

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 16000 OF 2022
IN
FIRST APPEAL STAMP NO. 14122 OF 2022

Nagnath s/o Tukaram Ballapatte [Died]

Gajrabai w/o Nagnath Billapatte [Died]

Through legal representatives

1] Harischandra S/o Nagnath Billapatte
Age: 43 years, Occu. Agril.

2] Bhagwat Nagnath Billapatte
Age: 41 years, Occu. Agril.,

3] Ramchandra Nagnath Billapatte
Age: 63 years, Occu. Agril.,
All R/o. Tambhurni, Tq. Ahmedpur,
Dist. Latur

... Applicants
(Orig.Claimants)

VERSUS

1] The State of Maharashtra
Through the District Collector, Latur

2] The Special Land Acquisition Officer,
[Purna Project] Latur

3] The Executive Engineer,
Minor Irrigation Division
at Latur

... Respondents
(Orig. respondents)

....

Mrs. P. G. Sontakke, Advocate for applicants

Mr. R. V. Dasalkar, AGP for respondent Nos. 1 and 2 - State

....

**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 23.03.2023
PRONOUNCED ON : 11.04.2023

ORDER (PER Y. G. KHOBRADE, J.) :-

. The applicants have filed the present application under Section 5 of the Limitation Act, 1963 and prayed for condonation of delay of 3776 days caused in filing Appeal against the judgment and award dated 04.10.2011 passed by the learned Joint Civil Judge, Senior Division, Ahmedpur, District Latur in L.A.R. No.683 of 2002.

2. Heard Mrs. P. G. Sontakke, learned Advocate for the applicants and Mr. R. V. Dasalkar, learned AGP for non-applicant Nos.1 and 2. Though the non-applicant No.3 served, but remained absent.

3. Having regard to submissions canvassed on behalf of both sides, we have gone through the record. Applicants were the owners and possessors of land Survey/Gut No.123 admeasuring 4 Hectare 20 Are (i.e. 4,57,380 square feet) situated at village Tembhurni, Taluka Ahmedpur, District Latur. That land was acquired by the non-applicant No.3 Acquiring Body for public project as per Notification dated 14.12.1997 published under

Section 4 of the Land Acquisition Act. On 15.01.2001 the Land Acquisition Officer determined compensation in respect of the acquired land at the rate of Rs.30,000/- per Hectare, which was accepted by the applicants under protest.

4. Being dissatisfaction with said award dated 15.01.2001, the applicants preferred reference bearing L.A.R. No.683/2002 under Section 18 of the Land Acquisition Act, 1894 before the learned Joint Civil Judge, Senior Division, Ahmedpur and claimed compensation of acquired land at the rate of Rs.90/- per square feet along with statutory benefits. The learned Joint Civil Judge, Senior Division, Ahmedpur, has partly allowed said LAR No.683/2002 on 04.10.2011 and granted compensation at the rate Rs.36,000/- per Acre with statutory benefits. Being dissatisfaction of said award dated 04.10.2011, the applicants/ original claimants intend to file appeal, by invoking jurisdiction of this Court under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure. However, since there is delay, in approaching this Court, they have filed present application.

5. The learned Advocate appearing for the applicants submitted that the original award holder No.2 Gajrabai was

suffering from serious ailment, therefore, her husband award holder No.1 Nagnath was taking her care. Unfortunately, Smt. Gajrabai died on 10.05.2015 due to her ailment. Original award holder No.1 Nagnath also died on 15.08.2018 at the age of 85 years, due to the depression because of death of wife Gajrabai. The applicants 1 and 2 are the legal heirs of original award holders 1 and 2, but they were not having knowledge about pendency of land acquisition proceeding. Therefore, they preferred application for issuance of heir-ship certificate before the learned 2nd Joint Civil Judge, Junior Division, Ahmedpur, District Latur. The learned Civil Court granted legal heir certificate in their favour on 30.08.2019. Since the applicants 1 and 2 were helpless due to death of their father. After receiving legal advice from their Counsel, they decided to file appeal. However, delay of 3776 days has been caused in filing appeal. The said delay is bona-fide and not intentional. Hence, prayed for condonation of the same.

6. In support of the submissions, the learned Advocate for the applicants relied on the case of ***Tukaram Kana Joshi and others Vs. M.I.D.C.***, passed by the Hon'ble Supreme Court on 02.11.2012 in Civil Appeal No.7780/2012, wherein, the Hon'ble Apex Court held that the question of condonation of delay is one

of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. In para Nos. 11 to 15, the Hon'ble Supreme Court held as under:

“11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under [Article 226](#), nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested

right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)

13. *In the case of H. D. Vora v. State of Maharashtra & Ors., AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.*

14. *The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the Statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.*

15. *Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. In a*

welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.”

[Emphasis supplied]

7. Per contra, the learned AGP submitted that the applicants have failed to explain the delay of 3776 days. The delay is inordinate and not bonafide. The alleged reasons cannot be considered as sufficient much less reasonable for condoning the inordinate delay. He further submitted that it is unbelievable that the applicants were not aware about the decision in the reference filed by their parents. Learned AGP, therefore, prayed for rejection of the application.

