

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

**8 CIVIL APPLICATION NO.9099 OF 2021
IN FAST/26281/2020**

**WITH CA/9101/2021 IN FAST/26413/2020
WITH CA/9103/2021 IN FAST/26403/2020
WITH CA/9104/2021 IN FAST/26422/2020
WITH CA/9102/2021 IN FAST/26407/2020
WITH CA/9100/2021 IN FAST/26418/2020**

**MADHAV NAGSHETTI BIRADAR AND ANR
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

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Advocate for Applicants : Mr. Sagar N. Pahune Patil h/f Mr.Rodge
Krishna P.

AGP for Respondent Nos. 1 & 2-State : Mr.S.N.Kendre
Advocate for Respondent No. 3 : Mr.Tandale Pradeepkumar R.

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 28.11.2022.

PER COURT :

1. Heard rival submissions.
2. The respective applicants in all these applications are seeking condonation of delay of 4101 days for filing the appeals. The learned counsel for the applicants submits that the aforesaid huge delay has in fact caused due to poor financial condition of the applicants since they did not possess any land to generate the income after the acquisition. He pointed out that the compensation amount

had in fact deposited by the Acquiring Body in the year 2019 and thereafter only the applicants could arrange the amounts for challenging the order of reference Court for seeking enhancement.

3. The learned counsel for the acquiring body strongly resisted the application by pointing out that the contents of reply of Acquiring Body. He relied upon various judgments of the Hon'ble Apex Court, wherein, the respective orders of this Court condoning the delay were set aside. He pointed out that the State had also filed appeals challenging the compensation granted by the learned Reference Court in these matters but ultimately those appeals were dismissed by this Court. He also contended that the doctrine of merger will apply in this case. According to him, these applicants could have filed Cross-Objections in those appeals which were in fact disposed of in the year 2015 only.

4. Admittedly, the State had filed such appeals which got dismissed on merit in the year 2015 only. It is also true that the present applicants could have filed Cross-Objections in those appeals but they did not. As such, the remedy of enhancement of compensation by filing appeal is still with the applicants. Moreover, it is also not in dispute that considering the pendency of appeals filed by the State there was no interim stay as pointed out by the learned AGP, since there was no deposit of award amounts in respect of the

impugned judgments. The amount of all these impugned awards was in fact deposited in the year 2019 only and thereafter, the applicants appeared to have got such financial aid to challenge the quantum of compensation awarded by the learned Reference Court.

5. No doubt, the Hon'ble Apex Court in the judgments relied upon by the learned Counsel for the Acquiring Body has set aside the orders of this Court of condoning the delay. However, the Hon'ble Apex Court at the same time, in many other cases has also observed that the delay applications specially in the cases of Land Acquisition are to be dealt liberally. The judgment of Hon'ble Apex Court in Civil Appeal No. 7696 of 2021, though refuses to condone the delay of 1011 days but that was in Second Appeal and owing to the peculiar circumstances of that case. In the instant case, the right of these applicants to claim the enhancement of the compensation amount is still alive. Further it can be noted that only because of financial constraints the applicants could not file Cross Objections for the same. Moreover, the doctrine of merger will not also apply, since the appeals filed by the State were dismissed and there was no modification of the impugned awards and judgments at the hands of appellate Courts. Therefore, considering the statutory rights of the applicants, the delay in all these applications which appears huge in nature, i.e. of 4101 days can be condoned.

6. In view of the same, the delay of 4101 days in all these applications stand condoned, subject to condition that the applicants shall not claim any interest for the aforesaid delayed period. The appeals be placed for admissions, after removal of office objections. Applications accordingly are disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

mahajansb/