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

920 CIVIL APPLICATION NO.: 1062 OF 2019
IN RAST/38774/2018

CITY INDUSTRIAL AND DEVELOPMENT CORPORATION,
THROUGH ITS ADMINISTRATOR, CIDCO, NEW AURANGABAD
VERSUS
VIJAYKUMAR NILKANTHRAO SALUNKE AND ANOTHER

WITH
CIVIL APPLICATION NO.: 1063 OF 2019
IN RAST/38730/2018

CITY INDUSTRIAL AND DEVELOPMENT CORPORATION,
THROUGH ITS ADMINISTRATOR, CIDCO, NEW AURANGABAD
VERSUS
GIRISH RAMAKANT KHAROSEKAR AND ANOTHER

WITH
CIVIL APPLICATION NO.: 1073 OF 2019
IN RAST/38730/2018

CITY INDUSTRIAL AND DEVELOPMENT CORPORATION,
THROUGH ITS ADMINISTRATOR, CIDCO, NEW AURANGABAD
VERSUS
GIRISH RAMAKANT KHAROSEKAR AND ANOTHER

WITH
CIVIL APPLICATION NO.: 1074 OF 2019
IN RAST/36841/2018

CITY INDUSTRIAL AND DEVELOPMENT CORPORATION,
THROUGH ITS ADMINISTRATOR, CIDCO, NEW AURANGABAD
VERSUS
M/S LAND MARK DEVELOPERS, THROUGHITS PARTNERS
LATA W/O ARUNKUMAR JETHLIA AND OTHERS

WITH
CIVIL APPLICATION NO.: 1076 OF 2019
IN RAST/36843/2018

CITY INDUSTRIAL AND DEVELOPMENT CORPORATION,
THROUGH ITS ADMINISTRATOR, CIDCO, NEW AURANGABAD

VERSUS
M/S LAND MARK DEVELOPERS, THROUGHITS PARTNERS
LATA W/O ARUNKUMAR JETHLIA AND OTHERS

WITH
CIVIL APPLICATION NO.: 1077 OF 2019
IN FA/416/2000

CITY INDUSTRIAL AND DEVELOPMENT CORPORATION,
THROUGH ITS ADMINISTRATOR, CIDCO, NEW AURANGABAD
VERSUS
M/S LAND MARK DEVELOPERS, THROUGHITS PARTNERS
LATA W/O ARUNKUMAR JETHLIA AND OTHERS

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Advocate for Applicants : Mr. Anil S Bajaj.

Advocate for Respondents / owners : Mr. V. J. Dixit, Senior Counsel, i/b Mr.S.S.Koranne.

AGP for Respondent / State : Mr. S. P. Tiwari.

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CORAM : **T. V. NALAWADE & SUNIL K. KOTWAL, JJ.**

DATE : 29th January, 2019.

PER COURT:

. All the applications are filed for condonation of delay of 279 days caused in filing review applications. There were three first appeals before this Court viz. First Appeal Nos.416, 419 and 420 of 2000. In the three appeals, three applications were filed by the Appellants for permission to lead additional evidence in appeal under the provisions of Order XLI Rule 27 of the Code of Civil Procedure.

The appeals and the three applications came to be decided together by the judgment dated 13th February, 2018. This decision was challenged in Supreme Court by present Applicants in Special Leave Petition (Civil) Diary No(s).24967 of 2018. By the order dated 20th August, 2018, the Apex Court dismissed the special leave petitions. The order made by the Honourable Apex Court is as under:

> "UPON hearing the counsel the Court made the following
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> O R D E R
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> Delay condoned.
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> No ground to interfere with the impugned judgment and order is made out. Consequently, the special leave petitions are dismissed.
>
> Pending application, if any, also stand disposed of."

2 The Applicants want to file review applications on the ground that there was some evidence to show the market rate of the property acquired and that was in the form of admission of agreement, which was made by the owner with third-party like Muley within one year prior to the notification dated 7th January, 1991. It is the contention that this agreement was not within the knowledge of the acquiring body and so this document was not produced before the Reference Court. In the first appeal, photocopy of that agreement was produced and permission was sought to lead additional evidence under the aforesaid provisions. The owner disputed the execution of

agreement. The contentions made by the acquiring body and the owner were considered and this Court rejected the applications filed for permission to lead additional evidence and the appeals also came to be dismissed.

