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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2541 OF 2019

IN

FIRST APPEAL (ST.) NO.28864 OF 2019

Chief Engineer Development Planning,  
BMC

...Applicant /  
Appellant (Orig.  
Respondent  
No.2.)

*Versus*

Surya Kirti Enterprises & Anr.

...Respondents

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Mr. S.K. Mishra, Senior Counsel with Shital Mane – Tadke for  
the Applicant.

Mr. Vishwajit Sawant, Senior Advocate with Kirit J. Hakani  
with Niyati Hakani with Fenil Sangoi for the Respondents.

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CORAM : K.K. TATED &  
R.I. CHAGLA, JJ.

DATE : 10TH FEBRUARY, 2021

ORDER :

1. Heard learned Counsel for parties.
2. By this application the Applicant acquiring body is seeking condonation of delay in filing the First Appeal under Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

(for short 'said Act') to challenge the award dated 11th July, 2019 passed by the Presiding Officer, Land Acquisition, Rehabilitation and Resettlement Officer, Nagpur in Application No.17/KOK/MUM (SU)/2018.

3. Learned Senior Counsel appearing on behalf of the Appellant / Applicant submits that in the present proceedings the Applicant acquired the Respondent/Claimants land admeasuring 306.60 Sq. mtrs. He submits that the Land Acquisition Officer awarded compensation of sum of Rs.2,06,05,819/-. The Respondents preferred application before Presiding Officer, Land Acquisition Officer, Nagpur in which additional compensation of Rs.6,56,45,527/- i.e. total sum of Rs.8,62,51,346/- with interest at the rate of 9% from the date of award till the date of payment was awarded. Learned Senior Counsel further submits that the compensation awarded in favour of the Respondent is on higher side. Therefore, they filed present First Appeal.

4. Learned Senior counsel for the Applicant further submits that in the present proceedings the Presiding Officer passed the award dated 11th July, 2019. Thereafter, Applicants have filed application for getting certified copy of the order on 15th July,

2019. The same was received by them on 16th July, 2019 and thereafter they have preferred First Appeal before this Court on 8th November, 2019.

5. Learned Senior Counsel for the Applicant submits that Municipal Corporation being a statutory body as well as being a large body it requires sanction and taking of opinion from several departments for filing the Appeal. In the present proceedings initially they forwarded the copy of the order to the DP department and the DP department then forwarded the proposal to the Municipal Commissioner. He further submits that as soon as the sanction received from the Municipal Commissioner, the same was intimated to the Legal Department. Thereafter the concerned Law Officer drafted the First Appeal and sent the draft to the Senior Counsel and DE Department for finalisation of the draft Appeal memo. Learned Senior Counsel further submits that as soon as the Legal Department received the final draft Appeal memo from the Senior Counsel, the Chief Engineer, DP Department was informed that they have to pay Court fees of Rs.3 lakh and to make arrangement for payment. He submits that as soon as they received the Court Fees, they filed First Appeal on 8th

November, 2019. In support of this contention, learned Senior Counsel relies on paragraphs 17 and 18 of the Civil Application, which read thus:-

- “17. The applicants submit that as the Hon’ble Land Acquisition Rehabilitation and Resettlement Officer Nagpur at Nagpur allowed the appeal of the respondent No. 1 (Claimant) and enhancement of the compensation amount i.e. total consideration of Rs.8,62,51,346/- along with interest of 9% from the date of Award i.e. from 25.5.2018 till the actual payment of additional compensation. The applicants submit that the said order was challenged by this applicant by filing the present first Appeal before this Hon’ble Court.*
- 18. The applicant say that after the receipt of the impugned passed by the Land Acquisition Officer, the Legal Department has forwarded the copy of the order to the DP Department and the DP Department then forwarded the proposal to challenge the order for the sanction of Hon’ble Municipal Commissioner. Thereafter, after receiving the sanction of the Hon’ble Municipal Commissioner, the DP department intimated to the Legal Department on 12/07/2019 for challenging the impugned order. Thereafter, the concerned Assistant Law Officer drafted the First Appeal and sent to the Sr. Counsel and DP Department for finalisation of the Draft Appeal Memo. On 19/10/2019, the Legal Department received the final draft Appeal Memo from the Sr. Counsel and the Dp department.. The Applicant further submits that applicant being statutory body being large body and it requires sanction from various departments for filing the Appeal and considering the quantum of work with various departments of Corporation, the delay has been caused.”*

