

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

WRIT PETITION NO.8328 OF 2022

1. Sainath Devrao Janjal
Age : 45 years, occu : Agri,
 2. Chitrabai Sainath Janjal,
Age : 35 years, Occu : Agri,
- Both R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad .. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...
AND

WRIT PETITION NO.8329 OF 2022

Chandrakalabai Vishwas Janjal
Age : 50 years, Occu : Agri,

R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...
AND

WRIT PETITION NO.8333 OF 2022

1. Yogesh Macchindra Desale
Age : 34 years, Occu : Agri,
2. Nilam w/o. Yogesh Desale
Age : 33 years, Occu : Agri,

Both R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad

.. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,

Revenue & Forest Department,
Mantralaya, Mumbai.

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...
AND

WRIT PETITION NO.8334 OF 2022

1. Raghunath s/o. Devrao Janjal
Age : 45 years, Occu : Agri,
 2. Sarlabai Raghunath Janjal
Age : 40 years, Occu : Agri,
- Both R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad .. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad

Collector Office, Aurangabad
Dist. Aurangabad.

4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...
AND

WRIT PETITION NO.8338 OF 2022

Rajendra Devrao Janjal
Age : 48 years, Occu : Agri,
R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad .. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

AND

WRIT PETITION NO.8339 OF 2022

1. Pitambar s/o. Tukaram Pawar (Dead)
Through his legal heirs

1-a) Bhaskar s/o. Pitambar Pawar
Age : 24 years, Occu : Agri,

1-b) Balu s/o. Pitambar Pawar
Age : 37 years, Occu : Agri

R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad

.. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.

3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.

4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad

5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...
AND

WRIT PETITION NO.8341 OF 2022

1. Vishwas s/o. Devrao Janjal
Age : 55 years, Occu : Agri,

2. Bhagwan Vishwas Janjal
Age : 34 years, Occu : Agri,

Both R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad

.. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.

3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.

4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad

5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...

AND

WRIT PETITION NO.8960 OF 2022

Kautik Vana Mahale (died)
Through L.Rs.
Muktabai Kautik Mahale
Age : 55 years, Occu : Agri,
R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...

AND

WRIT PETITION NO.8963 OF 2022

1. Ashok Suklal Sartale
Age : 60 years, Occu : Agri,
 2. Sumanbai Ashok Sartale
Age : 55 years, Occu : Agri,
- Both R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad .. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad
5. The Godawari Marathwada Development
Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

...
AND

WRIT PETITION NO.8989 OF 2022

Narmadabai Mahadu Karhale
Age : 55 years, Occu : Agri,
R/o. Wangaon, Tq. Soygaon,
Dist. Aurangabad .. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad
Collector Office, Aurangabad
Dist. Aurangabad.
4. The Sub Divisional Officer /
The Land Acquisition Officer,
Sillod, Tq. Sillod, Dist. Aurangabad

5. The Godawari Marathwada Development Corporation, Aurangabad
Through Executive Engineer,
Sinchan Bhavan, Jalna Road, Aurangabad. .. Respondents

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Mr. Shubham D. Jayabhar, Advocate for petitioners in all the matters.

Mr. S.G. Sangle, Advocate for Respondent No.5 in all the matters.

Mrs. Geeta L. Deshpande, AGP for Respondent – State in WP

Nos.8322 of 2022, 8329 of 2022, 8333 of 2022, 8339 of 2022, 8341 of 2022, 8963 of 2022, 8989 of 2022

Mr. K.B. Jadhvar, AGP for Respondent – State in WP No.8334 of 2022

Mr. K.N. Lokhande, AGP for Respondent – State in WP Nos.8338 of 2022, 8960 of 2022

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CORAM : SANDEEP V. MARNE, J.

DATE : 18-11-2022

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of the parties, called out for final hearing. Mr. S.G. Sangle, learned advocate waives notice for respondent No.5 in all the matters. Mrs. Geeta L. Deshpande, Mr. K.B. Jadhvar and Mr. K.N. Lokhande, learned AGPs waive service on behalf of respondent – State in the respective matters.

