

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.8440 OF 2016 IN
FIRST APPEAL ST.NO.12498 OF 2016

The State of Maharashtra,
through the Collector, Ahmednagar

Applicant

Versus

Smt.Shantabai Bhalchandra Deshmukh,
age: 55 years, Occ: Agril.,
R/o Jamkhed, Tq. Jamkhed,
District Ahmednagar.

Respondents

Mr.S.P.Deshmukh, A.G.P. for applicants.

CORAM : M.S.SONAK, J.

DATE : 24th January, 2018.

ORAL JUDGMENT :

1 This is an application seeking condonation of delay of 1812 days in instituting appeal from the date of impugned judgment and award dated 07.07.2010, by which, the Reference Court has enhanced compensation from Rs.10,500/- per hectare to Rs.42,5000/- per hectare.

2 The increase is marginally above the limits specified in Government Resolution dated 03.11.2016. The entire amount of compensation involved in this appeal is Rs.15,290/- only. Therefore, for the reasons set out in the judgment, this appeal need not be entertained. In any way, delay of 1812 days in instituting this appeal is not properly explained. All that is stated is that there was some communication going on between the office

of the Government Pleader and the Legal Department. On the basis of such vague reasons, unverifiable delay cannot be condoned.

3 Mr.Deshmukh, learned AGP relying upon decision of the Supreme Court in the case of **N.Balakrishnan vs. M. Krishnamurthy**, [1998 (7) SCC 123] submits that in such matters, the length of delay is not significant but the acceptability of the explanation is the only criteria. Mr. Deshmukh also relied upon the decision of the Supreme Court in the case of **Collector Land Acquisition vs Mst. Katiji & Ors.**, n [1987 (2) SCC 107], to submit that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. He submits that in case the delay is condoned, at the highest the appeal can be decided on merits. For all these reasons, Mr. Deshmukh, learned AGP submits that this is a fit case for condonation of delay.

4 In order to appreciate the contentions of learned A.G.P., it is necessary to make a reference to the cause as indicated in the Civil Application. The impugned Judgment and Award was made on 07.07.2010 and the applicant admits that the certified/typed copy of the impugned award was received from the Legal Department 16.07.2011. There is absolutely no explanation in the application as to why there was such inordinate delay in even applying for certified copies of the judgment and award, particularly, since it is now the case of the applicant that there was manifold increase in the compensation amount awarded by the Land Acquisition Officer. The statement, that some time was spent

to obtain opinion from Assistant Government Pleader and Joint Secretary, Law and Judiciary Department, is again, quite vague and backed by no particulars. In any case, the Officers are expected to act within some reasonable period. There is no point in seeking condonation of delay virtually as a matter of right on the ground that the Assistant Government Pleader's office or the Joint Secretary, Law and Judiciary Department, took some time to furnish a legal opinion.

5 In this case, the legal opinion and recommendation for filing of appeal was taken on 27.05.2011. Thereafter, the Office of the Government Pleader also prepared the appeal memos in the month of June 2011 itself. It is stated that the typed copy of the award was received on 16.07.2011. The appeal and application for condonation of delay are instituted on 05.04.2016. Again, the delay between July 2011 and April 2016 is both inordinate and unexplained. The vague statement, that the amount of court fees was received on 21.12.2012, can hardly be said to constitute sufficient cause. In spite the delay being of more than five years, the application merely states that there is 'some delay' in institution of appeals. This is hardly the proper manner to explain the delay. It is true that every day's delay is not required to be explained. However, that does not mean that delay which is of over five years can be explained in such a casual manner. In such circumstances, it cannot be said that any sufficient cause has been made out to condone the delay.

6 Normally, the applications seeking condonation of delay are liberally considered. This is more so when impersonal

agency like the Government or Public Sector Acquiring Bodies are concerned. Mr.Deshmukh, learned AGP is quite right in his submission that quantum of delay is not decisive but it is the quality of explanation, which determines the matter. In the present case, the quality of explanation is simply lacking. On the basis of the vague pleadings of procedural delay, it will not be appropriate to condone such inordinate delay of over five years in instituting the appeal.

7 Ultimately, the plight of the land losers cannot be totally forgotten. They have lost their lands several years ago. They have been litigating to secure some compensation, since according to them, what was awarded by the Land Acquisition Officer was mere pittance. Despite the determination by the Reference Court, almost seven years ago, the enhanced compensation has not, in fact, been paid to the land losers. There is no clarity as to whether the land losers have levied execution or not. Respondent has thus suffered enough prejudice on account of denial of enhanced compensation despite the award made by the reference Court almost seven years ago. To permit the applicant at this stage to re-visit 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 applicant, in the facts and circumstances of the case. The possibility of this appeal having been instituted only to seek some *ex-post facto* justification for non-payment of enhanced compensation to the land losers, cannot be ruled out. In such circumstances, it will not be appropriate to exercise discretion in favour of the applicant.

8 The decision in **N. Balkrishnan** (supra) case requires the applicant to demonstrate good faith before claiming exercise of discretion. The decision, no doubt, states that the length of delay is not decisive but the quality of explanation is the determinative factor. In this case, quality of explanation is too poor to constitute any sufficient cause. **Mst. Katiji** (supra), no doubt, absolves explanation of each day's delay. However, the observation does not mean that delay of over five years is to be condoned as a matter of routine in the absence of any sufficient cause.

9 The averments in the application seeking condonation, are quite casual and unverifiable. On the basis of such routine averments, the State, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The statements that files had to be moved from table to table or that pressure of work or that some time is always required for decisions, which have to be taken at different levels, are reasons too vague to merit any acceptance, particularly when we are dealing with case of land losers, who have been deprived of compensation for several years.

10 In **Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr.** [(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 the case with which we are concerned, no such facts have been either pleaded or proved.

11 In **Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors.**, [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 license to the officers of the Government to shirk their responsibility to act with reasonable expedition.

12 In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors.**, [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.

13 In **Postmaster General and Ors. vs. Living Media India Limited and anr.**, [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 *bona fide* 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.

14 In **Basawaraj and anr. vs. Special Land Acquisition Officer, [(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.

15 The Division Bench of this Court in **State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., [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.

16 Applying the aforesaid principles to the facts of the present case, it will not be proper to indulge the applicant and condone delay of over five years in instituting this appeal, particularly, when no sufficient cause has been shown.

17 For all these reasons, the application for condonation of delay is dismissed. As a consequence, the appeal as well as pending Civil Applications do not survive and stand disposed of.

M.S.SONAK
JUDGE

adb/ca844016