

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

**1026 CIVIL APPLICATION NO.798 OF 2019
IN FAST/36561/2018**

**BHASKAR SUNDARNATH GUNJAL
VERSUS
THE STATE OF MAHARASHTRA AD ORS**

...

WITH

**1027 CIVIL APPLICATION NO.800 OF 2019
IN FAST/36229/2018**

**PARASHARAM BAJIRAO GUNJAL
VERSUS
THE STATE OF MAHARASHTRA AD ORS**

...

**1028 CIVIL APPLICATION NO.801 OF 2019
IN FAST/36329/2018**

**KONDAJI PARVAT KANDEKAR
VERSUS
THE STATE OF MAHARASHTRA AD ORS**

...

**1029 CIVIL APPLICATION NO.837 OF 2019
IN FAST/17525/2018**

**ARUN SAHEBRAO GUNJAL THR PWER OF ATTORNEY HOLDER
SAHEBRAO RAMBHAU GUNJAL
VERSUS
THE STATE OF MAHARASHTRA ND ORS**

...

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

CORAM : P.R. BORA, J.

Dated: February 27, 2019

PER COURT :-

1. 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.

2. In all these matters delay for the period ranging between 79 to 1469 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.

3. 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.

4. 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)

5. 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.)