

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 WRIT PETITION NO.4061 OF 2021

RAJU RAJENDRA SHIVLINGAPPA MUDKANNA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. Vivekanand B. Deshmukh
AGP for Respondent No.1: Mr. N.T. Bhagat
Advocate for Respondent No.2 : Mr. S.S. Dande
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CORAM : SANJAY A. DESHMUKH, J.
DATED : 8th AUGUST, 2023.

PER COURT :-

1. Heard learned advocates for the respective parties.
2. By way of this petition, the petitioner has challenged the order dated 18.12.2017, passed by the Sub Divisional Officer and Land Acquisition Officer, Osmanabad, in file No.2017/LNQ/28/A/CR-127. It was an application for condonation of delay.
3. The learned advocate for the petitioner has invited my attention to the application filed under Section 28A of the Land Acquisition Act, 1894 for condonation of delay and also the impugned order passed thereon by the authority. It appears that the application was filed on 03.10.2017 before the concerned authority, after the order passed on 30.06.2017. As per the provisions of Section 28A of the Land Acquisition Act, 1894, the limitation for filing application is of

three months. The application should have been filed on or before 30.9.2017. On 30.9.2017, there was holiday on account of *Dashera* festival, on 01.10.2017 there was Sunday and on 02.10.2017 there was holiday on account of Mahatma Gandhi Jayanti and thus immediately on the next working day i.e. on 03.10.2017, the application was filed. However, these factual aspects were not considered by the authority and erroneously held in last para of the impugned order that the application was not filed within limitation as per Section 28A of the Land Acquisition Act, 1894.

4. The learned advocate for the respondent acquiring body has strongly opposed this writ petition contending that the impugned order is legal, correct and no interference is warranted.

5. The facts of holidays mentioned in the application as pointed out by the learned advocate for the petitioner above are totally ignored by the authority. The proviso to Section 28A of the Land Acquisition Act, 1894 clarifies that the day on which the award was pronounced and the time required for obtaining a copy of the award shall be excluded. This aspect was not considered by the authority. The quasi-judicial authority straightway proceeded to reject the application without assigning any reason upon these legal and factual aspects. Thus, the impugned order passed by the authority is illegal and not sustainable. The impugned order therefore, needs to be quashed and set aside. The writ petition deserves to be

allowed.

6. In the result, the writ petition is allowed in terms of prayer clause "B". No costs.

(SANJAY A. DESHMUKH, J.)

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