

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14688 OF 2018
IN FAST/34902/2018

THE STATE OF MAHARASHTRA AND ORS
VERSUS
SANGAPPA MAHADAPPA ZAMBRE (DEAD) THR. LRS GURAPPA
MAHADAPPA ZAMBRE AND ORS

.....
Mr. B. V. Virdhe, AGP for applicants – State.
Mr. V. V. Ingle, Advocate for respondent No.1.
Mr. P. B. Rakhunde, Advocate for respondent No.3.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19.06.2021

ORDER :-

1. Present civil application has been filed for condoning the delay of 2248 days in filing the first appeal.

2. Heard both sides. In order to cut short it can be said all of them have made submissions in support of their respective contentions.

3. Perusal of the record would show that this Court had dismissed the application as against respondent No.2 by its order dated 28.06.2019. Perusal of the said order would show that it was a conditional order for taking steps against the respondent within a particular period. After the said order was passed, no steps have been

taken and therefore, the said conditional order came into force and therefore, the application stood dismissed against him. The fact then remains that the other respondents i.e. respondent Nos.1 and 3 are also legal heirs of original claimant - Sangappa Mahadappa Zambre. In the said capacity, they were brought on record before the reference Court. The reference Court had enhanced the compensation and thereby the Government, as a judgment debtor, was required to fulfill the said award. It can be said that the said award was joint and several and, therefore, now in consequence of the dismissal of the present application as against respondent No.2 and the fact that there is no application for setting aside the said order filed by the State, the application in its entirety will have to be dismissed. Though the respondents have not come with the case of any other fact, yet, the legal position as it stands in respect of abatement of an appeal as against a co-respondent/deedee holder has laid down in ***State of Punjab Vs. Nathu Ram, (AIR 1962 SC 89 :: 1962 2 SCR 636)***, wherein following would be applicable :-

“The question whether a Court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the

respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary reliefs against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, will be ineffective, that is to say, it could not be successfully executed."

At the cost of repetition, it is stated that though respondent No.2 appears to be alive in this case, the matter cannot be said to be abated, but the same ratio would be applicable when this Court cannot go further and deal with the appeal only against two of the legal heirs of the original claimant by leaving one more claimant.

4. Learned AGP tried to submit that the other two persons are representing the State and, therefore, the application need not be disposed of as a whole, however, this Court cannot appreciate the said

submission on the ground that the said legal heir, who will be now left out, was definitely claiming his right to get compensation and, therefore, he was brought on record before the reference Court itself. Now, he cannot be left out.

5. This Court by order dated 08.04.2021 had specifically observed that the delay of 2248 days is definitely inordinate and there is no explanation offered in the application for a huge delay of 5 ½ years to make application for certified copy. It was also observed that this Court may consider imposition of heavy costs to be recovered from the erring officer in view of the judgment of the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Bherulal, [(2020) 10 SCC 654]***, however, an opportunity was given to the Government to explain the delay. The applicant was asked to file affidavit in support of the application for delay condonation. Pursuant to the said order, affidavit of Naib Tahsildar, SDO Office, Omerga, Dist. Osmanabad, namely, Mohan Dhondiram Panchal has been produced. In the affidavit, it is stated that the judgment and award in the matter was passed by the reference Court on 25.06.2012, thereafter, the Deputy Collector prepared appeal proposal and had sent it to the Law and Judiciary Department in the year 2013. The Law and Judiciary Department by letter number 829/2013 dated 13.03.2013 approved the proposal to file appeal before

this Court. After the proposal from Law and Judiciary Department was received, the office of the Government Pleader of this Bench issued letter dated 15.03.2013 and demanded the certified copies of the judgment and order in three sets. Thereafter, the Government applied for the copies of the judgment and order and it appears that it went through the channel of communication from Government office to Deputy Collector and then Deputy Collector contended that the said office has been closed down by the Government. All those matters were then transferred to the Sub Divisional Officer, Omerga by letter dated 15.03.2016 and 22.04.2016. After scrutinizing the files, when it was found that the certified copies were not applied or are not forming part of the record, they had applied for the certified copies once again on 02.12.2017. On the same day, those copies were received and sent to the Government Pleader's office of this Court on 09.04.2018. Thereafter, the appeal was drafted along with the civil application for condonation of delay. It has been tried to be submitted that in view of the accompanying documents, the delay is not intentional and the record itself was not traceable in view of lapse of about 10 years.

6. Learned Advocate appearing for the respondents has filed the affidavit-in-reply denying all the said contentions. Learned Advocate for respondent Nos.1 and 3 has submitted that whatever reasons those have

been tried to be assigned cannot be said to be sufficient much less reasonable to condone the delay.

