

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

CIVIL APPLICATION F. NO.1522/2017

IN

FIRST APPEAL ST. NO.19359/2015

The Executive Engineer, Medium Project Division, Yavatmal

...Versus...

Ravindra Sitaram Deulkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Godbole, Advocate for applicant
Shri J.A. Malnas, Advocate for respondent no.1
Mrs. K.S. Joshi, AGP for respondent nos.2 and 3

**CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.**

DATE : 27.04.2017

By this civil application, the applicant – Vidarbha Irrigation Development Corporation (V.I.D.C.) seeks the condonation of delay of 479 days in filing the first appeal.

The judgment of the reference Court in the case filed by the respondent – claimant was rendered on 10.1.2014. The applicant – V.I.D.C. applied for certified copy on 17.1.2014, the certified copy was ready on 13.3.2014 and was received by the V.I.D.C. on 24.3.2014 from the local Counsel. The V.I.D.C. sought the opinion of the legal advisors in respect of filing of the appeal. On 4.8.2014, the opinion that the appeal could be filed, was given by the legal advisors. On 28.8.2014, the amount for payment of court fee was sought. The matter was first sent to the Sub Division on 9.9.2014 and then to the Superintendent Engineer on

29.11.2014. The Executive Director granted approval on 16.12.2014 and on 24.7.2015 the cheque for the amount of court fee was received by the Counsel. The documents were then collected and the appeal was filed on 30.9.2015. It is stated on behalf of the applicant that the delay caused in filing the first appeal is not deliberate or intentional. It is stated that though the claimants had belatedly filed the first appeal, their appeal is admitted by this Court.

Mrs. Joshi, the learned Additional Government Pleader has supported the case of the appellant – V.I.D.C. It is submitted that it would be necessary for the Court to condone the delay in the facts and circumstances of the case. It is stated that compensation is granted to the respondent – claimant on much higher side. It is stated that though the Special Land Acquisition Officer had granted compensation @ Rs.2,29,000/- per hectare, the reference Court has enhanced it to Rs.37,00,000/- per hectare without any basis. It is stated that the two sale-deeds on which the reference Court has relied on, pertain to the non-agricultural property and though the reference Court has relied on the order of the reference Court in Land Acquisition Case No.263/2008, the V.I.D.C. has filed an appeal against the same and the said first appeal is admitted. It is stated that public interest is involved in the matter, inasmuch as if the compensation is wrongfully released in favour of the respondent – claimant as per the award of the reference Court, the Government exchequer would be burdened and the common man would suffer. It is submitted that the Hon'ble Supreme Court has held that where public interest is involved, the Court should take a pragmatic view in the matter

pertaining to the condonation of delay and allow the application in such cases. The learned Additional Government Pleader relied on the judgments of the Hon'ble Supreme Court, reported in *(1988) 2 SCC 142*, *(1996) 3 SCC 132*, *(2005) 3 SCC 752*, *(2008) 14 SCC 582*, *(2009) 13 SCC 192* and *(2010) 5 SCC 459* to substantiate her submission that a liberal approach may be taken by the Courts while deciding an application for condonation of delay, specially when public interest is involved and the dismissal of the application would result in perpetuating the fraud on the exchequer.

The learned Counsel for the respondent no.1 – claimant opposed the prayer made in the application. It is stated that the State Government had filed the First Appeal along with an application for condonation of delay of 171 days in filing the appeal. It is stated that the delay in the case of the State Government was not condoned and the application for condonation of delay was rejected. It is stated that the delay in the case of the applicant – V.I.D.C. in filing the appeal is 479 days, that is, much more than the delay of 171 days in the case of the appeal filed by the State Government. It is stated that in view of the dismissal of the application for condonation of delay filed by the State Government, the present application is also liable to be dismissed.

In the circumstances of the case, we are inclined to allow the application for condonation of delay in filing the appeal. We have noticed time and again that there is a considerable delay on the part of the V.I.D.C. in filing the appeals against the awards passed by the reference Court. When there is delay in filing

