

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

920 CIVIL APPLICATION NO.10153 OF 2021
IN FAST/23951/2016

DAGDU TUKARAM TAKE

VERSUS

THE STATE OF MAHARASHTRA
THROUGH THE COLLECTOR, JALNA AND OTHERS

Mr D.M. Kakade, Advocate for the applicant
Mr A.B. Chate, AGP for Respondent Nos. 1 and 2/State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 3rd February 2022

PER COURT :

1. It is an application moved by the applicant with three-fold prayers - (1) for condonation of delay, (2) for setting aside the order passed by this Court dated 19th March, 2018, and (3) to restore the name of respondent No.3 in the cause title of Appeal (Stamp) No. 23951/2016.

2. Heard Mr Deepak Kakade, learned counsel for the applicant. He submits that he could not supply the copies for service to respondent No.3 within a stipulated period granted by the Court. Thus, failed to take effective steps against respondent No. 3 and ultimately, appeal came to be dismissed against respondent No. 3 for want of steps. He submitted that the participation of respondent No.3/acquiring body is very much necessary to adjudicate the appeal. He submits that it is necessary to condone the delay by looking to the nature of dispute.

3. Mr A.B. Chate, the learned AGP for respondent No. 1 and 2 strongly opposed to allow this application. He submitted that the reasons assigned in this

application are neither cogent nor sufficient to allow the prayers. He submitted that respondent No. 3 is the main contesting party, who is absent though duly served and that aspect needs to be considered.

4. It is evident from the record that respondent No. 3/acquiring body has been duly served with notice. Even then, none present for respondent No. 3 when the matter is called out.

5. There is no point in keeping this application by looking to the nature of prayer.

6. The applicant has preferred an appeal feeling aggrieved by the impugned Judgment and Award passed by the reference Court. The question is about enhancement of compensation in respect of land acquired. Certainly, the participation of acquiring body/respondent No. 3 is very much necessary. The appeal cannot be decided effectively in absence of respondent No.3/acquiring body. As such, it is necessary to set aside the order passed by this Court dated 19th March, 2018 and to restore the name of respondent No.3 in the cause title of the first appeal by condoning the delay which would meet the ends of justice.

ORDER

- (i) The application is allowed in terms of prayer clause (B) to (D).
- (ii) The applicant to take necessary steps in respect of respondent No.3 within a period of four weeks.
- (iii) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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