Paragraph 2 of additional Affidavit dated 17th January, 2020 reads thus :-

*“2. It is further stated that Chief Engineer (DP) department was informed on dt.31.10.2019 that court fee worth Rs.3,00,000/- (Rs. Three lakhs only) are required at the time of filing of First Appeal as per claim in the trial court matter and requested to make necessary arrangement. Accordingly approval of Competent Authority was obtained by Ch.E.(DP) department on 07.11.2019 and appeal was filed on dt.08.11.2019. It is further submitted that there is delay of 58 days in filing the present appeal. It is submitted that the impugned judgement was passed on 11/07/2019. The MCGM had applied for Certified Copy on 15.07.2019 and it received to MCGM on dt.16.07.2019. The appeal came to be filed on 08/11/2019, i.e. within the period of 120 days from the date of receipt of the impugned order. Delay so caused in filing the appeal is not deliberate or intentional and is caused due to the reasons stated herein above and in the interim application already filed.”*

6. Learned Senior counsel for the Applicant submits that as per Section 74 of the said Act, the limitation of filing of First Appeal is 60 days and therefore 60 days can be condoned by the Court, if Appellant was prevented by sufficient cause from filing the appeal within the said period. He submits that reading of paragraphs 17 and 18 of the Interim Application and paragraph 2 of the additional Affidavit clearly shows that the Applicant has shown the sufficient cause in filing the First Appeal in time. He submits that they have filed First Appeal within 120 days i.e. from the day when they got certified copy.

He submits that in the interest of justice the delay in filing the First Appeal be condoned. If the delay is not condoned in filing the First Appeal, the Corporation will suffer irreparable loss. He further submits that the compensation awarded by the Presiding Officer, Land Acquisition, Nagpur is three times more. Hence they have good chance of success in the present First Appeal.

7. On the other hand, learned Senior Counsel for the Respondent vehemently opposed the application. He submits that bare reading of the Interim Application shows that, the Applicant has failed to show sufficient case which prevented them from filing the Appeal within time. He submits that in the present proceedings the Applicant filed the First Appeal after expiry of 120 days from the date of the Award. In support of his contention, the learned Senior Counsel for the Respondent placed on record the chart showing calculation of the limitation period. The said chart is taken on record and marked 'X' for identification. The same reads thus:

| Sr. No. | Date       | Event                                       | Remarks                                                                  |
|---------|------------|---------------------------------------------|--------------------------------------------------------------------------|
| 1.      | 11.07.2019 | Date of Award.<br>Pronounced in presence of | This fact has been recorded in Para 5(2) of the Affidavit-in-Reply dated |

|            |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
|------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----|------------|------------|----|------------|------------|---|--|--|----|------------|------------|----|------------|------------|----|------------|------------|---|--|
|            |            | <p>the Advocate for the Claimant and Adv for the MCGM and same is recorded in the Roznama of the Authority.</p> <p>Copy of the Award was subsequently provided on the same day i.e. After Pronouncement to both the Parties. The said Order was also ready by the Adv for the MCGM in the court room.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>19/12/2019 but same has not been denied by the MCGM.</p> <p>The said fact is also recorded in letter dated 12/07/2019 (Exh. A to the Affidavit-in-Reply) and the same has not been denied.</p> <p>The aforesaid fact is substantiated from the Statement of the MCGM in Para 18 of the IA that the DP department intimated to the legal department on 12/07/2019 for challenging the impugned Award.</p> |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
| 2          | 08/09/2019 | <p>In view of the aforesaid facts, the period of 60 days expired on 08/09/2019 as calculated below:</p> <table><tr><td>11/07/2019</td><td>31/07/2019</td><td>21</td></tr><tr><td>01/08/2019</td><td>31/08/2019</td><td>31</td></tr><tr><td>01/09/2019</td><td>08/09/2019</td><td>8</td></tr><tr><td></td><td></td><td>60</td></tr></table> <p>The period which court can condone is of 60 days from expiry of last day of filing the appeal i.e. 07/11/2019 and that the Hon'ble Court cannot condone the delay if appeal is filed after 07/11/2020. The 60 days are computed as below:-</p> <table><tr><td>09/09/2019</td><td>30/09/2019</td><td>22</td></tr><tr><td>01/10/2019</td><td>31/10/2019</td><td>31</td></tr><tr><td>01/11/2019</td><td>07/11/2019</td><td>7</td></tr></table> | 11/07/2019                                                                                                                                                                                                                                                                                                                                                                                                  | 31/07/2019 | 21 | 01/08/2019 | 31/08/2019 | 31 | 01/09/2019 | 08/09/2019 | 8 |  |  | 60 | 09/09/2019 | 30/09/2019 | 22 | 01/10/2019 | 31/10/2019 | 31 | 01/11/2019 | 07/11/2019 | 7 |  |
| 11/07/2019 | 31/07/2019 | 21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
| 01/08/2019 | 31/08/2019 | 31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
| 01/09/2019 | 08/09/2019 | 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
|            |            | 60                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
| 09/09/2019 | 30/09/2019 | 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
| 01/10/2019 | 31/10/2019 | 31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |
| 01/11/2019 | 07/11/2019 | 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                             |            |    |            |            |    |            |            |   |  |  |    |            |            |    |            |            |    |            |            |   |  |

