

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

947 CIVIL APPLICATION NO. 4600 OF 2018

IN

FAST/9215/2018

The Executive Engineer,
Lift Irrigation Division,
Osmanabad Thr.
Godavari Marathwada Irrigation
Development Corporation,
Aurangabad.

**.... APPLICANT/
[ORI. RESP. NO. 2]**

VERSUS

1. Harishchandra Rajaram Pimple
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
2. Ramchandra Mahadeo Pimple
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
3. Ashok Chandrahar Pimple
Died – Thr. L.Rs.
- A. Nitin Ashok Pimple
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.

- B. Sachin Ashok Pimple
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
- C. Ajit Ashok Pimple
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
- D. Prerna Yeshwant Ghogre
Age : Major, Occ. Agriculture,
R/o : Ghogarewadi, Tq. & Dist. RESPONDENTS/
Osmanabad. [ORI. CLAIMANTS]
4. The State of Maharashtra
Thr. the Collector, FORMAL RESPONDENT/
Osmanabad. [ORI. RESP. NO. 1]

WITH
CIVIL APPLICATION NO. 4602/2018
IN
FAST/9222/2018

The Executive Engineer,
Lift Irrigation Division,
Osmanabad Thr.
Godavari Marathwada Irrigation
Development Corporation, APPLICANT/
Aurangabad. [ORI. RESP. NO. 3]

VERSUS

1. Narayan Bapu Magar
Died – Thr. L.Rs.
- 1-A. Lochana Narayan Magar
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist.
Osmanabad.
- 1-B. Prabhu Narayan Magar
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist.
Osmanabad.
- 1-C. Nagnath Narayan Magar
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist.
Osmanabad.
- 1-D. Pandurang Narayan Magar
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist.
Osmanabad.
- 1-E. Kamal Somnath Lakal
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist.
Osmanabad.
- 1-F. Satyabhama Vasant Shinde
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist.
Osmanabad.

1-G. Surekha Ratnakar Bankar
Age : Major, Occ. Agriculture,
R/o : Ter, Tq. & Dist. RESPONDENTS/
Osmanabad. [ORI. CLAIMANTS]

2. The State of Maharashtra
Thr. the Collector,
Osmanabad.

.... FORMAL RESPONDENTS/

3. The S.L.A.O. at Osmanabad. [ORI. RESP. NOS. 1 & 2]

WITH

CIVIL APPLICATION NO. 4604 OF 2018

IN

FAST/9227/2018

The Executive Engineer,
Lift Irrigation Division,
Osmanabad Thr.
Godavari Marathwada Irrigation
Development Corporation,
Aurangabad.

.... APPLICANT/
[ORI. RESP. NO. 3]

VERSUS

Sitaram @ Sidram Manohar Umbre
Died – Thr.; L.Rs. :

1. Subhadrabai Sitaram @ Sidram Umbre
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.

2. Atmaling Sitaram @ Sidram Umbre
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
 3. Sadashiv Sitaram @ Sidram Umbre
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
 4. Minabai Shivaji Kilthe
Age : Major, Occ. Agriculture,
R/o : Dahiphal, Tq. Kalamb, Dist.
Osmanabad.
 5. Prayagbai Prakash Akoskar
Age : Major, Occ. Agriculture,
R/o : Ganji, Tq. Kaij, Dist.
Beed.
 6. Vanmala Ramchandra Gore
Age : Major, Occ. Agriculture,
R/o : Wagholi, Tq. & Dist.
Osmanabad.
 7. The State of Maharashtra
Thr. the Collector,
Osmanabad.
 8. The S.L.A.O.
at Osmanabad.
- RESPONDENTS/
[ORI. CLAIMANTS]
- FORMAL RESPONDENTS/
[ORI. RESP. NOS. 1 & 2]

WITH
CIVIL APPLICATION NO. 4606 OF 2018
IN
FAST/9232/2018

The Executive Engineer,
Lift Irrigation Division,
Osmanabad Thr.
Godavari Marathwada Irrigation
Development Corporation,
Aurangabad.

.... APPLICANT/
[ORI. RESP. NO. 9]

VERSUS

1. Shankarrao Wamanrao Kulkarni
Died – Thr.; L.Rs. :
Madhukar Shankarrao Kulkarni
(Wagholikar), Age : Major,
Occ. : Agriculture,
R/o : Osmanabad.

