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

**CIVIL APPLICATION (F) NO.2764 OF 2015
WITH
CIVIL APPLICATION NO. 2765 OF 2015
WITH
CIVIL APPLICATION NO. 2766 OF 2015
IN/WITH
FIRST APPEAL (ST) NO.9871 OF 2015**

The Executive Engineer, Medium
Project Division, Vidarbha
Irrigation Development Corporation,
NAGPUR ..APPELLANT

VERSUS

Vithoba Laxman Warokar,
aged about 70 years,
R/o. PANCHDHAR, Tq. Katol,
Dist. Nagpur & ors ..RESPONDENTS

Mr S.G. Jagtap, Advocate for appellant;
Mr V.V. Bhangde, Advocate for respondent Nos. 2 to
4;
Mr M.A. Kadu, A.G.P. for respondent No. 5;

WITH

**CIVIL APPLICATION (F) NO.2761 OF 2015
WITH
CIVIL APPLICATION NO. 2762 OF 2015
WITH
CIVIL APPLICATION NO. 2763 OF 2015
IN
FIRST APPEAL (ST) NO.9878 OF 2015**

The Executive Engineer, Medium
Project Division, Vidarbha
Irrigation Development Corporation,
NAGPUR ..APPELLANT

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VERSUS

Bapurao Shamrao Kolhe,
aged about 60 years, Occ: Farmer,
R/o. WAI, Tq. Katol,
Dist. Nagpur & anr

..RESPONDENTS

Mr S.G. Jagtap, Advocate for appellant;
Mr V.V. Bhangde, Advocate for respondent No.1;
Mr M.A. Kadu, A.G.P. for respondent No. 2;

CORAM : N.W. SAMBRE, J.**DATE : 26th APRIL, 2017****ORAL ORDER :**

These are applications for condonation of delay under Section 5 of the Limitation Act praying therein condonation of delay of 2035 days in preferring First Appeal Stamp Nos. 9871 of 2015 and 9878 of 2015 challenging the judgment and order dated 13th July, 2009 by learned 2nd Joint Civil Judge, Senior Division, Nagpur in Land Acquisition Case Nos. 403 of 2005 and 401 of 2005.

2. The appellant-executive engineer was a party to the original proceedings i.e. Reference preferred under Section 18 of the Land Acquisition (for short, 'the Act' for sake of brevity), as non-

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applicant No.2.

3. It is claimed that Reference Court, after pronouncement of the judgment in the said Reference granting enhancement, copy thereof was not made available to the present appellant by learned Assistant Government Pleader who appeared in the said matter. It is further urged that delay caused is unintentional and bonafide. Reliance is also sought to be placed on record on the issue of incorporation of V.I.D.C. in 1997. According to Mr. Jagtap, learned Counsel for the appellant, there is every right vested in the acquiring body to prefer an appeal and as such, delay caused is required to be condoned. He also sought reliance on the various dates as are narrated in the copy of the application so as to explain the delay caused.

4. Mr. Jagtap, learned Counsel for the appellant then would rely upon the judgment of the Apex Court in Civil Appeal No(s). 4262-4263 of 2017 arising out of SLP (C) Nos. 2185-2186 of 2017 with connected matters decided on 20th March, 2017 so as

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to substantiate the contention that the acquiring body has every right in law to prefer appeal against the judgment of the learned Reference Court. Mr. Jagtap would also submit that the fact as regards filing of appeal by the State Government against the same judgment of Reference Court under Section 54 and rejection of the same on the ground of refusal to condone delay was not within the knowledge of the appellant herein.

5. Per contra, Mr. Bhangde, learned Counsel for respondents-claimants would urge that present appeal itself is not maintainable and would invite attention of this Court to the order passed by this Court in Civil Application No. 1118 of 2012 in First Appeal No. 5741 of 2012 which was preferred by the State Government against same award which is questioned in this appeal, delivered under Section 18 of the Act. According to him, since the appeal of the State is already dismissed, consequence thereof, present application for condonation of delay is also liable to be dismissed. So as to substantiate his contention, he would invite

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attention of this Court to the judgment of Apex Court in the matter of **Warlu vs Gangotribai and another** reported in **1995 Supp (1) Supreme Court Cases 37**, particularly in Paragraph-6 thereof, which reads thus :

"6. The question now is of the effect of dismissal of the special leave petitions on the tenability of Civil Appeal No. 244 of 1982. The facts stated above giving rise to this Civil Appeal clearly indicate that after dismissal of the special leave petitions resulting in finality of the common order dated 20-08-1980 relating to dismissal of Writ Petition Nos. 679 and 760 of 1974, correctness of that order relating to dismissal of the Writ Petition No. 677 of 1974 cannot be examined for the obvious reason that interference in this appeal is bound to result in the making of conflicting orders regarding tenancy rights in the same lands. This alone is sufficient to require dismissal of Civil Appeal No. 244 of 1982."

6. Apart from above, Mr. Bhangde would also rely upon the judgment of the Apex Court in the

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matter of ***Bindeshwari Prasad Singh alias B.P. Singh and others vs State of Bihar (Now Jharkhand) and another*** reported in ***(2002) 6 SCC 650***. In addition, a submission is made that once the appeal preferred by the State is dismissed, against the same judgment of Reference Court, the appeals by acquiring body will also suffered same fate, as it is the case of acquiescence against the State Government.

7. In addition, he would also place reliance upon the order of this Court in the matter of Uranium Corporation of India Limited vs. Smt. Sarla w/o late Haribhau Mahajan and others decided on 25th October, 2004 on the similar set of facts as are narrated herein above. In the said order, this Court has taken a view that once the appeal by State is dismissed, other appeals by acquiring body against the same judgment will suffer same fate.

8. Having bestowed my thought to the submissions made, it is not in dispute before this Court that the appeal preferred by the State

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Government against the judgment and order delivered by the Reference Court under Section 18 of the Act in Land Acquisition Case Nos. 403 of 2005 and 401 of 2005 dated 13th July, 2009 is already dismissed. The said dismissal is based on the rejection of prayer for condonation of delay. As a consequence of rejection of prayer for condonation of delay, the appeals preferred by the State also stood dismissed.

9. It is against the same judgment by Reference Court, the acquiring body has preferred these appeals.

10. If the appeal by acquiring body is permitted to be entertained irrespective of dismissal of the appeals suffered by State Government against the same judgment, then it will give rise to this Court giving conflicting order in the back drop of the State Government has accepted the same judgment delivered by Reference Court, as a consequence of dismissal of their appeal but acquiring body can be permitted to question the

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same. Even if the appeal of State is dismissed on the ground of limitation, same is termed as dismissal for all purpose. If the appeal of the acquiring body is to be entertained in spite of dismissal of appeal by State, same give rise to incongruous situation. Mr. Bhangde, learned Counsel for the claimants, in my opinion, has rightly invited attention of this Court to the judgment of Apex Court in the matter of **Warlu and Bindeshwari Prasad Singh**, cited supra, so as to substantiate his contention that the appeals preferred by the acquiring body should suffer same fate as that of appeal preferred by the State Government, as both are against the same judgment of Reference Court.

11. In view of above, in my opinion, present applications for condonation of delay also stand rejected. As a consequence of rejection of prayer for condonation of delay, application for leave to file appeal, first appeal and other civil applications do not survive and same are also dismissed.

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12. Mr. Bhangde, learned Counsel for the claimants makes a prayer for permission to withdraw the amount deposited in this Court pursuant to the order passed by the Reference Court enhancing compensation.

13. The land owner; non applicant herein can be permitted to withdraw the said amount after appeal period is over.

(N.W. SAMBRE, J.)

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