

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.202/2017
IN
CROSS OBJECTION (ST) NO.13785/2017

Anandibai Mahadeo Mhatre (Deceased)
Through Legal Heirs
Nilesh Vasudeo Mhatre & Ors. ... Applicants

State of Maharashtra & Ors. ... Appellants

V/s.

Anandibai Mahadeo Mhatre (Deceased)
Through Legal Heirs
Nilesh Vasudeo Mhatre & Ors. ... Respondents

Mr. S. S. Kulkarni with Sachin Kadam for the Applicants
Mr. A. R. Patil, AGP for the Respondent State.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**
DATED : MARCH 15, 2018

PC. :

1 Heard. The Civil Application was fully argued by the learned counsel for the parties on 08.03.2018, when the learned AGP for the Respondent submitted that for condonation of delay the Applicants – claimants will have to tender an undertaking before this court that they will not claim any statutory benefits u/s.28 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) i.e. interest @ 9% and

15% p.a. respectively for the delayed period. At that time, the learned counsel for the Applicants sought some time to take instructions from his client. Hence, the matter was adjourned for today i.e. 15.03.2018.

2 Today when the matter was called out, the learned counsel for the Applicants - claimants again requested two weeks' time to take instructions from their client. The adjournment sought by the learned counsel for the Applicants is rejected.

3 Heard both sides at length. This Application is made by the claimants for condonation of delay of 644 days in filing the cross objection in the First Appeal for enhanced compensation.

4 The learned counsel for the claimants submits that the State of Maharashtra has preferred the First Appeal challenging the common judgment and award dated 25.10.2012 passed by the Reference Court awarding additional compensation in respect of the acquired land. He submits that the appeal preferred by the State of Maharashtra was admitted by this court on 21.07.2014. He submits that thereafter the claimants have decided to file cross objection for additional compensation in respect of the acquired land. He submits that because of financial difficulties, it remained on the part of the claimants to file cross-examination immediately. In support of this contention he relies on paragraph 8 and 9 of the Civil Application which read thus:

“8. The Applicants state that the Applicants are poor agriculturist whose entire lands were notified and acquired by the Respondent for the New Bombay Project. The Applicants state that in view of the acquisition the Applicants were deprived from there source of earning and livelihood. The Applicants state that the

Applicants were required to raise hand loan from their friends and relatives for the purpose of meeting there day to day needs. It is matter of record that the Respondent has awarded compensation at a meager rate which has caused serious prejudice to the Applicants.”

“9. The Applicants submit that the Respondent had not deposited the amount of compensation awarded by the court below and as such the Applicants were having no funds at their disposal to approach this Hon'ble Court.”

5 The learned counsel for the Applicant submits that the delay is not intentional. He submits that the Applicant has good chance of success in the cross-objection. He submits that if the delay is not condoned, irreparable loss will be caused to them.

6 The learned counsel for the Applicant submits that even the Apex Court, in several matters, held that the Application for condonation of delay may be allowed if sufficient cause is shown. He submits that in the present proceedings, the main cause for delay was financial difficulties. In support of his contention, the learned counsel for the Applicant relies on following authorities.

“a) Order dated 05.08.2015 passed by this court (Coram: A.S.Oka & Revati More Dere, JJ.) in Civil Application No.144 of 2015 in First Appeal (ST) No.206 of 2015 Shripat Ramchandra Desai (deceased through his legal heirs) a) Smt.Leelabai Shripatrao Desai and Ors. vs. The Special Land Acquisition Officer and Ors.

b) Order dated 18.12.2017 passed by this court (Coram: Smt.Vasanti A. Naik and Mr.Sarang V. Kotwal, JJ.) in Letters Patent Appeal No.20 of 2002 Eknath Sadashiv Kandpile vs. The State of Maharashtra & Ors.

c) Order dated 19.07.2017 passed by Apex Court (Coram: Kurian Joseph and R. Banumathi, JJ.) in Civil Appeal No.9288 of 2017, *K. Subbarayudu and Others vs. Special Deputy Collector (Land Acquisition)*

d) Order dated 14.04.1981 passed by Apex Court (Coram: D.A.Desai and Baharul Islam, JJ.) in Civil Appeal No.1410 of 1981, *Wadhya Mal vs. Prem Chand Jain and another.*

e) Order dated 24.06.2011 passed by this court (Coram: A.S.Oka, J.) in First Appeal No.1323 of 2002 along with Civil Application No.2432 of 2011 and Cross Objection (ST) No.16210 of 2011, *The State of Maharashtra vs. Kalu Ladku Mhatre*”

7 On the basis of these submissions, the learned counsel for the Applicant submits that this Hon'ble Court be pleased to allow the Civil Application and cross objections may be heard on merits.

