

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

C.A.F NOS. 1204/2020 AND 1499/2020 IN FIRST APPEAL 385/2020

(EXECUTIVE ENGINEER, AMRAVATI PROJECT CONSTRUCTION
DIVISION AMRAVATI & ANOTHER **VERSUS** ASHA ARVINDKUMAR GANERIWAL
& ANOTHER)

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

Court's or Judge's order

Mra. Anjali A. Joshi, counsel for the appellant.

Shri Arun A. Agrawal, counsel for the R-1.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI, JJ.

DATED : 15th DECEMBER, 2020.

By this application, the applicants pray that the delay in preferring appeal under Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the said Act') be condoned. The learned Presiding Officer Rehabilitation and Resettlement Authority, Nagpur decided the acquisition proceedings in which the lands owned by the non-applicant no.1 came to be acquired by order dated 04.11.2019. As per provisions of Section 74(1) of the said Act, an appeal is required to be filed within a period of sixty days from the date of the award. As per the proviso to Section 74(1) delay of a period not exceeding sixty days thereafter is liable to be condoned subject to sufficient cause being assigned.

According to the applicants appeal under Section 74(1) of the said Act was filed on 18.02.2020. Since according to non-applicant no.1 the appeal was filed beyond the period of sixty days as permitted and the appeal was not accompanied by any application for condonation of delay, it had moved Civil Application No.1204 of 2020 for dismissal of First Appeal No.385 of 2020 on that count. By the order dated 03.11.2020, it has been held that even though the appeal was filed beyond the period of sixty days as stipulated by Section 74(1) of the said Act, an opportunity was liable to be given to the applicants to seek condonation of delay. In

the application for condonation of delay, it has been stated that after getting knowledge of order being passed by the learned Presiding Officer on 04.11.2019 steps were taken to obtain legal opinion. The Certified Copy of the order that was applied for on 22.11.2019 was received on 07.01.2020. After deducting 42 copying days, it was clear that the appeal was filed within the prescribed period of limitation of sixty days and if the copying days were not taken into account the appeal was filed on the 105th day from the date of adjudication of the proceedings by the Presiding Officer. The learned counsel for the applicants submitted that the reply filed to Civil Application No.1204 of 2020 be also taken into consideration while considering the prayer for condonation of delay. She referred to the documents placed on record to urge that the Office of the Executive Engineer, Minor Irrigation had been wrongly impleaded in the array of parties. In fact, the Executive Engineer, Amravati Project Construction Construction Division Amravati ought to have been impleaded. It was submitted the delay as caused was not intentional and the same was liable to be condoned in the interest of justice.

The learned counsel for the non-applicant no.1 vehemently opposed the aforesaid application. According to him, the explanation furnished was not sufficient to condone the delay. Referring to provisions of Section 60(5) of the said Act, he submitted that the Competent Authority was required to deliver a copy of the order as passed to the parties within fifteen days. In view of the fact that applicants had knowledge of the aforesaid order on 06.11.2019/19.11.2019 they ought to have filed appeal immediately thereafter. There was no explanation furnished as to why the appeal was filed on 18.02.2020. He referred to the documents filed along with the reply to urge that though the certified copy was ready on 02.12.2019, it was collected by the counsel for the applicants only on 07.01.2020. Placing reliance on the decision in *Special Land Acquisition Officer (SIP) & Another Versus Jose Prazeres De Piedade Pinto r/o Old*

Market & Others [2006(4) Mh.L.J. 318], he submitted that in absence that any proper explanation for the period of delay the same was not liable to be condoned. He therefore submitted that the application was liable to be rejected.

After hearing the learned counsel for the parties, we find that the Presiding Officer passed his award on 04.11.2019. It is a fact that the applicants got knowledge of this order on 06.11.2019/19.11.2019. It has however not been indicated that the Office of Rehabilitation and Resettlement Authority had in terms of Section 60(5) of the said Act delivered the certified copy of the award to the applicants. The applicants even if served with a copy of the award could not have filed an appeal without certified copy of the same. The applicants applied for the certified copy on 22.11.2019 and the same was received on 07.01.2020. It is thereafter that the appeal was filed on 18.02.2020. As it was not possible to present the appeal without a certified copy and despite having knowledge of the award on 06.11.2019/19.11.2019, the appeal was required to be filed along with the certified copy. We find that though the appeal has been filed on 18.02.2020, there are no *mala fides* on the part of the applicants resulting in the period of delay. In fact, according to them, if the copying days from 22.11.2019 to 07.01.2020 are excluded the appeal was filed within a period of sixty days as prescribed.

In that view of the matter, the ratio of the decision in *Special Land Acquisition Officer* (supra) cannot be made applicable to the facts of this case. Finding the reasons sufficient, we condone the delay in filing the appeal subject to the applicants paying costs of Rupees Ten Thousand to the non-applicant no.1 within a period of three weeks. Civil Application Nos. 1204 of 2020 and 1499 of 2020 are disposed of in aforesaid terms.

(N. B. SURYAWANSHI, J.)

(A. S. CHANDURKAR, J.)

APTE
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