2. A short issue that invites attention of this Court in this petition is whether the authority under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013') can condone delay beyond the maximum period prescribed

under that section. The issue arises on account of challenge set up by petitioners to the order passed by the Sub Divisional Officer and Land Acquisition Officer, Sillod dated 25.04.2022 by which it is held that the references filed by petitioners were beyond the maximum period specified under Section 64 of the Act of 2013 and therefore the same have been rejected.

3. Brief facts of the case are that, Section 4 notification in respect of the lands of petitioners was published on 07.12.2012 and the Award was declared on 12.11.2018. Petitioners were issued notice for payment of compensation under Section 21 of the Act of 2013 on 19.11.2018. Petitioners filed Writ Petition No.13763 of 2018 alleging non-payment of compensation, which was disposed of on 30.01.2020 directing drawl of panchanama at the time of taking possession of the lands and granting liberty to petitioners to avail appropriate remedy for grant of enhanced compensation. On 21.01.2022, notice for possession was issued. Petitioners made application for payment of compensation on 25.02.2020. On 20.04.2020, they received the amounts of their respective compensation. On 27.08.2020 they filed references under Section 64 of the Act of 2013 for enhancement of compensation. By order dated 25.04.2022 the Sub Divisional Officer and Land Acquisition Officer,

Sillod has rejected the references on the ground of limitation.

4. Mr. Jayabhar, the learned counsel for petitioners submits that the Sub Divisional Officer ought to have condoned the delay in filing the references considering the peculiar circumstances of Covid-19 pandemic. He further submits that the Award was published on 12.11.2018 and that the references could have been filed within six months by 12.05.2019. He further submits that under Proviso to Sub-section (2) of Section 64, the Sub-Divisional Officer had power to condone the delay of further one year i.e. upto 12.05.2020. That the references were filed on 27.08.2020 after receiving compensation in April-2020.

5. Mr. Jayabhar relies upon several orders passed by the Apex Court extending the period of limitation on account of Covid-19 pandemic and submits that since the maximum condonable period fell within the period of pandemic, the same was required to be condoned. In support of this contention, Mr. Jayabhar relies upon the judgment of Single Judge of the Kerala High Court in **N.C. Uthupu @ Benny vs. The Union of India & Others**, Writ Petition (C) No.29190 of 2021 decided on 05.01.2022.

6. Mr. Jayabhar further seeks to rely upon provisions of Section 63 of the Act of 2013 in support of his contention that this Court has jurisdiction to entertain any dispute relating to land acquisition and therefore this Court can otherwise condone the delay in filing the references. Lastly Mr. Jayabhar submits that petitioners are willing to forgo interest on enhanced amount of compensation for the entire period of delay. In support of his contentions, Mr. Jayabhar relies upon order of this Court in **Lahu Arjuna Patil & Ors vs. The State of Maharashtra & Ors**, W.P. No.9644 of 2016 decided on 25.01.2018. He also relies upon the judgment of the Supreme Court in **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others**, AIR 1987 SC 1353.

7. Per contra, Mrs. Deshpande, the learned AGP strongly opposes the petitions. She invites my attention to the chronology of events leading to the filing of the petitions to demonstrate the petitioners' conduct. She submits that the pretext of Covid-19 pandemic sought to be put forth by petitioners deserves rejection in view of the fact that the references were filed by petitioners on 27.08.2020 when the pandemic was at its peak. She further submits that the Award was declared on 12.11.2018, hence the period of six weeks would come to an end by 24.12.2018 and further period of

one year, during which delay could have been condoned, came to an end by 24.12.2019. Thus, during the period from 12.11.2018 to 24.12.2019, despite there being no Covid- 2019 pandemic, petitioners failed to file references. She therefore contends that the pretext of pandemic is otherwise totally misleading. In support of her contention Mrs. Deshpande relies upon the judgment of the Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited**, 2020 DGLS (SC) 404.