|    |            |                                                                                                               |    |  |
|----|------------|---------------------------------------------------------------------------------------------------------------|----|--|
|    |            |                                                                                                               | 60 |  |
| 3. | 08/11/2019 | Date of Presentation of the above Appeal. The same is late by 1 day from the prescribed limit of 60/120 days. |    |  |
| 4. | 11/11/2019 | Date of filing of the above Appeal. The same is delayed by 4 days from the prescribed limit of 60/120 days.   |    |  |

8. The Learned Senior Counsel for the Respondents submits that this chart shows that the First Appeal has been filed by the Applicant beyond the period of limitation. Therefore, there is no question of entertaining the Interim Application.

9. Learned Senior Counsel for the Respondents submits that at the time of calculating the limitation period, the date of communication or knowledge of the order is relevant which in the present case is the date of the order itself as it was pronounced in Court in the presence of the learned Advocate for the Applicant. There is no question of excluding the first day on which the award is passed. In support of this contention, he relied upon the case of *D. Saibaba Vs. Bar Council of India & Anr.*<sup>1</sup> and in particular paragraph Nos.9 to 14, which read thus:-

<sup>1</sup> (2003) 6 SCC 186

- “9. *So far as the commencement of period of limitation for filing the review petition is concerned we are clearly of the opinion that the expression 'the date of that order' as occurring in Section 48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.*
10. *An identical point came up for the consideration of this Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Anr., (1962) 1 SCR 676. Section 18 of the Land Acquisition Act, 1894, contemplates an application seeking reference to the Court being filed within six months from the date of the Collector's award. It was held that 'the date of the award' cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office. It must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position, then placing a literal and mechanical construction on the words 'the date of the award' occurring in the relevant section would not be appropriate. It is fair and just that a decision is communicated to the party whose rights will ultimately be affected or who will be affected by the decision. The knowledge, either actual or constructive, of the party affected by such a decision, is an essential element which must be satisfied before the decision can be brought into force. Thus construed, the making of the award cannot consist merely of the physical act of writing an award or signing it or even filing it in the office of the Collector ; it must involve the communication of the*

*said award to the party concerned either actually or constructively. A literal or mechanical way of construing the words 'from the date of the Collector's award' was held to be unreasonable. The court assigned a practical meaning to the expression by holding it as meaning the date when the award is either communicated to the party or is known by him either actually or constructively.*

11. *The view taken in Raja Harish Chandra Raj Singh's case (supra) by two-Judges Bench of this Court was affirmed by a three- Judges Bench of this Court in State of Punjab Vs. Mst. Qaisar Jehan Begum & Anr., (1964) 1 SCR 971. This Court added that the knowledge of the award does not mean a mere knowledge of the fact that an award has been made ; the knowledge must relate to the essential contents of the award.*
12. *In The Assistant Transport Commr., Lucknow & Ors. Vs. Nand Singh, (1979) 4 SCC 19, the question of limitation for filing an appeal under Section 15 of the U.P. Motor Vehicles Taxation Act, 1935, came up for the consideration of this Court. It provides for an appeal being preferred 'within thirty days from the date of such order'. The taxation officer passed an order on October 20/24, 1964 which was received by the person aggrieved on October 29, 1964. The appeal filed by him was within thirty days \_\_ the prescribed period of limitation, calculated from October 29, 1964, but beyond thirty days of October 24, 1964. It was held that the effective date for calculating the period of limitation was October 29, 1964 and not October 24, 1964.*
13. *In Raj Kumar Dey & Ors. Vs. Tarapada Dey & ors., (1987) 4 SCC 398, this Court pressed into service two legal maxims guiding and assisting the Court while resolving an issue as to calculation of the period of limitation prescribed, namely, (i) the law does not compel a man to do that which he could not possibly perform, and (ii) an act of the court shall prejudice no man. These principles support the view taken by us*

