

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (F) NO.321 OF 2020 IN
FIRST APPEAL STAMP NO. 23078 OF 2019

V.I.D.C. through Executive Engineer Purna Medium Project, Achalpur
Division, Achalpur Dist. Amravati and another

Vs.

Dwarkaprasad Shivgodind Jaiswal and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mrs. P.P. Choube, Advocate for applicant.
Shri V.N. Patre, Advocate for non-applicant no.1.
Ms Shamsi Haider, A.G.P. for non-applicant nos.2 and 3.

CORAM : PUSHPA V. GANEDIWALA, J.
DATE : 2nd SEPTEMBER, 2021.

Heard.

2. This is an application for condonation of delay of 933 days caused in filing the First Appeal.

3. The appellant/V.I.D.C. has proposed to challenge the judgment and award dated 11.01.2017 passed by the learned Civil Judge Senior Division, Achalpur in Land Acquisition Case No.110 of 2008. The reasons for delay are stated in paragraph 2 of the application, which is reproduced below:

*“2. That the judgment was pronounced on 11.01.2017.
The Standing Counsel at Achalpur applied for certified
copy on 15.02.2017 and it was received on 01.03.2017.*

The Standing Counsel Achalpur gave Certified Copy alongwith his opinion to the office of appellant. The Executive Director opined to file Appeal on 20.07.2017. Thereafter the appellant referred the matter to the Legal Advisor of V.I.D.C. He opined to file appeal on 20.07.2017. Thereafter all the case papers were submitted to Standing Counsel to file appeal in the month of 25.03.2019. The Standing Counsel asked for court fee amount from appellant on 03.04.2019. The Court Fee Amount of this appeal was supplied to Standing Counsel on 07.10.2019, by NEFT along with court fees of other appeals. Thereafter the appeal is filed after procuring court fees.”

4. A perusal of above paragraph would reflect that after receiving an opinion to file an appeal on 20.07.2017, the case papers came to be submitted to the standing counsel to file an appeal on 25.03.2019. The application is absolutely silent with regard to the explanation for period from 20.07.2017 to 25.03.2019 i.e. almost two years.

5. A perusal of the impugned judgment and award would reveal that land of the claimant/non-applicant no.1 i.e. 63 square meter area with constructed house bearing No.19/4 and 40.12 square meter area with constructed house bearing No.20/3 came to be acquired for construction of Chandrabhaga River Project vide notification issued under Section 4 of the Land Acquisition Act which was published on 31.03.1994.

6. While passing the award, Land Acquisition Officer ascertained Rs.2,520/- and Rs.1,605/- as a value of lands of house No.19/4 and 20/3 respectively. Rs.17,424/- is ascertained as the value of structure of house No.19/4 whereas Rs.8,447/- has been ascertained as the value of structure of house No.20/3 with all statutory benefits. The Reference Court on the basis of oral and documentary evidence on record, which includes detailed valuation report with map, adjudicated structural value of house No.19/4 for Rs.73,185/- and house No.20/3 for Rs.38,593/-. The learned Reference Court valued land at Rs.200/- per square meter for 63 square meter of house No.19/4 and for 40.12 square meter area of house No.20/3. Total valuations for both houses along with lands were Rs.85,785/- and Rs.46,617/- for house No.19/4 and 20/3, respectively, with all statutory benefits.

7. Mrs. Pranita Chobe, learned counsel holding for Mrs. Anjali Joshi, learned counsel for the applicant/appellant urged that the delay was on the count of procedural requirements and is not intentional and therefore prays for condonation of delay.

8. On the contrary, Shri V.N. Patre, learned counsel appearing for the claimant strongly opposed the application and submitted that the claimant has received a meager amount of compensation against his residential house which was compulsorily acquired for the aforesaid project.

9. I have considered the rival submissions. I am at pains to observe that the residential house of the poor litigant has been compulsorily acquired on the pretext of public purpose for meager amount of compensation. The poor litigant had to approach the Court and got the same enhanced in the impugned judgment and award. As per law, once the period of limitation expires, a valuable right accrues in favour of the decree holder. In the instant case, after passing of the judgment and award, the right has already been accrued in favour of the respondent/poor litigant, whose lands with residential rooms have been compulsorily acquired. In a welfare State like India having robust digital and information technology sector, it took almost two years to the officers of the appellant -Corporation to forward the papers to the standing counsel to file an appeal which indicates the casual, callous and lackadaisical approach of the officers concerned. The V.I.D.C., being a statutory Corporation have its own full-fledged legal department dealing with thousands of Land Acquisition Cases, the approach of the office of the appellant cannot be taken lightly, at the cost of the right accrued to the poor litigant.

