

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

WRIT PETITION NO. 14516 OF 2017

1. Subhash Deorao Sabale
Age : 55 years, Occu. Agri.,
R/o Domgaon, Tq. Paranda,
Dist. Osmanabad
2. Sundar Deorao Sabale,
Age: 52 years, Occu: Agri.,
R/o as above. .. Petitioners

versus

1. The State of Maharashtra,
Through Collector, Osmanabad.
2. The Special Land Acquisition Officer,
(M.I.W.) Paranda, Head Quarter :
Paranda, Dist. Osmanabad .. Respondents

WITH

WRIT PETITION NO. 14518 OF 2017

1. Parmeshwar Changdeo Sabale,
Age : 54 years, Occu. Agri.,
R/o Domgaon, Tq. Paranda,
Dist. Osmanabad .. Petitioner

versus

1. The State of Maharashtra,
Through Collector, Osmanabad,
2. The Special Land Acquisition Officer,
(M.I.W.) Paranda, Head Quarter :
Paranda, Dist. Osmanabad .. Respondents

Mr Abhijit S. More, Advocate for petitioners
Mr S.N.Morampalle, Assistant Government Pleader for
respondents

CORAM : SUNIL P. DESHMUKH, J.

DATE : 29th September, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Aggrieved by communications dated 16-10-2002 issued by respondent no. 2 in respective writ petitions informing petitioners refusal to make reference to civil court under section 18 of the Land Acquisition Act, 1894 ("The Act") on the ground of non payment of court fees, the petitioners are before this court.

3. In present matters, awards had been passed by Respondent no. 2 - Special land acquisition officer (M.I.W.) Paranda, District Osmanabad, on 12-02-2001 and thereafter petitioners had filed applications to said authority seeking references under section 18 of the Act, within period prescribed therefor. However, on 16-10-2002, communications had been issued to respective petitioners by respondent no. 2 that since court fees has not been deposited and copy of final decision has not been

appended, applications for reference under section 18 of the Act are deficient and the same, therefore, are rejected. As such, these writ petitions.

4. Learned counsel for petitioners points out that the situation in present matters is no longer *res – integra* as this court often has observed and has ruled that payment or non payment of court fees is a matter to be considered by reference court and not by land acquisition officer or special land acquisition officer.

5. Learned counsel for petitioners refers to observations of this court in decision in the case of *Laxmibai w/o Ganesh Parke and others versus State of Maharashtra and others*, reported in 2010 (6) ALL MR 735, decided on 27-08-2010 (Coram : Honourable Justice S. S. Shinde). The Honourable Single Judge after taking stock of the situation and relying on a decision of division bench in the case of *Sambhaji Manaji Chate and another vs. State of Maharashtra and another* reported in 2003 (2) Mh. L. J., 661 had observed that special land acquisition officers and sub divisional officers are not empowered to reject applications for reference filed by claimants, may be

for non removal of deficiencies viz; payment of court fees etc. and it is obligatory for the authority to forward applications of claimants to reference court.

6. Over and above this, learned advocate for writ petitioners – claimants, on instructions, makes a statement that the petitioners would not claim interest for the period of delay from the date of communication of impugned order to date of filing the writ petitions in high court.

7. Learned advocate has further submitted that the delay in approaching is neither intentional nor deliberate and much less by deliberately causing delay petitioners are unlikely to get benefit in any way.

8. Learned counsel refers to and relies on decision of supreme court in the case of *Dhiraj Singh (Dead) through legal representatives and others Vs. State of Haryana and others* reported in (2014) 14 S.C.C. 127 and refers to paragraphs no. 14, 15 and 16, reading thus;

“ 14. The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same

circumstances.

15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the court has to be pragmatic and not pedantic.

16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in Collector, (LA) V. Katiji wherein it is stated in para 3 as under :

“ 3. The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that cause would be decided on merits after hearing the parties.

(3) “Every day’s delay must be explained” does not mean that a pedantic approach should be

made. Why not every hours delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

(5) There was no presumption that delay is occasioned deliberately, or on account culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay in fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. ”

9. In view of aforesaid, though learned Assistant Government Pleader resists, the resistance would have little efficacy.

10. Having regard to aforesaid and decision of learned single judge of this court in the case of *Laxmibai Ganesh Parke and Others V/s State of Maharashtra and Others* reported in 2011 (5) *Bom.C.R. 347*, so also on conjoint reading of order dated 6th August, 2018 in civil application No. 5558 of 2018 in Civil Revision Application Stamp No.11067 of 2018, reported decisions relied on and as have been referred to in

paragraph No. 3 of said order and order dated 10th January, 2018 in a batch of matters referred to *supra*, it appears to be expedient to indulge into request being made in the present matters by condoning delay and directing respondent no.2 - The Special Land Acquisition Officer, (M.I.W.) Paranda, Head Quarter at Paranda, Dist. Osmanabad to send references filed by writ petitioners to reference court for its onward adjudication in accordance with law and procedure. Deficiencies, if any, may be met with by petitioners as early as possible, before reference court. Delay, as such, stands condoned.

11. Impugned orders passed by Special Land Acquisition Officer (M.I.W), Paranda, Head Quarter at Paranda, district Osmanabad stand set aside. The Special Land Acquisition Officer (M.I.W.), Paranda, Head Quarter at Paranda, Dist. Osmanabad to transmit references of petitioners to reference court. Reference court, in case of granting enhancement in the land acquisition compensation to take into account statement made before this court that interest for the period of delay from date of communication of impugned orders to date of filing writ petitions in this high

court would not be claimed by the writ petitioners. Petitioners to file undertaking before the reference court to the effect that they would not claim any benefit, including interest for the period of delay as aforesaid.

12. Writ petitions, therefore, are allowed in terms of prayer clause (B) and are disposed of.

13. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH
JUDGE

arp/