

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.44 OF 2019

IN

STAMP NUMBER MAIN NO.4057 OF 2018 (F)

THE EXECUTIVE

ENGINEER, WORKS

DIVISION -II, PWD, PANAJI

....APPLICANT

Versus

BEVINDA DIAS AND ANR.

....RESPONDENTS

Mr Pravin Faldessai, Advocate for the Applicant.

Mr Bernard Fernandes, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATE : 13th APRIL 2023

P.C. :

1. Heard Mr Faldessai for the applicant and Mr B. Fernandes for the respondents.

2. This is an application seeking condonation of delay of 620 days in instituting an appeal against judgment and award dated 23.12.2016 made by the Reference Court enhancing the compensation rate from ₹5/- per sq. metre to ₹1300/- per sq. metre in respect of the acquired land admeasuring around 1080 sq. metres.

3. The explanation for the delay is about the time spent obtaining legal opinions and approvals for instituting the appeal. After the file was forwarded to the office of the learned Advocate General, some time was spent allotting the matter to the appropriate Government Counsel. The learned Government Counsel took some time to study, draft and file the case. Before filing the case, drafts had to be forwarded to the Government, and the approvals also took some time.

4. Mr Fernandes submitted that these are routine administrative reasons which ought not to be accepted by this Court. He relied on the *State of Uttar Pradesh through Executive Engineer & Anr. Vs Amar Nath Yadav*¹ and *Postmaster General vs Living Media India Ltd.*². to submit that such routine administrative reasons should not be accepted as sufficient grounds for condonation of delay. He offered that most delay periods were not sufficiently explained in the Application seeking condonation.

5. In *Postmaster General* (supra), the Hon'ble Supreme Court, in paragraph 28, held that in a matter for condonation of delay when there was no gross negligence, deliberate inaction, or lack of bona fides, a liberal concession has to be adopted to advance substantial justice. However, Court also held that in the facts and circumstances of the said case, the Department could not take advantage of various earlier decisions. The claim of impersonal machinery and inherited

¹ (2014) 2 SCC 422

² (2012) 3 SCC 563

bureaucratic methodology of making several notes cannot be accepted because of the modern technologies being used and available. The Court held that the law of limitation undoubtedly binds everybody, including the Government. The Court noted that the Department offered no proper explanation for the delay except for mentioning various dates.

6. In the present case, it is not as if the applicants have offered various dates. There is some explanation based on the movement of files and the time spent in the Offices of the Government Counsel. There is no allegation of any deliberate inaction or lack of bonafide.

7. In every case of condonation of delay, there is bound to be some lapse from the applicant seeking condonation of delay. However, that by itself is not sufficient to dismiss the Application. As long as the cause shown is probable and does not smack of any malafides, the Court is expected to show utmost consideration to the applicants.

8. At the same time, the Court must not forget the respondent, who is also a loser in such matters. Therefore, the equities can be balanced by condoning the delay but compensating the respondents with reasonable costs.

9. In the facts and circumstances of the present case, though sufficient cause is shown, the respondents should not be made to

suffer due to a delay which is not even remotely attributable to them. Accordingly, the delay is condoned subject to payment of costs of ₹25,000/- to the respondents.

10. The costs must be deposited in this Court within four weeks with due intimation to the learned Counsel for the respondents. If the costs are not deposited within four weeks, then this Application shall be deemed dismissed without further reference to this Court. On the other hand, if the costs are deposited, the respondents are allowed to withdraw the same.

11. The Civil Application is disposed of.

M. S. SONAK, J.

NITI K HALDANKAR
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