8. Mr. Sangle, the learned counsel for respondent no.5 also opposes the petition submitting that the authority did not have any jurisdiction to condone the delay beyond the period of one year after expiry of period of six weeks from the date of declaration of the award. He submits that the limitation prescribed under Section 64 is required to be strictly adhered to and Section 5 of the Limitation Act is not applicable for extending the period of limitation. In support of his contentions, Mr. Sangle relies upon the judgment of the Apex Court in **Officer on Special Duty (Land Acquisition) and another vs. Shah Manilal Chandulal**, 1996 AIR SCW 941 and the judgment of this Court at Principal Seat at Bombay in **Smt. Laxmibai Narayan Patil and another vs. State of Maharashtra and another**, AIR 1997 Bombay

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9. Rival contentions of the parties now fall for my consideration.

10. Since the issue raised in these petitions relates to interpretation of provisions of Section 64 of the Act of 2013, it would be necessary to introduce the said provision.

‘64. Reference to Authority.—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made—

(a) person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector’s award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section

21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

11. Thus, a person who has not accepted the award can make an application under Section 64 seeking a reference for determination of enhanced amount of compensation to the authority. The first Proviso to sub-section (2) of Section-64 provides that if a person making such application was present or represented before the Collector at the time when the award is made, such application must be made within 6 weeks from the date of Collector's award. In all other cases, such application is to be made within 6 weeks after receipt of notice under Section 21. Under second Proviso to sub-section (2) of Section 64, the Collector has been vested with jurisdiction to condone the delay upto further period of one year if he is satisfied that there was sufficient cause for not filing the application within the period specified in the first proviso.

12. In the present case, there is no dispute that petitioners were present / represented before the Collector at the time when the award was made. The award was made on 21.11.2018. Therefore

under clause (a) of first Proviso to sub-section 2 of Section 64, the application under Section 64 ought to have been made within a period of six weeks from 12.11.2018 i.e. on or before 24.12.2018. Since petitioners failed to make application under Section 64 within such period of six weeks, the Collector had jurisdiction under second Proviso to sub-section (2) of Section 64 to condone further delay upto period of one year i.e. upto 24.12.2019. However, in the present case, the applications under Section 64 were not filed even upto 24.12.2019. The same came to be filed on 27.08.2020.

13. In the above factual background, the applications filed by petitioners under Section 64 of the Act of 2013 were not only barred by limitation, but were even beyond the maximum period during which the delay could have been condoned. The learned counsel for petitioners submitted that the Collector could have condoned delay beyond one year, if sufficient cause is shown. Therefore, it is necessary to examine whether the Collector could have exceeded the maximum statutory period for condonation of delay.

14. In **Shah Manilal Chandulal** (*supra*) the Apex Court has considered the issue of power of a statutory authority to condone

delay contrary to the statutory provisions. In para 17 and 18 of the judgment, the Apex Court has held as under:

“17. It is to remember that the Land Acquisition [Amendment] Act [68 of 1984] was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the courts. Taking cognizance of the limitation prescribed in proviso to sub-Section (2) of Section 18, the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition [Amendment] Act [68 of 1984], the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority still acts as a court for the purpose of Section 5 of the Limitation Act.

18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period to limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act.”

15. In **Western Coalfields Ltd. vs Controlling Authority And Ors.**, 2000 (3) MPHT 219, Madhya Pradesh High Court has held that an appellate authority cannot condone delay beyond the statutory limit of 120 days.

16. The law is thus clear that once a statute prescribes period of limitation and there is a restriction on maximum period upto which delay can be condoned, the authority cannot condone delay beyond such maximum statutory period. In my view therefore, the Sub Divisional Officer could not have condoned such delay in view of the provisions of Section 64 of the Act of 2013.

17. Now, it is necessary to examine the submission of Mr. Jayabhar that on account of Covid-19 pandemic, the delay ought to have been condoned in the light of the several orders passed by the Apex Court extending the period of limitation. As observed herein above, the maximum period of one year during which delay could be condoned, came to an end on 24.12.2019. The Covid pandemic started only from March – 2020. Therefore, the pretext of Covid-19 pandemic sought to be put forth by petitioners is totally misplaced and is required to be rejected.

