

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

**CIVIL APPLICATION NO.1485 OF 2013
IN FAST/25078/2012**

AVINASH GURUNATH BIRAJDAR
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr.B.K.Pawar
AGP for Respondents No.1 & 3 : Mr.Y.G.Gujrathi
Advocate for Respondent No.2 : Mr.Anil M. Gaikwad

...
CORAM : K.K.SONAWANE, J.

DATE: 7th January, 2020

PER COURT:-

1. Issue notice to the respondents. Learned AGP waives service of notice for respondents No.1 and 3. Mr.A.M.Gaikwad, learned counsel waives service of notice for respondent No.2.
2. Heard learned counsel for the parties.
3. Applicant moved the present application seeking condonation of delay caused in filing first appeal against the impugned Judgment and award passed by the learned Civil Judge, Senior Division, Omerga, in LAR No.149 of 2010, dated 26.08.2011.
4. Learned counsel for the applicant submitted that the agricultural land of the applicant was acquired by the respondents for the purpose of Narangwadi Storage Tank. The Special Land Acquisition Officer (SLAO) has awarded less compensation amount in favour of applicant, therefore, he preferred reference before the Reference Court for enhancement in the compensation amount. But, the learned Reference Court also did not appreciate the factual aspects on record and failed to award the appropriate compensation of the said land. The applicant is intending to file first appeal

against the impugned Judgment and award passed by the Reference Court, but delay of 273 days is caused in filing the appeal. According to the learned counsel, the delay caused is not intentional and deliberate, but caused due to unavoidable circumstances and financial crises of the applicant-claimant. He requested to condone the delay caused in filing the appeal, in the interest of justice.

5. Learned AGP for respondent-State as well as learned counsel for respondent-Acquiring Body opposed the application and submits that huge delay of 273 days cannot be condoned for lack of satisfactory reasons. The applicant did not take proper precaution to file the appeal within stipulated period.

6. Having given anxious consideration to the arguments advanced on behalf of both sides and for the reasons mentioned in the application, I do not find any impediment to condone the delay in the interest of justice. The matter pertains to determination of appropriate market value of the acquired land of the applicant-claimant. The applicant is not satisfied with the amount of compensation awarded by the SLAO as well as by the Reference Court. In the circumstances, reasonable opportunity is essential to be given to the applicant to ventilate his grievance before the appellate forum for redressal. It is rule of law that liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach while dealing with the application for condonation of delay.

7. During the course of argument, learned AGP for respondent-State and learned counsel for respondent-Acquiring Body submit that in case the delay is condoned by this Court then the applicant-claimant may not be allowed to claim interest on the enhanced amount of compensation for the period of delay caused in filing the appeal. The learned counsel for the applicant-claimant fairly

conceded for the same and submits that the applicant-claimant will not claim the interest and other statutory benefits for the period of delay caused in filing the appeal. In such circumstances, the application deserve to be allowed.

8. Accordingly, the application stands allowed. The delay caused in filing the appeal is hereby condoned, subject to condition that the applicant-claimant shall not claim interest and other statutory benefits as laid down in the Land Acquisition Act, 1894 for the delayed period, in case any enhanced compensation is awarded by this Court after adjudication of appeal on merit.

9. Pursuant to aforesaid waiver of statutory claim, the applicant-appellant shall furnish undertaking to that effect and place it on record of the appeal to enable this Court to take note of the same while decision of the appeal on merit. Registry to take requisite steps for further process.

10. With the aforesaid observations, the application stands disposed of.

11. On registration of appeal, issue notice to the respondents. Learned AGP waives service of notice for the respondents No.1 and 3. Mr.A.M.Gaikwad, learned counsel waives service of notice for respondent No.2.

12. List the appeal for hearing in due course.

(K.K.SONAWANE)
JUDGE

SPT