.... RESPONDENT/
[ORI. CLAIMANT]

2. The State of Maharashtra
Thr. the Collector,
Osmanabad.

.... FORMAL RESPONDENT/
[ORI. RESP. NO. 1]

.....
Mr. S.G.Bhalerao, Advocate for applicant.
Mr. A.M.Phule, A.G.P. for State.

.....
CORAM : V.L.ACHLIYA, J.
DATE OF JUDGMENT : 27th JULY, 2018
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JUDGMENT :

1. The applicant/appellant i.e. acquiring body has filed these applications for condonation of delay in filing Appeals against the Judgment and Award separately passed in L.A.R. No. 133/1994, dated 18/12/2012 in L.A.R. No. 139/1995, dated 13/08/2012 in L.A.R. No. 139/2009 and dated 19/11/2012 in L.A.R. No. 289/1994 respectively by the Reference Court i.e. Civil Judge [S.D.], Osmanabad for the reasons set out in detail in the applications. The delay caused in appeal and sought to be condoned ranges between 1800 to 2000 days in each of the application.

2. Heard learned counsel for the applicants/appellants and learned A.G.P. for State. The Claimants in respective application absent though served.

3. Mr. Bhalerao, learned counsel for the applicant submits that the delay in filing Appeals was not deliberate but due to non communication of Award passed by the Assistant Govt. Pleader who appeared in the matter before Reference Court as well as time consumed in completing the procedural formalities such as securing legal advise, opinion and sanction from competent authority. It is further submitted that the delay was also caused

due to non availability of funds for payment of court fees. In the back-ground of the cause assigned for condonation of delay, learned counsel submits that delay caused in filing appeal be condoned.

4. On due consideration of the submissions advanced in the light of overall facts of the case and the cause assigned to condone the delay, I am of the view that no case is made out to condone the delay in filing Appeal. The cause assigned for condoning the delay can not be termed as sufficient cause to condone the delay of about 2000 days in filing appeal.

5. In the case of *Pundlik Jalam Patil (D) by L.Rs. V/s Exe.Eng. Jalgaon Medium Project and Anr. reported in 2008 (6) ALL MR 954 (S.C.)*, the Apex Court has observed that when the State and its instrumentalities are the applicant seeking condonation of delay, then they may be entitled to certain amount of latitude but the law of Limitation is same for citizens and for Govt. authorities. The Limitation Act does not provide for different period for filing Appeals or application by Govt. It would be different matter where the Govt. makes out a case where public interest 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. It is further observed that pursuing stale

claims and multiplicity of proceedings in no manner sub-serves public interest. It is further observed that prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled in law in any fraudulent manner. It is further observed that one should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers and such 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. In para No. 23 and 24 of said Judgment, the Apex Court has observed as under :

“ 23. Public interest undoubtedly is a paramount consideration in exercising the Courts discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the

case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled in law in any fraudulent manner. One should not forget the basic fact that wheat is acquired is not the land but the livelihood of the land losers. 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 can not 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. It serves no public interest.

24. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. 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 or proved they can not be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We can not entertain the submission made across the Bar without there being any proper foundation in the pleadings. ”

6. On examining the cause assigned to condone the delay, I am of the view that no case is made out to exercise the discretion in favour of the applicant. The averments made in the application for condoning the delay are vague and general in nature. The applicant/appellant was party to the reference proceeding and impleaded as respondent. The applicant/appellant was represented in the proceeding through their Advocate Mr. O.A.Morve and not by the A.G.P. The acquisition of the land was taken place pursuant to notification issued u/s 4 of the Land Acquisition Act on 08/03/1990. The land was acquired for Wagholi Medium Project. The possession of the land was taken on 01/03/1990. The Special Land Acquisition Officer [for short, 'S.L.A.O.'] passed Award on 07/11/1992. The References made were decided after about 20 years after the Award passed by S.L.A.O. As against such Reference, the acquiring body has filed

these appeals after the period of more than six years. Thus, the facts of the case and the conduct of the applicant – acquiring body itself sufficient to reject the applications seeking condonation of delay.

7. Thus, the reasons assigned to condone the delay are found to be false, concocted and contrary to record. The acquiring body has gone to the extent of making false averment that the delay was caused due to non communication of Award by the Govt. Pleader though represented in the proceeding through their Advocate and not by the Govt. Pleader. In that view, the applications are liable to be rejected. Accordingly, the applications are rejected. In consequences of rejection of applications seeking condonation of delay, the appeal stands dismissed. No order as to costs.

[V.L.ACHLIYA]
JUDGE