*hereinabove. Any view to the contrary would lead to an absurdity and anomaly. An order may be passed without the knowledge of anyone except its author, may be kept in the file and consigned to record room or the file may lie unattended, unwittingly or by carelessness. In either case, the remedy against the order would be lost by limitation though the person aggrieved or affected does not even know what order has been passed. Such an interpretation cannot be countenanced.*

14. *How can a person concerned or a person aggrieved be expected to exercise the right of review conferred by the provision unless the order is communicated to or is known to him either actually or constructively? The words 'the date of that order', therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed."*

10. Learned Senior Counsel for the Respondents further submits that the Appeal filed by the Applicant was lodged on 8th November, 2019 and same is filed on 11th November, 2019. He further submits that under Section 74 of the said Act, the Appeal is required to be filed in the Registry and merely not lodging of the Appeal. Therefore, the present Appeal is barred by limitation and the same is required to be dismissed with costs.

11. In support of this contention the learned Senior counsel for the Respondent relies on the judgment in the case of **Ashok**

*Shankar Gholap Vs. Krishnarao H. Deshmukh & Anr.*<sup>2</sup>. He submits that in this matter, this Court held that at the time of filing of the proceedings, the office objections are required to be removed. If there are office objections then that cannot be treated as filed. In support of this contention, he relied upon paragraph 7 of this judgment, which reads thus:-

*“7. Mr. Bhandare has also argued that even assuming that the election petition is presented and thereafter on the same day the copies of the election petition are subsequently presented, that itself will amount to non-compliance with Section 81, Sub-section (3) because the section provides that the election petition should be accompanied by the requisite number of copies of the election petition. Hence the election petition must be presented along with the copies. If the copies are filed subsequently, it will amount to non-compliance with the section. He has pointed out that in the case Satya Narain v. Dhuja Ram, which was a case in appeal from the judgment of the Punjab and Haryana High Court, the Punjab and Haryana High Court had held that if the requisite number of spare copies of the election petition were not filed along, with the petition in the High Court, the defect would not be cured subsequently even, within the period of limitation prescribed for filing an election petition. On the facts of that case the High Court had, held that such spare copies were filed beyond the period of limitation. I have not had the benefit of looking at the judgment of the Punjab and Haryana High Court in question. The Supreme Court has not considered this aspect of the question at all-Hence the decision of the Supreme Court does not throw any light on this aspect of the matter. Looking, however, merely to the language of Section 81(3) would not be conclusive on a matter like*

2 1979 SCC Online Bom 217.

*this. It is true that the words used in the section are "... petition shall be accompanied by.... copies". Therefore, prima facie it would appear that what Mr. Bhandare contends is correct, namely that the copies must accompany the election petition at the time when it is presented. However, the section need not be construed so literally. The purpose of the section, is to ensure that copies are immediately available for service on the respondents so that the hearing of the election petition is not unnecessarily delayed at the initial stage. Bearing this purpose in mind, if the copies are given by the Petitioner on the same day or soon after the presentation of the election petition at the time of removal of objections, it cannot be said that the Petitioner has violated Section 81(3) of the Act because the copies are supplied in such a case by the Petitioner within a reasonable time for service on the Respondents and his conduct does not cause any unreasonable delay in proceeding with the hearing of the election petition at the initial stage, provided, of course, the copies are given by the Petitioner within the period of limitation prescribed under the Representation of the People Act, 1951. Hence it cannot be said that simply because copies are furnished subsequently by the Petitioner though on the same day his petition is liable to be dismissed for non-compliance with Section 81(3) of the Act. Compliance with the provisions of Section 81(3) of the Act, however, after the expiry of the period of limitation, is not permissible. The petition must be presented as prescribed under Section 81(3) within the period of limitation."*

12. Learned Senior Counsel for the Respondent further relied on the judgment of the Apex Court in the case of **Satya Narain Vs. Dhuja Ram & Ors.**<sup>3</sup>. He submits that Supreme Court categorically held in paragraph 13 that, if the proceeding is

