

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

Civil Application No. 09777 of 2018
(In First Appeal Stamp No. 20627/2018)

District : Osmanabad

1. The Executive Engineer,
Minor Irrigation Division,
Osmanabad.
2. The State of Maharashtra,
Through the Collector,
Osmanabad.

.. Applicants
(Original
respondents)

versus

1. Tulsabai Baburao Ingale,
Age : 35 years,
Occupation : Agri. &
Household.
2. Subhadrabai Limbaji Pawar,
Died through legal heirs :
 - 2-a) Ramkrishna Baburao Ingale,
Age : 36 years,
Occupation : Agriculturist.
 - 2-b) Santosh Baburao Ingale,
Age : 32 years,
Occupation : Agriculturist,
R/o. Naichakur,
Taluka Omerga,
Dist. Osmanabad.

.. Respondents
(Original
claimants)

.....

Mr. Ruturaj C. Patil, Advocate, for the applicants.

*Mr. Ganesh V. Patil, Advocate, for respondents
no.01, 2-a and 2-b.*

.....

CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the order : 20th June 2019.**

**Date of pronouncing
the order : 01st July 2019.**

ORDER :

01. Present application has been filed by the acquiring body for getting the delay of 1470 days condoned for preferring first appeal.

02. Present applicant was the respondent No. 2 in Land Acquisition Reference No. 125 of 2005 filed by present respondent No. 1 and 2. The said reference was filed for enhancement in compensation under Section 18 of the Land Acquisition Act. The said reference was partly allowed by learned Joint Civil Judge Senior Division, Omerga, Dist. Osmanabad on 23-05-2014. Present applicants have directed to pay enhanced amount of compensation and therefore, present applicant intends to prefer appeal. However, there is delay of 1470 days.

03. Applicant has contended that delay in filing appeal has been caused due to unavoidable reasons and without intention. Applicant was required to obtain legal opinion and permission as well as sanction to file appeal. Applicant was required to spend huge amount on litigation as number of matters are pending in various Courts. They are relating to water tank

irrigation project. The project has been completed long back and now there is no budgetary provision to spend amount. The amount of compensation as awarded by Land Acquisition Officer has been paid to the claimants. Therefore, sanction to spend amount further was required to be obtained. Application for certified copies was filed by him on 23-05-2014 and they were delivered to him on 02-07-2014. Thereafter, applicant could not file appeal for want of court-fee. After the requisite provision for court-fee is made, appeal is immediately filed. On these grounds, the applicant has sought condonation of delay.

04. Heard learned Advocate Shri. R. C. Patil for applicant and learned Advocate Shri. G. V. Patil for respondents.

05. Learned Advocate for applicant has vehemently submitted that the delay has occurred due to the administrative requirements. A time consuming procedure is required to be undergone before necessary sanctions are obtained. There was no budgetary provision for court-fee and other expenses those are required to be incurred. In case of application for condonation of delay by public body, a liberal approach is required to be taken, when the delay was unintentional.

06. Per contra, the learned Advocate for respondents has submitted that the huge and inordinate delay of 1470 days, has not been properly explained by

the applicant. The application has been drafted in causal manner, without specifying details of action taken by the applicant or his office. A right had accrued to respondents and it can not be taken away. If there would have been reasonable and sufficient ground, then the question of taking liberal approach would have arisen.

07. The applicant is the acquiring body, who intends to challenge the judgment and award by the Reference Court granting enhancement in the compensation. The contents of the application shows that though the award was pronounced on 28-02-2014; application for certified copies has been made on 23-05-2014. This delay has not been explained. However, it can not be said to be huge. However, thereafter it is stated that applicant was required to seek permission, guidance and sanction, etc. The application can not said to be drafted in casual manner. Non-availability of funds may not be good ground, but note is also required to be taken that compensation as per award passed by Land Acquisition Officer has been paid or budgetary provision for that purpose is available. However, for the enhanced amount, there is no provision. Under such circumstance, there is substance in the submissions of the applicant.

08. While considering the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities Apex Court in *G.*

Ramegowda v/s. Spl. Land Acquisition Officer [(1988) 2 SCC 142], *State of Haryana v/s. Chandra Mani* [(1996) 3 SCC 309] and *State (NCT of Delhi) v/s. Ahmend Jaan* [(2008) 14 SCC 582] has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay. However, at the same time, in other decisions, it has been held that, lenient view is required to be taken. In ***N. Balakrishnan v/s. M. Krishnamurthy*** [1998 (7) SCC 123], Hon'ble Supreme Court has been observed that, "It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation". Here in this case there is no smack of mala fides. If time is consumed in making provision for court-fee and other budgetary provision; then it can not be said that the delay is deliberate.

09. Therefore, taking into consideration the fact that certified copies were applied within 3 months and then officers of applicant No. 1 started taking steps to file appeal, case is made out for condoning the delay. However, at the same time the rights of respondents are required to be protected. They deserve to be compensated in terms of money. Hence, following order is passed.

ORDER

(a) Application is hereby allowed.

(b) Delay caused in filing appeal is hereby condoned, subject to deposit of cost of Rs.5,000/- (Rupees Five Thousand Only) by the applicant in this Court within a period of one month from today.

(c) After the amount is deposited, then it be disbursed to the respondents.

(d) Further, after the deposit of amount of cost, Registry to verify and register the appeal.

(Smt. Vibha Kankanwadi)
JUDGE

.....