

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

WRIT PETITION NO.4207/2023

1. Smt. Shantabai Bhagwan Gomate,
aged about 65 Yrs., Occ. Agriculturist,
R/o Garkhed, Tq. Deulgaon Raja,
Dist. Buldhana.
2. Dwarkabai Ramrao Shingne,
aged about 70 Yrs., Occ. Agriculturist,
R/o Mandapgaon, Tq. Deulgaon Raja,
Dist. Buldhana.
3. Dnyandeo Yashwant Mante,
aged about 55 Yrs., Occ. Agriculturist,
R/o Garkhed, Tq. Deulgaon Raja,
Dist. Buldhana.

... Petitioners

- Versus -

1. The State of Maharashtra,
through its Secretary,
Irrigation Department,
Mantralaya, Mumbai 400 032.
2. The Sub-Divisional Officer and
Land Acquisition Officer,
Sindkhed Raja, Tq. Sindkhed Raja,
Dist. Buldhana.

... Respondents

Mr. R.N. Ghuge, Counsel for the Petitioners.

Mr. A.A. Madiwale, Assistant Government Pleader for
Respondent Nos.1 and 2.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 7.7.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

Heard. **Rule.** Rule made returnable forthwith.
Heard finally by consent of learned counsel for the parties.
Learned Assistant Government Pleader waives notice for the respondents.

2. Challenge raised is to the orders dated 10.11.2022 and 8.2.2023 passed by the Sub-Divisional Officer / Land Acquisition Officer, Sindkhed Raja rejecting the applications for condonation of delay in filing proceedings under Section 28A of the Land Acquisition Act, 1894 (for short “Act of 1894”).

3. The lands of the petitioners came to be acquired pursuant to the award passed under Section 11 of the Act of 1894. In terms of the order passed in Land Acquisition Case Nos.9/2002 and 215/2022 the petitioners preferred applications under Section 28A of the Act of 1894 seeking re-determination of the amount of compensation. Initially the said applications came to be rejected, after which the petitioners approached this

Court and the proceedings were remanded for fresh consideration. Thereafter since the Sub-Divisional Officer found that the applications were filed beyond the period of limitation, he refused to entertain the said applications. The petitioners again approached this Court and while remanding the proceedings, the petitioners were permitted to file fresh applications seeking condonation of delay. Pursuant thereto this exercise was undertaken and by the impugned orders the Sub-Divisional Officer has again rejected the said applications.

4. The learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in Civil Appeal No.17323/2017 (Karam Chand [dead] by L.Rs. and another V/s. State of Himachal Pradesh & another) decided on 27.10.2017 and submitted that the delay being of 175 days, the same could be condoned subject to depriving the petitioners of the benefit of interest for the period of delay. The learned counsel also seeks to rely upon the judgment of the Division Bench in Writ Petition No.5836/2017 (Mohd. Shakir Mohd. Jafar V/s. State of

Maharashtra and another) decided on 13.11.2019. It is, thus, submitted that an opportunity be granted to the petitioners to claim the enhanced compensation under Section 28A of the Act of 1894.

5. The learned Assistant Government Pleader opposes the aforesaid prayer by submitting that after considering the grounds raised by the petitioners the delay was not condoned hence no interference in the impugned orders is called for.

6. On hearing the learned counsel for the parties, we find that in the applications for condonation of delay the petitioners failed to give sufficient reason for having the delay condoned. They also failed to bring to the notice of the Sub-Divisional Officer the decision of the Hon'ble Supreme Court in Karam Chand (supra). We find that the provisions of Section 28A are beneficial in nature and following the course as indicated by the Hon'ble Supreme Court in Karam Chand (supra) an opportunity deserves to be given to the petitioners to seek condonation of delay.

7. Accordingly, the petitioners are permitted to file an additional application indicating the cause of delay and also by referring to the decision of the Hon'ble Supreme Court referred to hereinabove. It would be open for the Sub-Divisional Officer to deprive the petitioners of the amount of interest for the period of delay if the same is condoned. Accordingly, the following order is passed :-

The orders dated 10.11.2022 and 8.2.2023 are set aside. The petitioners are at liberty to file additional application before the Sub-Divisional Officer indicating the reasons for delay. After considering the judgment of the Hon'ble Supreme Court in Karam Chand (supra) the Sub-Divisional Officer shall pass orders in that regard. The entire exercise be completed within three months from today. Rule is made absolute in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)