IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
(1) CIVIL APPLICATION NO.42 OF 2018 IN
FIRST APPEAL ST.NO.36287 OF 2017

The Executive Engineer,
Vishnupuri Project Division No.1,
Jangamwadi, Nanded — Applicant

Versus

Kashinath s/o Maroti & others — Respondents

WITH
(2) CIVIL APPLICATION NO.43 OF 2018 IN
FIRST APPEAL ST.NO.36294 OF 2017

The Executive Engineer,
Vishnupuri Project Division No.1,
Jangamwadi, Nanded — Applicant

Versus

Ahmedsab Abdulsab & others — Respondents

WITH
(3) CIVIL APPLICATION NO.44 OF 2018 IN
FIRST APPEAL ST.NO.36296 OF 2017

The Executive Engineer,
Vishnupuri Project Division No.1,
Jangamwadi, Nanded — Applicant

Versus

Laxman Gangaji (deceased)
through legal heirs & another — Respondents

WITH
(4) CIVIL APPLICATION NO.45 OF 2018 IN
FIRST APPEAL ST.NO.36292 OF 2017

The Executive Engineer,
Vishnupuri Project Division No.1,

Jangamwadi, Nanded Applicant

Versus

Narayan Madhavrao Wadgaoker
& others Respondents

WITH
(5) CIVIL APPLICATION NO.46 OF 2018 IN
FIRST APPEAL ST.NO.36300 OF 2017

The Executive Engineer,
Vishnupuri Project Division No.1,
Jangamwadi, Nanded Applicant

Versus

Ganpat Laxman Vesmode & others Respondents

WITH
(6) CIVIL APPLICATION NO.47 OF 2018 IN
FIRST APPEAL ST.NO.36298 OF 2017

The Executive Engineer,
Vishnupuri Project Division No.1,
Jangamwadi, Nanded Applicant

Versus

Nagorao Gunda Gavane (died),
through Lrs & others Respondents

Mr.H.M.Shaikh, advocate for applicants.

CORAM : M.S.SONAK, J.
DATE : 11th January, 2018.

P.C. :

1 In all these Civil Applications, a prayer is made to condone delay of 2031 days caused in institution of the appeals.

2 The reasons stated in the Civil Applications are virtually identical. It is stated that the impugned awards were made on 20.01.2012. The certified copies were applied for almost after ten months i.e. on 12.10.2010 and the same were delivered on 29.10.2012. There is absolutely no explanation as to why it took 10 months to obtain certified copies of the award. Be that as it may. It is further stated in the Civil Applications that since the applicant is a Government Institution, it had to take approval and make budgetary provision to file appeals. It is stated that a request was made for some amount to pay the court fee to file these appeals, to the Head Office as well as the Government. However, there was no response either from the Head Office or from the Government. In the application, it is stated that it is the advocate has paid the court fees from out of advance advocate's fees. There is a further statement that the project, for which the land was required, was old and the budgetary allocation has been exhausted. For all these reasons, it is stated that the delay was unintentional and if delay is not condoned, the applicants will suffer great irreparable loss, which cannot be compensated by any other means. Learned Counsel for the applicants submit that if the delay is not condoned, it will cause problem for future.

3 Aforesaid is the only explanation for condonation of inordinate delay of 2031 days i.e. over six years in the institution of these appeals.

4 Such explanation can hardly constitute any sufficient cause for condonation of delay. There are absolutely no details in the application. In any case, on the ground that the acquiring

body or the Government had no budgetary provision even to pay the court fees for institution of these appeals, *prima facie*, is not a ground sufficient to explain inordinate delay of over six years in institution of these appeals.

5 Learned Counsel for the applicant relies upon the decision of this Court in batch of Civil Applications bearing No.10247 of 2016, which came to be disposed of on 11.07.2017. In the said order, at paragraph no.2, it is recorded that the learned Counsel appearing on behalf of original claimants has given no objection to condone the delay. It is, in these circumstances, delay came to be condoned. Such an order, which is made on concession, cannot constitute a precedent.

6 In **Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and another**, ***(2008) 17 SCC 448***, the Hon'ble Supreme Court has held that pursing stale claims and multiplicity of proceedings in no manner subserves 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.

7 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 license to the officers of the Government to shirk their responsibility to act with reasonable expedition.

8 In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur afar Academy & ors., (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.

9 In **Postmaster General and Ors. vs. Living Media India Limited and anr**., **(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 *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.

10 In **Basawaraj and anr. vs. Special Land Acquisition Officer**, **(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.

11 The Division Bench of this Court in **State of Maharashtra and ors. vs. Vithu Kalya Govari and ors**., [**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.

12 Applying aforesaid principles to the facts of this case, there is no case made out to condone inordinate delay of 2031 days i.e. over six years in institution of these appeals.

13 Civil Applications are, therefore, dismissed. As a consequence, the appeals and applications for stay do not survive and also stand disposed of.

M.S.SONAK
JUDGE

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