

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

**CIVIL APPLICATION NO.3921 OF 2018
IN CIVIL APPLICATION NO.14131/2012
IN FIRST APPEAL (ST) NO.14130/2012**

**KISHAN VITHOBA HEMANAR
VERSUS
THE STATE OF MAH AND ORS**

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Advocate for Applicant : Mr. Sontakke Gajanan K & Mr. P. G. Sontakke
AGP for Respondents/State: Mr. P. M. Kulkarni

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 19.08.2023

PER COURT :

1. By this application, the applicant seeks restoration of the application along with first appeal that has been dismissed for non-removal of office objections by the order of learned Registrar dated 18/09/2012.
2. Mr. Sontakke, learned Advocate appearing for the applicant submits that, the appeal has been filed challenging the award passed by the reference court under the provisions of Land Acquisition Act. The applicant has lost his agricultural land and litigating for just compensation / market value of the land acquired. He would submit that the other land holders, whose lands are also acquired for the same project, are already compensated with enhanced compensation. However, the present appeal has been dismissed for non-removal of office

objections. He would further submit that inadvertently, the Advocate's clerk could not notice the matter on the board of the learned Registrar. There were two office objections, namely, deficit courts fees not paid and margin is not sufficient. He would submit that such objections would be removed within a period of two weeks if this Court restores the appeal along with civil application.

3. Mr. Kulkarni, learned AGP appearing for the respondent opposes the prayer. He would submit that the order of learned Registrar is passed on 18/09/2012. The present application is filed after six years, as such, there is inordinate delay. He would also submit that since the matter is arising out of the proceedings under land acquisition act, the state will have to bear the interest on compensation amount in case the claim of the applicant is favorably considered. The delay occasioned on account of sheer negligence on the part of the claimants. Therefore, he urge to dismiss the application.
6. Having considered the submissions advanced, apparently, the subject matter of dispute is claimed for compensation under the the land acquisition act. The applicant is an agriculturist, who has lost his land on account of compulsory acquisition. He is litigating for the statutory / constitutional right and receive compensation towards acquired land. His appeal is dismissed for technical reasons. The explanation is given in the application that it was a mistake of Advocate's clerk, who could not note the matter on board so also the office objections. Apparently, the

reason given is plausible. However, it cannot be ignored that, there is huge delay of six years in filing the application and even thereafter, the application is moved after five years for restoration.

7. In that view of the matter, it would be appropriate to allow the prayer for restoration subject to certain riders. Hence, this Court proceeds to pass the following order:

ORDER

- (i) Civil Application is allowed in terms of prayer clauses – ‘A’ and ‘B’, subject to condition that the applicant shall not claim statutory benefit as well as interest for the period from 16/10/2012 till the date of this order.
- (ii) A copy of this order be made part of the civil application as well as first appeal stamp no.14130/2012.
- (iii) The applicant shall pay the costs of Rs.2000/- [Rupees Two Thousand] to the Advocates’ Association Bar Library, High Court of Bombay Bench at Aurangabad within a period of two weeks.

[S. G. CHAPALGAONKAR]
JUDGE