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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NOS.16142/2010
AND 16143/2010**

IN

FIRST APPEAL (St.) NO.31455/2010

The State of Maharashtra.

...Applicant..

Versus

Haribhau Ganpat Kadam,
died, through L.Rs. Lochanbai
Haribhau Kadam & others.

...Respondents...

.....

Shri A.M. Phule, AGP for applicant / appellant.

Shri G.R. Jagtap, Advocate h/f Shri S.D. Kotkar, Advocate
for respondent nos.1B to 1D & 2.

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CORAM: M.S. SONAK, J.

DATE: 12.02.2018

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] In this case, the delay in institution of the appeal is more than three years. The explanation for the delay is far from satisfactory. The civil application comprises in all four paragraphs, out of which explanation for delay is only in paragraph no.3, which reads as under:-

"Since the certified copy, typed copies, court

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fees and difference chart of the impugned judgment and order were not received with proposal, letters were sent to the concerned authorities on 7.1.2010 calling upon the said documents and same is received on 4.5.2010 and 7.9.2010. Thereafter, after appropriate compliance in respect of the same, present First Appeal is filed. However, on account of above said procedural and administrative exigencies, it appears that the delay has been caused in filing First Appeal. However, the said delay is not deliberate or intentional one."

3] The aforesaid can hardly be regarded as explanation for such inordinate delay. To merely state that there were administrative exigencies or that there was some delay in correspondence, are no grounds for condonation of delay. There is reference to the decision in the case of *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (**AIR 1987 SC 1353**). However, this decision is not an authority for the proposition that the delay has to be condoned even where no cause is shown. Even by considering the matter liberally, in absence of any worthwhile cause shown, the delay cannot be condoned.

4] The reasons are both unverifiable and quite casual. On the basis of such reasons, delay of almost

three years cannot be condoned. Merely stating that the delay was for reasons beyond the control of the applicants / appellants or that the delay was unintentional is not sufficient in such matters to condone the delay.

5] 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 subserve 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 landlosers 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.

6] In *Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors.*, reported in [(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.

7] In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors.*, reported in [(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.

8] In *Postmaster General and Ors. vs. Living Media India Limited and anr.*, reported in [(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

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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 *bona-fide* 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.

9] 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 summarized 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.

10] 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.

11] Applying the aforesaid principles, Civil Application No.16142/2010 is liable to be dismissed and

is hereby dismissed.

12] In this case, even if the delay were to be condoned, it is to be noted that the enhancement of Rs.819/- per Are from Rs.270/- per Are granted by the Land Acquisition Officer is well within the limits specified in Government resolution dated 3.11.2016, as amended from time to time, which records the policy decision of the State Government that the State Government and acquiring bodies will not institute or pursue appeals in which enhanced compensation is less than four times the ready reckoner rate prevalent on the date of issuance of Section 4 notification.

13] On cumulative consideration of the aforesaid circumstances, Civil Application No.16142/2010 for condonation of delay is hereby dismissed. As a consequence, First Appeal (St) No.31455/2010 is also dismissed. Pending Civil Application No.16143/2010 for stay also does not survive and is also dismissed.

(M.S. SONAK, J.)