

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1256 OF 2017
IN FAST/10430/2016

NIVRUTI GANPATI TARALKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

WITH
CA/1257/2017 IN FAST/11094/2016

VISHWAMBHAR GANGARAM WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

WITH
CA/1258/2017 IN FAST/11088/2016

RAGHUNATH GYANOBA MORE DIED THROUGH LRS. AND ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

WITH
CA/1259/2017 IN FAST/11085/2016

GOVIND NAGNATH GHAYAL AND ANR.
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

WITH
CA/1260/2017 IN FAST/11083/2016

SOPAN SHANKAR JAMBHALDARE
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

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Mrs. P.G. Sontakke, Advocate for applicants in all CAs
Mr. S.P. Deshmukh, A.G.P. for respondent-State
Mr. Ram Deshpande, Advocate for respondent no.2 in all CAs

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 26-02-2018

ORAL ORDER :

1. Heard.
2. This is a group of civil applications seeking condonation of delay in preferring appeals against decisions rendered in the land acquisition references seeking enhancement in the compensation awarded by the land acquisition officer. The land acquisition references were partly allowed and first appeals are sought to be preferred against the unaccepted claims.
3. Learned counsel for the applicants, on instructions, states that the applicants will not claim interest for the period of delay, in case they succeed in the appeals.
4. Learned counsel for the applicants refers to that appeals against the decision in land acquisition references by the claimants, whose lands are acquired under the same notification as that of the present applicants, have already been pending for decision in this court, so is the case of first appeals filed by the acquiring body.

5. Learned counsel for applicants purports to draw attention to that there were hosts of reasons under which appeals could not be preferred within the prescribed period, including that the applicants could not arrange wherewithal for court fees of the appeals. Only after the amount had been deposited by acquiring body in this court, the same had been withdrawn and after receipt of the same, appeals have been preferred within a reasonable period.

6. Learned counsel for the applicants has referred to a decision of supreme court in the case of *Tukaram Kana Joshi Vs. Maharashtra Industrial Development Corporation* reported in 2013 AIR (SC) 565, giving lenient treatment to the applicants in the matters of delay condonation.

7. Learned counsel for respondent no. 2 - acquiring body submits that there is enormous delay in filing appeals and the reasons would hardly justify condonation of delay. He purports to refer to that the amount had been deposited in first appeals by acquiring body in this court in 2015 and the same had been withdrawn by applicants and even thereafter, after quite some time, the applications are filed.

8. Perusal of the record shows that the amount had been withdrawn by the applicants in 2016 and the applications have been

preferred in 2016.

9. Learned counsel for respondent no. 2 further concedes to that magnitude of delay has been of similar nature in the present civil applications as involved in civil application no. 1110 of 2017 and companion civil applications and further that under order dated 02-02-2018, those were granted.

10. Perusal of said order dated 02-02-2018 shows that this court had considered order dated 07-08-2017 passed in civil application no. 53 of 2017 in first appeal (st.) no. 10298 of 2016 and connected matters. In said matters as well, it appears that applicants have given up their claim of interest for the delayed period.

11. In the order passed on 02-02-2018 in civil application no. 1110 of 2017, this court had reproduced order dated 07-08-2017 and had further observed in paragraphs no. 4, 5, 6 and 7, as under :-

" 4) In addition to the aforesaid, the learned counsel for the applicants points out that the order dated 7.8.2017 was made in the matters which arose under the very same Section 4 Notification as in the present case. He further points out that the appeals instituted by the acquiring body against the very same Judgment and award have already been admitted by this Court. He submits that it is on account of poverty and ignorance that these appeals could not be instituted within prescribed period. He submitted that it is for the same reason that the applicants did not even institute Cross-Objections in the appeals instituted by the acquiring body.

5) *Mr. Ram Deshpande the learned counsel for the respondent No.2 opposes the condonation of delay by pointing out that the order dated 7.8.2017 was made in the cases which were grouped separately. He, however, does not dispute that the order dated 7.8.2017 also relates to acquisition under the same Notification and for the same purpose. He submits that when the order dated 7.8.2017 was made, the acquiring body was not aware that it had already preferred appeal against the same Judgment and award. It is inconvincible that the acquiring body is not aware that it has itself instituted the appeals. In any case, the circumstances in which such appeals have been instituted by the acquiring body against the same Judgments and awards, are also similar in the present case. Infact, in the circumstances, it assists the applicants/appellants rather than acquiring body. Finally, Mr. Ram Deshpande learned counsel submits that this Court while condoning the delay involved in the institution of the appeals by the acquiring body had imposed costs of Rs.5,000/-. He submits that this action must be regarded as payback time and therefore, the appellants/applicants must also be required to pay costs for condonation of delay.*

6) *Reluctantly, this submission is accepted and the delay is deemed to be condoned subject to the applicants in each of these applications paying costs of Rs.5,000/- in favour of respondent Nos.1 and 2. This means that costs of Rs.2,500/- should be paid to the State Government and Rs.2,500/- to the acquiring body. It is pertinent to note that in this case, quite rightly the State Government did not press for costs.*

7) *Taking into consideration the order dated 7.8.2017 and also the circumstances that against the very same Judgment and award, the acquiring body has already instituted appeals and the further circumstance that the appellants/applicants in the present case are poor agriculturist, who have already lost their land for acquisition, the case is made out for condonation of delay subject to payment of costs as aforesaid. The amount of costs be deposited in this Court within eight weeks from today. Upon the deposit, the respondents are permitted to withdraw the same unconditionally."*

12. Having regard to that these are applications by the applicants whose lands were acquired under very same notification, the treatment given under aforesaid order to the applications for condonation of delay in filing appeal against decisions in land acquisition reference and also having regard to that first appeals preferred by other claimants whose lands were acquired under same

notification as involved in present applications as well as first appeals preferred by the acquiring body are pending, it would be expedient to give similar treatment to present applications as has been given in civil application no. 1110 of 2017.

13. In view of aforesaid, the civil applications are allowed, subject to payment of costs of Rs.10,000/-. Costs to be shared equally by the State and the acquiring body.

14. Pursuant to the statement made on behalf of the applicants/appellants, the applicants would not be entitled to claim any interest over the delayed period. The applicants will file necessary undertaking to above effect within a period of eight weeks from today.

[SUNIL P. DESHMUKH]
JUDGE

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