

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11970 OF 2017 IN
FIRST APPEAL ST. NO. 28302 OF 2017

Totaram Tukaram Magare
(Deceased through LRs)

Applicants

Versus

The Special Land Acquisition Officer & another

Respondents

Mr. M. M. Bhokarikar, Advocate for the applicants.
Mr. M. M. Nerlikar, AGP for respondent No. 1.
Mr. S. S. Chillarge, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
DATE : 6th FEBRUARY, 2023.

PER COURT :

1. This is an application for condonation of delay of 265 days in filing first appeal.

2. Heard learned advocate for the applicants, learned AGP for respondent No. 1 and learned counsel for respondent No. 2-acquiring body.

3. It is the contention of the claimants/applicants that due to financial difficulties, the appeal for enhancement of compensation could not be filed in time. The other difficulties faced by them which

were the cause for non-filing of the present appeal in time are elaborated in the application.

4. Learned advocate for the applicants submitted that in facts of the case and in the interest of justice, delay caused in filing the appeal be condoned. The said contention is strongly opposed by learned AGP and learned counsel for the acquiring body.

5. It is settled position of law by the orders passed by the Hon'ble Apex Court that in case of land acquisition cases, the Court cannot take pedantic approach for condonation of delay and substantive rights of land owners cannot be allowed to be defeated on technical grounds. In this regard reference can be made to the judgments in the matter of Dhiraj Singh vs. State of Haryana and others reported in **(2014) 14 SCC 127** and Imratlal and others vs. Land Acquisition, Collector, and others reported in **(2014) 14 SCC 133**.

6. In a case where there is compulsory acquisition of the land, the claimant is entitled to receive adequate compensation. If he is aggrieved by the order passed by any authority, he has a right to

prefer appeal against such order and to seek enhancement in accordance with law. This right cannot be denied on technicalities. The applicants herein have provided reason for not preferring appeal in time, which in absence of any malafides deserves to be accepted. However, at the same time, appellants cannot be allowed to take advantage of the delay and respondents cannot be burdened with liability to pay interest on enhanced amount for the said period. In the circumstances, equity can be balanced by denying any amount of interest to the claimants on enhanced compensation, if any, till the date of filing of appeal. Hence the order :-

ORDER

- i) Application is allowed.
- ii) Delay of 265 days caused in preferring appeal stands condoned.
- iii) Appeal be registered.
- iv) Applicants are not entitled to receive any amount of interest on enhanced compensation upto the date of filing of appeal, if they succeeds in the appeal.
- v) Civil application stands disposed of.

(R. M. JOSHI)
Judge