

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

**CIVIL APPLICATION NO.1219 OF 2018
IN FAST/32654/2017**

WITH

CA/1211/2018 IN FAST/32463/2017 WITH
CA/1213/2018 IN FAST/32488/2017 WITH
CA/1214/2018 IN FAST/32513/2017 WITH
CA/1216/2018 IN FAST/32520/2017 WITH
CA/1217/2018 IN FAST/32523/2017 WITH
CA/1220/2018 IN FAST 32527/2017 WITH
CA/1222/2018 IN FAST/32469/2017 WITH
CA/1223/2018 IN FAST/32490/2017 WITH
CA/1232/2018 IN FAST/32180/2017 WITH
CA/1233/2018 IN FAST/32186/2017 WITH
CA/1234/2018 IN FAST/32184/2017 WITH
CA/1236/2018 IN FAST/32188/2017 WITH
CA/1237/2018 IN FAST/32182/2017 WITH
CA/1996/2018 IN FAST/32139/2017 WITH
CA/1998/2018 IN FAST/32166/2017 WITH
CA/1999/2018 IN FAST/32160/2017 WITH
CA/2001/2018 IN FAST/32162/2017 WITH
CA/2002/2018 IN FAST/32151/2017 WITH
CA/2003/2018 IN FAST/32157/2017 WITH
CA/2004/2018 IN FAST/32148/2017 WITH
CA/2006/2018 IN FAST/32164/2017 WITH
CA/2655/2018 IN FAST/40878/2017 WITH
CA/2656/2018 IN FAST/40874/2017 WITH
CA/3148/2018 IN FAST/32196/2017 WITH
CA/3149/2018 IN FAST/32200/2017 WITH
CA/3150/2018 IN FAST/32202/2017 WITH
CA/3151/2018 IN FAST/32198/2017 WITH
CA/6008/2018 IN FAST/41248/2017 WITH
CA/6605/2018 IN FAST/41250/2017 WITH
CA/6606/2018 IN FAST/41252/2017 WITH
CA/7329/2018 IN FAST/41260/2017 WITH
CA/7330/2018 IN FAST/41266/2017 WITH
CA/7331/2018 IN FAST/41264/2017 WITH

CA/7332/2018 IN FAST/41262/2017 WITH
CA/7333/2018 IN FAST/41268/2017 WITH
CA/7334/2018 IN FAST/41270/2017 WITH
CA/7336/2018 IN FAST/41272/2017 WITH
CA/8065/2018 IN FAST/2587/2018 WITH
CA/8066/2018 IN FAST/2589/2018 WITH
CA/8067/2018 IN FAST/2591/2018

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Shri Mukul S. Kulkarni, Advocate for Applicants ;
Shri A.M. Phule, Shri P.M. Kulkarni, Shri S.J. Salgare
respective AGP's for Respondents No.1 & 2 in respective matters ;
Advocate for Respondent No.3 – Shri S.T. Shelke

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CORAM : P.R. BORA, J.

Dated: February 27, 2019

PER COURT :

1. Not on Board. Taken on Board at the request of the learned Counsel for the applicants.
2. Mr. S.T. Shelke, learned Counsel for the acquiring body, tendered across the Bar affidavit in reply of respondent no.3, the same is taken on record.
3. In all these matters delay for the period ranging between 358 to 1150 days has occurred in filing the present appeals by the original claimants. Respondent no.3 has filed affidavit-in-reply in one of the matter (Civil Application No.1232 of 2018 in First Appeal (St) No.32180 of 2017) for opposing

applications for condonation of delay. Mr. S.T. Shelke, learned Counsel appearing for respondent no.3, submits that the affidavit filed in the said matter be treated as affidavit in all these matters.

4. Shri Mukul Kulkarni, learned Counsel appearing for the applicants submitted that though the applicants were dissatisfied with the amount of compensation enhanced by the Reference Court, could not approach this Court within the stipulated period of limitation for the reason that they were lacking the necessary funds for purchasing Court fee stamps and take the further necessary steps for filing these appeals by approaching Advocate of the High Court. Learned Counsel submitted that though execution proceedings were filed by the applicants, with great difficulty they could recover the amount from the acquiring body. The learned Counsel further submitted that only after the amount was deposited in the respective accounts of the applicants that the appellants started preparations for filing the present appeals. Learned Counsel further submitted that drought situation for consecutive 2/3

years was the another great hurdle for the applicants. The learned Counsel submitted that substantial grounds are raised by the applicants in exception to the award passed by the Reference Court and, as such, the applicants need to be given an opportunity to agitate their appeals on merits. Learned Counsel, therefore, prayed for condonation of delay.

5. Shri Shelke, learned Counsel for respondent no.3, opposed for condonation of delay. Learned Counsel submitted that the financial crunch or poverty cannot be a ground for condonation of delay. The learned Counsel further submitted that the delay of huge period has occurred in filing the appeals for which there is no sufficient explanation submitted by the appellants. Learned Counsel placed reliance on the following judgments in support of his contentions:

- (i) 1999 (1) ALL MR 63
(Bipin H.Doshi Vs. Jawaharlal Prajapati & ors)
- (ii) AIR 1998 SC 2276
(P.K.Ramchandran v. State of Kerala and another)
- (iii) (2013) 14 SCC 81
(Basawaraj and another Vs. Special Land Acquisition Officer)

6. I have carefully considered the submissions made on behalf of the applicants as well as the respondents. There cannot be a dispute about the law laid down in the judgments relied upon by Shri Shelke, learned Counsel for respondent no.3. The discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. As has been held by the Honourable Apex Court in the case of **Basawaraj and another vs. Special Land Acquisition Officer** (cited supra) sufficient cause cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the parties. From the reasons which are assigned by the applicants, it is evident that neither they were negligent in prosecuting their right of appeal nor it can be said that they were inactive. According to me, lack of financial resources can certainly be a cause for occurrence of delay in approaching the Court. The persons like applicants, whose lands have been acquired which were, according to them, was the only source of their income, may be prevented from approaching the Court within the stipulated period of limitation for want of sufficient funds with

them. It does not appear to me that any mala fides can be attributed on the part of the applicants for approaching late to this Court in filing the appeals. It appears to me that the applicants have made out sufficient cause for condoning the delay. The applicants - appellants need to be given an opportunity to agitate their matters on merits. Hence, the following order:

ORDER

- (i) Delay caused in filing the Appeals is condoned.
- (ii) It is, however, clarified that if the applicants - appellants succeed in the appeals and consequently, the amount of compensation is enhanced by this Court, the applicants shall not be entitled for the interest of the period of delay on the enhanced amount of compensation.
- (iii) The Appeals be registered in accordance with law.
- (iv) Civil Applications for condonation of delay stand disposed of.
- (v) After registration of the appeals, issue notice to the respondents in all the appeals. Learned Counsel Shri Shelke waives notice for respondent no.3 in all these appeals.

Respective learned A.G.P's waive notice for respondent nos.1 and 2 in respective matters. Service complete.

(vi) Call Record & Proceedings.

(vii) Place the matters for admission after six weeks.

(**PR. BORA, J.**)