



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

19 CIVIL APPLICATION NO. 1225 OF 2024
IN FAST/34551/2023

Asaram Mahadu Thube Died Thr Lrs Yashodabai Died Thr Lrs
Mahadvrao Asaram Thube And Ors

VERSUS

The City And Industrial Development Corp. Of Maharashtra Thr
Administrator Aurangabad And Ors

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Mr. Shubham Jayabhar h/f. Mr. D. R. Jayabhar, Advocate for Applicants

Mr. S. S. Dande, AGP for Respondent/State.

Mr. S. V. Deshmukh, Advocate for respondent No.1.

Mr. Choudhary Nityanand @ Nitin S., Advocate for respondent No.3.

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CORAM : ROHIT W. JOSHI, J.

DATE : 10th MARCH, 2025

P.C.:

1. The land owners has filed appeal under Section 54 of the Land Acquisition Act, 1894 seeking enhancement in compensation awarded by the learned reference court vide judgment and award dated 08.01.2008.

2. There is a delay of 5679 days in filing the appeal. The present application is moved seeking condonation of delay of said period. It is stated in the application that the delay in filing appeal is due to financial difficulties. The application has also made reference to appeals by other land owners, whose lands have been acquired for the same

project and which are pending for adjudication before this Court.

3. The learned Counsel for respondent No.1/acquiring body strongly opposes the application. He points out that the total amount of compensation granted is Rs.94,00,000/- and odd, out of which 50% of the amount is withdrawn by the applicants in the year 2011 and further 25% amount is withdrawn in the year 2019. He therefore contends that the reason mentioned in the application is absolutely false and the delay is grossly inordinate. In that view of the matter the learned Counsel prays for rejection of the application.

4. I have heard the respective submissions as aforesaid. Had it be a case other than a case under Land Acquisition Act, the application would have been certainly rejected having regard to the reason mentioned in the application which is obviously incorrect. The learned Counsel for the applicant does not dispute the statements made at the bar by the learned Counsel for respondent No.1 that amount of Rs.70,00,000/- and odd along with interest is withdrawn by the applicant on two occasions i.e. in the year 2011 and 2019.

5. However, the appeal arises out of acquisition of land under the Land Acquisition Act. The respondents have acquired the land of the applicants exercising eminent domain. Section 28-A of the Land

Acquisition Act provides that even if a land owner does not make reference, he is entitled to same amount of compensation as is awarded on adjudication of a reference. Section 28-A provides that even if a person does not dispute the quantum of compensation awarded by Land Acquisition Officer and does not seek reference for enhancement of compensation, yet he is entitled to get enhanced amount of compensation as per adjudication of reference of other land owners covered by the same notification under Section 4 of the Land Acquisition Act, provided he applies for the same. It is now well settled that judgement in appeal under Section 54 of the Land Acquisition Act, is also the starting point of limitation for making application under Section 28A, legal position in this regard is clarified by the Hon'ble Supreme Court in the matter of *Banwari and Others Vs. Haryana State Industrial and Infrastructure Development Corporation Limited and Anr.* reported in 2024 SCC Online SC 3685. In view of the aforesaid scheme of the Land Acquisition Act, I am inclined to condone the delay although I am not satisfied with the explanation offered for the condonation of delay. However in order to balance the equities the delay is condoned subject to condition that appellant shall not be entitled to interest on the enhanced amount of compensation (market value + statutory benefit) for the period of delay. Apart from this, having regard to the explanation offered which is apparently not

correct, it is necessary to impose cost of Rs.50,000/- on the applicant.

6. In the circumstances, I proceed to pass the following order:-

ORDER

(i) Delay of 5679 days in filing First Appeal seeking further enhancement in compensation awarded in Land Acquisition Reference No.700 of 2019 decided vide judgment and award dated 08.01.2008 is condoned subject to payment of cost of Rs.50,000/- to be paid with the Registry i.e. the Committee consisting of learned Registrar (Administration) of the High Court, Bench at Aurangabad and the Medical Officer of the High Court Medical Dispensary, Aurangabad, and also on the condition that the appellants will not be entitled for interest on the enhanced amount of compensation, if any, (market value + statutory benefits) for the period of delay.

(ii) Civil application disposed of.

FIRST APPEAL (ST.) NO.3455 OF 2023

7. Admit the appeal after cost is paid.

8. Call Record and Proceeding after appeal is registered on payment of cost.

9. Learned AGP waives for respondent/State. Learned Advocate Mr.Deshmukh waives for respondent No.1. Learned Advocate Mr.Choudhary, waives for respondent No.3.

[ROHIT W. JOSHI J.]

Narwade/