

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13740 OF 2023
IN RAST/31454/2023 IN WP/3806/2020

The Executive Engineer
Minor Irrigation Division No.1,
Aurangabad Through
Umesh S/o Vishwanathrao Wankhede,
Age: 42 Years, Occ. Service at
Sinchan Bhavan, Jalna Road,
Aurangabad.

..Applicant
(Ori. Respondent No.5)

Versus

1. Murlidhar S/o Rama Veer (Died)
through Legal Representatives
- 1.A. Suman Wd/O Murlidhar Veer
Age: -55 years, Occu:-Household
- 1.B. Kailash Murlidhar Veer
Age:-38 years, Occu:- Agri.
- 1.C. Vilas Viuriidhar Veer
Age:-35, Occu:- Agri.
- 1.D. Deepak Muriidhar Veer
Age:-33, Occu:- Agri.

[1-A To i-D ali R/o Golaragaon, Tq. and
Dist-Chhatrapati Sambhajinagar.
(Aurangabad)]

2. Shyamrao S/o Rama Veer
Age: 60 years, Occu: Agriculture,
R/o. Golatgaon, Taluka and
District: Aurangabad
3. Dagadu S/o Rama Veer
Age: 69 years, Occu: Agriculture,
R/o. Golatgaon, Taluka and
District: Aurangabad
4. Ashok S/o Gunjaba Dhongade

(2)

Age: 51 years, Occu: Agriculture,
R/o. Golatgaon, Taluka and
District: Aurangabad

5. Shobhabai Govind Kahite
Age: 54 years, Occu: Agriculture,
R/o. At: Lalwadi, Post: Golatgaon,
Taluka and District: Aurangabad
6. Ramkorabai Bharat Kahite
Age: 51 years, Occu: Agriculture,
R/o. At: Lalwadi, Post: Golatgaon,
Taluka and District: Aurangabad
7. Shamsing S/o Shivlal Kahite
Age: 49 years, Occu: Agriculture,
R/o. At: Lalwadi, Post: Golatgaon,
Taluka and District: Aurangabad
8. Rupchand S/o Jayram Kahite
Age: 74 years, Occu: Agriculture,
R/o. At: Lalwadi, Post: Golatgaon,
Taluka and District: Aurangabad
9. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
10. The Divisional Commissioner,
Aurangabad.
11. The Collector,
Aurangabad.
12. Special Land Acquisition Officer
/Deputy Collector (Land Acquisition),
Krishna Khore Vikas Mahamandal,
Aurangabad.

..Respondents

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Advocate for Applicants : Mr. Rajendra Deshmukh, Senior Counsel i/b
Mr. Shyam C. Arora

AGP for Respondent/State : Mr. S.D. Ghayal

Advocate for Respondent Nos.1A to 1D, 2 to 8 : Mr. B.R. Kedar

Advocate for Applicant in CA/486/2024 : Ms. Anjali Dube

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**CORAM : R.G. AVACHAT &
S.G. MEHARE, JJ.**

RESERVED ON : MARCH 11, 2025

PRONOUNCED ON : MARCH 18, 2025

ORDER :

1. The applicant/original respondent no.5 in writ petition has preferred this application for condonation of delay caused in preferring the review of the judgment and order of this Bench passed in Writ Petition No.2806 of 2020 dated 09.12.2021.

2. The applicants are seeking condonation of delay of 552 days mainly on the ground that much time has been spent over obtaining the necessary sanctions and opinions from the superior authorities and its department as well as the legal opinion from the competent authority. The another ground for condonation of delay was that the higher authorities made the correspondence with the Collector, Aurangabad over the subject matter by confining to the aspect of execution of the sale deed by the petitioners by giving their consent and by also confining the fact that revival of the rate of land at a higher rate would cause severe financial loss to the State Government and it would open the flood gate of claims. The ground which is very casual raised is of no information by the counsel representing the present petitioner. However, during the course of arguments, the petitioner did not press into service the said ground. Orally, it has been argued that the Collector was proposed to file the

review application. Therefore, the applicant was under impression that the Government would file the review application. However, the Government did not file the review application as there was inordinate delay. The applicant has good grounds on merit in review particularly on the ground that respondent nos.1 to 8 had submitted the written consent on 25.09.2018 for accepting the rates of Jirayat lands and thereafter, executing the registered sale deeds on 10.01.2019.

3. The contesting respondent nos.1 to 8 have filed their reply and strongly opposed the application. Narrating the brief facts of the petition, the application is mainly opposed contending that the failure of the counsel to intimate them is without his affidavit. The compensation is to be paid without interest and the applicant is beneficiary. Hence, they are deliberately delaying the payment of compensation of the land. This Court has considered the factum of not granting an opportunity while reducing the compensation and no notice of such meeting was given to them. The Committee has concluded that the lands acquired were perennial and seasonal irrigated lands. Therefore, the compensation has to be paid for the same category. The ground of spending time over obtaining the sanction has also been assailed contending that on 28.09.2022, the Sub Divisional Officer i.e. the SLAO had communicated to the applicant by reminder letter No.1 that the review application against

the impugned judgment and order is to be filed within 15 days by giving personal attendance in the matter, in consonance of which the Sub Divisional Engineer communicated to the applicant on 24.11.2022 that Advocate Mr. Arora has been appointed to file review and by supplying the documents to him necessary steps be taken within the time limit. However, after around ten months, this review application has been filed. For this ten months, the applicant has no explanation. Day-to-day delay has not been explained. There is no justifiable ground to condone the delay. The delay is not deliberate nor intentional is not sufficient to be condoned. There is no sufficient cause mentioned in the application.

4. Learned senior counsel Mr. Deshmukh has vehemently argued that the petitioners have good case on merit. The applicant is a State. Normally, the State has to obtain various sanctions from the higher authorities to file the petitions. The same procedure was followed and the time was spent. There is no deliberate and intentional delay in preferring the review application. To bolster his arguments, he relied on the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, Collector Land Acquisition, Anantnag and Anr Vs. Mst. Katiji and Others, AIR 1987 SUPREME COURT 1353, Indian Oil Corporation Ltd and Ors Vs. Subrata Borah Chowlek and others, 2010 (14) SCC 419, N. Balakrishnan Vs. M. Krishnamurthy, AIR 1998

SUPREME COURT 3222 and Shakuntala Devi Jain Vs. Kuntal Kumari and Others, AIR 1969 SUPREME COURT 575. Relying on these case laws, he vehemently argued that the State or a public body or an entity representing a collective cause should be given some acceptable latitude while considering the delay condonation application. There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. Day-to-day delay is not required to be explained. Huge public money has been involved in the matter. The exorbitant rates have been decided by the Committee without considering the burden on the Government Exchequer and opening the flood gates of identical claims. He also argued that 'everyday delay must be explained' does not mean that the pedantic approach should be made. The Court should be liberal while condoning the delay in case of State which depends upon its officials for its action. Here, the petitioner is a State. So, the time spent for official formalities could not be considered deliberate and negligence. There was no negligence nor inaction nor malafide. Therefore, the doctrine of 'sufficient cause' would not apply. He also argued that if the application is allowed, no serious prejudice would be caused to the contesting respondents. The petitioner showing his bonafide has deposited 50% of the estimated compensation as per the Court's order. Considering the facts in toto,

the delay caused in preferring the review application deserves to be condoned.

5. Per contra, learned counsel Mr. Kedar for the contesting respondents has vehemently argued that the judgment under review was passed on 09.12.2021. On 15.12.2021, the respondents made a representation to implement. Referring to the judgment and order under review, he submits that the petition was allowed since the revised compensation award passed was without giving them opportunity of ascertaining the fact. Since the orders were not complied with, the contempt proceeding was filed and six months thereafter, this delay condonation application is filed. Since the contempt was filed, it cannot be said that the applicant was unaware of the judgment under review. While determining the compensation by the Committee, present applicant was the member to that Committee. The Committee decided the issue pursuant to the order under review. Therefore also, it cannot be said that there is no deliberate delay. It was a complete inaction of the applicant in not taking the decision appropriately.

6. The contention that since the Government was considering to file the review application they did not move ahead is unsustainable. The applicants are benefited by protracting the matter. Hence, no delay could be condoned. The application is not bonafide. It is a sheer negligence of the applicant. Referring to the case of Esha

Bhattacharjee (supra), relied upon by the applicant, he would argue that lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. The applicant being a State, no different rule could be applied. The explanation offered is concocted and fanciful. No delay could be condoned. It is an increasing tendency to perceive delay in executing the judgment and orders.

7. He also referred to the case of Collector Land Acquisition, Anantnag (supra) and argued that there must be sufficient cause to condone the delay. The applicant being a State seeking condonation of delay is altogether irrelevant and the rule of sufficient cause is not excluded.

8. Referring to the communication disclosed in his reply dated 24.11.2022, he has vehemently argued that though the petitioner appointed the lawyer, the application was not filed at the earliest. Such a conduct shows the negligence and taking it for granted that the delay would be condoned howsoever long it is. He also argued that the object behind filing such application is to delay the payment of compensation to the poor agriculturists and it is the substantial ground to reject the application. A recent award passed by the Committee is based upon the applicant's own document which

prima facie established that the lands acquired were perennial or seasonal irrigated lands. There is absolutely no sufficient ground to condone the delay and keep the contesting respondents/agriculturists away from their statutory right to get the compensation. He also vehemently argued that not a single paper is placed on record to show the bona fide that they are pursuing the matter with higher authorities for getting sanction and necessary approvals. Therefore, the bare words are not sufficient to believe the applicants.

9. It is trite the Court should adopt a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay. The Courts are not supposed to legalise injustice but are obliged to remove injustice. The condonation has been sought mainly on the ground that the petitioner spent time over for getting sanction and approval from the authorities. However, no details of such communication has been explained in the application. The delay is inordinate. Therefore, the applicant was supposed to explain the sufficient cause. The Hon'ble Supreme Court in the case of Esha Bhattacharjee (supra) has laid the principle applicable to the application for condonation of delay. One principle was that the term "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation. The rule giving the

acceptable latitude to the State could not be as straight jacket formula. The State has to bring the material before the Court to believe that there was sufficient cause for not approaching the Court in time. Such latitude could not be granted mechanically more particularly without supporting material. The petitioner only being a State could not be given a different treatment for the reasons that the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag (supra) has laid down the law that the rule of condonation of delay is irrelevant and different for the State and private party. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay.

10. The case of Indian Oil Corporation Ltd (supra) would also not help the petitioner because there was a huge delay. Though the Court should take liberal view while condoning the delay in case of State, it is not supported with the official action.

11. The brief facts of the writ petition needs to be produced to understand the view expressed in the judgment under review. The acquisition proceeding was declared lapsed. Then the applicants offered the petitioners to purchase their lands directly by private negotiation on inviting their consents. Accordingly, the consent was given. The District Level Compensation Determination Committee was constituted to determine the compensation. In the meeting dated 30.06.2017, the Committee had approved the rates proposed therein.

In another meeting dated 11.10.2017, a detailed report was submitted and the rates were determined. After the said determination, the petitioner requested the Committee to review the rates. Without any communication for hearing to the petitioner, the Committee determined the rates on 24.04.2018 and finally, revised the rate on 29.08.2018. The petition was allowed considering no opportunity of hearing was granted to contesting respondents and considering the dispute over the type of land. The Committee was again directed to re-determine the compensation. Thereafter, the Committee had passed the award of which the applicant appears to be aggrieved of.

12. We have gone through the submissions of the respective counsels and satisfied that in the absence of any cogent and reliable material, it could not be believed that there was a sufficient cause in not preferring the review application in time. Even there is also no explanation to satisfy the Court that the delay was not deliberate. The ground of opening the flood gates was also raised in the writ petition in which the judgment under review was passed. The writ petition was restricted to the petitioners only and on the basis of the facts, they were claiming that their lands were irrigated. However, the Committee erroneously considered it Jirayat land. We are not satisfied with the grounds of the application. Hence, we pass the following order :

ORDER

- (i) The application stands dismissed.
- (ii) No order as to costs.

(S.G. MEHARE,, J.)

(R.G. AVACHAT, J.)