be said that there is some explanation upto 23 November 1995. By these dates, the resolution of the State Government was in place and there is no dispute that the certified copy was available for delivery on 19 July 1995. However, despite the Government Pleader requesting the dealing hand to furnish certified copy, such certified copy, it appears, was furnished only after the period of almost two years i.e. on 13 October 1997. There is absolutely no explanation for this inordinate delay for merely sending the certified copy which was ready for delivery on 19 July 1995 to the office of the Government Pleader. In the matter of this nature, it was necessary that the State Government acts with some dispatch, considering that lands have been acquired compulsorily and the matter relates to the payment of compensation. There is absolutely no explanation as to why it took over two years to send certified copy of the award to the office of the Government Pleader. Accordingly, no sufficient cause is shown to explain such inordinate delay.

6. The submission that some time was required to arrange for the Court fees is also not acceptable. In fact, record indicates that the Registry of this Court permitted the State to institute the appeal by paying nominal Court fee of Rs.10/- on 21 February 1998. It is therefore quite unfortunate

that such a reason is cited for explaining inordinate delay of over 860 days.

7. Mr. Palkar, tried to explain that though the date given for collection of the certified copy 19 July 1995, the Clerk did not collect the same. Mr. Palkar also submitted that this appeal had to be filed along with 20 other matters. All these explanations do not make out any case for sufficient cause considering that the delay in this case is 858 days. Routinely, blame is apportioned upon clerks, since usually the position is unverifiable. In the facts and circumstances of the present case, it is quite clear that there is no explanation or sufficient cause to explain this inordinate delay of 860 days in instituting the appeal. Statement that Government Pleaders always take time, is not sufficient to condone such inordinate delay particularly in a matter where the award was made on 27 March 1995.

8. In *State of Maharashtra & Ors. V/s. Vithu Govari & Ors.*¹, a Division bench of this Court, has insisted on the necessity to explain the sufficient cause of delay in a condonation application. *“The submission that delay has occurred because of “official hassle” and approval at different levels. This is a case which can hardly justify condonation of delay. The hassles which in any case are unspecified in the application can always be set right by*

¹ 2008(6) Mh.L.J. 239

the applicants and the approval can be granted expeditiously. However, as already noticed, in the present case, there is no explanation even for a period of two years. The other point raised on behalf of the applicant is that if delay is condoned, it would cause no prejudice to the claimants. This argument is equally without any merit. In law advantage has accrued to the non-applicants claimants and the same ought not to be withdrawn in a mechanical manner and that too without any sufficient cause being shown to the applicants. This itself is the prejudice to the claimants. Before the delay can be condoned and claimants can be subjected to a prolonged litigation, the onus to show sufficient cause lies is upon the applicant State.

9. While the State Government in this civil application, has expressed its helplessness in the delay in filing an appeal attributing to a clerk exercising poor discretion, the division bench in the judgment referred above has disregarded such mechanical approach, appealing the concerned officers to own up responsibility and to lead by example. The division bench has recommended following guidelines on the approach ought to be adopted by the State Government :

“(a) The State Government shall constitute a Committee presided over by the Chief Secretary of the State, which shall issue guidelines to ensure that appeals on behalf of the State in land acquisition matters are filed within the prescribed period of

limitation.

(b) Under the directions/guidelines issued through appropriate Government Resolution, complete time frame should be provided for applying and/or receiving certified copies, preparation of appeals, sanctioning of requisite funds, drawing up and filing of appeals.

(c) These guidelines should also provide for due co-operation and co-ordination between different Departments of the State Government.

(d) Concerned authorities may also examine constituting a 'centralised nodal office' to ensure timely filing of appeals in the High Court so as to avoid any consequences adverse to the interest of the State including burdening the public exchequer.

(e) The guidelines so framed shall also introduce the principle of public accountability and answerability for inaction/action of various authorities in the State hierarchy in such cases and for inordinate delay in filing the present cases, the State Government shall fix responsibility and take action in accordance with law."

10. In ***Pundlik Jalam Patil (Dead) By Lrs. Vs. Executive Engineer, Jalgaon, Medium Project and anr.***², the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subverts public interest. Prompt and timely payment of

² (2008) 17 SCC 448

compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State on its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In a case with which we are concerned, no such facts have been either pleaded or proved.

11. In *Union of India and ors. vs. Visveswaraya Iron and Steel Ltd.*³, the Hon'ble Supreme Court declined to entertain the special leave petition filed almost one year after the receipt of copy of the judgment. The explanation that delay was on account of the file having moved through various departments was not accepted.

12. In *Special Land Acquisition Officer (SIP) and anr. Vs. Jose Prazeres DE Piedade Pinto r/o. Old Market and ors.*⁴, the learned Single Judge of this Court has held that delay cannot be condoned in a matter relating to land acquisition case, merely on the ground that the matter involved public monies. On such basis, the Government cannot seek condonation of delay as a matter of right. It is necessary for the Government to furnish necessary and satisfactory explanation for such delay. In case the delay has occurred on account of either willful acts on the part of the concerned officer/s or for any other reason, the same has to be stated and some material produced on record in support thereof. Mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal.

3 1987 (supp) Supreme Court Cases 192

4 2006(4) Mh.L.J. 318

13. In *Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.*⁵, the Hon'ble Supreme court has held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

14. In *Basawaraj and anr. Vs. Special Land Acquisition Officer*⁶, the Hon'ble Supreme Court at paragraphs 9 and 15 has observed thus:

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has

5 (2000) 6 SCC 133

6 (2013) 14 SCC 81

“not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai.)

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15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on*

his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature”.

15. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors.***⁷, the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

“(i)

... ..

... ..

⁷ (2013) 12 SCC 649

(xiv) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(xv) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(xvi)

(xvii) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

16. In *Postmaster General and ors vs. Living Media India Limited and anr.*⁸, the Hon'ble Supreme Court declined to condone the delay of 427 days in filing special leave petition by observing thus:

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has

⁸ (2012) 3 SCC 563

to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation

offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

17. Upon cumulative consideration of the facts and circumstances cited herein, as also the legal position, there is no case made out for condoning the delay in institution of three appeals. Accordingly, civil application nos. 2099 of 1999, 2107 of 1999 and 2109 of 1999 are hereby dismissed. In view of dismissal of these civil applications, remaining civil applications do not survive and the same are also disposed of. Since the delay is not condoned, consequently, the first stands stand dismissed. The Ad interim orders, if any, stand vacated.

(M. S. SONAK, J.)