

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

WRIT PETITION NO. 2644 OF 2019

1. Hiralal S/o. Motilal Joshi,
Died through L.Rs.
- 1A. Nathibai W/o. Hiralal Joshi,
Died through L.Rs.
- 1B. Bajranglal S/o. Hiralal Joshi,
Age. 65 years, Occ. Agri,
- 1C. Govind S/o. Hiralal Joshi,
Age. 54 years, Occ. Agri.
2. Shriniwas S/o. Motilal Joshi,
Died through L.Rs.
- 2A. Gopal S/o. Shriniwas Joshi,
Age. 62 years, Occ. Agri.
- 2B. Girdhar S/o. Shriniwas Joshi,
Age. 50 years, Occ. Agri.

All R/o. Tilaknagar, Latur,
Tq. & Dist. Latur.
3. Brijlal Madanlal Joshi,
Died through L.Rs.
- 3A. Kalawati W/o. Brijlal Joshi,
Age. 60 years, Occ. Household,
- 3B. Vinay S/o. Brijlal Joshi,
Age. 33 years, Occ. Agri.
- 3C. Vishal S/o. Brijlal Joshi,
Age. 30 years, Occ. Agri.

3A to 3C all R/o. Tilak Nagar,
Latur, Tq. & Dist. Latur.

...Petitioners.

Versus

1. The State of Maharashtra,
Through Collector, Latur.
2. The Commissioner,
Municipal Corporation, Latur.

...Respondents.

Advocate for Petitioners : Mr. B.N. Patil.
AGP for Respondent No. 1 : Mr. K.B. Jadhavar.
Advocate for Respondent No. 2 : Mr. H.V. Patil.

CORAM : NITIN B. SURYAWANSHI, J.
DATE : 29.09.2021.

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. This petition takes exception to the order passed by the learned Extra Joint Civil Judge, Senior Division, below Latur, Exhibit 57, 59 and 61 in LAR No. 133/1989, thereby, rejecting the prayer of the petitioners for setting aside abatement, for condonation of delay and for bringing legal heirs of claimants No. 2 and 3 on record.
3. Shriniwas and Brijlal were claimants No. 2 and 3 in reference filed

under Section 18 of the Land Acquisition Act seeking enhancement of compensation bearing LAR No. 133/1989. Claimant No. 2 – Shriniwas, expired on 02.11.2010 and claimant No. 3 – Brijlal, expired on 08.03.2003. The application for bringing their legal heirs on record was not filed within 90 days. The reference was dismissed as no oral evidence was given and no documents were produced to substantiate that the claimants were entitled to the enhanced compensation.

4. The dismissal of the reference was challenged in Civil Revision Application No. 168/2014, which was allowed by this Court vide order dated 21.03.2016, and the matter was remanded back to the reference Court. Accordingly, the record and proceedings of the reference were received back by the reference Court in the month of July 2016.

5. Thereafter applications under order XXII Rule 3 and 9 of the Code of Civil Procedure read with Section 5 of the Indian Limitation Act, bearing applications Exhibit 57 for setting the abatement, Exhibit 59 for condonation of delay and Exhibit 61 for bringing the legal representatives of claimants No. 2 and 3 were filed contending that since the record and proceedings was in CRA, the applications could not be filed within 90 days. The petitioners contending that the delay was not deliberate and in

the peculiar facts the same deserves to be condoned. The trial Court rejected applications by a common order. This order is impugned in the present petition.

6. Heard the learned Advocate for the petitioners, learned AGP for respondent No. 1 and learned Advocate for respondent No. 2.

7. Admittedly, the petitioners are legal heirs of the original claimants, who had contested the CRA, which was allowed by this Court. The delay in the present matter is inordinate i.e. 5 years 10 months and 18 days in bringing legal heirs of claimant No. 2 – Shriniwas and delay of 13 years 6 months and 12 days in bringing legal heirs of claimant No. 3 – Brijlal on record. However, if the delay is not condoned the petitioners will be deprived of their right to contest the claim for enhancement of compensation. The claimants are litigating since the year 1989 and merely on the ground of delay their claim should not be rejected. The legal position in the matters of condonation of delay is well settled that liberal approach is to be adopted while condoning delay. This Court is of the view that the petitioners should not be deprived of their right to contest the reference seeking enhancement of compensation. In that view of the matter, I am inclined to allow the present petition.

8. In the result, Writ Petition is allowed in terms of prayer clause 'C' subject to the condition that the petitioners shall deposit costs of Rs. 10,000/- (Rupees ten thousand) with the Legal Aid Services Authority, Latur, within a period of four weeks from today.

9. It is made clear that the petitioners shall not be entitled to claim interest for the period of delay, in the event they succeed in the reference.

10. Rule is made absolute in the above terms.

(NITIN B. SURYAWANSHI, J.)

S.PC.