

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

CIVIL APPLICATION NO. 2002 OF 2017
IN FAST/25247/2016

JAGDISH KISHANLAL JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr. Aashish T. Jadhavar.
AGP for Respondents No.1 and 3: Mr. B.V. Virdhe
...

CORAM : K.K. SONAWANE, J.

DATED : 4th JUNE, 2018.

Order :-

1. Heard learned counsel for the applicant and learned AGP for respondents No. 1 and 3. Despite service of notice, none appears on behalf of respondent No. 2- Acquiring Body.
2. Perused the application. There is delay of 757 days caused in filing the first appeal against the impugned judgment and award dated 4th March, 2014, passed by the learned Civil Judge, Senior Division, Osmanabad in land acquisition references.
3. It has been submitted on behalf of the applicant that delay caused in filing the appeal is not intentional or deliberate but it caused due to unavoidable circumstances as well financial crises for filing the present appeals. A reasonable opportunity be given to applicant for seeking relief of enhancement of compensation in the matter. The learned counsel further added that applicant - appellant will not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894, for the period of delay sought to be condoned, in case of success of appeals on merit. Hence, learned counsel for applicants prayed for condonation of delay.
4. The learned AGP for respondents No. 1 and 3 submits that

there is inordinate delay, which has not been explained satisfactorily, therefore, the same cannot be condoned and prayed for rejection of application.

5. Perused the application and relevant documents on record. Admittedly, the matter pertains to enhancement of compensation for the land under acquisition. The learned Reference Court partly allowed the Reference Petitions filed by the applicant under section 18 of the Land Acquisition Act, 1894. The applicant intends to challenge the findings for awarding meagre compensation amount and also intends to seek enhancement of compensation.

6. In view of the aforesaid submissions and for the reasons mentioned in the application that the delay so caused in filing the appeals was only due to unavoidable circumstances as well financial crises, I find it justifiable to give reasonable opportunity to the applicant-appellant in the interest of justice to ventilate grievances before the Appellate Forum. There is sufficient cause to allow the application for condonation of delay. In addition, the applicant-claimant has shown his willingness / inclination that he will not claim statutory benefits as well as amount of interest as mentioned above. In such circumstances, by imposing aforesaid fetter of waiver of statutory benefits and interest amount etc. on the part of applicant-appellant, there would not be any impediment to condone the delay. The application for condonation of delay required to be allowed.

7. In sequel, application is allowed in terms of prayer clause "B". The delay caused to present the appeal against the impugned Judgment and Award stands condoned subject to condition that applicant-appellant shall not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894 for the delayed period allowed to be condoned, in case, any enhanced compensation is awarded by this Court after adjudication of appeal on merit.

8. Pursuant to aforesaid waiver of statutory claim, the applicant-appellant shall furnish undertakings to that effect and place it on record of the appeal to enable this Court to take note of the same, while decision of the appeal on merit. Registry to take requisite steps for further process.

9. The civil application is allowed in aforesaid terms and stands disposed of.

10. On registration of appeal, issue notice to the respondents. Learned AGP waives service of notice for respondent No. 1 and 3.

11. Meanwhile, call for record and proceedings from the concerned learned Reference Court.

12. List the appeal for admission in due course.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.