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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 489 OF 2017
WITH
CIVIL REVISION APPLICATION STAMP NO.594 OF 2017

Ashruba Maruti Mali
Age - 66 years, Occ - Nil
R/o Ghatpimapri, Taluka - Washi
District - Osmanabad

APPLICANT

VERSUS

- | | |
|---|-------------|
| 1. The State of Maharashtra
Through Collector
Osmanabad | RESPONDENTS |
| 2. Sub Divisional Officer, Osmanabad
District - Osmanabad | |
| 3. The Executive Engineer,
Minor Irrigation (Local Level)
Osmanabad, District - Osmanabad | |
| 4. The Deputy Collector (Land Acquisition)
Medium Project No. 2,
Osmanabad | |

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Mr. Sushant B. Choudhari, Advocate for the applicant
Mr. S. N. Kendre, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 7th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Issue notice to respondent No. 2. Learned AGP waives service.
2. Mr. Chaudhari, learned advocate for the applicant submits

that ostensibly application had been moved belatedly, however, it may have to be taken into account that after the land acquisition award had been passed by the special land acquisition officer and the amount had been received under protest, indeed, applicant had preferred land acquisition reference and had lodged the same with the Land Acquisition Officer. However, while the land acquisition reference was expected to be forwarded to reference court, the matter got dillydallied for such aspects involved in the matter which were not within the domain of the land acquisition officer. Eventually, land acquisition officer purported to have made certain communications to the applicant. However, applicant was given to understand that necessary rectification and corrections shall take place before the reference court and it would be the province of the civil court and not of the land acquisition officer. Under the circumstances, it was expected that reference would be sent to civil court, however, the same was purportedly rejected on 28th March, 2016.

3. Learned advocate submits that legal advice in this respect had been sought, however, no specific legal advice had come his way and ultimately, since the things were becoming unbearable, civil revision application had been moved. It is being submitted that the applicant had no wherewithal to cope up with the

litigation and he was engaged in eking out their existence.

4. Learned advocate, refers to common decision rendered by learned single judge of this court in a batch of civil applications along with civil revision applications, disposed of under judgment and order dated 10th January, 2018. According to learned advocate, position of present applicants is more dire than that of the applicants in those matters. He, therefore, seeks a lenient treatment to the application as have been meted out to the applicants in that batch of civil applications and civil revision applications decided on 10th January, 2018.

5. Learned AGP on the other hand, however, submits that there is no sufficient explanation coming forth on behalf of the applicant seeking condonation of delay.

6. Although such a resistance is being put forth by learned AGP, it may have to be adverted to, a decision of learned single judge of this court in the case of *“Laxmibai Ganesh Parke and Others V/s State of Maharashtra and Others”* reported in 2011 (5) Bom.C.R. 347, wherein it has been observed that special land acquisition officers and sub divisional officers are not empowered to reject applications filed by claimants, may be for non removal of deficiencies viz., payment of court fee, etc. and it is obligatory for the authority to forward applications of claimants to reference

court.

7. Additionally, one may also have to take into account order dated 6th August, 2018 passed by learned single judge of this court in civil application No. 5558 of 2018 in Civil Revision Application Stamp No. 11067 of 2018, wherein a delay of more magnitude than involved in present matter has been condoned, taking into account that claimant is an agriculturist and has lost his land on acquisition, he had been running from pillar to post eking out existence and this court is the last hope for them.

8. Over and above this, learned advocate for the applicant – claimant, on instructions, makes a statement that the applicant would not claim interest for the period of delay.

9. Learned advocate has further submitted that the delay is neither intentional nor deliberate and much less by deliberately causing delay he is unlikely to get benefit in any way.

10. As such, conjoint reading of order dated 6th August, 2018 in Civil Application No. 5558 of 2018 in Civil Revision Application Stamp No. 11067 of 2018, 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 a batch of matters referred to *supra*, it appears to be expedient to indulge into request being

made in the present matter by condoning delay and directing special land acquisition officer / sub divisional officer to send references filed by the applicant to reference court for its onward adjudication in accordance with law and procedure. Deficiencies, if any, may be met with by the applicant as early as possible, before the reference court. As such, delay stands condoned. Civil application stands allowed in terms of prayer clause "B" and is disposed of, subject to payment of costs of Rs.500/-. Amount of costs be deposited within a period of four weeks from the date of receipt of writ of this order by the reference court. Impugned order dated 28th March, 2016 passed by The Deputy Collector (Land Acquisition) Medium Project No. 2, Osmanabad stands set aside. Civil Revision Application is allowed and is disposed of. Deputy Collector, Land Acquisition, Medium Project No. 2, Osmanabad to transmit reference of the applicant to reference court. Reference court, in case of granting enhancement in the land acquisition compensation to take into account statement made before this court that interest for the period of delay would not be claimed by the applicant. Applicant to file undertaking before the reference court to the effect that they would not claim any benefit, including interest for the period of delay.

Dinesh
Ramrao
Pawar

Digitally
signed by
Dinesh
Ramrao Pawar
Date:
2018.09.29
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+0530

[SUNIL P. DESHMUKH, J.]