

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14691 OF 2018
IN FAST/35221/2018

THE STATE OF MAHARASHTRA AND ORS
VERSUS
VISHNU PANDURANG JADHAV

WITH
CIVIL APPLICATION NO.14693 OF 2018
IN FAST/35226/2018

.....
Mr. B. V. Virdhe, AGP for applicants – State.
Mr. V. V. Ingle and Mr. P. B. Rakhunde, Advocates for respondent.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 19.06.2021

Pronounced on : 06.07.2021

ORDER :-

. Present civil applications have been filed for condoning the delay of 2248 days in filing the first appeals.

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

3. 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 respondents 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. Damu Manaji Kokani, Civil Application No.15424 of 2017*** and the group of matters decided on 04.01.2018 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 applications deserve to be rejected.

10. It will not be out of place to mention here that in view of the order passed in stay applications i.e. Civil Application Nos.14692 of 2018 and 14694 of 2018 amount of Rs.17,92,708/- and Rs.26,01,614/- has been deposited in this Court respectively. It deserves to be disbursed as per the award to the respective respondents – original claimants. Hence, the following order :-

ORDER

I) Civil Application Nos.14691 of 2018 and 14693 of 2018 stand rejected.

II) The amount of Rs.17,92,708/- and Rs.26,01,614/- deposited in these matters be disbursed to the respective respondents – original claimants as per the award.

[SMT. VIBHA KANKANWADI, J.]

scm