

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

28 CIVIL APPLICATION NO. 10848 OF 2017
IN FAST/26206/2017 WITH CA/10849/2017 IN FAST/26206/2017

1. The Executive Engineer,
Minor Irrigation Division,
Dist.Osmanabad,
Through:
Babu s/o Bhagwan Madke
Age: 54 years, Occu.: Service
as Sub-Divisional Engineer No.I,
Dist.Osmanabad.
2. The Special Land Acquisition Officer,
(P.T. & M.I.W.) No.1, Osmanabad.
3. State of Maharashtra
Through Collector, Osmanabad. ..Applicants

VERSUS

- . Avinash s/o Vyenkatrao Joshi
Age: 54 years, Occu.: Service,
R/o.Block No.25, Vijay Colony,
Latur. ..Respondent

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Advocate for Applicants : Mr.S.C.Arora

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WITH

29 CIVIL APPLICATION NO. 10961 OF 2017
IN FAST/26437/2017 WITH CA/10962/2017 IN FAST/26437/2017
WITH CA/10963/2017 IN FAST/26210/2017 WITH CA/10964/2017
IN FAST/26210/2017

WITH

30 CIVIL APPLICATION NO. 12264 OF 2017
IN FAST/30077/2017 WITH CA/12265/2017 IN FAST/30077/2017
WITH CA/12266/2017 IN FAST/30157/2017 WITH CA/12267/2017
IN FAST/30157/2017 WITH CA/12268/2017 IN FAST/30160/2017
WITH CA/12269/2017 IN FAST/30160/2017 WITH CA/12270/2017
IN FAST/30164/2017 WITH CA/12271/2017 IN FAST/30164/2017

WITH

32 CIVIL APPLICATION NO. 7 OF 2018
IN FAST/36405/2017 WITH CA/8/2018 IN FAST/36405/2017 WITH
CA/9/2018 IN FAST/36499/2017 WITH CA/10/2018 IN
FAST/36499/2017 WITH CA/11/2018 IN FAST/36506/2017 WITH
CA/12/2018 IN FAST/36506/2017 WITH CA/13/2018 IN
FAST/36502/2017 WITH CA/14/2018 IN FAST/36502/2017

WITH

33 CIVIL APPLICATION NO. 15 OF 2018
IN FAST/36449/2017 WITH CA/16/2018 IN FAST/36449/2017

WITH

36 CIVIL APPLICATION NO. 473 OF 2018
IN FAST/26159/2017 WITH CA/474/2018 IN FAST/26159/2017
WITH CA/476/2018 IN FAST/26275/2017 WITH CA/477/2018 IN
FAST/26275/2017 WITH CA/478/2018 IN FAST/26278/2017 WITH
CA/479/2018 IN FAST/26278/2017 WITH CA/481/2018 IN
FAST/26268/2017 WITH CA/482/2018 IN FAST/26268/2017 WITH
CA/483/2018 IN FAST/26272/2017 WITH CA/484/2018 IN
FAST/26272/2017

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CORAM : M.S.SONAK, J.

DATE : 15th JANUARY, 2018

ORAL JUDGMENT:-

1) Heard Mr.S.C.Arora, the learned counsel for the
applicants in these Civil Applications seeking

condonation of delay in institution of the First Appeals against the awards made by the Reference Court under the provisions of Land Acquisition Act, 1894 (said Act).

2) In Civil Application No.10848 of 2017, delay is of 884 days, in Civil Application No.10961 of 2017, delay is of 1000 days, in Civil Application No.10963 of 2017, delay is of 996 days, in Civil Application Nos.12264 of 2017, 12266 of 2017, 12268 of 2017, 12270 of 2017, delay is of 1333 days, in Civil Application Nos.7 of 2018, 9 of 2018, 11 of 2018, 13 of 2018, delay is of 655 days, in Civil Application No.15 of 2018, delay is of 888 days, in Civil Application Nos.473 of 2018, 476 of 2018, 478 of 2018, 481 of 2018 and 483 of 2018, delay is of 1399 days,

3) Mr.Arora the learned counsel for the applicants is quite right in his submission that in all such matters, it is not the length of the delay but the quality of explanation that matters. Therefore, although, the delay

in the institution of the appeals is quite large, it is necessary to focus on the explanation furnished and not merely the length of the delay.