8 On the other hand the learned AGP for the State has vehemently opposed the Civil Application. He submits that the Applicant claimant has failed to disclose any sufficient cause for the inordinate delay. He submits that the authorities relied on by the Applicant in support of his contention are not applicable in the facts and circumstances of the case. He submits that there is no dispute about the proposition that if sufficient cause is shown, delay can be condoned. But in the present proceedings, the reason given by the Applicant claimant is about the financial difficulties. He submits that immediately after passing the award by the Special Land Acquisition Officer, the awarded amount was paid to the claimants. In any case, the financial difficulties cannot be a reason for condonation of inordinate delay. He further submits that the Division Bench of this Court (Coram : A. S. Oka and Mrs.Revati Mohite Dere, JJ.) by order dated 05.08.2015 in **Civil Application**

No.144/2015 in First Appeal (ST) No.206/2015 Shripat Ramchandra Desai & Ors. Vs. The Special Land Acquisition Officer & Ors., at the time of condonation of delay on the part of the claimant in preferring the First Appeal imposed a condition that if the claimants succeed, in that case, they will not claim any statutory benefits for the delayed period. He relied on paragraph 4 of the said order which reads thus:

“4. The Applicants have tendered undertakings. In clause – 3 thereof it is stated that in the event the appeal is allowed and enhanced compensation is granted, the Applicants shall not claim any statutory benefits under Section 28 of the Land Acquisition Act, 1894 wherein interest at the rate of 9% and 15% per annum is respectively payable.”

9 The learned AGP submits that at the request of the claimants, the matter was adjourned for tendering an undertaking, but they failed to do so. He submits that if this court comes to a conclusion that the claimants have made out a case for condonation of delay in filing cross-objection, in that case, a condition may be imposed that the claimants should not claim any statutory benefits u/s.28 of the Land Acquisition Act, 1894 for the delayed period.

10 Heard both the sides at length. Admittedly, there is an inordinate delay on the part of the claimants. There is no explanation in the Civil Application for the said inordinate delay. The reason given by the claimant is only in respect of the financial difficulties. In any case, that cannot be a ground for condonation of inordinate delay. Considering the fact that the appeal preferred by the State has already been admitted by this court and the issue involved in the present proceedings is about the compensation in respect of the acquired land

belonging to the claimants, we are of the opinion that the delay can be condoned, but with some condition.

11 It is to be noted that the authorities cited by the claimants as stated hereinabove are not applicable in the facts and circumstances of the present case. In the case in hand the claimants have failed to disclose sufficient cause for condonation of inordinate delay. Apart from that when the matter was on board on 08.03.2018, it was adjourned for one week to enable the advocate for the claimants to take instructions as to whether the claimants are ready and willing to file an undertaking that they will not claim any benefits for the delayed period. However, they failed and neglected to do so.

12 Considering the submissions made by learned counsel for the claimants, the reasons disclosed in the Civil Application and though the claimants have failed to make out any case for condonation of delay, in the interest of justice, we are satisfied that the delay can be condoned by imposing some conditions i.e. cost of Rs.2500/- and claimants will not be entitled for the statutory benefits for this delayed period in case they succeed in the cross-objection.

13 Hence, the Civil Application is allowed as under:

- a. Delay in filing the cross-objection is condoned.
- b. The claimants will not be entitled for statutory benefits u/s.28 of the Land Acquisition Act, 1894 i.e. interest in case they succeed in the cross-objection.
- c. The Applicant to pay cost of Rs.2500/-.

- d. Cost shall be paid to Kirtikar Law Library, High Court, Mumbai, within six weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- e. Civil application stands disposed off accordingly.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)