

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

33 CIVIL APPLICATION NO. 15408 OF 2017
IN FAST/37772/2017 WITH CA/15409/2017 IN FAST/37772/2017

- 1) The State of Maharashtra
Through: Collector, Latur.
 - 2) The Executive Engineer,
Minor Irrigation Division,
Local Sector, Latur,
District Latur.
- ..Applicants

Versus

Bharat s/o Tulshiram Nade
Age: 52 years, Occu.: Agriculture,
R/o. Murud, Tq. & Dist.Latur.

..Respondent

...

AGP for Applicants : Mr.A.M.Phule
Advocate for Respondents : Mr.R.D.Raut

...

...

WITH

CA/15410/2017 IN FAST/37826/2017 WITH CA/15411/2017 IN
FAST/37826/2017

WITH

CA/15413/2017 IN FAST/37837/2017 WITH CA/15414/2017 IN
FAST/37837/2017

WITH

CA/15415/2017 IN FAST/37841/2017 WITH CA/15416/2017 IN
FAST/37841/2017

WITH

CA/15417/2017 IN FAST/37830/2017 WITH CA/15418/2017 IN
FAST/37830/2017

WITH

CA/15419/2017 IN FAST/37833/2017 WITH CA/15420/2017 IN
FAST/37833/2017

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CORAM : M.S.SONAK, J.

DATE : 4th JANUARY, 2018

ORAL JUDGMENT:-

1) Heard Mr.A.M.Phule, learned AGP for the applicants and Mr.R.D.Raut, learned counsel for the respondents in all these Civil Applications.

2) By these Civil Applications, which are virtually identical in nature, the State seeks condonation of delay in instituting appeals against Judgment and Award dated 31.3.2012. The delay in each of these matters is of 1972 days i.e. more than five years.

3) Mr.Phule, learned AGP submits that in these cases, the Reference Court has enhanced the compensation almost 12 times without there being any material on record to justify such enhancement. He submits that the delay was

because files had to move from table to table and decisions had to be taken by several authorities before the appeals could actually be instituted. He points out that the certified copy of the Judgment and Award dated 31.3.2012 was applied for on 13.8.2013 and after the same was ready, the matter was referred to the office of Government Pleader for legal opinion. After securing such opinion, the matter was referred to the Joint Secretary, Law and Judiciary Department, who recommended filing of the appeals and ultimately on 24.9.2015, the papers were forwarded to the office of Government Pleader and soon thereafter, the Government Pleader prepared the appeal papers. However, there was some delay in securing certified copies, Demand Drafts for Court fees and legal expenses and therefore, the appeals alongwith application for condonation of delay could be instituted only on 21.11.2017.

4) Mr.Phule, learned AGP submits that all this is

sufficient cause and therefore, the delay in instituting all appeals may be condoned.

5) Mr.Phule, learned AGP relying upon decision of the Supreme Court in the case of N.Balakrishnan vs. M. Krishnamurthy, reported in [1998 (7) SCC 123] submits that in such matters, the length of delay is not significant but the acceptability of the explanation is the only criteria. Mr.Phule also relied upon the decision of the Supreme Court in the case of Collector Land Acquisition vs Mst. Katiji & Ors., reported in [1987 (2) SCC 107] to submit that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. He submits that in case the delay is condoned, at the highest the appeals can be decided on merits. For all these reasons, Mr.Phule, learned AGP submits that this is a fit case for condonation of delay.

6) Mr.R.D.Raut, learned counsel for the respondents submits that the delay in the present case is quite inordinate and there is absolutely no explanation for the same. He submits that the applications seeking condonation of delay are quite vague and in all cases it is not sufficient merely to state that decisions had to be taken at different levels and therefore, more time was spent for filing the appeals. He points out that there are no details in the Civil Applications and the explanation offered is entirely vague and can never constitute sufficient cause. He submits that the respondents' lands have been acquired and it is quite unjust and unfair that the compensation awarded in their favour should be revisited at this point of time. For all these reasons, Mr.Raut, learned counsel submits that these Civil Applications may be dismissed.

