

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 14940 OF 2017 IN
FIRST APPEAL ST. NO. 28666 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Shahaji Venkat Jadhav

Respondent

WITH
CIVIL APPLICATION NO. 14942 OF 2017 IN
FIRST APPEAL ST. NO. 28784 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Dashrath Hariba Jadhav

Respondent

WITH
CIVIL APPLICATION NO. 14944 OF 2017 IN
FIRST APPEAL ST. NO. 28775 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Pandhari Irappa Barule
& others

Respondents

WITH
CIVIL APPLICATION NO. 14946 OF 2017 IN
FIRST APPEAL ST. NO. 28805 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Angad Bhimrao Phule

Respondent

WITH
CIVIL APPLICATION NO. 14948 OF 2017 IN
FIRST APPEAL ST. NO. 28778 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Ram Harishchandra Sule

Respondent

WITH
CIVIL APPLICATION NO. 14950 OF 2017 IN
FIRST APPEAL ST. NO. 28764 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Haribhau Raosaheb Sul

Respondent

WITH
CIVIL APPLICATION NO. 14952 OF 2017 IN
FIRST APPEAL ST. NO. 28772 OF 2017

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The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Tukaram Eknath Gunale
& others

Respondents

WITH
CIVIL APPLICATION NO. 14954 OF 2017 IN
FIRST APPEAL ST. NO. 28781 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Narayan Eknath Haridas

Respondent

WITH
CIVIL APPLICATION NO. 14957 OF 2017 IN
FIRST APPEAL ST. NO. 28799 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Madhav Chandrakant Barule

Respondent

WITH
CIVIL APPLICATION NO. 14958 OF 2017 IN
FIRST APPEAL ST. NO. 28793 OF 2017

The Godavari Marathwada Irrigation
Development Corporation Ltd.
& another

Applicants

Versus

Vaijinath Nivrati Jadhav

Respondent

Mr. Anand Chawre, advocate for applicants.
Mr. Madde, advocate for respondent.

CORAM : M.S. SONAK, J.
DATE : 16th JANUARY, 2018

ORAL ORDER :

1. In all these applications, condonation of delay of 2691 days in instituting appeals against award dt. 12.01.2010 made by the reference Court, has been applied for.
2. The only explanation furnished for this inordinate delay in instituting appeals is in paragraph no. 4 in each of the applications, which reads as follows :

Though the judgment and award was pronounced by the Hon'ble Learned Lower Court on 12.01.2010; and the award has been drawn on 22.01.2010. However, the decision of the matter was communicated to the appellants in the later months by the letter dated 23.03.2013 by their advocate in the learned lower Court. By various letters bearing different dates, the applicants sought for appropriate guidance from their head quarters situated at Aurangabad. While it was being deliberately that what could be next course of action in the matter, appropriate opinion and guidance also was sought from the appellants. The appellants' Executive Engineer and concerned

Sub Divisional Officer, under their various communications and persistent follow ups discussed the pros and cons of the matter with the office of the Executive Director as well as the Legal Advisor at the Legal and Vigilance eSection at their Head Quarters at Aurangabad. The appointment of panel advocate to conduct the matter was sought, in response to which, the appellants Legal Section at Aurangabad advised of preferring appeal and communicated appointment of undersigned advocate for prosecuting and conducting the instant appeal under the correspondence dated 20.05.2014 which was received by the appellants in the following month through proper channel. Immediately thereafter, the appellants' Executive Engineer deputed the Sub Divisional Engineer to instruct and assist the advocate in conducting this appeal and also communicated the undersigned advocate vide his letter dated- 04.06.2014, which was received by the said advocate in the latter months. Under the circumstances, the appellants approached the undersigned advocate. After various communications with the appellant's authorities, the relevant documents becoming available to the advocate, and immediately upon such documents becoming available to the advocate, he raised bill for Court fees payable on the appeals on 26.09.2015. The undersigned advocate then handed over the requisition of funds to meet the expenses and Court fees under his correspondence dated 26.09.2015. The funds were received by 07.08.2017 on so being sanctioned by the authorities. Owing to the complicated questions of law and facts, the appellants' advocate consumed some time, in studying the matter and drafting the appeal, and other interlocutory applications. Immediately thereafter, the instant appeal is filed in the Registry of this Hon'ble Court.

3. Delay in these appeals is inordinate i.e. over seven years. All that is stated in the applications is that decisions need to be taken at several levels and therefore filed had to move from table to table occasioning delay. There is a statement that since there are complicated questions of law involved, the advocate for appellants consumed some time in studying the matter, drafting the appeal and other interlocutory applications. Learned counsel for applicant however, now states that the appeals were filed within one week from receipt of papers / court fee cheque from the appellants. If this is correct, then statement in paragraph no.4 of the application is obviously wrong.

4. In any case, based upon such reasons, inordinate delay of over seven years cannot be condoned. These are the matters where the appellants have acquired lands and till date no compensation has been paid to the land losers. Possibly, to avoid payment of compensation, these appeals have been instituted after delay of over seven years.

5. Learned counsel for applicant points out that some connected matters have been admitted on 27.09.2013 and 27.06.2008. Since, the award which are impugned in the present cases are dated 12.01.2010, there is no question of connected appeals being admitted on 27.06.2008. In any case, this cannot be regarded as a ground to condone delay of over seven years.

6. The averments in the application seeking condonation, are quite casual and unverifiable. On basis of such routine averments,

the appellants, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The plight of land losers, who have been deprived of compensation for several years. cannot be ignored.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Applying aforesaid principles to the facts of the present case, these civil applications are liable to be dismissed and hereby stand dismissed.

14. As a consequence of dismissal of civil applications, appeal do not survive and same are also disposed of.

15. Pending civil application if any, does not survive and stands disposed of.

(M.S. SONAK, J.)

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