

**(2024) 02 GUJ CK 0048**

**In the Gujarat High Court**

**Case No :** R/Civil Application (For Condonation Of Delay) No. 790 Of 2024 In F/  
First Appeal No. 3073 Of 2024

Babu Punjabhai (Expired)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision :** 13-02-2024

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2024) 02 GUJ CK 0048

**Hon'ble Judges :** Devan M. Desai, J

**Bench :** Single Bench

**Advocate :** Krushnakant D Patel, Kiran Udasi, Aditya D Davda

**Final Decision :** Allowed

## Judgement

Devan M. Desai, J

1. Rule. Learned Assistant Government Pleader appears on advance copy, waives service of notice of Rule for respondent-State.
2. Heard learned advocates for the respective parties.
3. By way of present application filed under Section 5 of the Limitation Act, 1963, the applicants have prayed to condone delay of 1437 days caused in preferring captioned First Appeal on the reasons stated in the application.
4. Learned advocate for the applicants has submitted that in similar group of Land Acquisition Reference Cases, the delay has been granted by this Court, the copy of the order dated 09.02.2024 passed in Civil Application (For Condonation of Delay) No.724 of 2024 in F/First Appeal No.3077 of 2024 by this Court which is taken on record. Learned advocate for the applicants has further submitted that the applicants are not much literate and they are poor agriculturists. He has further submitted that the applicants was not aware about the procedure of the Court of law which could enable them to file Appeal within limitation. Learned

advocate for the applicants would also emphasize on the decision of the Hon'ble Supreme Court in case of K. Subbarayadu & Ors vs. The Special Deputy Collector, ( Land Acquisition) reported in 2017 ( 12) SCC 840 and would submit that considering the law laid down by the Hon'ble Supreme Court, the applicants-appellants would also waive their right to claim for interest upon enhanced compensation, if any, during the period of delay.

5. Per contra, this application is vehemently opposed by the learned Assistant Government Pleader Mr. Aditya D. Davda for respondent-State by making submission that delay has not sufficiently been explained and whereas under such circumstances, the application may not be considered by this Court.

6. Heard the learned advocates for the respective parties and perused the documents on record and also perused the decisions of the Hon'ble Apex Court in case of Collector, Land Acquisition, Anantnag and Anr. Vs. Msr. Katji and Ors. reported in AIR 1987 SC 1353 and Dhiraj Singh ( Dead) Through Legal Heirs Vs. State of Haryana and Ors. reported in 2014 (14) SCC 127 relied upon by the learned advocate for the applicants.

7. The Hon'ble Apex Court in case of Collector, Land Acquisition, Anantnag (supra) has observed as thus:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

8. The Hon'ble Apex Court in case of Dhiraj Singh (supra) has observed as thus :

"we can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually

guided by their covillagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of halfbaked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer, or the Reference Court have been granted relief." In Samiyathal v. Tahsildar decided on 5-7- 2013, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation."

9. Furthermore, this Court also relies upon the decision of the Hon'ble Apex Court in case of K. Subbarayudu and Ors. (supra), whereby the Hon'ble Apex Court has inter alia condoned delay considering the submission on part of the claimants therein that they would not claim interest on the enhanced amount for the delay period.

10. Having regard to the law laid down by the Hon'ble Supreme Court, more particularly whereby an application for condonation of delay is required to be considered liberally and further having regard to the statement made by learned advocate for the applicants, upon instructions and as per the decision of the Hon'ble Supreme Court in case of K. Subbaryadu & Ors (supra) in the considered opinion of this Court the present Civil Application deserves consideration.

11. Delay of 1437 days which has occurred in preferring First Appeal challenging Judgment and Decree dated 22.11.2017 passed by learned Principal Senior Civil Judge, Khambhaliya in Land Reference Case No. 199/1993 in group Land Acquisition Reference (LAR) Nos.177 to 183, 186, 190 to 191, 193, 195 to 196, 198 to 202, 205, 207 to 209 of 1993 is condoned, subject to the condition that the claimants shall not claim interest upon enhanced compensation, if any, for the period of delay.

12. With these observations and direction, the present Civil Application stands allowed. Rule is made absolute to the aforesaid extent.