

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

**CIVIL APPLICATION NO.4967 OF 2017
IN
FIRST APPEAL (ST) NO.8744 OF 2017**

AND

**CIVIL APPLICATION NO.4969 OF 2017
IN
FIRST APPEAL (ST) NO.8838 OF 2017**

1. The Executive Engineer,
Lower Terna Canal Division No.2
Latur
(Lower Terna (Left Bank),
Project Department, Latur). **Ori. R.No.2**
2. The State of Maharashtra
through the Collector,
Latur. **.. Co-Appellant
(Ori.R.No.1)
... APPELLANTS**

VERSUS

Shivprasad Hiralal Dhoot
Age : Major, Occ : Agri., & Business,
R/o Sangvi (J), Tq. Nilanga,
Dist. Latur. **... RESPONDENT
(ORI. CLAIMANT)**

...

Advocate for Applicant : Mr. Shinde Bhagwat A.
AGP for Applicant no. 2/State : Mr. S.P. Deshmukh
Advocate for Respondent : Mr. N. P. Patil Jamalpurkar

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 08.11.2019

Pronounced on : 19.11.2019

JUDGMENT :

These are the applications under Section 5 of the Limitation Act, 1963 seeking condonation of delay in preferring appeal by the acquiring body and the State, impugning the common judgment and order passed by the learned Civil Judge Senior Division on a reference preferred by the respondent under Section 18 of the Land Acquisition Act.

2. The learned A.G.P. submitted that by the impugned judgment and order, the reference Court has awarded enhanced compensation exorbitantly without appreciating the evidence on record in the proper perspective which has resulted in gross injustice to the applicants.

3. He submitted that the judgment and award was passed on 14.06.2013. In fact, it is only after they were served with a notice in an appeal preferred by the respondent impugning the judgment and award that they got the knowledge regarding passing of the impugned judgment and order. Some time was required to engage the lawyer and to obtain certified copies. Some period was also consumed for collecting necessary documents and for making arrangement for payment of court fees. Because of such unavoidable reasons the delay of 1281 days has occasioned. There are no mala fides. They were not to gain anything by allowing the appeals to be barred by limitation.

Therefore by applying the principles laid down by the Supreme Court in the case of **Collector, Land Acquisition Vs. Mst. Katiji ; 1987 (2) S.C.C. 107**, the delay deserves to be condoned.

4. Per contra, the learned advocate for the respondent referring to the decision of a coordinate bench of this Court in **State of Maharashtra Vs. Bharat Tulshiram Nade; 2019(2) Bom.C.R. 465**, submitted that the fact situation in the matter in hand is exactly similar to what was obtaining in the case of Bharat Tulshiram Nade. After considering various decisions including that of the Supreme Court in the Case of Collector Land Acquisition Vs. Mst. Katiji, this Court refused to condone the delay. Therefore similar view should be taken in the matter in hand and the applications be rejected.

5 The law which regulates the powers of any Court to condone the delay under Section 5 of the Limitation Act have been laid down by catena of decisions right from the decision in case of Collector Land Acquisition Vs. Mst. Katiji (supra) and several subsequent decisions. The principles laid down in the case of the Collector Land Acquisition Vs. Mst. Katiji are as under :

- “(1) Litigant does not stand benefitted by lodging an appeal late;*
- (2) Refusal to condone may result in meritorious matters being thrown out at the very threshold and the cause of justice being defeated;*
- (3) In the matter of explanation of every day’s delay, pedantic approach should be avoided. Rational common sense pragmatic*

approach should be invariably adopted;
(4) Substantial justice is to be preferred against technical flaws;
(5) There is no presumption that delay is always deliberate;
(6) Injustice is to be removed.”

It is therefore imperative for this court to objectively assess the matter in hand to ascertain if following these guidelines the delay can be condoned by following these guiding factors.

6. The foremost circumstance that needs to be borne in mind is that the applicants have been directed to compensate the respondent for the land acquired and more importantly the burden being carried by them includes their liability to pay interest under Section 28 @ 9% per annum and under Section 34 @ 15% per annum. Needless to state that this is indeed a heavy burden on any acquiring body. Liability to pay interest on the amount of compensation at this rate should in fact work as a strong deterrent for any acquiring body to allow the appeal to be barred by limitation. It would be quite unconceivable that an acquiring body carrying such a heavy burden would allow its right to prefer appeal to be lapsed by limitation.

7. True it is, as has been held in the case of *Bharat Tulsiram Nade* (supra) that a State machinery cannot in a routine manner take shelter of it being impersonal agency and has to act through its officers and that as has been laid down in the case of **Pundlik Jalam Patil**

(Dead) by Lrs. Vs. Executive Engineer, Jalgaon, Medium Project,; 2008(6) Bom.C.R. 513 (S.C.), 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 or for governmental authorities.

8. Further it is equally trite that as has been laid down in the case of **Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.**; AIR 1962 SC 361, the delays are to be usually condoned unless the discretion lies with the Court and exercised judicially.

9. Bearing in mind all these principles, the explanation given in these applications may not be ideal and perfect enough to explain the entire delay. However, simultaneously one cannot lose sight of the fact that there is absolutely no material to show that the delay has occasioned mala fide or that the applicants were to gain something by allowing the delay to be caused. Rather as is mentioned earlier it would be other way now. Any delay would saddle applicants with a burden to compensate the respondent with an interest which is at an enormous rate as compared to the rate prevailing in the market. Therefore, it cannot be said that there is any possibility of these appeals having been instituted only to seek some *ex post facto* justification for non payment of enhanced compensation. Therefore,

though to some extent there is a similarity in the facts in the matter of Bharat Tulshiram Nade and the present applications, still, in my considered view, these applications cannot be rejected as was done in that case.

10. Cost is considered to be a right panacea which heals every sore in the litigation. When the respondent is entitled to claim interest on the enhanced compensation as determined by the reference court, no prejudice is likely to be caused to him if the delays are condoned in these matters by saddling the applicants with a liability to pay cost to him as a condition precedent.

11. Both the applications are, therefore, allowed subject to the condition that the applicants pay a cost of Rs.10,000/- to the respondent within a period of 6 weeks.

12. The respondent shall be entitled to withdraw the costs without furnishing any security.

(MANGESH S. PATIL, J.)