

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

**956 CIVIL APPLICATION NO.2395 OF 2018
IN FAST/34200/2017**

**RAMBHAU @ RAMDAS GANPAT KAMBLE AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

...
Advocate for Applicants : Shri M.P.Tripathi
AGP for Respondents - State : Shri S.J.Salgare
Advocate for Respondent No.3 : Shri Ram B.Deshpande
...

CORAM : P.R.BORA, J.

DATE: 18th January, 2019

PER COURT:-

1 Shri M.P.Tripathi, learned Counsel for the applicants tendered across the bar additional affidavit on behalf of the applicants alongwith certain documents annexed thereto. The same is taken on record.

2 The learned Counsel for the applicants submitted that the delay in filing the appeal has caused because of several problems. The learned Counsel submitted that son of applicant No.1 had met with an accident in 2010 and was subjected to incur huge expenses on his treatment. The learned Counsel further submitted that the applicants were

also in the intervening period migrated to Karnataka in search of work. For all these reasons, the delay has occasioned. The learned Counsel submitted that delay caused is unintentional and for bonafide reasons. The learned Counsel further submitted that the applicants in the present application will not claim interest of the period of delay in the event of their success in appeal. The learned Counsel submitted that in cases of all other similarly situated persons, the amount of compensation has been enhanced to the tune of Rs.1,500/- per Are. The learned Counsel, in the circumstances, has prayed to condone the delay and to give opportunity to the applicants to prosecute their appeal on merits.

3 Shri Ram B.Deshpande, learned Counsel appearing for the Acquiring Body has strongly opposed for condoning the delay. The learned Counsel submitted that the reasons which are assigned, are not supported with any evidence. The learned Counsel further submitted that the applicants have received the amount as per the enhancement given by the Reference Court in the year 2009 itself, as such ground of financial constraints cannot be said to be available to the

present applicants. The learned Counsel relying upon the Judgment of **Basawaraj and Another Vs. Special Land Acquisition Officer [(2013) 14 Supreme Court Cases 81]** submitted that no case is made out for condoning the delay, which is caused in filing the present application.

4 I have considered the submissions advanced by the learned Counsel appearing for the applicants and learned Counsel appearing for the Acquiring Body. It is true that delay caused is of huge period of eight years, however, it cannot be said that the applicants have not provided any reason for the delay caused. After having gone through the contents of the application and additional affidavit submitted by the applicants, the reasons, as are assigned for condoning the delay, are difficult to be outrightly discarded. Further, the applicants have undertaken not to claim interest for the period of delay in case of their success in the appeal.

5 It is also brought to my notice that in similar matters, this Court has condoned the delay on undertaking submitted by the applicants therein not to claim interest of

the period of delay. The learned Counsel also brought to my notice that other matters arising out of the same project from which the present appeal is arising, have been disposed of by this Court by giving enhancement in the amount of compensation.

6 In view of above, I am inclined to allow the application. Hence, the following order:-

ORDER

- I) Application is allowed.
- II) Delay of 2936 days caused in filing the appeal is condoned.
- III) Civil Application No.2395 of 2018, stands disposed of.
- IV) Appeal be registered in accordance with law.
- V) On registration of appeal, issue notice to the respondents. Shri Ram B.Deshpande, learned Counsel waives service of notice for the respondent Acquiring Body. Shri S.J.Salgare, learned AGP waives service of notice for the respondents -

State. Service complete.

VI) It is clarified that the appellants - claimants shall not be entitled for the interest under Section 28 as well as Section 34 of the Act for the period of delay in the event of their success in appeal on the enhanced amount of compensation.

VII) The copy of the present order be kept with papers of appeal.

VIII) List the appeal for further consideration on 15.02.2019.

(P.R.BORA)
JUDGE

SPT

SPT