

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

902 CIVIL APPLICATION NO. 1110 OF 2017
IN FAST/37972/2016

HAVAJI RAMAPPA RODAGE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicants : Mr.V.D.Sapkal h/f.
Mr.Laxmikant C.Patil
AGP for Respondents/State : Mr.A.M.Phule
Advocate for Respondent No.2 : Mr.Ram Deshpande

...

WITH

CA/1111/2017 IN FAST/38812/2016
WITH CA/1112/2017 IN FAST/38816/2016
WITH CA/1113/2017 IN FAST/38814/2016
WITH CA/1114/2017 IN FAST/38818/2016
WITH CA/1115/2017 IN FAST/38800/2016
WITH CA/1116/2017 IN FAST/38802/2016
WITH CA/1117/2017 IN FAST/38806/2016
WITH CA/1118/2017 IN FAST/38810/2016
WITH CA/1119/2017 IN FAST/38808/2016
WITH CA/1120/2017 IN FAST/38804/2016

...

CORAM : M.S.SONAK, J.
DATE : 2.2.2018

ORAL ORDER:-

1) In all these civil applications seeking the
condonation of delay, the learned counsel for the

applicants/appellants on the basis of instructions makes a statement that applicants/appellants will not claim statutory benefits as well as amount of interest in terms of land acquisition for the period the delay sought to be condoned in case of success of appeals on merits. This statement is noted and accepted.

2) The learned counsel for the applicants places reliance on the order dated 7.8.2017 in Civil Application No.53 of 2017 in First Appeal Stamp No.10298 of 2016 and connected matters, wherein, accepting the similar statement as aforesaid, this Court has condoned delay of almost 2009 days in instituting appeals.

3) The order dated 7.8.2017 is transcribed below for ready reference:-

"Order:-

1. Heard the learned counsel appearing for both the parties. Perused the applications.

2. The learned counsel for the applicants-appellants submits that the applicants - appellants will not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition Act, 1894, for the period of delay sought to be condoned, in case of success of appeals on merit.

3. In view of the aforesaid submissions and for the reasons mentioned in the applications, I find it justifiable to give reasonable opportunity to the applicants-appellants in the interest of justice to ventilate the grievances before the Appellate Forum. There is no impediment to condone the delay by imposing aforesaid fetter of waiver of statutory benefits on the part of applicants-appellants. The applications for condonation of delay deserve to be allowed.

4. In sequel, applications stand allowed. The delay caused to present the appeals against the impugned Award stands condoned subject to condition that applicants-appellants shall not claim statutory benefits as well as amount of interest as laid down in the Land Acquisition

Act, 1894 for the delayed period allowed to be condoned, in case, any enhanced compensation is awarded by this Court after adjudication of appeal on merit.

5. Pursuant to aforesaid waiver of statutory claim, the applicants-appellants shall furnish undertaking to that effect and place it on record of the appeals to enable this Court to take note of the same, while decision of the appeals on merit. Registry to take requisite steps for further process.

6. The civil applications are allowed in aforesaid terms and stands disposed of.

Sd/-
[**K. K. SONAWANE**]
JUDGE"

4) In addition to the aforesaid, the learned counsel for the applicants points out that the order dated 7.8.2017 was made in the matters which arose under the very same Section 4 Notification as in the present case. He further points out that the appeals instituted by the

acquiring body against the very same Judgment and award have already been admitted by this Court. He submits that it is on account of poverty and ignorance that these appeals could not be instituted within prescribed period. He submitted that it is for the same reason that the applicants did not even institute Cross-Objections in the appeals instituted by the acquiring body.

5) Mr.Ram Deshpande the learned counsel for the respondent No.2 opposes the condonation of delay by pointing out that the order dated 7.8.2017 was made in the cases which were grouped separately. He, however, does not dispute that the order dated 7.8.2017 also relates to acquisition under the same Notification and for the same purpose. He submits that when the order dated 7.8.2017 was made, the acquiring body was not aware that it had already preferred appeal against the same Judgment and award. It is inconvincible that the acquiring body is not aware that it has itself instituted

the appeals. In any case, the circumstances in which such appeals have been instituted by the acquiring body against the same Judgments and awards, are also similar in the present case. Infact, in the circumstances, it assists the applicants/appellants rather than acquiring body. Finally, Mr.Ram Deshpande learend counsel submits that this Court while condoning the delay involved in the institution of the appeals by the acquiring body had imposed costs of Rs.5,000/-. He submits that this action must be regarded as payback time and therefore, the appellants/applicants must also be required to pay costs for condonation of delay.

6) Reluctantly, this submission is accepted and the delay is deemed to be condoned subject to the applicants in each of these applications paying costs of Rs.5,000/- in favour of respondent Nos.1 and 2. This means that costs of Rs.2,500/- should be paid to the State Government and Rs.2,500/- to the acquiring body. It is

pertinent to note that in this case, quite rightly the State Government did not press for costs.

7) Taking into consideration the order dated 7.8.2017 and also the circumstances that against the very same Judgment and award, the acquiring body has already instituted appeals and the further circumstance that the appellants/applicants in the present case are poor agriculturist, who have already lost their land for acquisition, the case is made out for condonation of delay subject to payment of costs as aforesaid. The amount of costs be deposited in this Court within eight weeks from today. Upon the deposit, the respondents are permitted to withdraw the same unconditinoally.

8) All the civil applications are disposed of in the aforesaid terms.

9) It is clarified that in view of the statement made

by and on behalf of the applicants/appellants, the applicants/appellants shall not be entitled to claim any statutory benefits as well as the amount of interest for the period of delay. The applicants within eight weeks from today to file necessary undertakings to this effect in the main appeals and copies of the same be furnished to the learned counsel appearing for the respondents.

[M.S.SONAK, J.]