

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.827 OF 2022
IN
CROSS OBJECTION ST. NO.21829 OF 2018
IN
FIRST APPEAL NO.1227 OF 2017

Inderchand Hiralal Kakliya

Vs.

The State of Maharashtra, through Collector, Yavatmal and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vinay Rathi, Advocate h/f Mr. Purushottam Patil, Advocate for appellant.
Mr. A. B. Nakshane, Advocate for respondent No.1.
Ms. Shamsi Haider, AGP for respondent Nos.1 and 2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/01/2023

1. This is an application seeking condonation of delay of 220 days in preferring cross-objection. The learned counsel Mr. A. B. Nakshane for the cross-objector/(original applicant) submitted that the appellants have preferred this appeal against the award passed by the reference Court in Land Acquisition Case No.121 of 2010. The original claimant has filed this application for condonation of delay caused in filing the cross-objection for enhancement of the compensation. The delay is not intentional one. The original claimant is illiterate person and not conversant with the legal provisions. There is reasonable and justifiable reason for condonation of delay and prayed for condonation of delay.

2. On the other hand, the learned counsel Mr. Vinay Rathi for the appellants submitted that there is inordinate delay without any satisfactory reason. Hence application deserves to be rejected.

3. He placed reliance on the decision of the Hon'ble Apex Court in ***New Okhla Industrial Development Authority Vs. Rameshwar @ Ramesh Chandra Sharma (Dead) Through Legal Heir and Another reported in 2022 SCC OnLine SC 1599*** wherein it is held:

“10. However, at the same time the acquiring body and the beneficiary of acquisition shall not be saddled with the liability of statutory benefits and the interest which may be available under the Land Acquisition Act, 1894 for the delayed period. In the present case the delay of 22 years can be said to be a substantial delay. However, as the claimants are held to be entitled the enhanced amount of compensation, in the facts and circumstances of the case, the High Court can be said to be justified in condoning the delay. However, at the same time, the High Court has erred in awarding other statutory benefits and interest for the delayed period. To saddle with the liability to pay statutory benefits and interest for the delay period upon the beneficiary/acquiring body would be a financial burden upon the public body and it may increase the project cost which shall be against the public interests. It cannot be disputed that the liability towards the statutory benefits and the interest under the Act, 1984 would be a huge liability considering the interest at the

rate of 15% per annum, solatium, price rise etc. Therefore, while condoning the delay and enhancing the amount of compensation at par with other land owners, the High Court ought not to have saddled the liability upon the appellant to pay statutory benefits and the interest payable under the Land Acquisition Act, 1894 for the delayed period. To the aforesaid extent the impugned common judgment and order passed by the High Court is required to be modified and the present appeals are required to be partly allowed to the aforesaid extent.”

4. He submitted that in view of the judgment of the Hon'ble Apex Court, the original claimants are not entitled for any statutory benefits including the interest payable under the Land Acquisition Act. He submitted that if delay is condoned, then it should be condoned subject to the condition that the claimant shall not be entitled to any statutory benefits including interest payable under the Land Acquisition Act.

5. On the other hand, learned counsel Mr. Nakshane, submitted that the claimant is entitled for statutory benefits which are compulsory, however, the claimant is ready to waive the right of interest payable on the enhanced amount of compensation. In support of his contention, he placed reliance on ***Dhiraj Singh (dead) through Legal Representatives and others Vs. State of Haryana and others reported in (2014) 14 SCC 127*** wherein it is held by the Hon'ble Apex Court that while considering the condonation of delay approach of the

court to be pragmatic and not pedantic. Substantive rights of appellant landowners cannot be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. He further placed reliance on *Narain Das Jain Vs. Agra Nagar Mahapalika, Agra reported in (1991) 4 SCC 212* wherein Hon'ble Apex Court has considered the aspect of statutory rights of the claimants regarding the statutory benefits and held that the importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the court "in every case" leaves no discretion with the court in not awarding it in some cases and awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made.

6. He also placed reliance on *Imrat Lal and others Vs. Land Acquisition Collector and others reported in (2014) 14 SCC 133* wherein delay of 1110 days in filing appeal for enhancement of compensation was condoned and it is held that judicial notice can be taken of the fact that the villagers in our country are by and

large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the courts or the advocates with whom they get in touch for redressal of their grievance.

7. Heard rival submissions of the parties.

8. The decision of the Hon'ble Apex Court in *New Okhla Industrial Development Authority (supra)* wherein delay of 22 years was condoned and therefore, Hon'ble Apex Court has considered that there is a substantial delay. However, considering the right of the party and in the interest of justice, the delay was condoned by disentitling the claimants from statutory benefits. Admittedly, earlier decisions are not referred in the judgment of *New Okhla Industrial Development Authority (supra)*.

9. In the present case, delay caused of 220 days. As observed by the Hon'ble Apex Court in earlier decision of *Narain Das Jain (supra)* that the importance of the award of solatium cannot be undermined. It is the statutory rights and it is the mandate for the Court to award the statutory benefits. Considering the various decisions of the Hon'ble Apex Court, the claimants cannot be restrained from getting the statutory benefits. However, considering the delay, the claimants are not entitled for the interest.

10. In view of the above circumstances, the application for condonation of delay is allowed, subject to the condition that the claimant shall not be entitled to any interest payable under the Land Acquisition Act for the period of delay.

11. The Civil Application is disposed of.

First Appeal No.1227 of 2017

The original claimant filed Pursis contending that this Court by its order dated 11.1.2018 has permitted to withdraw the entire amount out of which 25 % of amount was permitted to withdraw on furnishing solvent surety. Accordingly, respondent No.1 filed solvent security of his own house on its own. Now, the respondent No.1 requires the said security back. He is ready to furnish solvent surety/security fresh. The claimant shall furnish fresh solvent surety/security for the satisfaction of the Court. The old security be returned back to the respondent No.1.

(URMILA JOSHI-PHALKE, J.)

Sarkate