

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

CIVIL APPLICATION NO. 10079 OF 2017
IN FAST/21851/2017

BABURAO GANPATRAO CHAVAL
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr. Deepak M. Kakade.
AGP for Respondents No. 1 and 2 : Mr. A. M. Phule.
Advocate for Respondent No. 3 : Mr. B. R. Surwase.

...
WITH CA/10080/2017 IN FAST/22424/2017
WITH CA/10081/2017 IN FAST/22422/2017
WITH CA/10082/2017 IN FAST/22426/2017
WITH CA/10083/2017 IN FAST/22428/2017
WITH CA/10085/2017 IN FAST/21835/2017
WITH CA/10086/2017 IN FAST/22420/2017
WITH CA/10088/2017 IN FAST/22399/2017
WITH CA/10089/2017 IN FAST/22401/2017
WITH CA/10090/2017 IN FAST/22397/2017
WITH CA/10091/2017 IN FAST/22408/2017
WITH CA/10092/2017 IN FAST/22413/2017
WITH CA/10094/2017 IN FAST/22403/2017
WITH CA/10098/2017 IN FAST/22418/2017
WITH CA/10111/2017 IN FAST/24435/2017

...

CORAM : K.K. SONAWANE, J.

DATED : 14th JUNE, 2018.

Order :-

1. Heard learned counsel for the parties.
2. Perused the present applications and other relevant documents produced on record.
3. The present applications are filed for condonation of huge delay more than 3000 days to present an appeals against the impugned judgment and award passed by the learned Reference Court in Land Acquisition References filed under section 18 of the Land Acquisition Act, 1894 (for short "Act of 1894").

4. The learned counsel for the applicants submits that the applicants were the owners and in possession of the agricultural lands located at village Wanjola, Ta. Mantha, District Jalna. The lands of the applicants-appellants were placed under acquisition pursuant to notification under section 4 of the Act of 1894 published on 13-07-1995 for construction of Nimna Dudhana Project. After due compliance of procedural formalities, the Special Land Acquisition Officer (for short "SLAO") declared the award under section 11 of the Act of 1894. The notice under section 12(2) of the Act of 1894 was issued inviting the applicants-claimants to accept the market value determined by SLAO for the land under acquisition. But, the applicants-claimants did not satisfy with the amount of compensation offered by the SLAO. Therefore, they applied for enhancement of compensation and made Land Acquisition References under section 18 of the Act of 1894. Accordingly, the matters were referred to the Court of District Judge, Jalna to evaluate the just and reasonable market value of the acquired lands of applicants-claimants.

5. The Reference Court issued notice to the concerned parties for adjudication of reference petitions on merit. After considering the evidence on record, the Reference Court arrived at the conclusion that market price for non-irrigated (Jiryat lands) land should be calculated @ Rs.1200/- per R, Rs. 1600/- per R for seasonally irrigated and Rs.1800/- per R for perennially irrigated lands. However, the applicants were not in agreement with the market value determined by the Reference Court under section 18 of the Act of 1894. Therefore, the applicants are intending to approach to the appellate forum by invoking

remedy under section 54 of the Act of 1894 to redress their grievances. But, there is huge delay of more than 3000 days for presenting the first appeals under Section 54 of the Act, 1894. Hence, applicants moved the present applications for condonation of delay.

6. According to learned counsel for applicants, the so-called delay caused for filing the first appeals is not intentional or deliberate, but it caused due to unavoidable circumstances. The learned counsel contends that the applicants are illiterate rustic agriculturists. Due to financial crises the applicants could not prefer the appeals within prescribed period of limitation. He submits that the applicants will not claim any sort of statutory benefits as well as amount of interest as prescribed under the Act of 1894 for the delayed period sought to be condoned. The applicants have every hope of success in the appeals. He further added that adjoining owners of the agricultural lands of appellants also preferred an appeals under section 54 of the Act of 1894 before this Court and they succeeded to get more compensation at the rate of Rs.1500/- per R for Jiryat lands, Rs. 1800/- per R for seasonally irrigated lands and Rs. 2100/- per R for perennially irrigated lands. In view of rule of parity the applicants are also entitled to get same rate for their acquired lands. Therefore, the delay caused in filing the appeals is essential to be condoned in the interest of justice.

7. The learned counsel for Acquiring Body and learned AGP for the respondent -State vociferously opposed the contentions propounded on behalf of applicants and submits that there is huge and inordinate delay of more than 3000 days caused for filing the present first appeals

against the impugned judgment and award passed by the learned Reference Court. The reasons for the delay so caused in filing the appeals are not satisfactorily explained by the applicants. There is no sufficient cause to condone the delay. The applicants-original claimants are intending to make gain on the basis of judgment and order passed by this Court in other connected appeals. The applicants are negligent to pursue the proceedings for enhancement of compensation amount. Therefore, the delay caused may not be condoned.

8. I have given anxious consideration to the arguments advanced on behalf of both sides. It is not in dispute that the applicants-claimants are rustic illiterate persons and having no knowledge of legal procedure. The agricultural lands of the applicants came to be acquired for the purpose of Nimna Dudhna project. The claimants received the compensation for their acquired lands, but they were not satisfied with the quantum of compensation offered by the SLAO as well as assessed by the learned Reference Court under section 18 of the Act of 1894. However, the applicants failed to pursue the matters in appellate forum for getting just and reasonable market value for their acquired lands within purview of law. At this juncture, the applicants are intending to avail the remedy under section 54 of the Act of 1894. But, there is huge and inordinate delay caused to present an appeal.

