

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

WRIT PETITION NO.14129 OF 2019

- 1] Badrinath Narayan Mahajan
Age : 73 Years, Occu.Nil
R/o Bhawani Peth, Jalgaon
Taluka & Dist.Jalgaon
- 2] Shobha Vasudeo Mahajan
Age : 59 years, Occu : Household
- 3] Chandan Vasudeo Mahajan
Age 40 years, Occu : Business

2 & 3 R/o Chandraprabha Housing
Society, Near Kwajamiya Darga
Jalgaon, Taluka & District Jalgaon
- 4] Ravindra Narayan Chaudhari
Age : 59 years, Occu : Business
R/o 196, Bhawani Peth, Jalgaon
Taluka & District Jalgaon.
- 5] Bindesh Yashwant Bhole
Age : 53 years, Occu : Business
R/o Near Main Post Office
Jalgaon, Taluka & District Jalgaon
- 6] Pushpa Jagannath Patil
Age : 65 years, Occu : Nil
R/o Khadgaon,
Taluka & District Jalgaon
- 7] Vijaya Laxman Patil
Age : Major, Occu : Household
R/o Janaki Nagar, Jalgaon
Taluka & District Jalgaon.

.. PETITIONERS
(Applicant in MCA)
(Org.Decree Holder)

VERSUS

- 1] Special Land Acquisition Officer

Collector office, Jalgaon
Taluka & District Jalgaon

- 2] Executive Engineer,
Irrigation & Water Supply Division,
Zilla Parishad, Jalgaon
Taluka & District Jalgaon

.. RESPONDENTS
(R.1 & 2 in MCA)
(Org.Judgment Debtor)

- 3] Latika Anil Gajare
Age : 63 years, Occu : Nil
R/o SOU B Basant Bahar
Baner Pashan Link Road,
Pune

.. RESPONDENT
(R.3 IN MCA)
(Org.Decree Holder)

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Shri S.H.Tripathi, Advocate for the petitioners

Shri P.N.Kutti,A.G.P. for respondent no.1

Shri Maheshkumar S. Sonawane, Advocate for respondent no.2.

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CORAM : MANGESH S. PATIL,J.

DATED : 11/08/2021.

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ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2] The petitioners are before this Court being aggrieved and dissatisfied by rejection of their application for condonation of delay of 103 days in seeking restoration of Regular Darkhast No.354/2006 which was dismissed in default.

3] The learned advocate for the petitioners would submit that they have been fighting for just compensation for years together. They were not to gain anything by losing their right by getting the execution proceedings dismissed in default. They are rustic persons who may not

be deprived of right to recover the compensation of their lands acquired by the respondent no.2. The learned Judge has taken a hyper technical view while rejecting the application for condonation of delay.

4] The learned A.G.P. and the learned advocate for the respondent no.2 submit that no error is committed by the learned Judge refusing to condone the delay. The application of the petitioners was devoid of all the particulars. They have not been vigilant. In fact the petitioners are 7 in numbers and any one of them could have prosecuted the execution proceedings promptly and diligently.

5] I have carefully perused the impugned order and the papers and considered the rival submissions. The law in regard to the condonation of delay is far too well settled. Suffice for the purpose to refer to the oft quoted decisions of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and another V/s Mst. Katiji and others; A.I.R.1987 S.C. 1353 and Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649.

6] The prime consideration to be kept in mind while considering request for condonation of delay is a party is not to gain anything by allowing his rights and remedies to be lost in default. True it is that there has to be some sufficient cause for condoning the delay.

7] The petitioners in their application had averred various grounds which prevented them from prosecuting the execution proceedings diligently. Considering the fact that it is a matter of execution whereby the petitioners were seeking to claim compensation in respect of land acquired by the respondents coupled with the fact that the delay was merely of 103 days in seeking restoration, in my considered view, the justice demands that the impugned order is quashed and set aside and

the delay is condoned.

8] The Writ Petition is allowed in terms of prayer clauses [A] and [B]

9] The Rule is made absolute.

(MANGESH S. PATIL,J.)

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