

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**933 CIVIL APPLICATION NO. 3442 OF 2018
IN FAST/34060/2016
WITH
CA/3443/2018 IN FAST/34054/2016**

TULSHIRAM PEMA GAIKWAD AND ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

...
Advocate for Applicants : Shri Ganesh Vilasrao Patil
AGP for Respondents - State : Shri A.M.Phule and Smt.S.S.Raut
...

CORAM : P.R. BORA, J.

Date: August 28, 2018
...

PER COURT :-

1 Heard learned Counsel appearing for the applicants and learned AGP appearing for the State.

2 Delay of 12 years 142 days has occurred in filing these appeals by the applicants/appellants. It is the contention of the applicants that they had handed over the matters to their Counsel in the High Court for preferring the Appeals against the Judgment and award passed in Reference Applications well within the time, however, the said Counsel did not file the appeals within the prescribed period of limitation.

3 The learned Counsel presently appearing for the applicants submitted that the applicants, who are poor villagers were

under the belief that their earlier Counsel has filed the Appeals before the High Court. The learned Counsel further submitted that the applicants after few years when enquired about progress in their appeals, they came to know that the earlier Counsel has not preferred the appeals. The learned Counsel further submitted that the applicants, therefore, contacted the present Counsel and by providing him all necessary documents have preferred the appeals. The learned Counsel submitted that in the similar acquisition proceedings, other appellants have received compensation at an enhanced rate and as such the present applicants cannot be deprived of the said benefits. For all above reasons, the learned Counsel prayed for condoning the delay.

4 Learned Counsel for the applicants relied upon the Judgment of the Apex Court in the case of ***K.Subbarayudu and Others Vs. The Special Deputy Collector (Land Acquisition)*** in Civil Appeal No.9288 of 2017 decided on 19.07.2017. The learned Counsel pointed out that in the aforesaid matter, the Hon'ble Apex Court has condoned the delay of 3671 days.

5 Learned AGP strongly opposed for condoning the delay of such a huge period. To support his contention, learned AGP

relied upon the decision of the Hon'ble Apex Court in the case of ***Basawaraj and Ors. Vs. The Spl. Land Acquisition Officer, AIR 2014, Supreme Court, 746.***

6 I have given due consideration to the submissions made by the learned Counsel for the parties. Though, it is the contention of the applicants that the Counsel, who was engaged by them did not present the Appeals within prescribed period of limitation, the name of the said Counsel is not mentioned in the applications. In the absence of the material particular like name of the concerned Counsel, on bare statement of the applicants, it cannot be believed that the reason as has been assigned by the applicants is a genuine reason.

7 Even if, it is accepted that the applicants had handed over the papers well within the period of limitation, the question arises as to why the applicants were not diligent in making enquiry with the said Counsel about the progress in the appeals. The applicants though were not expected to inquire every week or every fortnight with their Counsel as to what happened in their Appeals, the applicants were certainly under an obligation to keep track with the appeals filed by them. It cannot be believed that for long 12 years, the applicants did not make any enquiry

whether their appeals are filed or not. The applicants have thus failed in making out any case for condoning the inordinate delay of more than 12 years. I am, therefore, not inclined to exercise the discretion in favour of the applicants. Hence, the following order:-

ORDER

- I) Both the applications are rejected.
- II) Consequently, the Appeals on Stamp Number also stand dismissed.

(P.R.BORA)
JUDGE

SPT