9. It has been asserted that the adjoining land owners, whose lands were acquired under same notification and same award, preferred the appeals and they succeeded in getting more compensation amount. In such circumstances, in view of rule of parity as well as object and

purpose of new amended provisions of section 28-A of the Act of 1894, I find that reasonable opportunity is essential to be given to the applicants to ventilate their grievances before the appellate forum for enhancement of compensation awarded to them.

10. The learned counsel for the applicants relied upon the decision/order dated 4th September, 2015 passed by the Co-ordinate Bench of this Court (Coram : S.V. Gangapurwala, J), in civil application No. 15921 of 2013 with other connected civil applications. These all applications were based on the similar set of facts, relating to the lands acquired under the same notification and award. This Court considered the factual aspect and was pleased to condone the delay of more than 2000 days for filing the appeal on similar ground of financial crises etc., which prevented the claimants to approach to appellate forum within stipulated time. Moreover, these applications were allowed subject to condition that the applicants shall not claim any statutory benefits available under law for the period of delay.

11. The learned counsel for the applicants further kept reliance on decision of Co-ordinate Bench of this Court (Coram: S.V. Gangapurwala, J.) dated 14th October, 2015 in **first appeal No. 2561 of 2015 (Maroti Sahebrao Chaval Vs. The State of Maharashtra and others)**, wherein the market value awarded by the LAO came to be enhanced for the acquired lands located adjoining to the lands of present applicants. The learned counsel placed reliance on the ratio laid down by the Honourable Apex Court in the case of **K Subbarayudu and others Vs. Te Special Deputy Collector (Land**

Acquisition) reported in **MANU/SC/0884/2017 : 2017 (4) RCR (Civil) 428**. It has been observed by the Honourable Apex Court that since the appellants-claimants are agriculturists whose lands were acquired and when similarly situated agriculturists were given a higher rate of compensation, there is no reason to decline such benefit to the appellants, merely on the ground of delay. The interest of justice would be served by declining the interest on the enhanced compensation and also on the *solatium* and other statutory benefits for the period of delay.

12. Admittedly, it is settled rule of law that while dealing with application for condonation of delay, the Court should adopt liberal and pragmatic approach by avoiding pedantic approach. There should be justice-oriented approach while dealing with the application for condonation of delay. It would be reiterated that the present applicants-claimants are agriculturists, rustic and illiterate villagers residing in remote area of Jalna District. The possibility of ignorance of law and omission to adopt extra vigilance on their part cannot be ruled out. Therefore, it would be unjust and improper to blame the applicants for negligence or want of *bonafide* to pursue the present proceedings within prescribed period of limitation. It has been delineated by the Hon'ble Apex Court in catena of judgments that in the cases of acquisition of lands of the agriculturists, it is incumbent for the Court to adopt pragmatic approach to facilitate for grant of just and reasonable compensation.

13. The Honourable Supreme Court in the case of **Dhiraj Singh**

(Dr) Tr. Vs. Harayana State reported in **MANU/SC/0778/2014 : 2015(2) RCR(Civil)507**, in paragraph No. 14 observed that -

"14. Equities can be balance by denying the Appellants interest for the period for which they did not approach the Court. The substantive rights of the Appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic."

14. In view of aforesaid legal guidelines delineated by the Hon'ble Apex Court, I find that the reasonable opportunity needs to be given to the applicants to approach to the Appellate Forum for redressal. The delay caused for filing the appeals against the impugned judgment and award passed by the learned Reference Court required to be condoned. It would facilitate the applicants/claimants to ventilate their grievances before appellate forum for demand of more compensation amount at par with adjoining land owners, who were already succeeded in the legal proceedings. But, in view of colossal delay in presenting appeals, it would be imperative to impose monetary fetters on the applicants-claimants that they shall not claim any statutory benefit of interest, *solatium* or other benefits, etc. available under Act of 1894 for the so-called period of delay which sought to be condoned, in case the compensation amount, came to be enhanced by the appellate forum in these matters. The learned counsel for the applicants fairly conceded that the applicants/claimants are ready to waive the claim of statutory benefits of interest etc. as referred above.

15. In the above premise, the applications stand allowed. The delay caused in filing the appeals against the impugned judgment and award passed by the learned Reference Court stands condoned subject to condition that the applicants-appellants shall not claim statutory benefits as well as amount of interest etc. as envisaged under Act of 1894, for the delayed period, in case, the enhanced compensation is awarded in the first appeals filed on behalf of applicants. The Registry to take requisite steps for further process.

16. The civil applications are allowed in aforesaid terms and stand disposed of accordingly.

17. On registration of appeals, issue notice to the respondents. Learned counsel waive service of notice on behalf of respective respondents.

Pursuant to aforesaid waiver of statutory claim, the applicants-appellants shall furnish undertaking to that effect and place it on record of the appeal to enable this Court to take note of the same, while adjudication of appeal on merit.

Call for record and proceedings.

18. After receipt of record and proceedings, list the appeals for admission in due course.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.