

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO. 411 OF 2019
IN
STAMP NUMBER MAIN NO.3730 OF 2018**

The Executive Engineer,
Works Division-XVIII(R)
PWD

... Applicant

V e r s u s

Anant V. Kamat Haldonkar & anr.

... Respondents

Mr. S. P. Munj, Additional Government Advocate for the
Applicant.

Ms. Ketki Pednekar, Advocate for the Respondents.

**Coram : C. V. BHADANG, J.
Date : 27th September, 2019**

ORAL ORDER

1. This is an application for condonation of delay of 234 days, in filing an appeal.

2. An area admeasuring 4074 square metres of Village Betqui of Ponda Taluka, belonging to the respondents was acquired by the Government, for the construction of road at Gimmona (Phase II) in V.P. Betqui Candola in Priol Constituency. The Land Acquisition Officer (LAO) granted

compensation at the rate of Rs.150/- per square metres, which has been enhanced to Rs.500/- per square metres by the Reference Court, vide judgment and award dated 13.12.2017 passed in Land Acquisition Case No.22/2015. After the impugned judgment and award was passed on 13.12.2017, the certified copy was applied for on 02.04.2018 and was delivered on 07.04.2018 after which the appeal along with the application for condonation of delay came to be filed on 01.11.2018 resulting into a delay of about 234 days in filing the appeal.

3. According to the applicant, the delay after the obtaining of the certified copy, is attributable to the movement of file and obtaining of the legal opinion, etc. The applicant has set out the details in para 6 onwards of the application which shows that the concerned Government Advocate had given his opinion on 02.04.2018, which is the date on which the certified copy was applied for. After obtaining of the legal opinion, the file was placed before the Superintending Engineer on 04.04.2018. A perusal of para 16 of the application shows that finally on 22.05.2018, the Executive Engineer (Legal) had observed that considering the legal opinion of the Government Advocate and of the Law Department, the award needs to be challenged by filing an appeal. Even thereafter, the file

continued to move in various Departments. In para 22 of the application, it is stated that "sometime was lost in studying the matter and preparing the draft of appeal" and thereafter again time was spent in Government approvals of the draft of the appeal and the application for condonation of delay.

4. It is submitted that the delay caused is not deliberate or on account of absence of diligence and is principally on account of the requirement of the file being processed at various levels.

5. The respondents have filed their reply and have opposed the application. It is contended that the delay has not been properly explained and there is no sufficient cause made out for filing the appeal beyond the period of limitation.

6. I have heard Mr. S. P. Munj, the learned Additional Government Advocate for the applicant and Ms. Pednekar, the learned Counsel for the respondents.

7. The learned Additional Government Advocate has placed reliance on the decision of this Court in the case of **The Executive Engineer P.W.D., Works Division XVIII vs. Prabhakar Krishna Sinai Usgaonkar, MCA No. 1059 of**

2011 decided on 22.03.2012, in order to submit that public interest, undoubtedly is a paramount consideration in exercising discretion wherever conferred by the relevant statutes and looking to the drain on the public exchequer the delay which otherwise, is not on account of any negligence, deserves to be condoned. The learned Additional Government Advocate has strenuously urged that the delay after obtaining of the certified copy i.e. from 07.04.2018 was principally on account of the movement of the file and the necessity of the approvals at various levels. It is submitted that by the time the decision to challenge the award of the Reference Court was taken, the appeal was already barred by limitation and, therefore, some more time was taken to prepare and get approvals to the application for condonation of delay. Insofar as the delay in applying for certified copy is concerned, it is contended that it is attributable to the concerned Government Advocate who was appearing before the Reference Court.

8. The learned Additional Government Advocate has also placed reliance on the judgment of the Supreme Court in the case of **State of Nagaland vs. Lipok AO & Ors. (2005) 3 SCC 752** and on the decision of this Court in the case of **Shri Piety Noronha vs. Cuncolim Municipal Council, Writ Petition No.422 of 2016 decided on 19.10.2016.**

9. Ms. Pednekar, the learned Counsel for the respondent has submitted that there is gross delay which cannot be condoned as the applicant has failed to show sufficient cause for not filing the appeal within time. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **Pundlik Jalam Patil (D) by Lrs. vs. Exe. Eng. Jalgaon Medium Project & Ors., (2008) 17 SCC 448** in which reference is made to the earlier decision of the Supreme Court in the case of **Ajit Singh Thakur Singh & anr. vs. State of Gujarat, 1981 Cri LJ 293**. It is submitted that when the certified copy itself is applied for, beyond the period of limitation, no event or circumstance arising after the expiry of limitation, can constitute sufficient cause. It is submitted that the said decision in the case of **Ajit Singh Thakur** (supra) clearly applies to the facts as obtaining in the present case. Reliance is placed on the decision of the Supreme Court in the case of **Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & anr., (2012) 3 SCC 563** and the decision in the case of **The State of Bihar & Ors. vs. Deo Kumar Singh & Ors., (Special Leave Petition (Civil) Diary No(s).13348/2019 decided on 09.05.2019)**, in

order to submit that movement of the file is not a valid ground for condonation of a gross delay.

