

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3205/2019

in

First Appeal (ST) No.5995/2019

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. Niketan Nakhawa for the Applicant

CORAM: K.K.TATED, J.

DATED : SEPTEMBER 25, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Applicant, the matter is taken on production board.

2 This Application is for condonation of 24 years 11 months and 2 days delay in preferring the appeal challenging the judgment and award dated 23.12.1993 passed by the Reference Court in LAR No.97/1989.

3 The learned counsel for the Applicant submits that in the present proceedings the Special Land Acquisition Officer had issued Notification u/s.4 of the Land Acquisition Act, 1894 on 24.09.1986 for acquiring the land bearing Gut No.121/1 at village Roadpali

admeasuring 3396 sq.mtr. which was subjected to the compulsory acquisition under the said Act. Thereafter the Special Land Acquisition Officer declared the award u/s.11 of the said Act in the year 1989. He submits that in the said Award, the Special Land Acquisition Officer has specifically shown the name of the Applicant as notice with ownership. Not only that, the Special Land Acquisition Officer also held that the Applicants are entitled to 60% compensation i.e. Rs.27,523/-.

4 The learned counsel for the Applicant submits that thereafter the Respondent-Claimants had challenged the said award by filing Reference u/s.18 of the said Act being LAR No.97/1989 which was allowed by the Reference Court by order dated 23.12.1993 holding that the Respondent-Claimants are entitled to additional compensation of Rs.7,13,160/- by way of market value plus Rs.2,13,948/- by way of solatium at 30% plus Rs.2,22,974.80 as additional payment u/s.23(1-A) of the said Act.

5 The learned counsel for the Applicant submits that subsequently the

Respondent Dashrath Trimbak Thakur had filed Regular Civil Suit No.202/2016 before the Civil Judge, Senior Division at Panvel and claimed the share and the compensation which was payable to Trimbak Joma Thakur. He submits that at the time of filing the said LAR and the said suit, the Respondent suppressed the fact that the Applicants have also share in the awarded compensation. He submits that recently the Applicant learnt all these facts i.e. filing of LAR No.97/1989 and award passed by the Reference Court on 23.12.1993. Hence, the Applicant has filed the present application for condonation of delay. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and the matter be heard on merits. He submits that if the delay is not condoned, irreparable loss will be caused to them.

6 It is to be noted that though 60% share was granted to the Applicant by the Special Land Acquisition Officer in the award, they failed and neglected to challenge the same for additional compensation. LAR No.97/1989 was filed by the other claimants for

enhancement of compensation. Apart from that there is no satisfactory explanation in the Civil Application for condonation of inordinate delay of 24 years in filing the First Appeal. I do not find any substance in the Civil Application.

7 Hence, following order is passed:

- a. The Civil Application for condonation of delay is rejected.
- b. Registration of the First Appeal stands rejected.
- c. In view thereof, Civil Application for stay stands dismissed as infructuous.

8 At this stage, the learned counsel for the Applicant submits that Applicant may be permitted to withdraw the First Appeal unconditionally. To that effect, he has given in writing. Same is taken on record and marked "X" for identification.

9 In view of the above, following order is passed:

- a. Earlier order rejecting the Civil Application for condonation of delay is recalled.

- b. Both the Civil Applications and the First Appeal are restored to file.
- c. The First Appeal and both the Civil Applications stand disposed of as withdrawn, unconditionally.
- d. No order as to costs.

(K.K.TATED, J.)