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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL APPLICATION NO.231 OF 2016
IN
REVIEW PETITION (ST) NO.18688 OF 2016
IN
FIRST APPEAL NO.196 OF 1996

The Administrator Nashik,
City and Industrial Development
Corporation of Maharashtra

... Applicant

Vs.

The State of Maharashtra,
Through Special Land Acquisition Officer and Ors.

... Respondents

Mr. Ashutosh M. Kulkarni for the Applicant and Mr. S.S. Diwan for the Applicant.

Mr. A.R. Patil, Addl. G.P. for the Respondent No.1.

Mr. Anil Ahuja for the Respondent Nos.2A to 2G, 3A to 3G.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 12th MARCH 2019.

P.C. :

1 Heard the learned counsel appearing for the applicant. This is an application for condonation of delay in filing Review Petition. The applicant is the acquiring body. In the acquisition proceedings under the Land Acquisition Act, 1894 (for short “the said Act of 1894”) read with the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP

Act”) review is sought by the applicant of the judgment and order dated 31st January 2008 passed by the First Court in First Appeal No.196 of 1996 along with connected matters. The first appeal arose out of an award made under section 18 of the said Act of 1894 by the reference Court. We may note here that for seeking review of the judgment and order dated 31st January 2008, review petition was filed on 2nd January 2016. The review is sought of the direction contained in clause (iii) of the operative part of the judgment of the Division Bench under which interest under sub-section (1A) of section 23 of the said Act of 1894 is made payable from 1st April 1982 till 12th February 1986. Review is sought on the ground that in fact possession of the acquired land in the present case was taken over on 30th June 1983. The contention in the review petition is that the interest under sub-section (1A) of section 23 ought not to have been made payable upto 12th February 1986 and should have been made payable only upto 30th June 1983.

2 In support of long delay of more than 8 years, the learned counsel appearing for the applicant has taken us through additional affidavit of Shri Anil Zope, Administrator of the applicant which is the Planning Authority. He pointed out that after the judgment in the appeal which is sought to be reviewed, the Special Land Acquisition Officer informed the applicant to deposit the enhanced amount of compensation in 106 cases. Accordingly, on 26th June 2008, additional amount in terms of the judgment was deposited. On 18th September 2008, the Land Acquisition Officer called upon the applicant to deposit the enhanced amount in 27 matters which was deposited on 12th March 2009. He

pointed out how the matter progressed further. He submitted that on 17th March 2015 a discussion was held in the office of the Chief Administrator of the applicant in presence of Legal Advisor and other officers of the applicant when it was decided to seek opinion. On 24th June 2015, the concerned Advocate gave opinion noticing for the first time the error in clause (iii) of the judgment regarding the date upto which interest under section 23(1A) was made payable. He pointed out that there was further correspondence made and opinions were exchanged from 21st June 2015 till 10th November 2015 when the Managing Director of the applicant granted approval for filing review petition. Thereafter, on 27th November 2015, the file was sent to the Chief Administrator for appointment of an Advocate for filing review petition. Ultimately, on 1st December 2015, the Managing Director granted final approval. It took six months thereafter and only on 2nd July 2016 the review petition was filed.

3 The submission of the learned counsel appearing for the applicant is that the applicant was dealing with large number of cases and therefore, error could not be noticed. When the Court made a query to him about the date on which judgment of this Court sought to be reviewed was sent to the applicant he stated that it was received on 26th May 2008. His submission is that unless obvious mistake is corrected, the respondents – claimants will get away with unjust enrichment. He submitted that after the error was noticed in April 2015, steps were taken by the applicant. He would, therefore, submit that this is a case where the Court will have to adopt liberal approach and condone the delay of 8 years. The learned counsel appearing for the claimants opposed the application by relying

upon various decisions of the Apex Court including well known decision of the Apex Court passed *Postmaster General and Ors. vs. Living Media India Limited and Anr.*¹ as well as the decision of the first Court in the case of *State of Maharashtra and Ors. Vs. Vithu Kalya Govari & Ors.*².

