

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

Civil Application No. 13541 of 2018
(In First Appeal Stamp No. 31784 of 2018)

District : Nanded

Executive Engineer,
Medium Project Division,
Nanded.

.. Applicant
(Original
respondent no.02)

versus

1. Ishwarrao s/o. Venkatrao
Patil,
Age : 40 years,
Occupation : Agriculture.

2. Chandrasen s/o. Ishwarrao
Patil,
Age : 19 years,
Occupation : Education.

Both r/o. Gaudgaon,
Taluka Loha, Dist. Nanded.

3. The State of Maharashtra,
Through Collector, Nanded.

4. The Spl. Land Acquisition
Officer (M.I.W.),
Collector office, Nanded.

.. Respondents

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Ms. S.D. Shelke, Advocate, for the applicant.

*Mr. N.P. Patil Jamalpurkar, Advocate, for
respondent no.01.*

Respondent no.02 served (Absent).

*Mr. S.P. Deshmukh, Assistant Government Pleader,
for respondents no.03 and 04.*

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the order : 18th 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 1765 days condoned for preferring first appeal.

02. Present applicant was the respondent No. 2 in Land Acquisition Reference No. 421 of 2003 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 Civil Judge Senior Division, Kandhar, Dist. Nanded on 13-09-2013. Present applicant and respondents No. 2 and 3 have directed to pay enhanced amount of compensation and therefore, present applicant intends to prefer appeal. However, there is delay of 1765 days.

03. Applicant has contended that application for certified copies was filed by him on 07-09-2018 and they were delivered to him on 26-09-2018. He has sought necessary documents and communications from the office of Land Acquisition Officer, Nanded. There

was requirement of huge court-fee in order to prefer appeal. Correspondence was made and special budgetary provision was required to be made for that purpose. Thereafter, guidance was sought from higher authorities. Application has been filed along with appeal, after getting necessary approval for filing appeal as well financial sanction. It has been further contended that the delay was unintentional and was caused purely due to administrative aspects. Applicant is a public body dealing in development for the benefit of public at large. On these grounds, the applicant has sought condonation of delay.

04. Heard learned Advocate Smt. S. D. Shelke for applicant, Shri. N. P. Patil Jamalpurkar for respondent No. 1 and learned A. G. P. Shri. S. P. Deshmukh for respondent No. 3 and 4.

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. She has relied on the decision in **Executive Officer, Antiyur Town Panchayat**

v/s. G. Arumugan (dead) by L.Rs. [2015 (6) Mh. L. J. 518]; wherein it has been held by the Apex Court that, *"If the Court is convinced that there had been an attempt on the part of Government officials or public servant to defeat justice by causing delay, Court, in view of larger public interest, should take a lenient view in such situations, condone the delay, however huge may be the delay, and have matter decided on merits"*. In this case the delay of 1373 days in filing second appeal was condoned.

06. Per contra, the learned Advocate for respondent No. 1 has submitted that the huge and inordinate delay of 1765 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 respondent No. 1 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. However, no such case is made out by applicant to apply the ratio laid down in the case cited by the learned Advocate for applicant. Learned Advocate for respondent No. 1 has relied on the decision of this Court (Coram : Shri Sonak J.) in **State of Maharashtra v/s. Bharat Tulshiram Nade [2019 (2) Bom. C. R. 465]**; wherein it has been held that, *"Respondents suffered enough prejudice on account of denial of enhanced compensation despite award made by the Reference Court almost five years ago. Possibility of*

these appeals having been instituted only to seek some ex post facto justification for non-payment of enhanced compensation to land losers, could not be ruled out. Further, averments in application seeking condonation, were quite casual and unverifiable. On the basis of such routine averments, State could not, in every case, plead that delay should be condoned, because it was impersonal agency, which was required to act through its officers”.

07. The applicant is the acquiring body, who intends to challenge the judgment and award by the Reference Court granting enhancement in the compensation. In the entire application or in affidavit filed in support of the application, applicant has not come with a case that applicant or its advocate representing before Reference Court was not aware about decision pronounced on 13-09-2013. It is also not its case that none of its officers looking after the matter, also did not come to know about the decision. Under the said circumstance, when contrary is not pleaded, we will have to presume that they had the knowledge about the pronouncement of the decision immediately after 13-09-2013. However, the application for certified copies is made only on 07-09-2018 i.e. after about 5 years. There is absolutely no explanation by applicant as to why no application was preferred within reasonable time for obtaining certified copies. The further act of writing letters, making budgetary provision has started after the

certified copies were collected on 26-09-2018. No pains have been taken by the applicant to explain as to why no application was preferred for getting the certified copies of the judgment and award for a period of 5 years. The reason for subsequent period to that can not be considered, unless there is explanation for not obtaining copies within the said period of 5 years. When there is absolutely no explanation offered by the applicant, it can not be said that there was any sufficient and reasonable ground for applicant for not preferring appeal within the period of limitation. The submission made by learned Advocate for respondent that the application has been casually drafted is correct and acceptable. Merely because the applicant is a public body, it can not afford to sit idle for considerable time and then seek condonation of delay on administrative ground.

08. The ratio laid down in ***Arumugam's case*** (*supra*) can not be disputed, but applicant can not make use of the said ratio, for the simple reason that the said ratio is applicable only when *Court is convinced that there had been an attempt on the part of Government officials or public servant to defeat justice by causing delay*. Only after the proof in that respect is given, the Court would take lenient view in larger public interest, in spite of huge and inordinate delay. Therefore, it was for the applicant herein to explain as to why they had not even applied

for certified copies of judgment and award by Reference Court. I fully agree with the view taken in **Bharat Nade's case** (*supra*). In this case, various pronouncements by Apex Court as well as this Court were considered. Even in the case of **N. Balakrishnan v/s. M. Krishnamurthy** [1998 (7) SCC 123], Hon'ble Supreme Court has 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"*. Thus, what has been held that the reason for the delay should be assessed to know whether it was deliberate, due to negligence of applicant or caused with mala fides. In fact, **Arumugam's case** (*supra*) is on the same line. 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.

09. Here in this case the applicant is not blaming anybody for delay. The act of securing certified copies of judgment and award was must for applicant. It might have been for making provision for satisfying the award also and not only for filing appeal. Unless those copies would have been on record of applicant, applicant could not have taken administrative act of preparing cheque for disbursement. Therefore, for any reason, it was expected that applicant ought to have applied for copies. However, no such step has been taken by its officials within reasonable time. The act of securing copies has been undertaken after a period of 5 years, for which, at the cost of repetition, it can be said that there is no explanation. The reason for delay has been tried to be submitted in 5 lines only. The said reason is very vague, without any further details.

10. Therefore, after applying the ratio laid down in aforesaid pronouncements and for the reasons stated herein, it can be concluded that applicant

has failed to show any 'reasonable' and 'sufficient' ground to condone the delay. Hence, the application stands rejected. Since the application for condonation of delay is rejected, appeal as well as other application, if any, stands disposed of.

(Smt. Vibha Kankanwadi)
JUDGE

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