

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO.3485 OF 2022

BHAURAO S/O LIMBAJI PAWAR THRU HIS LRS
1-A. VITTHAL S/O BHAURAO PAWAR AND ORS.
VERSUS
THE STATE OF MAHARASTHRA THROUGH COLLECTOR AND
OTHERS

Advocate for Petitioners : Mr Vishnu B. Madan
AGP for Respondent/State : Mrs G.L. Deshpande

CORAM : SANDEEP V. MARNE, J.
DATE : 14th DECEMBER, 2022

PER COURT :

1. Not on Board. Taken on Board at the request of learned counsel for petitioner.
2. By this petition, petitioner challenges order dated 18.06.2020 passed by the Reference Court rejecting application for condonation of delay for restoration of LAR No. 490/2007, which is dismissed in default on 15.09.2009.
3. In the present case, the reference was filed in the year 2007 and on account of petitioner failing to file copy of reference and not depositing process fee, the reference came to be dismissed on 15.09.2019. Petitioner filed application for restoration of LAR on 08.01.2009, and sought condonation of delay.
4. Petitioners in their Civil Misc. Application No. 10/2019 dated 08.01.2019 has given following justification for condonation of delay in para Nos. 2, 3 and 4 .

2. That, it is submitted that the reference was dismissed in default on dated 15.09.2009 and therefore the restoration petition for restoration of the same ought to have been filed within the stipulated period of limitation i.e. within 30 days, but the petitioners were unknown about the same, as their Advocate did not inform the present petitioners or the deceased petitioner No.1 Bhaurao Pawar, the father of the petitioners no.1-a to 3 and therefore no restoration petition could be filed before the Hon 'ble court.

3. That, the original petitioner no.1 Bhaurao Pawar, who was the head of the family and was looking after all the affairs of the family died on dated 23.02.2015 and therefore recently the petitioner no.2 had been to Jalna sand through Advocate made enquiry about the reference filed and came to know that the reference petition came to be dismissed for want of copies and process on dt.15.9.2009 and therefore after obtaining the certified copies, restoration petition is filed by petitioners which is delayed by 9 years 3 months and 24 days.

4. That, it is submitted that the delay caused in filing the restoration petition is not intentional but it is due to lack of knowledge, ad the Advocate of the petitioners, did not inform about the same within time and even till obtaining the information by the petitioner no. 2 by his own. Therefore, the petitioners pray to allow this petition and to condone the delay caused in filing the restoration petition. If this petition is not allowed, then the petitioners will be deprived of getting the enhanced compensation of their acquired land and will be put to financial irreparable loss.

5. The reference Court has refused to condone the delay of nine years and three months and 24 days by order dated 18.06.2020.

6. No fault can be found in the order passed by the Reference Court in rejecting the application for condonation of delay in filing restoration application. However, at the same time, consistent view has taken by this court that land acquisition references cannot be dismissed without providing an opportunity to claimant to lead evidence in support of claim for higher compensation.

7. Considering the settled position of law and the fact that petitioner did make an attempt for restoration of Reference by filing application dated in January, 2019, and I am inclined to grant one indulgence in favour of petitioner. I accordingly proceed to pass the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The judgment and order dated 15.09.2009 passed by the Reference Court is set aside and LAR No. 490/2007 is restored.
- (iii) Petitioner to lead necessary oral and documentary evidence in support of his claim for enhanced compensation before the Reference Court within a period of four months from today.
- (iv) Petitioner shall not be entitled to any interest on the enhanced amount of compensation, if awarded, during the period from 15.09.2009 till the date of decision of the Reference.
- (v) Petitioner to pay costs of Rs.15,000/- (Rupees Fifteen Thousand) to the respondent by depositing the same in the Reference Court within a period of four weeks from today.
- (vi) The respondents are at liberty to withdraw the costs so deposited.

[SANDEEP V. MARNE, J.]

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