

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

**CIVIL APPLICATION NO.3767 OF 2021
IN
FIRST APPEAL (STAMP) NO.21030 OF 2020**

**THE CHIEF OFFICER, MUNICIPAL, AMBAD, THROUGH VIDYACHARAN
JAGANNATH KADAVKAR**

VERSUS

BABAN ANNA NAMDE AND OTHERS

...

Mr. Swapnil Patunkar, Advocate h/f J.P. Legal Associates for applicant
Mr. A.S. Kale, Advocate h/f Talekar and Associates for respondent Nos.1 to 5
Mr. A.M. Phule, AGP for respondent Nos.6 and 7

...

**CORAM : SMT. VIBHA KANKANWADI
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 22nd JUNE, 2023

PRONOUNCED ON : 19th AUGUST, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for condonation of delay of 406 days in filing the First Appeal. The application is by the acquiring body. It is raising an exception to the Judgment and Award dated 25.10.2018 passed by learned Civil Judge Senior Division, Jalna i.e. the reference Court

in Land Acquisition Reference No.794/2008.

2 Heard learned Advocate Mr. Swapnil Patunkar holding for J.P. Legal Associates for applicant, learned Advocate Mr. A.S. Kale holding for Talekar and Associates for respondent Nos.1 to 5 and learned AGP Mr. A.M. Phule for respondent Nos.6 and 7.

3 It has been vehemently submitted on behalf of the applicant that the delay that has been caused is due to the lapse of period in seeking and obtaining the sanctions from the General Body of the Municipal Council to prefer an appeal. It has been contended that the proposal to prefer an appeal was submitted before the State Government, then legal opinion has been given on 26.11.2019. The said opinion was then again put before the General Body of the Council, who had thereafter decided to accord the approval. Further, there is weak financial position of the council and, therefore, all the factors were required to be considered. The applicant has deposited amount of Rs.75,00,000/- before this Court, which has been withdrawn by the claimants. Thereafter the applicant has also paid amount of Rs.18,00,000/- to the claimants and Rs.10,00,000/- were also deposited before this Court in Writ Petition No.7123 of 2011. No deduction has been given in respect of said amount of Rs.10,00,000/- by the reference Court as

the said fact has been suppressed by them from the reference Court. That amount is also in respect of the same acquisition of the land. If the said amount is deducted, then all statutory benefits granted to the claimants would change. In all, the applicant has paid amount of Rs.1,03,00,000/- to the claimants. The acquired land was in fact agricultural land, but the reference Court has treated it as non agricultural. Therefore, the applicant – acquiring body has good case on merits. Due to the weak economic condition of the council the applicant is ready to give TDR to the claimants in respect of remaining amount. The First Appeal No.1040 of 2019 filed by the claimants is already admitted by this Court by order dated 06.11.2019. Both the appeals can be heard together and no prejudice is going to cause to the claimants. Learned Advocate for the applicant, therefore, prayed for condonation of delay.

4 Per contra, the application has been strongly opposed by the original claimants – present respondent Nos.1 to 5. It has been stated that the delay is huge and the reason that has been stated is not reasonable. Weak economic condition of the Municipal Council cannot be a ground, so also, the delay in taking decision by the General Body is also not a good ground to condone the delay. For the administrative lapses on the part of the acquiring body, the claimants shall not be asked to suffer. Reliance has been

placed on **Postmaster General and others vs. Living Media India Limited and another [(2012) 3 SCC 563]**, wherein it has been held that a condonation of delay is an exception and should not be used as an anticipated benefit for government departments and offering usual explanation that file was kept pending due to procedural red tape. It has been further observed that -

“27) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28) Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

5 Learned AGP appears for respondent Nos.6 and 7.

6 Here, the reasons those have been given in the application have already been stated. It has been contended that the acquiring body i.e. Municipal Council, Ambad, Tq. Ambad, Dist. Jalna was suffering from financial crisis at that time. No doubt, there is a procedure, that is, laid down in any Government institution or semi Government institution when it comes to preferring an appeal or taking any concrete action in respect of Court procedures. The applicant is coming with a clear reason that the General Body of the applicant – council had taken much more time in taking the decision. Obtaining legal opinion cannot be objected because every litigant has right to approach Advocate of his/her/its choice. When again that

opinion was required to be tabled before the General Body of the council, then, definitely, that procedure cannot be objected. Of Course, the swift action was contemplated. There cannot be second opinion in respect of the observation by the Hon'ble Supreme Court in Postmaster General (supra). However, in the same case itself the decision in **Pundlik Jalam Patil vs. Jalgaon Medium Project [(2008) 17 SCC 448]** was referred. In **Pundlik Jalam Patil's** case there was delay of 1724 days in filing appeals before this Court. After referring to earlier decisions in respect of taking very lenient view, the Hon'ble Supreme Court has deprecated it when it comes to public interest, however, the main reason for that appears to be that prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement was considered to be integral part of public policy, and then it was observed that dragging the landlosers to Court of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. Here, we would like to observe that condonation of delay depends on the reasons given or in other words, reasonable ground shown. Here, it has been stated that amount of Rs.10,00,000/- was deposited by the Municipal Council – acquiring body in the writ petition in this Court, but the reference Court had not pointed it out.

Of course, that could have been definitely pointed out by the present applicant also, but the fairness on the part of the claimants is also expected. Now, the total amount that has been paid to the claimants appears to be Rs.1,03,00,000/-, which is a substantial amount. The due amount is stated to be more than Rs.2,00,00,000/-. The earlier orders in respect of stay to the execution proceedings appears to be continued and the original claimants have been permitted to withdraw the amount, time and again, when the applications were filed. When the claimants' appeal is also pending, which is of course for the enhancement, no prejudice is going to be caused if this appeal is also tagged along with the appeal filed by the claimants. Therefore, we hold that reasonable ground has been shown for condoning the delay of 406 days in filing the appeal by the acquiring body. In fact, the acquiring body's appeal would lie before the Single Bench, however, in view of the fact that the claimants' appeal for enhancement is beyond the pecuniary limit of the Single Bench, the matter would lie before the Division Bench and under such circumstance, the delay condonation is before this Court.

7 As we hold that reasonable ground has been shown for condonation of delay and substantial amount has been deposited, we proceed to pass following order.

ORDER

- 1 Application stands allowed and disposed of.
- 2 Registry to verify and register the First Appeal.
- 3 The said First Appeal be tagged along with First Appeal No.1040
of 2019.
- 4 The paper book is already ready and received in the said First
Appeal.
- 5 Place the applications for stay for further consideration on
29.09.2023, till then interim relief, if any, granted earlier to continue.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

agd