

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

**931 CIVIL APPLICATION NO.16386 OF 2016
IN FIRST APPEAL ST.NO.33897 OF 2016**

...

DYNOBA ABAJI POLKALE

VERSUS

THE STATE OF MAHARASHTRA AND OTHER

...

Advocate for Applicant : Shri Arun H.Koralkar

AGP for Respondent-State : Shri A.M.Phule

Advocate for respondent no.3 : Shri S.S.Tope

...

CORAM : P.R.BORA, J.

DATE : 03.10.2018

ORDER:

1. Heard Shri Arun H. Koralkar, learned counsel appearing for the applicant, Shri S.S.Tope, learned counsel appearing for the acquiring body and Shri A.M.Phule, learned AGP appearing for the respondent-State.

2. The delay of 2099 days has occurred in filing the present First Appeal by the applicant. The learned counsel appearing for the applicant pointed out that though the Reference Application of the present applicant was rejected by the Court

disbelieving the sale instances brought on record by the applicant, relying on the same sale instances, in the companion matters, the same Reference Court has enhanced the amount of compensation. The learned counsel submitted that the aforesaid fact came to the notice of the applicant after much long period and thereafter immediately he has filed the present First Appeal. The learned counsel submitted that the applicant is ready to give up his right to receive the statutory benefits and interest for the period of delay in the event of success in the Appeal.

3. Shri S.S.Tope, learned counsel appearing for the acquiring body and learned AGP appearing for the respondent-State have opposed the application, stating that no sufficient reasons are assigned for the delay of about 6 years.

4. I have considered the submissions of

the learned counsel appearing for the respective parties. The judgment filed on record by the applicant clearly reveals that the sale deed which was not relied upon in the matter of the applicant was subsequently relied by the same Court in allowing other applications. I am, therefore, inclined to allow the present application. Hence the following order:

ORDER

1. The application is allowed.
2. The delay caused in filing the present Appeal is condoned.
3. First Appeal be registered in accordance with law.
4. It is clarified that the appellant shall not be entitled for the statutory benefits or interest accrued thereon under the provisions of the Land Acquisition Act for the period of delay on the enhanced amount of compensation. The copy of this order be placed along with the papers of the First Appeal.

5. On registration of the First Appeal, issue notice to the respondents.

6. Shri S.S.Tope, learned counsel waives service for respondent no.3 and Shri A.M.Phule, learned AGP waives service for respondent nos.1 and 2. Service complete.

7. List the First Appeal for further consideration after four weeks.

[P . R . BORA]
JUDGE

DDC