7) In order to appreciate the rival contentions, it is necessary to make a reference to the cause as indicated

in the Civil Applications. The impugned Judgment and Award was made on 31.3.2012 and the applicants admit that the certified copy was applied for only on 13.8.2013. There is absolutely no explanation in the applications as to why there was such inordinate delay in even applying for certified copies of the Judgment and Award, particularly, since it is now the case of the applicants that there was manifold increase in the compensation amount awarded by the Land Acquisition Officer. The statement that some time was spent to obtain opinion from Assistant Government Pleader and Joint Secretary, Law and Judiciary Department, is again, quite vague and backed by no particulars. In any case, the Officers are expected to act within some reasonable period. There is no point in seeking condonation of delay virtually as a matter of right on the ground that the Assistant Government Pleader's office or the Joint Secretary, Law and Judiciary Department, took some time to furnish a legal opinion.

8) In this case, the legal opinion and recommendation for filing of appeal was taken on 24.9.2015. Thereafter, the Office of the Government Pleader also prepared the appeal memos in the month of September 2015 itself. The appeals and applications for condonation of delay are instituted on 22.11.2017. Again, the delay between September 2015 and November 2017 is both inordinate and unexplained. The vague statement that the memos of appeal were incomplete or that the Demand Draft for payment of Court fees and legal expenses, was not enclosed alongwith proposal can hardly be said to constitute sufficient cause. In spite the delay being of more than five years, the applications merely state that there is 'some delay' in institution of appeals. This is hardly the proper manner to explain the delay. It is true that every day's delay is not required to be explained. However, that does not mean that delay which is of over five years can be explained in such a casual manner. In

such circumstances, it cannot be said that any sufficient cause has been made out to condone the delay.

9) Normally, the applications seeking condonation of delay are liberally considered. This is more so when impersonal agency like the Government or Public Sector Acquiring Bodies are concerned. Mr.Phule, learned AGP is quite right in his submission that quantum of delay is not decisive but it is the quality of explanation, which determines the matter. In the present case, the quality of explanation is simply lacking. On the basis of the vague pleadings of procedural delay, it will not be appropriate to condone such inordinate delay of over five years in instituting all the appeals.

10) Ultimately, the plight of the land losers cannot be totally forgotten. They have lost their lands several years ago. They have been litigating to secure some compensation, since according to them, what was awarded

by the Land Acquisition Officer was mere pittance. Despite the determination by the reference Court, almost five years ago, as pointed out by learned counsel for respondents, the enhanced compensation has not infact been paid to the land losers. There is no clarity as to whether the land losers have levied execution or not. Learned counsel for respondents submits that in most cases, the land losers have no means to levy execution, since, the experience has shown that the mighty State which has acquired their lands is often successful in delaying the execution process as well. Respondents have thus suffered enough prejudice on account of denial of enhanced compensation despite the award made by the reference Court almost five years ago. To permit the applicant at this stage to re-visit the issue of compensation and that too, without there being any sufficient cause shown to explain the inordinate delay, will only amount to grant of undeserved indulgence to the applicant, in the facts and circumstances of the case.

The possibility of these appeals having been instituted only to seek some *ex-post facto* justification for non-payment of enhanced compensation to the land losers, cannot be ruled out. In such circumstances, it will not be appropriate to exercise discretion in favour of the applicants.

11) The decision in *N. Balkrishnan* (supra) case requires the applicant to demonstrate good faith before claiming exercise of discretion. The decision, no doubt, states that the length of delay is not decisive but the quality of explanation is the determinative factor. In this case, quality of explanation is too poor to constitute any sufficient cause. *Mst. Katiji* (supra), no doubt, absolves explanation of each day's delay. However, the observation does not mean that delay of over five years is to be condoned as a matter of routine in the absence of any sufficient cause.

12) The averments in the application seeking condonation, are quite casual and unverifiable. On basis of such routine averments, the State, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The statements that files had to be moved from table to table or that pressure of work or that some time is always required for decisions, which have to be taken at different levels are reasons too vague to merit any acceptance, particularly when we are dealing with case of land losers, who have been deprived of compensation for several years.

13) 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 subverts 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.

14) In Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors., reported in [2(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.

15) In Esha Bhattacharjee vs. Managing Committee of Raghunathpur Afar Academy & ors., reported in [3(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.

16) In Postmaster General and Ors. vs. Living Media India Limited and anr., reported in [4(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 bonafide 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.

17) 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 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.

18) 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.

19) Applying the aforesaid principles to the facts of the present case, it will not be proper to indulge the applicants and condone delay of four or five years in instituting these appeals, particularly, when no sufficient cause has been shown.

20) For the aforesaid reasons, these civil applications

are dismissed. There shall be no order as to costs. As a consequence of dismissal of civil applications, the appeals and civil applications seeking stay also stand disposed of.

[M.S.SONAK, J.]