

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

CIVIL APPLICATION (CAF) NO.2727 OF 2022
IN
FIRST APPEAL STAMP NO.18446 OF 2022

Suresh s/o Lobhaji Gawali

Vs.

The State of Maharashtra, through Collector, Akola and another

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

Court's or Judge's orders

Mr. Sharad M. Thakre, Advocate for appellant.
Ms. Shamsi Haider, AGP for respondent No.1.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06/02/2023

1. By preferring this application, the appellant is seeking condonation of delay of 5242 days which is caused in filing appeal.

2. As per the contention of the appellant, he is a senior citizen and illiterate person. The respondent No.2 had already challenged the award passed in Land Acquisition Case No.329 of 1997 vide First Appeal No.562 of 2006 which was dismissed in default. No proper legal assistance or advice was received by the appellant due to uneducated and illiterate background. After he got the knowledge of award, he applied for the certified copy, and thereafter he contacted his local counsel. As he received the advice to prefer an appeal, he approached to this Court, and therefore delay of 5242 days is caused in preferring this appeal.

3. It is submitted that the delay is not intentional one. Just and reasonable cause is mentioned by the appellant for condonation of delay, hence delay be condoned.

4. The said application is strongly opposed by the learned AGP appearing for the respondent No.1/State on the ground that the delay is not properly explained and no reasonable and justifiable reasons are mentioned for condonation of delay. Hence application deserves to be rejected.

5. Though, respondent No.2 is served with the notice and last opportunity was afforded to him, but none appear for the respondent No.2.

6. Heard learned advocate Mr. Thakre for the appellant. He submitted that considering the background that appellant is a senior citizen and illiterate person. He got the knowledge about the impugned judgment, and thereafter he applied for the copy which he had received on 04.10.2022. Thus, the delay caused is for justifiable reason. He further submitted that this Court has allowed the appeal of the same project by enhancing the compensation amount to the other claimants of the same village. The appellant should not suffer loss as he has not filed the appeal. He is also entitled for the same compensation, and therefore he be permitted to litigate the cause on merits. In support of his contention, he place reliance on **Ram Chander (Deceased) through his legal representatives**

and others Vs. Union of India and another reported in (2020) 15 SCC 491 wherein Hon'ble Apex Court has condoned the delay of 6593 days by observing that giving of parity with similarly situated landowner is must. It is further held that if a similarly situated landowner has received higher compensation, which in fact the High Court had noted, the High Court should have allowed the benefit of such higher compensation to the appellants, if required, by making it clear that for the period of delay no interest shall be payable to the appellant landowners. The above course of action has, in fact, been adopted by Supreme Court in several other cases where compensation on a par has been awarded minus interest for the period of delay in approaching the Court.

7. In view of the principles laid down if the facts of the present case are considered, it is admitted position that the other landowners received the enhanced compensation, and therefore the present appellant cannot be deprived from getting the enhance compensation merely because he filed the appeal at a belated stage. Considering the same, the delay deserves to be condoned subject to the waiver of the interest.

8. In the result, I proceed to pass following order.

ORDER

- (i) Civil Application No.2727 of 2022 is allowed.
- (ii) The delay of 5242 days is condoned, subject to the

waiver of interest for the said delayed period.

(iii) Appeal be registered.

First Appeal No. _____/2023

1. Call record and proceedings.
2. Mr. Thakre, learned Advocate for the appellant further submitted that the issue is already covered by the earlier judgment of this Court, hence paper-book be dispensed with.
3. Considering the same, paper-book is dispensed with.
4. Stand over after four weeks.

(URMILA JOSHI-PHALKE, J.)

Sarkate