4 We have carefully considered the submissions. As noted earlier, the grievance in the review petition is about the date fixed upto which interest under sub-section (1A) of section 23 will be payable. The date fixed is 12th February 1986 and accordingly, the contention is that as possession was taken on 30th June 1983, interest payable ought to have been only upto that date and not upto 12th February 1986.

5 Perusal of the judgment of the Division Bench shows that even in paragraph 5, it is specifically mentioned that the possession of the acquired lands was taken on different dates from 20th August 1981 till 1983. We may note here that the Division Bench was dealing with a group of appeals. The same paragraph mentions that the possession was taken over prior to the date of award under section 11. We may note here that after receiving a copy of the judgment on 26th May 2008, the applicant acted upon the judgment by depositing enhanced amount in June 2008 and March 2009. Going by the additional affidavit, it is very clear that when the amounts were calculated by the applicant in the year 2008 and 2009, they were aware of the direction regarding interest payable under sub-section (1A) of section 23. Additional affidavit indicates that in execution application, based on the judgment in first appeal, an

1 2012(3) SCC 563

2 2008(6) Mh.L.J. 239

application was made way back on 15th September 2009 by the original claimants which indicates that interest has been calculated while depositing the amount from the date of award instead of date of possession and hence, the claimants were deprived of interest for four years. An order was passed by the Executing Court on 4th August 2011 which in so many words notes that the possession of the acquired lands was taken over in the year 1982 and 1983. The entire discussion in the said order which contains detailed reasons is that as possession was taken over on 30th June 1983 interest under section 28 of the said Act of 1894 was payable from the said date.

6 Firstly, it is impossible to believe that clause (iii) of the operative part of the judgment was not noticed for 8 years. Even assuming that it was not noticed till the year 2011, obviously, it ought to have been noticed at least on 4th August 2011 when the Executing Court passed the aforesaid order. The additional affidavit shows that from March 2012, the files containing charts of calculation of the amount payable moved from one officer to another. The file was placed before the Administrator on 13th June 2012. The Administrator forwarded the same to the Law Officer along with his own opinion. Thereafter, it passed through the hands of the Development Officer (Legal), Legal Advisor (New Towns), Chief Administrator, Chief Administrator (New Towns). On 11th October 2013, the Chief Administrator (New Towns) passed an order directing verification of the charts received from the Special Land Acquisition Officer. Even thereafter, the file moved from the Administrator to the Chief Administrator to and fro. Even in the year 2014, the file moved

through various officers. On 15th September 2014, the Chief Administrator sought opinion of the Legal Advisor (New Towns). On 22nd September 2015, the Chief Administrator (New Towns) asked the Collector for the copies of possession receipts, etc. Even thereafter, the file moved from one office to another and mainly between the offices of the Administrator and Chief Administrator. There were number of meetings held in the year 2015. The legal opinion was given by the Advocate appointed by the applicant on 21st June 2015. The first approval to file review petition was given on 10th November 2015 and the final approval was on 1st December 2015. After the final approval, it took six more months for the applicant to file review petition.

7 It is impossible to accept the case of the applicant that though copy of the judgment was received on 26th May 2008 and though the same was acted upon and though the file passed through several officers during the period from May 2008 till May 2015, the operative part was not noticed by any of the officers.

8 As regards unjust enrichment, we must note here that we are dealing with a gross delay of more than 8 years for which there is no explanation. As stated earlier, even after final approval was granted by the Managing Director to file a review petition, it took six months' time for the applicant to file review petition. Moreover, if the case of the applicant is accepted, interest under section 28 of the said Act of 1894 will be payable to the claimants from the date of possession in the year 1983 and not from the date which is subsequent to the award under section 11. We may note

here that interest under section 28 is payable at the rate of 9% for the first year and at the rate of 15% for the subsequent period, from the date of possession till the date of deposit of the excess amount. The interest under section 28 is payable on three components on market value, 30% solatium and interest payable under sub-section (1A) of section 23.

9 Even taking liberal view of the matter, it is impossible to condone the delay of 8 years. Accordingly, the application is rejected. All pending civil applications do not survive and the same are disposed of.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)