18. Reliance of Mr. Jayabhar on judgment of Kerala High Court in **N.C. Uthupu @ Benny** (*supra*) has no application to the present case. In that case, the maximum condonable period of one year fell within the Covid – 19 pandemic and therefore the Kerala

High Court has directed consideration for condonation of delay. In the present case, the maximum condonable period of one year expired on 24.12.2019 when there was no Covid-19 pandemic. Therefore reliance of Mr. Jayabhar on the judgment in **N.C. Uthupu @ Benny** (*supra*) is of no avail.

19. Mr. Jayabhar has also relied upon order of this Court in **Lahu Arjuna Patil** (*supra*). In para-6 of that order observed as under:

“6. The records reveal that the petitioners had filed applications under Section 64 of the Land Acquisition Act, 2013 on 12th October 2015. Respondent No.3 has dismissed the said applications on the ground that no sufficient reason or explanation was given by the petitioner for condonation of delay. It is to be noted that though the said applications were beyond the period specified in the first proviso, the same were within the period specified in the second proviso. Hence, the Collector was competent to entertain the same on being satisfied that the petitioners had sufficient cause for not filing the applications within the period specified in the first proviso.”

20. Thus, in **Lahu Arjuna Patil** (*supra*) though the applications under Section 64 were beyond the period specified in the first Proviso, the same were within the period specified in the second Proviso. In the present case, the applications filed by the petitioners under Section 64 were even beyond the period specified in second Proviso to sub-section (2) of Section 64 and therefore the judgment in **Lahu Arjuna Patil** (*supra*) is of no assistance to petitioners.

21. Reliance of Mr. Jayabhar on the judgment of the Apex Court in **Collector, Land Acquisition, Anantnag** (*supra*) is also misplaced. The principles laid down in the said judgment could be applied only for considering the question of condonation of delay during the period specified in second Proviso to section (2) of Section 64. Since Section 64 provides maximum period of one year during which the delay can be condoned, the judgment in **Collector, Land Acquisition, Anantnag** (*supra*) cannot be relied upon to contend that delay beyond that period could also be condoned.

22. Coming to the conduct of petitioner highlighted by Mrs. Deshpande, the award in the present case was declared on 12.11.2018 and notice for payment under Section 21 of the Act of 2013 was issued on 19.11.2018. Despite receipt of that notice, petitioners approached this Court by filing Writ Petition No.13763 of 2018 alleging non-payment of compensation. After the writ petition was disposed of on 30.01.2020, they made application for payment of compensation on 25.02.2020. Despite this position, in application seeking condonation of delay, they made following averments.

“12. The applicant states that the delay caused for filing the instant reference only economical condition and the compensation was not received to the applicant, as he has got the knowledge of the award on the day of panchanama i.e. 01.02.2020 and therefore the authority conducted the said and immediately by approaching before this Hon’ble Court.”

23. Thus a completely false statement was made in the application seeking condonation of delay that petitioners acquired knowledge of the award on the day of panchanama i.e. on 01.02.2020. This statement was completely contrary to their conduct. They were not only represented in the award, had received notice of payment on 19.11.2018 but had also filed Writ Petition No.13763 of 2018 challenging the award dated 12.11.2018. Thus the statement in the application for condonation of delay that the knowledge of award was acquired on 01.02.2020 was patently false.

24. Considering the above position, I am of the view that the Sub Divisional Officer has correctly rejected references made by petitioners on the ground that the same are beyond the period of limitation. Writ petitions are devoid of merits and deserve to be dismissed. The aforementioned conduct exhibited by petitioners warrants imposition of costs while dismissing the petitions. However, considering the position that petitioners are agriculturists, I am refraining myself from imposing costs on them.

25. Writ petitions are accordingly dismissed. Costs made easy. Rule discharged.

(SANDEEP V. MARNE, J.)