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3 (1974) 4 SCC 237

filed with some objections then that not to be treated as filed,  
 paragraph 13 reads thus:-

*“13. Keeping in the forefront the proper functioning of democracy, the principal object of the Act is purity of elections. When therefore, an election of a returned candidate is challenged under the Act, expeditious trial of the election dispute is sought to be enforced by the legislature making all safeguards against delay. Trial has to be necessarily expedited to rid the candidate as well as the constituency interested in the result of the election, of any taint or suspicion of corrupt practices which are again clearly enumerated in the Act. To take, therefore, another important object of the Act, viz., expeditious, disposal of an election petition, by section 86(6) "the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons, to be recorded". Again under section 86(7), " every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial". Further section 87(1) introduces the Civil Procedure Code only subject to the provisions of the Act and of any rules made thereunder. Section 87(2) makes a deeming provision for application of the Evidence, Act only subject to the Act. Therefore, there is no scope for free play in the application of the provisions of those two Acts. The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casualty and lightly permitting, all kinds of devices to delay the ultimate trial. The purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at*

*this very initial stage when the election petition is presented. If there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. We are, therefore, clearly of opinion that the 1st part of section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total, non-compliance with the same will entail dismissal of the election petition under section 86 of the Act.”*

13. Learned Senior Counsel for the Respondent submits that, since in the present proceedings, the award was passed on 11th July, 2019, in the presence of the learned Advocate for the Applicant, they had knowledge about the order of Land Acquisition Officer. Therefore, limitation will start from the date of knowledge i.e. 11th July, 2019. In support of this contention, he relies on the judgment of the Apex Court in the case of *Oil and Natural Gas Corporation Ltd. Vs. Gujarat Energy Transmission Corporation Ltd. & Ors.*<sup>4</sup>, paragraph 6 of the said judgment reads thus:-

*“6. In Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & Ors., (2010) 5 SCC 23, the issue that arose before this Court was whether Section 5 of the Limitation Act can be invoked for allowing the aggrieved person to file an appeal under Section 125 of the Act after more than 120 days from the date of communication of the decision of the tribunal. It adverted to the anatomy of Section 125 and the Appellate Tribunal for Electricity*

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4 Civil Appeal No.1315 of 2010 decided on 1st March, 2017.

*(Procedure, Form, Fee and Record of Proceedings)  
Rules, 2007 and opined thus:-*

*"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits etc. The use of the expression 'within a further period of not exceeding 60 days' in Proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."*

14. Learned Senior Counsel for the Respondent submits that the reasons given in the present Interim Application shows that the file was moving from one department to another and therefore, the delay on their part to file the First Appeal in this Court. However, the applicants failed to show a sufficient ground for condonation of delay. In support of this contention, he relies upon the judgment in the case of *Postmaster General & Ors. Vs. Living Media India Ltd and Anr.*<sup>5</sup>, paragraph Nos.27

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5 (2012) 3 SCC 563

and 28 of the said judgment read thus:-

*“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*

*28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.”*

15. On the basis of these submissions, learned Senior Counsel for Respondents submits that there is no sum and substance in the present Interim Application and same is required to be dismissed with costs.

16. We heard both sides at length. It is to be noted that in a

present proceedings the Presiding Officer passed award on 11th July, 2019 and thereafter the application for certified copies of award was made on 15th July, 2019 and same was received on 16th July, 2019. They filed the First Appeal on 8th November, 2019. The chart given by the Senior Counsel for the Respondents shows that the Appellant filed First Appeal after expiry of 120 days. Bare reading of the said chart which is reproduced above shows that the Respondents have calculated the first day i.e. the day on which the award was passed which is not correct. Whenever days are calculated for the limitation purpose, the day on which the order is passed is not required to be taken into account. In the present case, if limitation period is calculated from 12th July, 2019, then the First Appeal is filed on the 119th day. Same view has been taken by the Karnataka High Court in the case of *The Deputy Commissioner and Special Land Acquisition Officer, Bengaluru Vs. M/s. S.V. Global Mill Ltd., Chennai*<sup>6</sup>. In paragraph Nos.92 and 96, the Court held thus:-

***“92. Thus, there can be no exception to the period of limitation to file an appeal to the High Court and the 60 days has to be computed after application of Sections 12, 13 and 14 of the Limitation Act. In other***

