

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Kausik Chanda**

F.A.T. 65 OF 2019

With

CAN 1 OF 2019 (Old CAN 1639 OF 2019)

With

CAN 2 OF 2019 (Old CAN 1651 OF 2019)

EXECUTIVE OFFICER, BURDWAN DEVELOPMENT AUTHORITY

-VERSUS-

KHANDEKAR AFZALUL QUADER AND ANOTHER.

For the appellant : Mr. Sorujit Nath Mitra, Sr. Adv.,
Mr. Arindam Banerjee, Adv.,
Ms. Sanchari Chakroborty, Adv.,
Mr. Soumik Chakraborty, Adv.,
Mr. Sarosij Dasgupta, Adv.

For the respondent no. 1 : Mr. Gopal Ghosh, Adv.,
Mr. Prabir Rej, Adv.

Hearing concluded on : 09.03.2021

Judgment on : 06.07.2021

Kausik Chanda, J.:-

This is an application for condonation of delay of 1981 days in preferring the present appeal beyond the statutory period for preferring the appeal.

(2) This appeal has been preferred against an award dated 11th June, 2013 passed by the learned Additional District Judge, 3rd Court, Burdwan, in Land Acquisition Case no. 45 of 2008. By the impugned award the learned Judge in the Court below determined the market price of the land in question @ Rs. 35 lakh per acre. In the said award, other components of compensation in terms of the Land Acquisition Act, 1948 were also awarded in favour of respondent no. 1/opposite party no. 1.

(3) It has been contended in the application for condonation of delay that after the award was passed by the Court below, the then Executive Officer of the petitioner immediately took steps to obtain a certified copy of the judgment and decree and instructed their Advocate for taking steps who did not take any initiative.

(4) Thereafter, there was a change in the post of Executive Officer till December, 2017 for a number of times. Due to frequent changes in the head of the organization, the said Executive Officer in the short tenure, could not take any effective steps for preferring the appeal before this Court arising out of the said land acquisition proceeding. Especially, due to the splitting of Burdwan district into two parts.

(5) The petition for condonation of delay further explains that a new Chief Executive Officer was appointed in the month of December, 2018 who appointed a new Advocate for filing this appeal. It was found that most of the papers were not available in the file and it took time till October, 2018 to arrange for the papers, including the certified copy of the impugned order. Thereafter, the puja vacation of the High Court intervened, and the appeal was ultimately filed in the month of February, 2019 resulting in a delay of about 1981 days in preferring the appeal.

(6) To summarize, the petitioner sought to justify the delay by citing the reasons including frequent change of key officials, unavailability of the record and delay on the part of Advocates.

(7) It has further been stated that there are a number of appeals already filed against similar type of judgments whereby the compensation amount was fixed @ Rs. 35 lakh per acre. A list of such appeals has been annexed to this application for condonation of delay. The petitioner contended that for the purpose of maintaining uniformity in the rate of compensation awarded against the relevant Mouza, this appeal preferred should also be heard along with other pending appeals.

(8) In support of such contention, the petitioner relies upon a judgment passed by a Division Bench of this Court in FAT 587 of 2014 (CAN 12049 of 2014) **(Executive Officer, Burdwan Development Authority vs. Anwar Ali**

and Others) whereby a delay of 1235 days in filing the appeal, arising out of a Land Acquisition case concerning the same Mouza was allowed.

(9) Though on January 24, 2020 the respondent no.1/opposite party no. 1 intended to file an affidavit-in-opposition to this application, for condonation of delay, no such opposition has been filed by the respondent no.1/opposite party no. 1.

(10) The respondent no.1/opposite party, however, verbally submitted at the time of hearing that the petitioner could not explain the delay in preferring the appeal beyond the statutory period of limitation. It was further submitted that such inordinate and huge delay in preferring the appeal could not be condoned in view of the judgments reported in **Basawraj vs. The Spl. Land Acquisition Officer [(AIR 2014 SC 746)]**, **Pundlik Jalam Patil (D) by Lrs. vs. Exe. Eng. Jalgaon Medium Projects [(2008) 17 SCC 448)]**.

(11) We may also notice some recent judgments of the Supreme Court where the Apex Court observed that no latitude should be shown to the Government or its instrumentalities in considering the delay for filing an appeal beyond the statutory period of limitation. (**See: Postmaster General vs. Living Media India Limited, [(2012) 3 SCC 563]**, **State of Madhya Pradesh vs. Bherulal [(2020) 10 SCC 654]**). The judgments relied upon by respondent no. 1/opposite party no.1 also support such proposition.

(12) We, however, feel it is necessary to take into consideration the judgment passed in FAT 587 of 2014 (CAN 12049 of 2014) (**Executive officer, Burdwan Development Authority vs. Anwar Ali and Others**) where it has been held as follows:-

“ That apart when several appeals have already been filed and those are still under consideration before us, we do not feel that the State gained anything to the prejudice of the respondents by not filing this appeal within the prescribed period of limitation.

Accordingly, we hold that the explanations which were given for the delay in this application are sufficient to condone the delay.

That apart, we find that for maintaining uniformity in the process of assessment of compensation of the lands situated in the same Mouza covered under several notifications issued for the same project, this appeal should also be decided along with the other pending appeals.”

(13) Though there has been much more delay in preferring the present appeal in comparison with the aforesaid case, it is necessary for the sake of comity, uniformity and consistency in judicial decisions to follow the said judgment passed by a coordinate bench which held that appeals arising out of the said land acquisition proceeding pending in this Court should be heard together to avoid the conflicting decision with regard to payment of compensation.

(14) Accordingly, this application is allowed subject to payment of Rs. 2 (two) lakh as costs to be paid by the appellant. Appellant shall deposit such cost to the State Legal Services Authority, West Bengal within a period of four weeks

from date. If such a deposit is made, the State Legal Services Authority will keep the said amount in the account earmarked for the juvenile. In default, this order will automatically stand recalled, and the application for condonation of delay be dismissed.

(15) The application being **CAN 2 of 2019 (Old CAN 1651 of 2019)** is, thus, disposed of.

(16) Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

I agree.

(Harish Tandon, J.)

(Kausik Chanda, J.)