

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

**955 CIVIL APPLICATION NO. 5065 OF 2018
IN
FAST/10283/2018**

The Executive Engineer
Lower Terna Canal
Division No. 2, Latur
Thr. Godavari Marathwada
Irrigation Development
Corporation, Aurangabad.

.... APPLICANT

VERSUS

1. Putalabai w/o Suryakant Patil
Age : Major, Occ. Agriculturist,
R/o : Tipral, Tq. Shirur Anantpal,
Dist. : Latur.

**.... RESPONDENT/
[ORI. CLAIMANT]**

2. The State of Maharashtra
Through the Collector,
Latur.

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

WITH

**CA/5067/2018
IN
FAST/10559/2018**

The Executive Engineer
Lower Terna Canal
Division No. 2, Latur
Thr. Godavari Marathwada

Irrigation Development
Corporation, Aurangabad.

.... APPLICANT

VERSUS

1. Shivdas s/o Vireshetti Biradar
Age : Major, Occ. Agriculturist,
R/o : Tipral, Tq. Shirur Anantpal,
Dist. : Latur. RESPONDENT/
[ORI. CLAIMANT]
2. The State of Maharashtra
Through the Collector,
Latur. RESPONDENT/
[ORI. RESP. NO.1]

WITH

**CA/5069/2018
IN
FAST/10559/2018**

The Executive Engineer
Lower Terna Canal
Division No. 2, Latur
Thr. Godavari Marathwada
Irrigation Development
Corporation, Aurangabad.

.... APPLICANT

VERSUS

1. Madhav S/o Vieshwambhar Biradar
Age : Major, Occ. Agriculturist,
R/o : Tipral, Tq. Shirur Anantpal,
Dist. : Latur. RESPONDENT/
[ORI. CLAIMANT]

2. The State of Maharashtra
Through the Collector, **RESPONDENT/**
Latur. **[ORI. RESP. NO.1]**

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Mr. S.G.Bhalerao, Advocate for applicant.
Mr. A.M.Phule, A.G.P. for R – 2.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 27th JULY, 2018

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JUDGMENT :

1. All these applications are filed by the applicant/appellant i.e. acquiring body for condonation of delay in filing respective Appeals against the Judgment and Award dated 02/09/2015 passed by the Reference Court i.e. Civil Judge [S.D.], Nilanga, District Latur in L.A.R. Nos. 81/2013, 82/2013 and 83/2013 for the reasons set out in detail in each of the applications. As the cause assigned in seeking condonation being same, the applications are heard together to be decided by common order.

2. Heard learned counsel for the applicant/appellant and learned A.G.P. for State. The claimants in respective Appeals though served, absent.

3. Learned counsel for the applicant submits that the delay caused in filing Appeal was not deliberate. He submits that order passed by the Reference Court was not communicated by Govt. Pleader in time. He further submit that the applicant was not made party to reference proceeding. Only after the claimant approached and demanded to pay compensation as per Award

passed by Reference Court, the applicant has taken steps to file appeal. Considerable time spent in obtaining copies, sanction from higher authority and arranging money to pay court fees.

4. Respondent No. 1/claimant though served, failed to appear. Learned A.G.P. pointed out the quantum of amount enhanced by the Reference Court in each of case and challenged in Appeal is very meagre sum of Rs. 7,926/- enhanced by Reference Court.

5. 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 can not be treated as sufficient case to condone the delay.

6. 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 what 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. ”

7. On examining the cause assigned by applicant to condone the delay, I am of the view that no case is made out to exercise the judicial discretion to condone the delay 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 No. 2. Respondent No. 2 was represented in the proceeding through their panel Advocate Mr. M.U.Talikhedkar. After full fledged proceeding, the Tribunal has enhanced the compensation and that too to the extent of Rs. 7,926/- to each of the claimant. The notification u/s 4 of the Land Acquisition Act was issued on 05/12/1990. The land was acquired for construction of “Saunrakshak bandh” in the village. The possession of the land was taken in the year 1998. The Special Land Acquisition Officer [for short, 'S.L.A.O.'] passed Award on 30/03/2002. The References made were decided 12 to 13 years after the Award passed by S.L.A.O. The land admeasuring 6 Are of each of the claimant was acquired. The Reference Court has enhanced the compensation to the extent of Rs. 7,926/- in each of Reference. As against such meagre amount of compensation awarded by Reference Court, the acquiring body has filed Appeal after a period of more than two years. In spite of the conditional order dated 06/04/2018 passed by this Court to stay the execution on deposit of compensation amount, the applicant has not deposited the amount. Thus, the facts of the case but the conduct of the applicant/acquiring body disentitle them to seek exercise of judicial discretion in their favour to condone the delay. It is really surprising to note that the applicant/acquiring body has filed these Appeals against meagre enhancement of compensation in respect

of lands which were taken in possession in the year 1998. The amount spend on litigation may be much more than the amount awarded by the Reference Court.

8. 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. In consequences of rejection of applications seeking condonation of delay, the appeal stands dismissed. No order as to costs.

[V.L.ACHLIYA]
JUDGE