10. I have given my anxious consideration to the rival circumstances and the submissions made and I do not find that a case for condonation of delay is made out. The delay in the present case can be divided into two parts. The first is the period from 13.12.2017 to 02.04.2018 i.e. from the passing of the impugned judgment and order till the time the certified copy was applied for and second from 07.04.2018 to 01.11.2018 i.e. from the time the certified copy was obtained till the filing of the application for condonation of delay. It is a matter of record that the certified copy itself was applied for beyond the period of limitation, in this case. It was submitted by the learned Additional Government Advocate that this was on account of the lapse on the part of the concerned Advocate who was representing the State before the Reference Court. However, no such case appears to have been made out in the application for condonation of delay much less there are any particulars forthcoming in this regard supported by an affidavit of the concerned Advocate. It is therefore not possible to accept the said contention. The Supreme Court in the case of **Ajit Singh Thakur** (supra) which has been relied upon in a subsequent decision in the case of **Pundlik Jalam Patil**

(supra), has held that no event or circumstance arising after the expiry of limitation can constitute sufficient cause where the sufficient cause has not been established on account of some circumstance arising before the limitation expires. As noticed earlier, there is no material forthcoming for this part of the delay.

11. Coming to the second part of the delay, it is entirely on account of the movement of file. The Supreme Court in the case of **Office of the Chief Post Master General** (supra) had refused to accept any such ground. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649**, after taking a survey of several decisions, holding the field has culled out the principles which are germane for considering the prayer for condonation of delay. It has been inter alia held that there is a distinction between inordinate delay and a delay of few days. In the case of the former, a strict approach is warranted while considering a prayer for condonation of delay of a short duration, the Court may take a liberal view. In the present case, the delay is of a gross nature and although the certified copy was applied for beyond the period of limitation, further time of about 7 months was taken in filing the appeal and this

subsequent part of the delay was on account of the movement of which ground has not found favour in the case of the **Office of the Chief Post Master General** (supra). It is true that in para 21.13 of the judgment in the case of **Esha Bhattacharjee** (supra), the Supreme Court has noted that a State or a public body or an entity representing a collective cause should be given some 'acceptable latitude'. Even considering some acceptable latitude as has been permitted in favour of a State or a public body, in my considered view, no case for condonation of delay is made out in this case. A bare perusal of the application shows that even after a decision to challenge the judgment and decree of the learned Reference Court was taken and it was realised that the appeal is already barred by limitation, the file continued to move, for finalisation of the application for condonation of delay and the draft of the appeal.

12. The reliance placed on behalf of the applicant on the case of **Prabhakar Krishna Sinai Usgaonkar** (supra), to my mind, is misplaced for the reason that in that case on facts the delay which was about 140 days was found to have been properly explained in paragraphs 7 and 8 of the application. The question whether the applicant has made out sufficient cause for the condonation of delay would depend upon facts

and circumstances of each case. In the case of **State of Nagaland** (supra), the delay was only of 57 days which was found to have been properly explained.

13. The decision in the case of **Shri Piety Noronha** (supra) also, in my considered view, turned on its own facts wherein the land which was subject matter of acquisition was a tenanted land. There were two separate references raised by the owner as well as the tenant and the Reference Court deciding the two references separately had granted enhancement in both the petitions i.e. by the owner as well as the tenant, the net result of which the compensation granted at the rate of Rs.43/- per square metre for the paddy land and at the rate of Rs.92/- per square metre for bharad land stood enhanced to Rs.1,401/- per square metre. There was one more circumstance which weighed with this Court, while condoning the delay, namely the delay in filing an appeal in respect of the judgment and award passed in the reference filed by the tenant was already condoned.

14. On a careful consideration of the facts and circumstances obtaining in this case, in my view, the applicant has failed to make out a sufficient cause for not filing the appeal within limitation.

15. The Civil Application is accordingly dismissed. The registration of the First Appeal stands refused.

C. V. BHADANG, J.

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