8. It is not in dispute that a notification under Section 4 of the Land Acquisition Act was published in respect of acquisition of the land of the applicants bearing Survey/Gut No.123 admeasuring 4 Hectare 20 Are i.e. 4,57,380 square feet situated at village Tembhurni, Taluka Ahmedpur, District Latur on 14.12.1997. Non-applicant No.3 Acquiring Body has acquired said land for public project.

9. The record speaks that on 15.01.2001, the Land Acquisition Officer passed an award and determined compensation @ Rs.30,000/- per Hectare. The applicants' predecessor in title had received the amount of compensation under protest on 28.09.2001. It is an admitted fact that, the original award holders i.e. (1) Nagnath, (2) his wife Gajrabai and (3) Ramchandra (present applicant No.3) had filed proceeding under Section 18 of the Land Acquisition Act, before the Joint Civil Judge, Senior Division, Ahmedpur and prayed for enhancement of compensation @ Rs.90/- per square feet. It is a matter of record that, on 04.10.2011, the learned trial Court partly allowed L.A.R. No.683/2002 and granted compensation @ Rs.36,000/- per Acre along with statutory benefits.

10. According to the applicants, Gajrabai died on 10.05.2015 and Nagnath died on 15.08.2018. The original award holder No.3 Ramchandra is survived and he is well aware and having knowledge about passing the award on 04.10.2011 in L.A.R. No.683/2002. He was party to the said reference proceeding in his independent capacity and not legal heir of his parents. That means he was aware about the impugned decision. He alone could have filed appeal. The applicants are now claiming

that after death of award holder No.1 Nagnath, they had instituted a proceeding before the learned 2nd Joint Civil Judge Junior Division, Ahmedpur seeking legal heir certificate and they got it on 30.08.2019; thereafter, they sought legal advice from their counsel and approached before this Court. This is the reason for their belated approach. However, the applicants failed to give any explanation for not submitting application for grant of certified copy till 01.07.2021 though the learned reference Court passed the judgment and award on 04.10.2011. Further, the applicants have not given any explanation in respect of delay with effect from 05.10.2011 till death of original award holder No.2 Gajarabai who died on 10.05.2015 and further delay till 15.08.2018 on which date the original award holder No.1 Nagnath died. If a legal proceeding is initiated in the Court of law and in case either party to the legal proceeding dies in that circumstance, legal heirs of dead party can be brought on record as per Order 22 Rule 1 and 2 of the Code of Civil Procedure and there is no necessity to bring certificate of heirship in respect of dead party to the said proceeding.

11. It is worthwhile to mention here that, though the original award holders i.e. Nagnath and Gajarabai had expired on 10.05.2015 and 15.08.2018, respectively, but original award

holder No.3 i.e. applicant No.3 was party before reference Court in his independent capacity. He was having knowledge about passing of judgment and award dated 04.10.2011, however, he has not taken any steps to file proceeding challenging the award for more than ten (10) years. No doubt, while condoning the delay the Courts should be liberal and exercise discretionary powers judiciously and reasonably; but such powers cannot be exercised in favour of a party who is intentionally sleeping over his/her rights. Such powers cannot be exercised, when the applicant fails to give reasonable and justifiable grounds.

12. In the case in hand, it is not the case of the applicants that, the present applicant No.3 was not having knowledge about passing of judgment and Award dated 04.10.2011 in L.A.R. No.683/2002. Deceased Nagnath and Gajarabai had also not taken any steps to prefer appeal since 2011 till the date of their death i.e 2015 and 2018. It is needless to mention here that the illiteracy of litigant cannot be the substantial and bona-fide ground to condone the inordinate delay of more than ten (10) years, especially when they had already taken steps to challenge the award passed by SLAO before the Reference Court after accepting the money under protest. They were well represented by Advocates at all levels. We are also aware that, to receive adequate

amount of compensation upon the acquisition of land, is a substantial right of the citizen; however, Court will not help those citizens who are sleeping over their rights for considerable long time. We are constrained to observe that in case of land acquisition matters, such type of reasons is given to get the delay condoned with ulterior motive. A genuine land owner who feel that he has received less compensation, will not keep quiet for long time. Here the applicants have also not given the educational qualification of applicant No.3.

13. In the case of *Tej Pratap Singh v. Union of India (F.B.) A.I.R. 2018 Del. 146 at p. 154*; the Full Bench held that condonation of delay is not a vested right or to be granted on asking in all appeals seeking enhancement of compensation on acquisition of land. The social and economic condition of the appellant, indulging his educational background, other limitations are the most important and determinative factors to be taken into consideration so as not to deny justice and correct disparity. At the same time indulgence need not be bestowed to the negligent and fence sitters, who had economic resources and were well versed and could have enforced right to appeal but for multifarious reasons were satisfied and did not pursue and enforce their right to appeal.

14. In the case in hand, the explanation/ justification given by the present applicants does not appear bona-fide and reasonable. In other words, the grounds are set out to condone inordinate delay of 3776 days i.e. more than ten (10) years are not satisfactory. Therefore, we are not inclined to condone the delay, hence the present application is liable to be rejected. Accordingly, it is hereby rejected.

[Y. G. KHOBRADE, J.] [SMT. VIBHA KANKANWADI, J.]

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