

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4163 OF 2020

Subrao S/o. Madhavrao Salunke,
Age 61 years, Occu. Agril.,
R/o. Ajandoh, Tq. Dharur,
District Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Collector,
Collector office at Beed,
Taluka and District Beed

2. The Executive Engineer,
Minor Irrigation, Beed,
Taluka and District Beed

.. Respondents

...

Mr. Prasad Kadam, Advocate holding for Mr. Kalidas B. Bhise,
Advocate for Petitioner

Mr. S. W. Munde, Assistant Government Pleader for Respondent
no.1 – State

Mr. S. C. Arora, Advocate for Respondent no. 2

...

CORAM : NITIN B. SURYAWANSHI, J.
DATE : 14-01-2022

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned Advocates for the parties.

2. This petition takes exception to order dated 26.11.2019
below Exhibit-1 passed in Civil Miscellaneous Application No. 50 of
2018 by the learned District Judge-1, Majalgaon, thereby rejecting
delay condonation application filed by the petitioner seeking
restoration of Land Acquisition Reference No. 25 of 2009.

3. LAR no. 25 of 2009 filed by the petitioner and his father under Section 18 of the Land Acquisition Act, 1894, seeking enhanced compensation for their acquired land, was dismissed in default on 06.09.2013.

4. Petitioner filed Civil Miscellaneous Application No. 50 of 2018 seeking condonation of delay of 5 years and 2 days in filing restoration petition to restore the Reference. The respondents opposed the said application. The learned Additional District Judge, Majalgaon, by the impugned order rejected the application. Hence, the petition.

5. It emerges from the record that the Reference was filed jointly in the name of petitioner and his father. In the delay condonation application, it is a specific contention of the petitioner that his father was looking after the Reference. He was suffering from paralysis since 2010, and therefore, he could not attend the matter. He expired on 17.05.2013. After the villagers received enhanced compensation, the petitioner approached his Advocate and inquired about the Reference, he was informed that the matter is transferred to Majalgaon Court. Thereafter, on inquiry at Majalgaon Court, it was revealed that the Reference was dismissed in default. Hence, he moved restoration application alongwith delay condonation application.

6. From the averements made in the application, it is clear that delay was not intentional. The trial Court ought to have liberally condoned the delay as a valuable right of the petitioner seeking enhanced compensation is involved in the matter. The trial Court has adopted to technical approach in rejecting the application seeking condonation of delay. The impugned order, therefore, is unsustainable in law and facts of the case.

7. The impugned order dated 26.11.2019 below Exhibit-1 passed in Civil Miscellaneous Application No. 50 of 2018 by the learned District Judge-1, Majalgaon, is quashed and set aside.

8. Civil Miscellaneous Application No. 50 of 2018 is allowed.

9. It is made clear that, in case, the petitioner succeeds in the Reference, he shall not be entitled to claim interest for the period between 06.09.2013 till today.

10. Rule is made absolute in above terms. No costs.

(NITIN B. SURYAWANSHI)
JUDGE

rrd