HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

7 SECOND APPEAL NO.83 OF 2019
WITH CA/2072/2019 IN SA/83/2019 WITH CA/5259/2019 IN SA/83/2019

AGRICULTURAL PRODUCE MARKET COMMITTEE
VERSUS
TANAJI PREMRAJ GUNJAL, DIED, THROUGH ITS L.RS. MEERABAI TANAJI GUNJAL AND OTHERS
...

Advocate for Appellant : Shri M.S. Karad h/f Shri Thombre S.S.
Advocate for Respondent nos. 1A to 1D, 2A to 2E, 5 : Shri N.K. Kakade h/f Shri D.A. Naik
AGP for Respondent nos.3 & 4: Shri A.P. Basarkar
…..

CORAM: V.L. ACHLIYA, J.

DATE: 30.09.2019

PER COURT :

1] Being aggrieved by order dated 29.9.2018 passed in Civil Miscellaneous Application No.172/2017 by District Judge-12, Aurangabad, rejecting the application seeking condonation of delay filed alongwith the appeal challenging the judgment and decree dated 18.1.2016 passed in Regular Civil Suit No.62/2001, the appellant –

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original defendant no.3 has preferred this appeal.

2] Heard learned counsel for the appellant and the respondents. Perused the judgment and decree passed by the trial Court as well as the impugned order passed by the first appellate Court.

3] In brief, it is the contention of learned counsel for the appellant that the order passed by the first appellate Court to reject the application seeking condonation of delay is not sustainable in law and same is against the settled principles of law laid down by various judicial pronouncements made by this Court as well as the Apex Court. It is submitted that in gross suppression of fact regarding the acquisition of the suit land and passing of award by the Land Acquisition Officer, the plaintiffs have filed the suit seeking following relief:-

> "A] The suit of the plaintiffs may kindly be allowed and decreed as follows.
>
> B] That, plaintiffs be declared as the owners of the suit over the suit land S.No.8 to the extent of 2 Acres and 08 Gunthe, situated at village Jadhavwadi Tq. And Dist.Aurangabad.
>
> C] That, it is further be declared that the notices issued by defendant no.1 to the plaintiff

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dt.06/01/2001 for hearing on review of the judgment dt.25/07/2000 in file No.98/MAG/ROR/CR/21 and order thereon dt.09/05/2001 are to be declared illegal, null and *void ab initio* and same is to be cancelled and which are not binding upon plaintiffs.

D] That, defendants, their servants, agents, relatives or any other person on behalf of them may kindly be restrained from obstructing and interfering into the peaceful possession of the plaintiffs land S.No.8, situated at Jadhavwadi Tq. And Dist.Aurangabad by issuing the decree of perpetual injunction to the extent of 2 Acre 08 Gunthe land which is in possession and enjoyment of the plaintiffs.

D-1] Direct the defendant no.2 and 3 jointly and severally to pay the compensation in respect of 1 Acre 12 Gunthe land at present market rate to the plaintiffs.

E] To pass any other equitable relief in favour of plaintiffs and to meet the ends of justice and oblige."

4] By making false and misleading averments, the decree has been secured in respect of the land, which was already acquired and in respect of which compensation has been paid by the acquiring body and received by plaintiffs. It is submitted that though the appellant –

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defendant no.3 appeared in the matter, due to fault on the part of its officials, the written statement was not filed. It is submitted that the possibility of decree being obtained by practising fraud upon the Court in connivance with the officials who were working with the appellant – APMC cannot be ruled out under the facts and circumstances of the case. It is further contended that the order dated 25.7.2000, though was set aside by the appellate authority was made basis to get the decree passed in suppression of said order. After the appellant got the knowledge about the decree passed, preferred appeal alongwith the application seeking condonation of delay.

