

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

906 CIVIL APPLICATION NO. 85 OF 2017
IN RC/1121/2009

SUJALABAI VENKATRAO PATIL DIED THR L.RS.VINAYAK AND ORS
VERSUS
STATE OF MAHARASHTRA AND ORS

Advocate for Applicants : Mr. M.M. Narwadkar
AGP for Respondents No. 1 and 2: Mr. S.P. Deshmukh
Advocate for Respondent No.3 : Mr. S.P. Sonpawale

CORAM : A.M. DHAVALÉ, J.

DATED : 9th AUGUST, 2018.

Order :-

1. Heard learned counsel for parties.
2. This is an application for re-calling of order dated 06-04-2009 in First Appeal stamp No. 5633 of 1999 passed by this Court, by condoning the delay.
3. By order dated 23-11-1995 learned Civil Judge, Senior Division, Billoli (for short "Reference Court") dismissed the references filed by eight claimants including present applicants. The Land Acquisition Officer has granted compensation @ Rs.33,000/- per hectare the compensation claimed was Rs.75,000/- per hectare. The Judgment of Reference Court shows that the learned Reference Court wrongly assumed that sale instances should of the date of taking possession of the lands, which were much prior to the notification dated 05-06-1992. The claimants had relied on sale instances from the same village or adjacent village and rates

awarded in other LARs. The learned Reference Court discarded the sale deeds (Exhibits-23 and 24) on the ground that those were executed after taking possession but before notification, therefore, those were suspicious.

4. Mr. Narwadkar, learned Advocate for the applicants states that other claimants aggrieved by the same judgment have preferred appeals and those are pending before another Bench of this Court. He also pointed out that in case of the acquisition of lands under notification dated 16-03-1992, the Reference Court has awarded compensation @ Rs. 68,000/- per hectare and the land of the present applicants/claimants is similarly situated.

5. Mr. Sonpawale, learned counsel for respondent No. 3 opposed the application on the ground of gross negligence in prosecuting the appeal. He pointed out that there was delay of 1110 days in preferring the appeal. Even thereafter when appeal was registered it was not prosecuted as no steps were taken for service of notice, the appeal came to be dismissed for seven years and six months no steps were taken for restoration of the same. The learned Advocates for respondents opposed the application on the ground of gross negligence shown.

6. So far as present application is concerned, I find that there is gross negligence on the part of claimants. The Reference Court delivered the Judgment on 23-11-1995. The First Appeal was filed after delay of 1110 days. The delay was condoned on 06-02-2008

by this Court in civil application No. 6634 of 2005. But, pursuant to conditional order dated 06-04-2009, the objections were not removed, hence, the appeal came to be dismissed. Thereafter, present application for restoration has been filed on 19-12-2016 i.e. after 7 years and 8 months. There are no justified reasons disclosed for condonation of delay, except that it was fault of the Advocate for not attending the matter.

7. Under the normal rules of sufficient cause for condonation of delay this application cannot be allowed.

8. Though there is huge delay of seven years and eight months, as held in the case of **Dhiraj Singh (D) Tr. L.Rs. Etc. Vs. Haryana State and Ors. Etc.**, reported in **[2015(1) SCC (Civil) 236]** and **Imrat Lal and others Vs. Land Acquisition Collector & others** reported in **[2012 (2) R.C.R. (Civil) 437]**, the Apex Court has taken a view that all the land owners, whose similar lands are acquired under one notification should get the same rate of compensation from the acquiring body. If on the ground of ignorance, poverty or illiteracy the land owners are not in a position to file appeal within reasonable time, still huge delay can be condoned for placing them at par with other landholders. In the case of **Samiyathal and others Vs. Special Tahsildar and others**, reported in **[2012(2) R.C.R. (Civil) 441]**, the Apex Court extended the benefit of same compensation for the land acquired under the same notification in similarly situated lands to some of the

claimants who had not preferred any appeal, due to ignorance, poverty and other handicaps.

9. Considering the reasons of Reference Court the claimants have good chances. If other land holders, whose claim was dismissed under same Judgment get benefit of enhancement, the applicants-appellants would also be entitled for such benefits.

10. In view of policy of the Apex Court of parity, the order of dismissal of the appeal deserves to be recalled/set aside and appeal deserves to be and is restored to its original stage subject to condition that the appellants shall waive statutory benefits from the date of dismissal of the appeal i.e. 06-04-2009 till filing of the present application i.e. on 19-12-2016 and it is restricted to claim compensation like other land holders similarly situated, whose lands were acquired under the same notification.

11. After restoration of the appeal, issue notice to respondents. Learned AGP waives service of notice on behalf of respondents No. 1 and 2 and Mr. Sonpawale, learned Advocate waives service of notice on behalf of respondent No. 3.

12. The Civil application stands disposed of

[A.M. DHAVALA]
JUDGE