10. The Hon'ble Apex Court in the case of ***Postmaster General & Ors. Vs. Living Media India Limited & Anr.***, reported in ***(2012) 3 SCC 563*** while declining to condone delay of 427 days in preferring Special Leave Petition has observed thus:

“..... In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/year due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few....”

11. The Hon’ble Apex Court in the case of the ***Registrar of Companies Vs. Rajshree Sugar and Chemicals Limited & Ors.***, reported in ***(2000) 6 SCC 133*** held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give license to the officers of the Government to shirk their responsibility to act with reasonable expedition.

12. The Division Bench of this Court in the case of ***State of Maharashtra & Ors. Vs. Vithu Kalya Govari & Ors.*** [2008 (6) ***Mh.L.J.*** 239], while refusing to condone inordinate delay of more than two years in preferring the appeal against the judgment and award of the reference Court, in concluding paragraph 12 has observed as under:

“12. Before these files are consigned to record room, the Courts cannot help but notice that most of the appeals filed on behalf of the State are barred by time and the delay normally is inordinate. They suffer from defect of inordinate delay. Normally, it is expected of the State, in the modern times and with modern amenities and infrastructure, to govern its affairs to the much expected standards. It hardly stands to reason that most of the appeals filed by the State, particularly in land acquisition matters, should be barred by time. They are filed after much delay and normally after considerable delay which remains unexplained and is ex facie unjustified. Filing of appeal within limitation is an exception but filing appeals barred by time is the rule. Filing appeal in a mechanical manner beyond the period of limitation has become a rule. This needs to be checked by the concerned authorities at the earliest. Unreasonable delay on the part of the concerned authority in completion of execution proceedings, disbursement of compensation, determination of compensation and then in filing legal proceedings include the appeals invites twin disadvantages that are opposed to public policy and even good governance. Firstly, even in good cases because of inordinate and unexplained delay, the Court may decline to entertain the appeals. Secondly, the liability of statutory interest increases every passing day which burdens the public exchequer. Both these adverse rigors could be avoided by timely and co-ordinate actions. The authorities are required to have a more practical and pragmatic

approach to provide solution to this problem. The inordinate delays occurring from inaction or non-co-operation of the departments, as is demonstrated by the facts of the present cases, needs to be corrected and it will be desirable to fix the responsibility of the erring officer/official. The concept of public accountability for default of performance of statutory and public duties relatable to the powers vested in the authorities under the Act or other administrative authorities, is squarely applicable.....”

13. It is well settled that “sufficient cause” is required to be shown for seeking condonation of delay. I am conscious about the settled position of law that justice oriented and liberal approach of the Court is required in deciding the delay application. Had it been the case that the delay is caused on the part of the poor litigant, the consideration would have been different, especially in land acquisition matters. As the experience shows that for claiming parity, the claimant approaches the court belatedly for enhancement of compensation and undertakes to waive the interest during the period of delay. In this context, the Hon’ble Apex Court in the case of **K. Subbarayudu and others Vs. Special Deputy Collector (Land Acquisition)** reported in **(2017) 12 SCC 840**, in order to do substantial justice, condoned the delay of 3671 days wherein the applicant/appellant was farmer and it was found that there was sufficient cause for delay, and to bring this farmer at par

with similarly situated farmers who had already received enhanced compensation in the same notification

14. In the instant case, the unexplained and inordinate delay is caused on the part of the Corporation. The procedural delay of genuine nature can very well be understood. However, this is not the case here. In my opinion, it would be done more appropriate to reject the application which has been filed after almost three years of the passing of the judgment, without any proper explanation for the delay. No public interest is going to be served in pursuing the stale claims against the land loser and that too in the era of the Land Acquisition Act of 2013 (i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.)

15. In the circumstances, the application deserves to be dismissed and the same is accordingly dismissed. Consequently, the appeal is dismissed.

JUDGE

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