almost every First Appeal by the V.I.D.C., it makes this Court believe that the delay in filing the appeal could be intentional. It could be said that the delay on the part of the public body is not intentional or deliberate if the delay is caused in one or two matters or a small number of matters. But we find that the delay in filing the appeal is a regular feature with the V.I.D.C. and the delay is also inordinate. In land acquisition matters if the First Appeals are not admitted in view of the rejection of the application for condonation of delay in filing the appeal, great loss would be caused to the Government exchequer, inasmuch as it would be necessary for the State and the V.I.D.C. to pay the compensation awarded by the reference Court to the claimant without considering the case of the State Government or the V.I.D.C. on merits. We find that in this case the reference Court has relied on a decision in the land acquisition case which is challenged before this Court in a First Appeal against the enhancement of compensation and the First Appeal is admitted by this Court. We also find that the two sale-deeds on which reliance is placed by the reference Court pertain to non-agricultural land, whereas the land of the respondent - claimant in this case is agricultural land. The reference Court has enhanced the compensation manifold, that is, more than ten times, as the initial compensation was granted at Rs.2,29,000/- per hectare, whereas the reference Court has enhanced it to Rs.37,00,000/- per hectare. Though it is possible to believe that the delay in filing the application may not be only due to procedural difficulties, in the circumstances of the case, since the common man's money is involved, it would be necessary to condone the delay in filing the

appeals after directing that appropriate action be taken against the erring officers of the V.I.D.C. after conducting an enquiry in the matter. Unless this is done, the delay in filing the appeals would continue to be a regular feature and may be in some cases intentionally, by joining hands with the claimants.

We are surprised that the respondent – claimant has opposed the application filed by the V.I.D.C. for condonation of delay in filing the appeal. Against the same award, dated 10.1.2014, the Government had filed the appeal with the delay of 171 days and though this Court had dismissed the application filed by the State Government for condonation of delay, the application filed by the respondent – claimant for condonation of delay in filing the First Appeal against the same judgment and award dated 10.1.2014, with a delay of 663 days is allowed. The respondent – claimant has filed a First Appeal against the same award bearing First Appeal No.261/2017 and the said appeal is admitted. This Court has condoned the delay of 663 days in filing the appeal by the respondent – claimant. It would not be fair on the part of the respondent – claimant to oppose the prayer made in this application for condonation of delay of 479 days when the respondent has belatedly filed the appeal for enhancement of compensation with delay of 663 days and the delay of the respondent in filing the appeal is condoned. In the application for condonation of delay, as filed by the respondent, the only case of the respondents – claimants is that the respondents are agriculturists and due to the paucity of funds, they were not able to file the appeal. The application filed by the respondent – claimant was drafted in a very casual manner but considering the

fact that the valuable rights of the parties are involved, this Court had condoned the inordinate delay. If the application filed by the respondent – claimant for condonation of delay of 663 days in filing the appeal could be allowed, we see no reason for dismissing the application for condonation of delay of 479 days in filing the appeal, more so, when exorbitant compensation is awarded in favour of the respondent – claimant by the reference Court and ultimately the public interest would be hampered or compromised, if excess compensation is unduly paid to the respondent – claimant in terms of the award of the reference Court. Our order would be supported by the judgments relied on by the learned Additional Government Pleader.

Hence, in the circumstances of the case, we allow the application for condonation of delay in filing the appeal. We also direct the higher-ups in the V.I.D.C. to conduct an enquiry and take appropriate action against the officers and employees that are responsible for causing the delay in filing the First Appeals in land acquisition matters, just like the delay caused in this matter and ensure that henceforth every First Appeal is filed as early as possible.

Place the matter on 27.07.2017 for ensuring compliance. We expect the higher-ups in the V.I.D.C. to immediately take cognizance of this order and ensure taking appropriate action against the erring officers and employees so that appeals are filed as early as possible in future.

FIRST APPEAL ST. NO.19359/2015

Heard.

ADMIT.

Call for record and proceedings.

Learned Counsel Shri J.A. Malnas waives notice of hearing on behalf of the respondent no.1

Learned Additional Government Pleader Mrs. K.S. Joshi waives notice of hearing on behalf of the respondent nos.2 and 3.

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Heard.

On a reading of the award and in the circumstances of the case, we stay the award of the reference Court only on the condition that the appellant – V.I.D.C. deposits 75% of the amount due and payable in terms of the award of the reference Court, in this Court within twelve weeks.

If the amount is so deposited, in the circumstances of the case, we permit the respondent – claimant to withdraw 60% of the amount so deposited after furnishing solvent surety/security to the satisfaction of the Registrar of this Court and remaining 40% of the deposited amount on furnishing a bank guarantee. If the amount is not withdrawn in the aforesaid manner, the same may be placed in a fixed deposit in a nationalised bank.

The civil application is allowed in the aforesaid terms and disposed of.

JUDGE

JUDGE