4) In all these cases, the explanation or cause shown is virtually identical and therefore, reference to the cause shown in Civil Application No.10848 of 2017 will suffice and apply to the acceptability or otherwise of the cause shown in the remaining Civil Applications.

5) In Paragraph No.4, it is stated that the impugned Judgment was made on 3.12.2014, and the applicants were not aware that such award was made, since the matter was reserved for orders. Further, it is stated that application for certified copy was made on 12.8.2015 and the copy was delivered on the same date. Apart from the statement that applicants were not aware of the making of award, there is absolutely no material produced on record in support of this statement. Infact, if the award dated

3.12.2014 is perused, it contains a specific endorsement that same was dictated and pronounced in the open Court. The award also notes the presence of the Advocates for the respondents including in particular, the respondent Nos.1, 2 and 3. Therefore, to put it in simple terms, the statement in paragraph No.4 of the application seeking condonation of delay is inaccurate and deserves no acceptance. This only means that though the impugned award was dictated and pronounced in the open Court on 3.12.2014 in the presence of the Advocates for the appellants, no certified copies were applied for until 12.8.2015 i.e. for over nine months. There is absolutely no explanation for such inaction and delay.

6) In paragraph No.5 of the Civil Application, there is again a statement that applicants sought legal opinion from the Advocate, who conducted the Reference and sought for necessary documents and communications from the office of the Special Land Acquisition Officer,

Osmanabad. Again, these are bare statements, which are totally unverified. In any case, neither there is any document placed on record nor any details are furnished. The statements made are quite casual.

7) In paragraph No.6 of the Civil Application, it is stated that the applicants are Government Institutions and therefore, they have to take approval and make budgetary provision to file appeal from the Government. If the cause title is perused, the third applicant is nothing but the Government i.e. the State of Maharashtra. Time spent to take approval from itself hardly constitutes sufficient cause.

8) Then, it is stated that the applicant No.1 asked for Court fees to the Head Office, the same were not received. It is further stated that the Project for which the land has acquired was quite old and the budgetary allocation stood exhausted. Special budgetary

provision has to be made. This, it is stated, constitutes a cause, which is beyond the control of the applicant. Finally, it is stated that the applicant sought guidance from the higher authorities from Corporate Officer at Aurangabad and after receipt of the necessary approval, the applicant rushed by appointing Advocate to institute a appeal. It is also submitted that enhancement made by the Reference Court is based on guesswork.

9) The aforesaid cause, which is again unverifiable, hardly constitutes sufficient cause in the facts and circumstances of the case. On the basis of such unverifiable and self-serving statements, delay which is quite inordinate, cannot be condoned.

10) The learned counsel for the applicants submits that the Government is impersonal agency, which has necessarily act through its Officers and therefore, it is necessary to show greater latitude to the Government

Agencies in cases of condonation of delay. The submission is quite correct. However, some latitude does not extend to condonation of inordinate delay, particularly when the explanation is quite casual, unverifiable and hardly constitutes sufficient cause.

11) Similar contentions have been rejected not only by this Court, but also by the Hon'ble Apex Court.

12) In Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr., reported in [(2008) 17 SCC 448], the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subverts public interest. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the land-losers to courts of law years after the termination of legal proceedings would not serve any

public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude but the law of limitation is same for citizens and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In cases with which we are concerned, no such facts have been either pleaded or proved.

13) In Registrar of Companies vs. Rajshree Sugar &

Chemicals Ltd. and ors., reported in [2(2000) 6 SCC 133], the Hon'ble Supreme Court held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

14) In Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors., reported in [3(2013) 12 SCC 649], the Hon'ble Supreme Court has held that 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. Further, the Hon'ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective.

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.

15) In Postmaster General and Ors. vs. Living Media India Limited and anr., reported in [4(2012) 3 SCC 563], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. It is the right time to inform all the

government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

16) In Basawaraj and anr. vs. Special Land Acquisition Officer, reported in [(2013) 14 SCC 81] the Hon'ble Supreme Court went on to observe that the law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without

any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

17) The Division Bench of this Court in State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., reported in [2008(6) Mh.L.J.239] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive

compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant-State.

18) Applying the aforesaid principles to the facts and circumstances of the present case, no case is made out for condonation of delay in institution of appeals.

19) The Civil Applications are dismissed. As a consequence, the appeals and Civil Applications seeking stay do not survive and the same are also disposed of. There shall be no order as to costs.

[M.S.SONAK, J.]