

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CIVIL APPLICATION NO.8162 OF 2020
IN SAST/7501/2020 WITH CA/4436/2021 IN CA/6561/2020
WITH CA/6561/2020 IN SAST/7501/2020
WITH CA/6562/2020 IN SAST/7501/2020

MAHEBUBI ABDUL SYED DIED LRS. AFSARALI ISMAIL SYED
VERSUS
THE RAHRUI MUNICIPAL COUNCIL THROUGH ITS CHIEF OFFICER
SHRINIWAS GANGADHAR KURE

...
Advocate for Applicant : Mr. D.R. Jayabhar
Advocate for respondent : Mr. R.V. Naiknavare
...

CORAM : MANGESH S. PATIL, J.

DATE : 27 JANUARY 2022

PC :

Heard both the sides.

2. By way of Civil Application no. 6561 of 2020, the appellant - Municipal Council is seeking condonation of delay of 582 days in filing the second appeal. By CA/6562/2020, it is also praying for stay to the execution of the judgment and decree under challenge. By CA/4436/2021, it is seeking production of documents whereas by way of CA/8162/2020, the respondent who is the original plaintiff, is seeking direction to the appellant to deposit some money pursuant to the judgment and decree since it is pertaining to the damages being claimed by the respondent - plaintiff.

3. Ex facie, the suit had proceeded without the written statement of the appellant - Council. The respondent - plaintiff has been

claiming damages for illegal acquisition of his property by the Municipal Council. Though the suit was dismissed, the appellate court permitted him to produce documents at the appellate stage and based on that the judgment and order under challenge has been passed reversing the judgment of the trial court and decreeing the suit but not in the form as is being claimed by the respondent. Though he claimed damages, the appellate court has directed the land acquisition proceeding to be undertaken for the acquired portion.

4. Though law of limitation does not permit any distinction to be made depending upon the party, whether it is individual or is a State instrumentality, one cannot ignore the fact that some set of regulations and practices have to be followed by State instrumentality before taking any decision to challenge any judgment or award. If, in the process some time is lost, unless there is something to demonstrate that such delay has occasioned with some ulterior motive or with some mala fide intention, some latitude will have to be extended for the delay.

5. Considering the fact that the trial court had dismissed the suit but it was decreed by the appellate court by allowing the documents to be produced at the appellate stage and considering the fact that the decree is for direction to undertake a land acquisition proceeding which would ultimately result in recovery of money which would be the public money since appellant is a Municipal Council, for the reasons mentioned in the applications, production of the documents

is allowed and even the delay deserves to be condoned by imposing some costs.

6. Civil Application no.6561 of 2020, Civil Application no. 6562 of 2020 and Civil Application no. 4436/2021 are allowed and the delay is condoned subject to the appellant - Municipal Council deposit costs of Rs.5,000/- in this Court within a period of four weeks.

7. On such costs being deposited, execution and operation of the judgment and decree under challenge shall stand stayed only to the extent of actual payment of money, rest of the process of land acquisition may continue. The respondent - plaintiff shall be at liberty to renew his request made by way of CA/8162/2020 directing the appellant to deposit some money after the award is finalized.

8. All Civil Applications are disposed of.

9. Parties to act on authenticated copies of this order.

[MANGESH S. PATIL]
JUDGE

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