

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

CIVIL APPLICATION NO. 2213 OF 2020 IN FAST/30705/2018

M.S.E.D.C. LTD., THROUGH THE EXECUTIVE ENGINEER, (CIVIL)  
SUB DIVISION, HINGOLI

VERSUS

BABARAO BAHIRJI (DIED) THROUGH LRS  
DAMODHAR BABARAO SHINDE AND OTHERS

....

Mr. A.S. Shelke, Advocate for the Applicant  
Mr. S.S. Dargad, Advocate for the Respondent No.1  
Mr. S.G. Sangle, AGP for Respondent Nos.2 and 3

....

**CORAM : SHRIKANT D. KULKARNI, J.**

**DATE : 10<sup>th</sup> JANUARY, 2022**

**PER COURT:-**

1. It is an application for condonation of delay moved by the appellant / acquiring body.
2. Heard Mr. Avishkar Shelke, learned counsel for the applicant / acquiring body, Mr. S.S. Dargad, learned counsel for respondent no.1 and Mr. Sangle, learned counsel for respondent nos. 2 and 3.
3. There seems to be delay of 4692 days in preferring the appeal.

4. Mr. Shelke, learned counsel for the applicant / acquiring body invited my attention to para 7 of the application. He submitted that the applicant / acquiring body was not a party to the reference proceedings initiated before the Reference Court under Section 18 of the Land Acquisition Act, 1894. The Reference Court decided the reference in absence of the acquiring body / applicant. Even though, the acquiring body was necessary party to the proceedings under Section 18 of the L.A. Act, not made a party respondent. The applicant came to know about the decision of the Reference Court for the first time in the year 2013, when the applicant received the letter from the Special Land Acquisition Officer. However, the concerned officials of the applicant / acquiring body did not bring to the notice of the higher authorities that letter and the matter remained unattended.

5. In the year 2017, the applicant / acquiring body received the letter from the Collector about the meeting in respect of the subject matter and at that time the applicant / acquiring body came to know about the award dated 31.08.2005 in L.A.R. No. 98/1998. Thereafter, the applicant / acquiring body applied for the certified copy and after completing all the formalities,

preferred this appeal alongwith application for condonation of delay. He submitted that though there is inordinate delay, it was not intentional. The applicant / acquiring body was not knowing about the decision given by the Reference Court. By looking to the fact that the applicant / acquiring body could not get an opportunity to appear before the Reference Court as it was not a party, it is necessary to condone the delay to decide the appeal, on its own merits.

6. Mr. S.S. Dargad, learned counsel for respondent no.1 / original claimant strongly opposed to condone the delay. He submitted that there is inordinate delay of 4692 days in preferring the appeal. Even though, the applicant / acquiring body came to know about the decision of the Reference Court in the year 2013, not taken any steps to prefer an appeal. It shows the lethargy on the part of the applicant / acquiring body to prefer an appeal. No sufficient reasons are assigned to condone the delay.

7. Mr. Dargard invited my attention to the affidavit-in-reply, more particularly, para 4. He submitted that the Special Land Acquisition Officer has appeared before the reference Court and filed his written statement in consultation with the applicant /

acquiring body. It is not in dispute that, the Special Land Acquisition Officer has issued notice to the applicant / acquiring body and asked to deposit the enhanced amount of the compensation as per the judgment and award passed by the Reference Court. Even then, no steps are taken by the applicant / acquiring body to prefer an appeal. The delay is deliberate in filing the present appeal. The application is not bona fide and liable to be dismissed.

8. It is not in dispute that the present applicant / acquiring body was not a party to the L.A.R. No. 9/1998, which came to be decided on 13.08.2005. It seems that the applicant / acquiring body came to know that for the first time, in the year 2013, when the applicant / acquiring body received the notice from the Special Land Acquisition Officer to deposit the amount of compensation in view of the judgment delivered by the Reference Court in L.A.R. No.9/1998. It is true that that the applicant / acquiring body has not taken any steps to prefer an appeal immediately after service of that notice and ultimately caused delay in preferring the appeal, which is found to be inordinate as pointed out by Mr. Dargad, learned counsel for respondent no.1.

9. Be that as it may, it cannot be overlooked the legal position, which has been made clear by the Hon'ble Supreme Court in number of decisions and even in the Constitution Bench judgment in case of *Uttar Pradesh Awas Evam Vikas Parishad Vs. Gyan Devi (dead) By L.Rs. and another, Etc.* reported in *1995 AIR (SC) 724*, wherein it is held that the participation of the acquiring body in the proceedings under Section 18 of the Land Acquisition Act, 1894 is necessary. The opportunity to defend the reference for enhancement of compensation needs to be afforded to the acquiring body. That opportunity seems to have not been extended to the applicant / acquiring body and in its absence, L.A.R. No.9/1998 came to be decided, thereby enhancing the compensation from Rs.120 per R to Rs. 2058 per R. The applicant / acquiring body is a State Electricity Distribution Company Limited. It is a Government of Maharashtra undertaking company. Even though, there is delay in preferring the appeal, after getting the knowledge of the decision in the year 2013, the delay needs to be condoned having regard to the facts and circumstances of the case in hand. If the delay is not condoned, the applicant / acquiring body may not get an opportunity to challenge the decision rendered by the Reference Court under

Section 18 of the L.A. Act. It may amount to causing injustice to the applicant / acquiring body.

10. Having regard to the above reasons and discussion, I am of the considered view that the delay needs to be condoned in view of the facts and circumstances of the case in hand.

**ORDER**

- (i) The application is hereby allowed in terms of prayer clause (B).
- (ii) The appeal be registered.
- (iii) The civil application is accordingly disposed of.

**[ SHRIKANT D. KULKARNI ]  
JUDGE**

S.P. Rane