

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 137 OF 2018

Limbu S/o Shankar Sathe
Age : Adult, Occu. : Agri.,
R/o Makani, Tq. Omeraga
Dist : Osmanabad

.. Applicant
(Orig. Claimant)

Versus

- 1] The State of Maharashtra,
Through the Collector, Osmanabad
- 2] Special Land Acquisition Officer No.1,
Osmanabad

.. Respondents

...
Mr. V.V. Kabade, Advocate for applicant
Mr. S.N. Morampalle, AGP for respondent-State
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-10-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Aggrieved by judgment and order dated 28-01-2014 passed by learned civil judge senior division, Omerga in land acquisition reference no. 738 of 2009 (old no. 04 of 2002), thereby dismissing the reference under section 18 of the Land

Acquisition Act, 1894, filed by him, the applicant is before this court.

3. Applicant – claimant had been owner and possessor of land admeasuring 1 *Hectare*, 2 *Are*, situated in village Makani, Taluka – Omerga, District – Osmanabad. Said land came to be acquired for resettlement. Possession of aforesaid land had been taken over by private negotiations in 1993.

4. An award came to be passed and a meagre compensation according to claimant had been awarded while he had claimed compensation @ ` 40/- per square foot. The claimant, as such, had filed reference against the award. The same had been pending since 2002. It has been given to understand that as and when the matter would be ripe for evidence and hearing, the claimant would be informed. However, to the shock and surprise of the claimant, it later transpired that land acquisition reference filed by him bearing No.4 of 2002 at Osmanabad had been transferred to Omerga and had been renumbered as Land Acquisition Reference No. 738 of 2009 and the same came to be dismissed on 28th January, 2014, in his absence for want of evidence. The applicant – claimant has submitted that his absence on the date of dismissal and earlier on had been due to communication gap. He had never been given

any intimation about progress in the proceedings. Due to pendency of proceedings for a long period and the applicant being given to understand that he would be informed about requirement of his presence and no such information had come his way, the proceedings stood dismissed on 28th January, 2014.

5. Upon realizing the same, present civil revision application along with application for condonation of delay had been preferred and the delay has been condoned subject to payment of costs.

6. Learned advocate for the applicant submits that while delay has been condoned for the reasons as have been referred to by the applicant and also those have been reflected in the order while condoning delay, the same analogy shall hold good and the present civil revision application be allowed. He submits that non appearance in the proceedings, which had been pending for years together is not wholly attributable to the applicant. Non appearance had neither been intentional nor deliberate and non appearance seldom would benefit the claimant in any way.

7. Learned counsel for applicant refers to and relies on decision of supreme court in the case of *Dhiraj Singh (Dead) through legal representatives and others Vs. State of Haryana and others* reported in (2014) 14 S.C.C. 127 and refers to paragraphs no. 14, 15 and 16.

8. Learned advocate for applicant – claimant, on instructions, makes a statement that the applicant would not claim interest for the period of delay from 24-12-2014, a date when he had been made known of impugned order to date of filing present civil revision application in high court.

9. In view of aforesaid, though learned Assistant Government Pleader resists, the resistance would have little efficacy.

10. Having regard to decision in the case of "*Dhiraj Singh*" (*supra*), order dated 6th August, 2018 in Civil Application No. 5558 of 2018 in Civil Revision Application Stamp No. 11067 of 2018 and the reported decisions relied on and as have been referred to in paragraph No. 3 of said order and order dated 10th January, 2018 in civil application No. 12437 of 2017 in civil revision application stamp No. 31946 of 2017 and other companion matters, it appears to be expedient to indulge into request being made in present civil revision application by directing reference court at Omerga to hear land acquisition reference no. 738 of 2009 (old no. 04 of 2002) on merits in accordance with law and procedure, as expeditiously as possible, preferably within a

period of six months from the date of receipt of writ of this order. Claimant to co-operate in early disposal of the matter.

11. Impugned judgment and order dated 28-01-2014 passed by learned civil judge senior division, Omerga in land acquisition reference no. 738 of 2009 (old no. 04 of 2002) stands set aside and the same stands restored with reference court. Applicant to file undertaking before the reference court to the effect that he would not claim any benefit, including interest for the period of delay, as aforesaid.

12. Civil Revision Application is allowed. Rule made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

arp/

“ 14. The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same circumstances.

15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the court has to be pragmatic and not pedantic.

16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in Collector, (LA) V. Katiji wherein it is stated in para 3 as under :

“ 3. The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that

can happen is that cause would be decided on merits after hearing the parties.

(3) “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

(5) There was no presumption that delay is occasioned deliberately, or on account culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay in fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. ”