

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

938 CIVIL APPLICATION NO.6295 OF 2018
IN FAST/4128/2018 WITH CA/6296/2018 IN FAST/4131/2018

DINKAR LIMBRAJ PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Advocate for Applicant : Mr. More P. P.
AGP for Respondents/State : Mr. S.S. Dande
...

CORAM : Y.G. KHOBRAGADE, J.
DATE : 16th November, 2022

PC.:-

Heard advocate Mr. More the learned counsel appearing for the applicants as well as learned AGP for the non-applicant nos.1 and 2 in both these matters . None appeared for non-applicant no.3.

2. The learned counsel appearing for the applicants vehemently canvassed that the applicants having no independent source of income and in the year 2007 the non-applicant no.3/Acquiring Body acquired land of the applicants, which was only source of income. Thereafter, the present applicants in both the matters raised land reference before the competent Court. Accordingly, on conclusion of the trial on 22.08.2017, the learned trial Court passed the judgment and award and granted very meager amount of

compensation to the applicants. Therefore, the applicants wanted to challenge the said award with a prayer for enhancement of compensation. However, due to their poor financial condition they could not present appeal within stipulated period, therefore, in both these matters the delay of 24 days and 43 days is caused while lodging the appeals which is *bona fide* and substantial. Hence prayed for condonation of delay.

3. Per contra the learned AGP strongly opposed the application on the ground that the financial condition of the applicants for lodging the appeal cannot said to be *bona fide* and substantial. Further there is huge delay while getting circulation of the matter and no any steps have been taken by the applicants to get circulation of the matter for the period of more than four years. Therefore, the applicants in both the matters are not entitled for statutory benefits and interest for the delayed period as well as for the period which has consumed for circulation of the matter. Hence submitted for passing suitable order.

4. On face of record, it appears that on 06.02.2018 both the applicants have presented these two applications along with first appeals challenging the judgment and award dated 22.08.2017 passed by the learned Reference Court in LAR Nos.141/2011 and 517/2011. It further appears that both these matters were first time listed on 14.09.2018 before this Court and

notice came to be issued to the non-applicants. Thereafter vide order dated 29.10.2018 R & P was called. Thereafter, the matters were never listed on board. Nonetheless, the delay which has been caused while lodging both these appeals does not appear to be intentional but taking into consideration that the litigants would not be deprived from receiving substantial justice on account of delay, therefore, the said delay is liable to be condoned. However, it appears that the present non-applicant no.3-Executive Engineer Minor Irrigation i.e. Acquiring Body also filed F.A. No.2914/2019 and 2913/2019 and challenged the judgment and award dtd. 22.08.2017. The learned counsel appearing for the applicants submitted that the non-applicant no.3-Acquiring Body already deposited awarded amount before this Court and both these applicants also received some amount as per the order of this Court. However, there is delay while circulating the matter, therefore, both the applicants are not entitled for statutory benefits and interest for the delayed period and the period which has been consumed for circulation as per the view taken in order dated 09.11.2022 passed in C.A. No.5157/2020 in FAST No.8511/2019. In view of above discussion, I am inclined to grant present applications and proceed to pass the following order:

ORDER

- I) Both the Civil Applications are hereby allowed.

- II) The delay of 43 and 24 days caused in filing appeals is hereby condoned. No order as to costs.
- III) The applicants shall not be entitled for the statutory benefits and interest for the delayed period.
- IV) Office is directed to register the first appeals and place it before the Court for further action.

[Y.G. KHOBRAGADE, J.]