5] The first appellate Court has rejected the application seeking condonation of delay on technical ground by observing that the delay of 460 days caused in filing appeal has not been properly explained. It is submitted that in the catena of cases decided by this Court as well as Apex Court, it has been held consistently that while dealing with the application seeking condonation of delay, the Court must adopt liberal and pragmatic approach especially in the cases in

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which the Government makes out a case that in public interest, it is necessary to condone the delay on account of acts of fraud committed on the part of its officers. It is further submitted that the suit filed by plaintiffs is not maintainable in law. The jurisdiction of Civil Court is barred under law to entertain challenging the acquisition of land under the Land Acquisition Act. In support of the submissions, the learned counsel has placed reliance on the following rulings:-

1] *State of Bihar v. Dhirendra Kumar & others* (**AIR 1995 SC 1955**)

2] *Municipal Corporation, Gwalior v. Ramcharan (D) by Lrs. & others* (**AIR 2003 SC 2164**)

3] *Shyam Sunder Sarma v. Pannalal Jaiswal & others* (**2005 (1) Mh.L.J. 340**)

4] *State of Karnataka v. Y. Moideen Kunhi (Dead) by Lrs. & others* (**MANU/SC/0715/2009**)

5] *State of Punjab v. Amarjit Singh* (**2011) 14 SCC 713**

6] *Pushkaraj v. V.V. Industries & others* (**MANU/MH/3370/2018**)

6] It is submitted that the land which is acquired and in possession of the plaintiffs and in respect of which the decree has been passed by the trial Court is a valuable land situated within city of Aurangabad. While

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dealing with an application seeking condonation of delay, the Court has adopted a very narrow and technical approach. The consequences to follow on account of refusal to condone delay have not been considered while passing the impugned order. In the background of overall facts of the case and number of documents placed on record, such as award passed by Land Acquisition Officer, possession receipt / panchanama, the order passed by appellate / revisional authority to set aside order dated 25.7.2000, the communication received from the office of Deputy Inspector of Land Records that the map relied by respondent – plaintiff for the purpose of filing of suit not prepared and issued by their department, the FIR registered against the respondent – plaintiff to create bogus documents etc., the learned counsel submits that there is good case to succeed on merit. It is submitted that the impugned order by first appellate Court is against the law settled by the Apex Court.

7] On the other hand, the learned counsel for the respondents opposed the admission of the appeal with contention that the appeal raises no substantial question of law. It is submitted that even if the facts pleaded

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in the application seeking condonation of delay are taken to their face value, still the appellant / applicant is entitled to seek condonation of delay in filing appeal. It is pointed out that even after securing the certified copies of judgment and decree, the appeal has been presented after a period of more than eight months. The delay in filing appeal after receipt of certified copies of judgment and decree has not been explained on the part of appellant. It is submitted that in order to get the delay condoned, it was incumbent for the appellant to prove the existence of sufficient cause in not filing appeal within time. It is submitted that the suit proceeded without written statement as the appellant though appeared but failed to file written statement. In spite of affording several opportunities, the defendant / appellant has not filed written statement.

8] So far as merits of the case of respondent is concerned, the learned counsel submit that there is absolutely no merit in the contention of the appellant that the suit land forms the part of land acquired and put in possession of appellant. By referring the certificate issued by the Land Acquisition Officer, the

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learned counsel submit that the land in question was never acquired land in the alleged acquisition proceeding. In support of the submission that delay does not deserve to be condoned, the learned counsel have referred and relied upon the decision of Apex Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others* (**2013 AIR SCW 6158**).

9] On due consideration of the submissions advanced in the light of overall facts of the case, I am of the view that the appeal deserves to be admitted on following substantial question of law:-

> "Whether the impugned order is against the settled principles of law laid down in the matter of condonation of delay ?

9] Hence, the following order:-

O R D E R

A] Admit.

B] Learned counsel waive service of notice for respective respondents on admission of appeal.

C] Print is dispensed with.

D] Hearing of the appeal is expedited.

E] Pending disposal of the appeal, *status quo*

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in respect of the suit property be maintained as on today.

F] By consent, list the appeal for final hearing on 17.10.2019.

(V.L. ACHLIYA, J.)

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