7. The reasons given by affiant Mohan Dhondiram Panchal, the Naib Tahsildar, appears to be based on the documents those he could trace out. However, it is to be noted that when he has used the words 'once again applied for the certified copy' that presupposes that in the past there was an attempt and in fact the certified copies of the judgment and award were received by the Government. In fact, without going through the judgment and record how the Law and Judiciary Department had given approval to file appeal itself is a question and then why the copies of the judgment and award were not attached to the order is a question. Again then the Assistant Government Pleader of this office was required to make communication and demand the documents. It appears that, that communication was not taken seriously. There is total lethargy on the part of the Government servants dealing with the case. By order dated 15.08.2013, the office of Deputy Collector, Land Acquisition No.1, Osmanabad was closed down. The copy of the said order has been produced which shows that the charge was given to the Sub Divisional Officer, Bhoom and it was lay down by the District Collector, Osmanabad as to who would be the authority who would look after the remaining matters. But then after the said order

was passed on 14.08.2013 it appears that till 15.03.2016 no action was taken on the communication dated 20.04.2013 by learned AGP, Nilanga to Deputy Collector, Manjra Project, Osmanabad. Merely, by saying that the office was closed down, the responsibility of the persons/government servants will not end. In fact, it was then the responsibility of the officers to whom the charge was given by order dated 14.08.2013 to comply with the formalities in pursuant to the sanction given for filing appeal. Therefore, the affidavit, which is now filed in pursuance to the order passed by this Court on 08.04.2021; which in fact ought to have been filed along with the application itself, does not explain the delay of 2248 days and, therefore, the application deserves to be rejected.

8. This Court in *State of Maharashtra and others Vs. Onkar Manaji Kokani*, [2018 (3) Mh.L.J. 599] had taken note of all the earlier decisions by this Court as well as Hon'ble Supreme Court. Few of them can be referred here. In *Pundlik Jalam Patil (D) by LRs Vs. Executive Engineer Jalgaon Medium Project and Another*, [2008 (17) SCC 448], the Hon'ble Supreme Court has held that "*pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. These public interest parameters ought to be kept in mind by the Courts while exercising the discretion dealing with the application filed under*

Section 5 of the Limitation Act. Dragging the land losers to Courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. Though the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude, but the law of limitation is same for citizen and for Governmental agencies.”

Same ratio was laid down in ***Registrar of Companies Vs. Rajashree Sugar and Chemicals Ltd. and Ors., [(2000) 6 SCC 133]***.

Further, in ***Basawaraj and Another Vs. The Special Land Acquisition Officer, [2013 (14) SCC 81]***, Hon’ble Supreme Court observed that “the law on the issue can be summarised to the effect that where a case has been presented in the Court beyond limitation, the applicant has to explain the Court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the Court within limitation. In case a party is found to be a negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remain inactive, there cannot be a justified ground to condone the delay. No Court could be justified in condoning such an inordinate delay by

imposing any condition whatsoever.”

Further, in ***State of Maharashtra and Ors. Vs. Vithu Kalya Govari and Ors.***, [2008 (6) Mh.L.J. 239], the Division Bench of this Court observed that *“the State is not expected to be in negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of “official hassle” or “approval at different levels” is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown to the applicants. Despite, awards/judgments of the Courts which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant - State”*. Therefore, applying these principles, it can be said that no sufficient cause has been shown to condone the delay.

9. As aforesaid, this Court have taken note of the decision in ***State of Madhya Pradesh Vs. Bherulal (Supra)*** and it was observed that in case of failure to give any proper explanation, this Court may consider

imposition of heavy costs. In the said decision, it has been held that unless officer/officer(s) concerned have reasonable and acceptable explanation for delay and there was *bona fide* effort, there is no need to accept usual explanation that file was kept pending for several months/years due to considerable degree of procedural red tape in process. Thereafter, the Hon'ble Supreme Court sent a warning in such cases of inordinate delay to the Government or the State authorities that they should pay for wastage of judicial time which has its own value and such costs shall be recovered from the officers responsible. To apply this ratio, the affidavit was called, though the affidavit is not giving a good state of affairs, however, it can be definitely said that the present officer, who has filed the affidavit, could not have been the person in-charge in the year 2013. Further, when the office itself was closed down, yet, who was required to carry out the further affairs in view of order dated 14.08.2013 will have to be inquired into, but certainly it is not at the cost of the present officer and, therefore, that action of recovery of wastage of judicial time is not warranted. Suffice it to say, as the reasonable ground has not been shown to condone the delay, the application deserves to be rejected.

10. It will not be out of place to mention here that in view of the order passed in stay application i.e. Civil Application No.14690 of 2018,

amount of Rs.25,79,751/- has been deposited in this Court. It deserves to be disbursed as per the award to the respondents – original claimants.

Hence, the following order :-

ORDER

I) Application stands rejected.

II) The amount of Rs.25,79,751/- deposited in this matter be disbursed to the respondents – original claimants as per the award.

[SMT. VIBHA KANKANWADI, J.]

scm