

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

**CIVIL APPLICATION NO. 8944 of 2016
IN / WITH
CIVIL REVISION APPLICATION (Stamp) NO. 14510 of 2016**

Nursa S/o Lalsa Fakir,
age 70 years occupation agriculture
R/o Narangwadi Taluka Omerga District Osmanabad

...Applicant
(Original claimant)

VERSUS

1. The State of Maharashtra
Through : The Collector, Osmanabad
District Osmanabad.
2. The Special Land Acquisition Officer No.1,
Osmanabad District Osmanabad. **...Respondents**

Mr. Vivekanand V. Ingale, *Advocate for applicant*
Mr. S.P. Tiwari, *Asstt. Govt. Pleader for respondents No.1 & 2*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 12th October, 2018

ORAL JUDGMENT:

1. Learned counsel Mr Ingle advocate submits that ostensibly application has been moved belatedly, however, it may have to be taken into account that after the land acquisition award had been passed by the collector and the amount had been received under protest, indeed, applicant had preferred land acquisition reference and had lodged the same with the Land

Acquisition Officer within limitation. Accordingly, the reference was fixed for recording evidence before the trial court. However, the learned Joint Civil Judge (Senior Division), Umarga, dismissed the same in absence of applicant and his advocate before the court, under order dated 30th April 2009. Learned advocate submits that applicant was absent because of communication gap between him and his concerned advocate and also not having information as to transfer of his land acquisition reference from Osmanabad to Umarga Court. Applicant came to know about impugned order in December 2015 when some of the claimants from the same award had told him about it.

2. Learned advocate submits that legal advice in this respect had been sought, however, no specific legal advice had come their way and ultimately, since the things were becoming unbearable, application has been moved. It is being submitted that the applicant had no wherewithal to cope up with the litigation and he was engaged in eking out his existence.

3. Learned advocate, further refers to common decision rendered by learned Single Judge of this court in civil revision application (stamp) No. 33657 of 2015 alongwith other civil revision applications disposed of under judgment and order dated 17th December, 2015. According to learned advocate, position of

present applicant is worse than that of applicants in those matters. He, therefore, seeks a lenient treatment to the application as had been meted out to the applicants in the matters, cited supra.

4. Learned Assistant Government Pleader on the other hand, however, submits that since the reference has been dismissed for want of evidence in April 2009, there is huge delay of about seven years and no proper explanation is coming forth.

5. One may have to take into account order dated 6th August, 2018 passed by learned Single Judge of this court in civil application No. 5558 of 2018 in Civil Revision Application Stamp No. 11067 of 2018, wherein a delay of similar magnitude as involved in present matter has been condoned, taking into account that claimants were agriculturists and have lost their lands on acquisition, they had been running from pillar to post eking out their existence and this court is the last hope for them.

6. It may also have to be adverted to a decision dated 17th December, 2015 passed by learned Single Judge of this Court in Civil Revision Application (Stamp) No. 33657 of 2015 alongwith other civil revision applications (stamp), wherein it has been observed that opportunity of hearing needs to be given subject to

not claiming interest for the period from the date of dismissal of the proceeding by reference court till the date of restoration, as per statement made on behalf of the applicant.

7. Over and above this, learned advocate for the applicant-claimant, on instructions, makes a statement that the applicant would not claim interest for the period of delay.

8. Learned advocate has further submitted that the delay is neither intentional nor deliberate and much less by deliberately causing delay he is unlikely to be benefited.

9. As such, conjoint reading of order dated 6th August, 2018 in Civil Application No. 5558 of 2018 in civil revision application stamp No. 11067 of 2018 and in civil revision application (stamp) No. 33657 of 2015 alongwith other civil revision applications (stamp), referred to supra, it appears to be expedient to indulge into request being made in the present application by condoning delay.

10. In view of aforesaid circumstances and the statement made on behalf of applicant, civil application is allowed in terms of prayer clause "B". The judgment and award of the Reference Court is hereby set aside. Civil revision application is allowed in terms of prayer clause "C" and is disposed of. The matter is

remanded to the reference court for fresh trial.

11. Applicant to file undertaking before the reference court to the effect that he would not claim interest for the period of delay.

12. Reference court, in case of granting enhancement in the land acquisition compensation to take into account statement made before this court that interest for the period of delay would not be claimed by the applicant.

13. The reference court to decide the reference expeditiously, preferably within a period of six months from the date of receipt of writ of this order.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar