



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 5147 OF 2013 IN FAST/9044/2013
Kamalbai Jaharsingh Vasave
VERSUS
The State Of Maharashtra And Another
WITH
CIVIL APPLICATION NO. 5138 OF 2013 IN FAST/8504/2013
WITH
CIVIL APPLICATION NO. 5139 OF 2013 IN FAST/9036/2013
WITH
CIVIL APPLICATION NO. 5148 OF 2013 IN FAST/9038/2013
WITH
CIVIL APPLICATION NO. 5140 OF 2013 IN FAST/9042/2013
WITH
CIVIL APPLICATION NO. 5143 OF 2013 IN FAST/9048/2013
WITH
CIVIL APPLICATION NO. 5144 OF 2013 IN FAST/9052/2013
WITH
CIVIL APPLICATION NO. 5142 OF 2013 IN FAST/9056/2013
WITH
CIVIL APPLICATION NO. 5141 OF 2013 IN FAST/9154/2013
WITH
CIVIL APPLICATION NO. 5145 OF 2013 IN FAST/9156/2013
WITH
CIVIL APPLICATION NO. 5146 OF 2013 IN FAST/9158/2013

.....

Mr. M. K. Deshpande, Advocate for the Applicants
Ms. Chaitali Chaudhari-Kutti, AGP for respondent-State
Mr. A. D. Pawar, Advocate for Respondent No.2

.....

CORAM : SHAILESH P. BRAHME, J.

DATED : 07TH MAY, 2025

PER COURT :-

- . Heard both sides.
2. Applicants are praying for condonation of delay ranging

from 440 to 441 days in preferring First Appeals for enhancement against judgment and award passed by the Reference Court i.e. Civil Judge Senior Division, Nandurbar. Acquisition proceedings are for the self-same project in which lands of the applicants were acquired resulting into filing of references. Those references were decided commonly by forming their groups and judgment was rendered on 29.09.2011. Appeals with applications are filed belatedly, on or about 11.03.2013. Applications were circulated and first orders were passed on 17.04.2013, issuing notices to the respondents. In pursuance of that, respondents appeared in the matter and they are contesting the present applications.

3. Mr. M. K. Deshpande, learned Counsel for the petitioner tenders on record a chart showing necessary details, which is marked as Exhibit-X and treated to be part of record.

4. Mr. Deshpande, learned Counsel appearing for the applicants submits that delay has been explained in paragraph Nos.2 to 4 of the applications, which is not intentional. Applicants are the Tribals. There are no malafides in preferring the appeals belatedly. It is submitted that they have lost the substantial source of income for very meager

amount of compensation. It is further contended that all applications were promptly circulated in the year 2013 itself, however, those were not listed before the Court for further consideration. It is the duty of the office also to place the matter for further consideration once appearances have been caused. The applicants can not be held responsible for the lapses from 2013 to 2025.

5. Learned Counsels Mr. Ajay Pawar and Ms. Chaitali Chaudhari-Kutti would vehemently oppose the submission of the applicants. They would submit that delay is inordinate and the grounds are not convincing. They would further contend that in the given facts and circumstances, applicants are not entitled to claim statutory benefit and interest for the delayed period as well as for the period of 12 years in case they succeed in their appeal. They would point out that from 2013 to 2025, no steps were taken by the applicants to circulate the matters soliciting the orders. In case the applicants succeed, they will be paid compensation from the public exchequer.

6. I have considered rival submissions of the parties, the common judgment and award passed in 2011 is under

challenge in these appeals. After filing of the appeals alongwith application for condonation of delay on or about 11.03.2023, applications were circulated for the first order on 17.04.2013. Notices were issued in pursuance of which the respondents have caused their appearances. First order was solicited promptly.

7. I have gone through the grounds mentioned in Civil Applications for condonation of delay. Those have not been seriously disputed by the respondents. They did not file affidavit-in-reply to contest the proceedings. Acquisition appears to be for the project of 'Nesu' in the rural and tribal area. The submission of the learned Counsel for the applicants that applicants are Tribals and they are deprived of their lands, cannot be overlooked. I propose to adopt the pragmatic approach in condoning delay and hearing the appeals on merits.

8. Perusal of the orders which are pressed into service by the respondents in *Ramsing Raghunatsing Pardeshi Vs. State of Maharashtra*, on **13.12.2021** then in a group of appeals in *Pandurang Dodhu Dhekale Vs. Collector, Jalgaon and others* on **09.11.2022** and in matter of *Uttam Dagadu Patil*

(deceased) Vs. State of Maharashtra on **16.11.2022**, shows a common thread that after filing of the appeals alongwith application for condonation of delay, no steps were taken by those applicants to circulate applications soliciting first orders. In that context, those applicants were deprived of the statutory benefit and interest not only for the delayed period but also for the period of their lapses, for not circulating the matter in time. Due to this distinguishing fact, I find that the course adopted by the co-ordinate benches in those matters cannot be made applicable in the present case.

9. I have carefully gone through the discussion, especially in paragraph 5 of the order dated 09.11.2022 in the group of appeals of *Pandurang Dodhu Dhekale Vs. Collector, Jalgaon and others*. Those observations are in the context of the fact, that appeals were filed in 2019 with applications for condonation of delay and those were not circulated till 2021 and it was treated to be circulation delay.

10. I am of the considered view that it is the duty of the office also to list the matters once they become ready after appearances of the respondent parties. Simultaneously, I cannot be oblivious of the fact that a duty is cast upon the

applicant also to take circulation once matters become ready.

11. After appearances of the contesting parties in the present matter from 2013 to 2025, the matters did not come up for 12 years for further consideration before the Court. These lapses of 12 years cannot be attributed to the applicants, exclusively. By balancing the equities, I propose to deprive the applicants for the statutory benefit and interest for 6 years from 2013 to 2025, which is 50% of period. In that view of the matter, I pass following order:

ORDER

- i. Civil Applications for condonation of delay stand allowed on condition that applicants shall not be entitled to statutory benefit and interest for the delayed period and for further period of 6 years in each appeal.
- ii. Additionally, applicant shall furnish an undertaking that they shall not claim statutory benefit and interest for the delayed period as well as for the period of 6 years as stated above.
- iii. Office shall register the First Appeals.

(SHAILESH P. BRAHME, J.)