3 Now it is the contention of the acquiring body that subsequent to the decision of the first appeals, Civil Application No.5916 of 2018 came to be filed by Padmakar Muley and in that application, Muley contended that there was a compromise decree in his favour and under the said compromise decree, he was entitled to get 50% of the compensation amount deposited in the Court. Alongwith the application, he had produced copy of compromise decree. It is the contention of the acquiring body that only after filing of this application by Muley, the acquiring body learnt that agreement of 1991, which was between the owner and Muley, was not disputed before the Civil Court and on that basis compromise decree was obtained and as the acquiring body had no knowledge about this admission, this admission of the owner could not be shown to this Court in the first appeal. Thus, it is the contention that admission evidence was not within the knowledge of the acquiring body and so the review of the decision given by this Court is necessary.

4 The learned senior counsel for Respondent / owner took this Court through the memo of special leave petition filed in the Supreme Court and submitted that the contentions were made in the Supreme Court about the said agreement and it was further contended that the compensation could have been awarded as per the rate, which was around Rs.2,00,000/- per Acre mentioned in that document, and this evidence is not considered by the first appellate Court. However, the memo of appeal does not show that there was contention of the acquiring body that there was aforesaid admission on the part of the owner given in Civil Court and on that basis compromise decree was also prepared. In any case, the order made by the Apex Court which is already quoted, shows that it needs to be presumed that the special leave petition came to be dismissed after considering all the contentions with regard to the market rate of the land, which was prevailing at the relevant time and the relevance of that document. It needs to be presumed that the Apex Court has considered the circumstance that this Court had refused permission to the Appellant to lead additional evidence in the first appeal and relief on that ground is also rejected by the Apex Court.

5 For delay condonation, this Court is expected to consider two things viz. (i) that there was sufficient cause and (ii) there is some arguable case in the main proceeding, in the review proceedings. The application of Muley came to be filed on 26th April, 2018. The Supreme Court decided the matter on 20th August, 2018. In view of the date of filing of Civil Application No.5916 of 2018, it can be said that it was possible to the acquiring body to bring to the notice of the Apex Court the present circumstance like the admission, which came to the knowledge of the acquiring body due to Civil Application No.5916 of 2018. Further, after filing of that application by Muley, third-party, review application could have been filed immediately in this Court if the circumstance that the matter was filed to challenge the decision of this Court in Supreme Court was pending is ignored. However, present proceeding came to be filed on 15th December, 2018 and due to this circumstance it is difficult to believe that there was sufficient cause for the acquiring body in respect of delay of 279 days caused in filing review application. It appears that the acquiring body continued to fight the litigation in the Supreme Court and the review application was also filed in respect of the aforesaid order made by the Apex Court.

6 For ascertaining as to whether there is something to argue in the review application, this Court cannot ignore that the Apex Court had already dismissed the special leave petition by passing the order of aforesaid nature. The learned counsel for Applicants placed reliance on some observations made by the Apex Court in the case reported as ***(2011) 8 Suprme Court Cases 679***, (*Bakshi Dev Raj (2) and another Vs. Sudheer Kumar*). The learned counsel submitted that in that case, the Apex Court observed that the review proceeding is tenable even after dismissal of special leave petition by the Apex Court. In that case, the special leave petition was dismissed as withdrawn though permission of the Apex Court was not obtained for withdrawal of the said proceeding. In view of the said fact the Apex Court observed that the review could have been filed in High Court. The facts of the present matter are different. In view of the aforesaid order made by the Apex Court of dismissal of the special leave petition, this Court holds that it will not be open to this Court to re-open the matter on aforesaid point. Thus, the delay itself cannot be condoned. In the result, all the applications filed for condonation of delay stand rejected.

[SUNIL K. KOTWAL, J.] **[T. V. NALAWADE, J.]**

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