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6 ILR 2020 KAR 1897

words, while applying the period of limitation prescribed under Section 74(1) of the 2013 Act in the matter of filing an appeal to the High Court against the judgment and Award of the reference court, while considering as to whether the appeal filed is within the period of 60 days, the exclusion of time as envisaged under Sections 12, 13 and 14 must be made applicable. In our view, such an interpretation would also be in consonance with Article 300A of the Constitution, which recognizes the Constitutional right of a person to his property as no person can be deprived of such a Constitutional right except by authority of law. The same is also in line with the interpretation made by the Hon'ble Supreme Court vis-à-vis other special statutes. Further, on a reading of Section 74(1) of the 2013 Act, there is no bar, either express or implied, which excludes application of Sections 12 to 14 of Limitation Act. On the other hand, if a mechanical interpretation is given to the words "within sixty days from the date of the Award" and the expression "a further period not exceeding sixty days", without taking into consideration Sections 12, 13 and 14 of the Limitation Act, it would result in violation of the Constitutional right of a land-loser to seek enhancement by filing an appeal to the High Court and also disable him from seeking enhancement of compensation. The application of Sections 12 to 14 of Limitation Act is in order to advance justice as the reasons for exclusion of the periods mentioned in those Sections while computing the limitation period are those which are beyond the control of the party seeking to file an appeal to the High Court. In the same vein Section 4 of the Limitation Act is applicable. Thus, a pedantic interpretation of the 2013 Act must be avoided. It must be interpreted in such a manner that the judicial dicta with regard to the applicability of a distinct limitation period under the Special Act in light of Section 29(2) of the Limitation Act on the one hand, is balanced with the Constitutional right of a land-loser on the other hand. This would also advance the cause of justice of the stake holders involved in the acquisition of land under the 2013 Act as in the instant case.

AND

“96. We have already interpreted Section 74(1) of 2013 Act in light of Section 29(2) of the Limitation Act by holding that Section 5 thereof is not applicable whereas Section 4 and Sections 12, 13 and 14 are applicable while computing the period of limitation of 60 days + 60 days. As already noted, there is no indication as to when the certified copy was delivered to the appellant even though it was prepared on 01/12/2018 and the appellant was required to appear on 10/12/2018. In the instant case, while we accept the contentions of learned counsel for the respondent that Section 5 of the Limitation Act is not applicable to Section 74(1) of the 2013 Act and there cannot be any condonation of delay as contemplated under the said Section in the instant case, nevertheless, Sections 4, 12 to 14 of the Limitation Act are applicable to Section 74(1) of the 2013 Act while computing the period of sixty days + sixty days under Section 74(1) of the 2013 Act. Further, we do not venture to condone any delay that has occurred in filing of this appeal under Section 5 of the Limitation Act as the same is not applicable to Section 74(1) of the 2013 Act.”

17. In the present proceedings, the Appeal is filed after taking opinion and sanction from several departments. It is correct that whenever the Appeal is filed on behalf of any institution, the decision is required to be taken by responsible officer. Considering these facts, we are of the opinion that the Applicant has made out a case that they prevented by sufficient cause in paragraph 18 of Interim Application.

18. The judgment relied by the learned Senior Counsel for

Respondent in the matter of ***Ashok Gholap (Supra)*** is not applicable in the present case as it is under Section 81 of the Representation of the People Act, 1951, where the provisions are altogether different. Similarly the judgment in the matter of ***Satya Narain (Supra)*** is also not applicable. The judgment in the case of ***ONGC (Supra)*** is also not applicable. Similarly the judgment in ***D. Saibaba Vs. Bar Council of India (Supra)*** is also not applicable. In the matter of ***Postmaster (Supra)*** the Supreme Court held that, if sufficient cause is shown delay can be condoned.

19. Considering all these facts and the applicant prevented by sufficient cause and the judgment of the Karnataka High Court in the case of ***S.V. Global (Surpa)*** we are of the opinion that the Appellant has made out case for allowing this Interim Application for condonation of delay. Hence the following order:-

- (a) The delay in filing First Appeal is condoned;
- (b) The Applicant to pay cost of Rs.50,000/-.

(c) Cost to be paid to the Respondent No.1 within a period of two weeks from today and place on record the receipt to that effect, failing which the Interim Application shall stand dismissed without reference to the Court.

(d) Interim Application stands allowed accordingly.

[R.I. CHAGLA J.]

[K.K. TATED, J.]