

((1))

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

CIVIL APPLICATION NO.11344 OF 2013 WITH
CIVIL APPLICATION NO.11345 OF 2013 IN
FIRST APPEAL ST. NO.21023 OF 2013

The State of Maharashtra
and others

... APPLICANTS

VERSUS

Nivruti Jaywanta Shinde, Died L.Rs.
Deelip s/o Nivruti Shinde & others

... RESPONDENTS

.....
Shri S.P. Deshmukh, AG.P. for applicants
Shri M.L. Dharashive, Advocate for respondents No.1 to 4
.....

CORAM: A.M. DHAVALÉ, J.

DATED : 1st August, 2018.

ORAL ORDER :

1. The acquiring body seeks condonation of delay of 471 days in preferring the appeal against the judgment dated 21.12.2011.

2. The respondent's land admeasuring 1 Hecter 6 R from Gat No.93, at Makani, Tq. Lohara, District Osmanabad was acquired under notification dated 29.9.1994 for rehabilitation of

village Makani. The Land Acquisition Officer, by award dated 3.3.1998, awarded a sum of Rs.24,000/- per hector. The Reference Court, relying on two sale deeds of non-agricultural plots, held that the average price was Rs.34/- per sq.ft. and since the sale deeds were one year old, the amount should have been increased by 10%, but increased by Rs.10/-, holding that the market value was Rs.44/- per sq.ft. and since the land is agricultural, he reduced the price to Rs.34/- per sq.ft. He has deducted 30% amount towards development charges/ spaces.

3. There is apparent error committed by the Reference Court in calculating the enhancement by 10%. In fact he enhanced by 30%. Besides, the deductions for development is only 30% in respect of total agricultural land having no facilities. The Apex Court has issued guidelines awarding higher amount of deduction up to 65%. In such cases, considering the facts and the public money involved, it is necessary to hear the parties and re-consider the judgment of the Reference Court.

4. The Government officers have shown undue lethargy in not preferring the appeal in time resulting into delay of 471 days.

5. The judgment was delivered on 21.12.2011. A reference was made to the Law & Judiciary Department for preferring appeal and the decision to file appeal was taken on 17.2.2012 and communicated to the Government Pleader's Office of High Court on 18.2.2012. The draft sent by the Government Pleader's Office dated 21.2.2012 was approved by the Law & Judiciary Department. The A.G.P. Office was not having all the necessary documents and, therefore, request was sent to the Law & Judiciary Department. The necessary copies were sent by the Law & Judiciary Department on 24.8.2012 and the appeal is preferred on 26.6.2013. The above dates make it clear that, unduly long time was taken by the concerned officers from Law & Judiciary Department and from the A.G.P. Office for preferring the appeal. The delay of almost 6 months took place in the Law & Judiciary Department for supplying other documents to prefer appeal. The Government Pleader's Office took 10 months to prefer appeal. The law with regard to delay condonation was summed up by the Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, reported in [(2013) 12 SCC 649]** as follows :-

“21. From the aforesaid authorities, the principles that can broadly be culled out are :-

21.1 (I) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to fact such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :-

22.1 (a) 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.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) 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.”

6. When the public interest of high volume is involved, the lethargy and casual approach of Government officers should not come in way in re-considering the merits of the case. The decision in land acquisition matters granting higher market value not only cause loss to the Government in that matter but can be

taken as market value fixed by Court and become final which can be used in other similar matters and it is capable of causing very heavy loss. At the same time, the Courts cannot neglect or overlook the lethargic and casual approach of the Government officers in such matters.

7. As per provisions of Article 116(a) of the Limitation Act, the period of 90 days is provided for preferring appeal. It must have been fixed by the legislation after due consideration of the time required for obtaining the necessary permissions and copies of the papers and (making provision of funds) and operations at 3 different levels, the trial Court, Law & Judiciary Department Office and Government Pleader's Office, High Court. It is the bounden duty of all Government officers concerned with the same, to prefer the appeal within limitation. These grounds cannot be raised regularly for condonation of delay of huge period. It is necessary that the public interest should be safeguarded by condoning the delay. At the same time, it is necessary to impose exemplary costs on the Government so that such lethargic attitude should not be shown by the Government officers. It is necessary that there should be directions to the Government to find out the erring officers and recover substantial amount from such officers. If this is not followed,

either the period of limitation prescribed under the Limitation Act would become redundant or the public interest would suffer on account of the lethargic attitude on the part of Government officers. It is high time that the Principal Secretary, Law & Judiciary Department and the Joint Secretary, Law & Judiciary Department should evolve a system of fixing the time limit for the concerned officers for performance of the duties on their part.

8. The Principal Secretary and the Joint Secretary of the Law & Judiciary Department should inform all the Government Pleaders working in trial Courts that as soon as the decision is given, if it is against the interest of the Government, on the very day the applications for certified copies should be submitted not only for the judgment and decree but also copies of depositions and other papers, which may be necessary for preferring the appeal. Within a reasonable and specified time the Government Pleaders from the trial Courts should make a proposal along with draft of appeal memo and forward the same to the Principal Secretary/ Joint Secretary, Law & Judiciary Department with its copy to the Government Pleader's office of the concerned Bench of the High Court. The copy to the Government Pleader should be accompanied with certified copies of all the documents while

the Principal Secretary/ Joint Secretary should get the xerox copies thereof. The Joint Secretary should consider the said proposal within a specified time and obtain necessary approval and funds within reasonable time and forward the same to the Government Pleader's office so that the Government Pleader's office should get at least 15 days for preferring the appeal in time. If such system is adopted, all the appeals can be filed within time, and in case there is some delay, it will be marginal and not huge. It has been found that, in most of the appeals filed by the Government and acquiring bodies, there is huge delay. In case of condonation of delay, the Court can adopt a bit more liberal approach than the ordinary delays, but at the same time, inordinate delay, lack of interest, lethargy and casualness cannot be tolerated. In appropriate cases, the superiors can take necessary actions against the erring officers, if there is inordinate delay in filing the appeal and the same is not condoned by the Court, thereby it causes huge loss to the State or the State instrumentalities. The Joint Secretary should consider these aspects and issue proper instructions to safeguard the interest of the Government and Government bodies and also to safeguard the public funds. With these observations, considering the interest of public involved, I am inclined to condone the delay of 471 days subject to heavy costs.

9. The Civil Application is allowed subject to costs of Rs.10,000/- to be paid within four weeks. The appellant shall also deposit 60% of the amount awarded by the Reference Court. The Joint Secretary, Law & Judiciary Department shall hold enquiry as to the causes of delay and the concerned persons responsible for the delay, and in appropriate case, if the delay was not for the reason beyond control, the substantial amount of costs awarded should be recovered from the concerned officers. The Joint Secretary shall apportion the period of limitation of 90 days amongst the three places concerned after due consideration of the time required for taking steps by the concerned officers at their office.

10. Subject to depositing 60% of the amount awarded by the Reference Court within six weeks from today, there shall be stay to the execution, implementation and operation of the judgment passed by the Reference Court during the pendency of the appeal. However, if the present order is not complied, the Executing Court shall be intimated accordingly, and the Executing Court shall be at liberty to proceed with the execution. Both the Civil Applications stand disposed of.

((11))

11. Registry to register the First Appeal subject to payment of costs within stipulated period.

12. Copy of this order be sent to the Principal Secretary, Law & Judiciary Department, Mantralaya, Mumbai and the Joint Secretary, Law & Judiciary Department, Aurangabad.

(A.M. DHAVALÉ)
JUDGE

fmp/