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

CIVIL APPLICATION NO.11550 OF 2013 WITH
CIVIL APPLICATION NO.11551 OF 2013 IN
FIRST APPEAL ST. NO.23160 OF 2013

The State of Maharashtra & anr. ... APPLICANTS

VERSUS

Gundu s/o Satappa Chaudhari ... RESPONDENT

.....
Shri S.P. Deshmukh, A.G.P. for applicants
Shri M.L. Dharashive, Advocate for respondent
.....

WITH

CIVIL APPLICATION NO.11552 OF 2013 WITH
CIVIL APPLICATION NO.11553 OF 2013 IN
FIRST APPEAL ST. NO.23203 OF 2013

The State of Maharashtra & anr. ... APPLICANTS

VERSUS

Babu s/o Sidram Dalal ... RESPONDENT

.....
Shri S.P. Deshmukh, A.G.P. for applicants
Shri M.L. Dharashive, Advocate for respondent
.....

WITH

CIVIL APPLICATION NO.11554 OF 2013 WITH
CIVIL APPLICATION NO.11555 OF 2013 IN
FIRST APPEAL ST. NO.23215 OF 2013

((2))

The State of Maharashtra & anr. ... APPLICANTS

VERSUS

Babu s/o Kashinath Sakhare ... RESPONDENT

.....
Shri S.P. Deshmukh, A.G.P. for applicants
Shri M.L. Dharashive, Advocate for respondent
.....

WITH

CIVIL APPLICATION NO.11556 OF 2013 WITH
CIVIL APPLICATION NO.11557 OF 2013 IN
FIRST APPEAL ST. NO.23209 OF 2013

The State of Maharashtra & anr. ... APPLICANTS

VERSUS

Madhukar s/o Kant Sutar ... RESPONDENT

.....
Shri S.P. Deshmukh, A.G.P. for applicants
Shri M.L. Dharashive, Advocate for respondent
.....

CORAM: A.M. DHAVALÉ, J.

DATED : 1st August, 2018.

ORAL ORDER :

1. The acquiring body seeks condonation of delay of 578 days in preferring the appeal against the judgment dated 4.10.2011. Respondents' lands as shown in chart below were acquired under notification dated 12.1.1994 for rehabilitation of village Sastur.

Civil Application No.	L.A.R. No.	Name of the applicant/s	Land Survey No.	Area
11550/2013	658/2005 (367/2000)	Gundu Satappa Chaudhari	141(1)(2) 143/5 142/2	80 R 2 H 2 R 2 H 9 R
11556/2013	657/2005 (366/2000)	Madhukar Kant Sutar	145/2/12 146/2	80 R 1 H 63 R
11554/2013	659/2005	Babu Kashinath Sakhare	148/1/2	1 H 68 R
11552/2013	662/2005	Babu Sidram Dalal	142/1/3 143/3	2 H 62 R 40 R

The Land Acquisition Officer, by award dated 22.10.1996, awarded a sum of 35,000/- and Rs.24,000/- per hector. The Reference Court, held that the average price was Rs.30/- per sq.mtr. i.e. Rs.3,00,000/- per hector relying on the judgment in L.A.R. No.601/2005. It appears that, certified copy of the said judgment in L.A.R. No.601/2005 was not filed before the Reference Court. The Reference Court has not considered whether the judgment and order in the said matter had become final or not.

2. In these cases, huge areas of agricultural lands were acquired and the sale instances of residential plots were placed before the Court. It is well settled that, if the land is having residential potential, there should be substantial deduction towards development charges, spaces and substantial deduction

for providing amenities, roads, electricity, water and living place for the same. This Court, in **State of Maharashtra & ors. Vs. Nivruti Jaywanta Shinde, Died by L.Rs. etc.** (Civil Application No.11344/2013), has deducted to the extent of 65% of the award while granting the rate as per the residential plots. The Reference Court has deducted only 30%. It is, therefore, necessary to hear the acquiring body.

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 that 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 578 days.

5. The judgment was delivered on 4.10.2011. A reference was made to the Law & Judiciary Department for preferring appeal and the decision to file appeal was communicated to the Government Pleader's Office of High Court

on 2.12.2011. 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 19.7.2012 and the appeal is preferred on 14.8.2013. 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 8 months took place in the Law & Judiciary Department for supplying other documents to prefer appeal. The Government Pleader's Office took 13 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 having become final and 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 filing of appeal, to prefer the same 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 done, 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 from three Departments 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 application 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 or the 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 578 days subject to heavy costs.

9. The Civil Applications are allowed subject to costs of Rs.10,000/- to be paid within four weeks in each of the matter. The appellants shall also deposit 60% of the amount awarded by the Reference Court in each matter. 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 may 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. All Civil Applications stand disposed of.

11. Registry to register the First Appeals 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/