

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CIVIL APPLICATION NO.11636 OF 2018
IN FAST/3726/2018

THE EX. ENGINEER, (MINOR IRRIGATION) DIV., THR LIFT IRRIGATION DIV.,
OSMANABAD AND ORS

VERSUS

PATILBUWA TULSIRAM MOTE (DIED) THR LRS POPAT PATILBUWA MOTE

...

Advocate for Applicant : Patil Ruturaj C.

AGP for State: Y.G.Gujrati

Adv.Wakure Sanjay A. For R/1

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WITH

CIVIL APPLICATION NO.11638/2018 IN FAST/3963/2018

THE EX. ENGINEER, (MINOR IRRIGATION) DIV., THR LIFT IRRIGATION DIV.,
OSMANABAD AND ORS

VERSUS

RAM BHAGWAN MUNDHEY

...

Advocate for Applicant : Patil Ruturaj C.

AGP for State: Y.G.Gujrati

Adv. S.R.Shirsat, Adv. For R/1

...

CORAM : MANGESH S. PATIL, J.

DATE : 10.12.2019

PC. :-

These are the applications under Section 5 of the Limitation Act, 1963
by the acquiring body seeking condonation of delay of 1505 days in filing the

appeals.

2] The learned advocate for the acquiring body submits that it is a State machinery, the project was subsequently transferred to another Division and huge amount was spent for acquiring the lands. For want of budgetary provision the amount could not be arranged. The compensation determined by the S.L.A.O. was already disbursed. Sanctions had to be obtained and for want of funds it could not prefer appeals in time. Therefore, relying upon decision in the case of Collector, Land Acquisition, Anantnag, Anr. V/s Mst. Katiji and Ors; AIR 1987, SC. 1353, the delay may be condoned.

3] The learned advocates for the respective claimants strongly oppose the applications. They submit that the applications are vague and do not clearly indicate all the dates regarding getting knowledge of the impugned award and the dates on which various steps were taken to complete the formalities before filing the First Appeals. The discretion of condoning the delay cannot be exercised in the absence of such details. The claimants lands have been acquired way back in the year 1998 and till date they have not received the compensation. Therefore, the applications may be rejected for want of sufficient cause.

4] As has been laid down in the case of Mst.Katiji (supra) one of the considerations to be borne in mind while considering applications for condonation of delay is that the appellant would not anything by causing the delay. It is equally trite that unless there are circumstances indicating some *mala fides* on the part of the acquiring body, the delay have to be condoned liberally. True it is that the State machinery does not stand on a different

footing than an ordinary litigant. However, it is equally trite that though the delay has to be explained, it is not expected that it should be with mathematical precision.

5] One cannot lose sight of the fact that being a State machinery the acquiring bodies will have to undergo various formalities leading upto filing of the appeal. Simultaneously it carries heavy burden of paying interest at an alarming rate under the statutory provisions. If that be so, one cannot comprehend as to how it would gain anything by allowing the appeals to be barred by limitation rather it would stand to lose since it carries liability to pay interest at the rate which is more than the rate of interest prevalent in the market.

6] As far as deprivation of the claimants from getting compensation, it is to be noted that if the acquiring body does not prefer any appeal it is always open for the claimants to enforce the award. Merely because the acquiring body has chosen to file appeal at belated stage, that cannot be said to have prevented the claimants from filing execution proceeding and seeking enforcement. Therefore, that cannot be a ground to refuse to condone the delay.

7] Besides, now the acquiring body has deposited the entire amount of the award with interest in this Court and the claimants can seek to withdraw it. It is again important to note that contrary to law the Reference Court has awarded interest under Section 28 of the Land Acquisition Act from the date of notification under Section 4 which was issued in the year 1998 when it should have awarded the interest under that provision from the date of award

which was passed on 1/2/2002. If the delays are not condoned and the appeals are not registered, the direction which is palpably illegal would put undesired burden on the public exchequer.

8] Taking into account all the aforementioned facts circumstances, the delays are condoned. The Applications are disposed of.

[MANGESH S. PATIL, J.]

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