



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CIVIL APPLICATION NO. 2416 OF 2023
IN
CIVIL APPLICATION NO.9364 OF 2017
IN
REVIEW APPLICATION STAMP NO.32049 OF 2016
IN
WRIT PETITION NO.5982 OF 2008

Kaduba Vithoba Salunke And Another
VERSUS
The State Of Maharashtra Through The Secretary And Another
And Another

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Advocate for Applicant : Mr.D.A. Bide h/f Mr.T.C. Sonawane
AGP for Respondent no.1: Mr. V.M. Kagne
Advocate for Respondent 2 : Mr. Ruturaj Patil

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WITH
CIVIL APPLICATION NO. 11058 OF 2024 IN 9364/2017
IN RA ST 32049/2016 IN WP 5982/2008

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CORAM : MANGESH S. PATIL AND
S. G. CHAPALGAONKAR, JJ.

Dated : January 16, 2025

ORDER :-

1. We have heard both sides not only in respect of restoration application. The original petitioners are seeking restoration of the civil application for condoning the delay of more than 2000 days in seeking review of the order passed in the writ petition way back in the year 2009.

2. We restore the civil application.

3. We have heard both sides not only in respect of the civil application seeking condonation of delay, but merits of the review application, as well with their consent.

4. Learned advocate appearing for the petitioners would take us through the chequered history. He would submit that the petitioners had rightly filed the writ petition seeking compensation in respect of the fruit bearing trees, which were not part of the Award passed in the year 2004. However, by order under review in the wake of the fact that petitioners had challenged the Award and reference was pending presumably under section 18 of the Land Acquisition Act, disposed of the petition. He would submit that due to lack of communication between advocate of the petitioners in the High Court and before the reference Court, Reference was settled in Lok-Adalat on 29.11.2009. However, the petitioners were not compensated for the fruit bearing trees and this gives rise to them a right to seek a review. He would also advert our attention to the documents demonstrating that independently even the Land Acquisition Officer and the department were alive about rights of the petitioners in seeking compensation

for fruit bearing trees. They had resorted to necessary inquiry. A panchnama was conducted, valuation was ascertained and still petitioners/claimants were made to enter into settlement in the Lok-Adalat without compensating in respect of the fruit bearing trees. He would submit that there is no reference in the terms of settlement about the compensation being agreed upon was inclusive of the valuation of the fruit bearing trees.

5. Learned advocate appearing for respondent no.2, referring to the affidavit-in-reply would strongly opposes the request for condoning the delay on the ground that delay is huge and remains unexplained.

6. Independently, learned advocate would submit that inspite of the petitioners being alive to the fact that a writ petition was dismissed by the order under review in the wake of the fact that Reference preferred by them was pending adjudication was indicative of the fact that this Court was considering the claim to be raised in the reference. The petitioners having suffered that order and having failed to take appropriate steps during pendency of the reference for claiming compensation in respect of the fruit bearing trees and subsequently, agreeing for the settlement, would seal the fate

of their claim in respect of the fruit bearing trees. He would submit that there are no sufficient and relevant grounds admissible in law even for entertaining the review application on merits.

7. The fact qua the sequence of the events, are not in dispute. Being aggrieved by the Award passed in the year 2004, admittedly, a reference was made under section 8 of the Land Acquisition Act. Simultaneously, writ petition was preferred seeking compensation in respect of the fruit bearing trees. The writ petition was disposed of with following order :-

“This petition has been filed to challenge the action of the respondents in not including the compensation payable for fruit bearing trees, house, well and land in the Field Block No.335 situated at village Golatgaon, Tq. & Dist. Aurangabad. It is the case of the petitioner that an award has been passed without taking into consideration the aforesaid factors.

Award has been passed in 2004. A reference has already been made for enhancement. In these circumstances, we see no reason to interfere in this petition after such a prolonged delay. Petition rejected.

It is quite evident that it is only in the wake of the fact that reference was already made for enhancement that the writ petition was rejected. Admittedly, petitioners did not challenge it. Even if it is a matter of record that some exercise

was undertaken for determining valuation of the fruit bearing trees, that had happened before the parties settled the matter before Lok-Adalat on 29.11.2009. Agreeing upon *inter alia* quantum of compensation to be enhanced. Conspicuously, inspite of being aware about rejection of writ petition by order under review, petitioners had consciously agreed for terms of the settlement. They did not reserve any right in them to claim compensation in respect of the fruit bearing trees, which was subject matter of the writ petition. Even, no liberty was sought while Court was passing the order under review for including the claim in the reference that was pending.

8. In the wake of these circumstances, in our considered view, there is neither an explanation for condoning enormous delay of more than 2000 days in seeking the review and there is not even a merit in the Review Application. Delay condonation together with the review application are **dismissed**.

9. Civil application no.11058 of 2024 stands allowed. Amendment to be carried out by tomorrow.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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