

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CIVIL APPLICATION NO.:6572 OF 2016
IN
FIRST APPEAL STAMP NO.:6877 OF 2016

G.M.I.D.C. THROUGH ITS EXECUTIVE ENGINEER, MINOR IRRIGATION
DIVISION OSMANABAD AND ANOTHER

VERSUS

RANGNATH AMBADAS JAWALE (DIED) AND ANOTHER

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Mr. Prashant S. Shinde, Advocate for Applicants.

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CORAM : **M. S. SONAK, J.**

DATE : 15th February, 2018.

P.C.:

. Heard Mr. P. S. Shinde, learned counsel for Applicants.

2 By this civil application, the Applicants, seek condonation of delay of 1402 days in instituting the appeal to challenge the judgment and award dated 17th January, 2012 made by the Reference Court.

3 In the application, it is stated that the certified copy of the award was applied on 31st January, 2012 and the same was received on 27th February, 2012. Thereafter, it is stated that a period of almost two years was required for the purpose of "*approval from the legal*

department". After such approval was obtained, the matter was handed over to the counsel before the High Court for institution of the appeal vide letter dated 27th January, 2014.

4 The actual appeal has been instituted only on 1st March, 2016 i.e. after the period of more than two years from the date of so-called approval and handing over the case papers to the counsel before the High Court. The reason stated for this delay is not that there was any default on the part of the counsel, but that the counsel, for two years, was pursuing the matter with Applicants / Appellants to obtain the Court fee necessary for institution of the appeal. Ultimately, the Court fee was made available after two years. This is the explanation in respect of the delay, which is virtually of almost four years in institution of the appeal.

5 The aforesaid reason cannot be said to constitute any sufficient case for condonation of delay. Mere submission that "approval was sought from the legal department" and further, two years time was spent in securing such approval is certainly, no cause on the basis of which, such inordinate delay can be sought to be condoned particularly when the Applicants have acquired the lands of farmers for irrigation project and the compensation in terms of the

enhancement award by the Reference Court is being withheld from such farmers. Thereafter, taking two years time to only make available Court fee to the counsel before the High Court is also not some reasonable explanation to explain such an inordinate delay. Apart from these reasons, there are no other reasons set out in the civil application seeking condonation of delay. In paragraphs 5 to 9 of the civil application, certain submissions have been made on merits of the matter. In paragraph 10 of the civil application, reference is made to the decision of the Honourable Supreme Court in the case of **G. Ramegowda, Major, ETC. Vs. Special Land Acquisition Officer, Bangalore**, reported in, **AIR 1988 SC 897** to urge that indulgence has to be shown to the Government and its instrumentality in the matters of condonation of delay. Finally, it is asserted that since the Applicants have a good case on merit, the delay of 1402 days must be condoned. As noted earlier, there is no explanation of such an inordinate delay and the reasons stated in the civil application do not constitute any sufficient cause, even by applying liberal standards, which this Court normally applies where the Government or its instrumentality are the Applicants.

Court is in fact, within the limits prescribed in the Government Resolution dated 3rd November, 2016, which records the policy of the State Government not to institute or pursue appeal where the enhanced compensation is less than four times the ready reckoner rates prevalent on the date of issuance of Section 4 notification. However, the learned counsel for Applicants points out that since, some excess compensation has been awarded in respect of trees and since the Government Resolution makes no reference to compensation for trees, the Applicants, are unwilling to instruct him to withdraw this appeal. Accordingly, the learned counsel, made his submissions in support of the application for condonation of delay. Apart from re-iterating the reasons in the civil application, he also submitted that since the Applicants are impersonal agency, which has to function through its officers, delay may be condoned.

7 In this case, as noted earlier, the compensation awarded is within limit prescribed in the Government Resolution date 3rd November, 2016 as amended from time to time. In this matter, the lands of farmers have been acquired several years ago. They have been litigating to secure some compensation, since according to them, what was awarded by the Land Acquisition Officer, was a mere

pittance. The learned counsel for Applicants admits that in pursuance of the marginal enhancement ordered by the Reference Court way back on 17th January, 2012, till today, even though six years have passed, no such compensation has been paid to the land losers. This is despite the fact that as yet, there is no interim relief restraining the execution of the award. Possibly, the land losers are too poor or too tired, even to execute the awards, which have been made in their favour by the Reference Court. The enhancement as noted earlier, is really not substantial and in fact, within limits prescribed by the Government itself in Government Resolution dated 3rd November, 2016. The issue of inordinate delay of almost four years or 1402 days has to therefore, to be considered not only from the perspective of the Applicants, who are impersonal agency, required to function through the officer, but also from the context of the formers, who have lost their lands and trees, are now in no position to even execute the order in their favour because, the compensation which they have received from LAO several decades ago, which was a pittance. To permit the Applicants at this stage to revisit the issue of compensation and that too, without there being any sufficient cause shown to explain the inordinate delay, will only amount to grant of undeserved indulgence to the Applicants, in the facts and circumstances of the present case.

8 The possibility that this appeal has been instituted after so much delay only to seek time ex-post facto justification for non-payment of enhanced compensation to the land losers, cannot be ruled out. The averments in the civil application are extremely casual and unverifiable. On basis of such routine averments, the Applicants, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, required to act through its officers. In this case, the Applicants have not blamed any particular officer or officers or alleged that on account of deliberate inaction or fraud on the part of such officer or officers, the appeal could not be filed within prescribed period of limitation or within some reasonable period thereafter. Only a bald statement has been made that approval was required from the legal department and that such approval took two years. Thereafter, it is stated that about two years time was required to make available to the counsel before the High Court, the Court fee amount. This is no explanation for condoning the delay of 1402 days. On the basis of such statement, such inordinate delay cannot be condoned.

9 In Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr., reported in [(2008) 17 SCC 448], the Hon'ble Supreme Court has held that pursuing stale

claims and multiplicity of proceedings in no manner subserves public interest. 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 land-losers 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 or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude but the law of limitation is same for citizens 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 cases with which we are concerned, no such facts have been either pleaded or proved.

Chemicals Ltd. and ors., reported in [2(2000) 6 SCC 133], the Hon'ble Supreme Court 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.

11 In Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors., reported in [3(2013) 12 SCC 649], the Hon'ble Supreme Court has held that 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. Further, the Hon'ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. 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.

12 In Postmaster General and Ors. vs. Living Media India Limited and anr., reported in [4(2012) 3 SCC 563], the Hon'ble

Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed that 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. 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 bonafide 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 government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning

of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

13 In Basawaraj and anr. vs. Special Land Acquisition Officer, reported in [(2013) 14 SCC 81] the Hon'ble Supreme Court went on to observe that 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.

14 The Division Bench of this Court in State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., reported in [2008(6) Mh.L.J.239] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant-State.

15 Applying the aforesaid principles to the facts and circumstances of the present case, the application for condition of delay is liable to be dismissed and the same is hereby dismissed.

16 As a consequence of, the appeal and other civil applications therein, do not survive and the same are also disposed of.

[M. S. SONAK, J.]

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