

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

956 CIVIL APPLICATION NO.11427 OF 2021
IN FAST/23764/2020

THE EX. ENGINEER, OSMANABAD MIN. IRRIGATION SUB-DIV.,
VERSUS
MAHADEO @ SUDHAKAR S/O TUKARAM KADAM AND OTHERS

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A.G.P. for Applicant : Mrs. Surekha G. Chincholkar
Advocate for Respondent No.1 : Mr. R.K. Ashtekar
AGP for respondent Nos. 2 and 3: Mr. S.S. Dande
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CORAM : S. G. DIGE, J.
DATED : 23rd SEPTEMBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned counsel for respondent No.1.

2. Leaned counsel for the applicant submits that the applicant has challenged the impugned order of reference court on two grounds; firstly, the interest awarded by reference court is on higher side and secondly ten times more compensation is given by the reference court as granted by the S.L.A.O. It is the contention of learned counsel for the applicant that the reference court has awarded exorbitant compensation and same is challenged before this court. There is delay in filing the appeal as the sanction has to be taken from higher authorities to file appeal. There was no budgetary provision to deposit the court fees and there is a procedure and in that process delay has been caused. Learned counsel submits that there was pandemic period and due to said pandemic, budgetary

provision of respondent got collapsed. The applicant is seeking justice before this court as the public money is involved. Hence requested to allow the application.

Learned counsel for the applicant placed reliance on the following cases:-

- i) N. Balakrishnan vs. M. Krishnamurthy, reported in AIR 1998 SC 3222;
- ii) O.P. Kathpalia vs. Lakhmir Singh (Dead) and others, reported in (1984) 4 SCC 66
- iii) Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruvila's son and others, reported in 1987 (Supp) SCC 340;
- iv) Judge of Supreme Court in the case of State of (NCT of Delhi) vs. Ahmed Jaan in criminal appeal arising out of SLP (Cri) No. 131 of 2006.

3. Learned counsel for respondent No.1 vehemently opposed the application on the ground that no proper explanation is given for condonation of delay. Seeking guidance from the higher authorities cannot be considered as a ground for condonation of delay. Every department has their budgetary provision, and hence non availability of budget cannot a ground to condone the delay. Learned counsel for the respondent thus requested for dismissal of application.

Learned counsel for respondent No.1 placed reliance on the following cases:-

- i) Basawraj @ others vs. Spl. Land Acquisition Officer, reported in 2013 (14) SCC 81.
- ii) Post Master General and other vs. Living Media India Ltd. & Ors. reported in 2012 (3) SCC 563;
- iii) State of Maharashtra and others vs. Vithu Kalya Govari and others, reported in 2008 (6) Mh.L.J. 239
- iv) Executive Engineer M.I.W. Minor vs. Ganpat Balaji Lade & Ors. Civil application No. 192 of 2018 in F.A. (St.) No. 21089 of 2017 decided on 17.10.2018 (Nagpur Bench).
- v) Chindha Fakira Patil (D) Through L.Rs. vs. Spl. Land Acquisition, Civil Appeal No. 5475 of 2007 decide don 1.11.2022.
- vii) State of Uttar Pradesh and Ors vs. M/s. Satish Chand Shivhare and Brothers, 2022 Live Law (SC) 430 SLP (Civil) No. 5301 of 2022 decided on 4.4.2022.)
- viii) Union of India vs. Central Tibetan Schools Admin & Ors, reported in 2021 (11) SCC 557
- ix) Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors. Reported in 2022 AIR (SC) 332

4. I have heard both learned counsel. There is delay of 1795 days for filing first appeal. The applicant sought legal opinion to file appeal. After receiving it, the applicant sought necessary documents

from Land Acquisition Officer. Thereafter applicant took approval from higher authorities to file appeal and for budgetary provision to file appeal.

5. The appeal has been preferred by the acquiring body on the ground that exorbitant compensation is awarded to the claimants/respondents. The applicant is Government authority. The amount which is going to be paid as compensation is the public money. In my view, though there is delay because of the Government policy, the public money should not be wasted. The main contention of the applicant is that the compensation awarded is more than 10 times than the compensation given by Special Land Acquisition Officer. Whether it is properly awarded or not needs to be verified. The delay is caused due to procedural aspects and non availability of funds. Mere the applicant is Government authority cannot be a ground to reject their prayer at the threshold.

6. As per the view of Hon'ble Apex Court in the case of ***State of Haryana vs. Chandra Mani and others, reported in (1996) 3 SCC 132*** that a pragmatic view should be taken while condoning the delay is squarely applicable to the present case. Moreover, the applicant has deposited 75% of the amount out of award amount, this Court has permitted the respondents-original claimants to withdraw 50% of it. 25% on furnishing undertaking and 25% on furnishing solvent surety. So no prejudice is going to cause to the claimants if the

application is allowed, as they have received part of compensation amount.

7. I have gone through the cases cited by learned counsel for the respondent No.1. The facts of cited cases and case at hand are different, as in the case at hand, this court has permitted the respondents to withdraw 50% compensation amount out of deposited amount. In view of above, I pass the following order:-

O R D E R

- I. Application is allowed.
- II. The delay of 1795 days caused in filing first appeal is condoned
- III. The appeal be registered.
- IV. The applicant to deposit remaining amount under award within 12 weeks from today.
- V. Civil application is disposed of.

(S. G. DIGE, J.)

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