

(2008) 02 GUJ CK 0099
In the Gujarat High Court

Case No : Civil Application-for Condonation of Delay No. 944 of 2008 in First Appeal (Stamp Number) No. 2982 of 2007 to Civil Application-for Condonation of Delay No's. 953 of 2008 in First Appeal (Stamp Number) No. 2991 of 2007

Narmada Yojna Main Canal Vibhag and Others	APPELLANT
Vs	
Thakarsibhai Govindbhai Since Decd. thro" Ravjibhai and Another	RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1), 23(2), 28, 4

Citation : (2008) 02 GUJ CK 0099

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Gupta, for Trivedi and Gupta, for the Appellant; K.M. Sheth and Maulik Nanavati, for the Respondent

Judgement

D.N. Patel, J.—These Civil Applications have been preferred for condonation of delay of 1909 days in preferring the First Appeals, against the common judgment and award dated 15th December,2001 passed by learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Case Nos. 129 of 1999 to 139 of 1999.

2. Looking to the reasons given in this Civil Application, it appears that judgment and award passed by the Trial Court on 15th December,2001 and the application to obtain certified copy was moved on 15th December,2001 and the same was received on 29th June,2002. The Office of the District Government Pleader, Mehsana has given an opinion for filing of the appeal on 18th July,2002. On 7th October,2002, the Legal Department of the State, accepted the judgment and award dated 15th December,2001 and, therefore, concerned Department of Sardar Sarovar Narmada Nigam Limited has started the requisite procedure and amount of compensation was deposited on 24th May, 2004. The claimants preferred execution application for recovery of the interest u/s 23(1)(a) and 23(2) of the Land Acquisition Act. This amount was deposited before the District

Court and the same has been withdrawn by the claimants. Again, the applications were preferred by claimants to revive earlier execution application by the claimants, inter alia, requesting for the remaining amount i.e., interest amount "from the date of taking over of the possession or issuance of Section 4 notification, whichever is earlier", as directed in the impugned judgment and award.

3. Learned counsel for the applicant submitted that this is an error apparent in the impugned judgment and award and the aforesaid judgment and order runs contrary to proviso to Section 28 of the Land Acquisition Act. If the overall financial burden is calculated, it approximately, comes to Rs. 1.50 Crores for the entire group of matters. Learned counsel for the applicants submitted that Section 4 notification was issued on 30th December,1995, whereas possession of the land was taken on 27th November,1998 and, therefore, interest is to be given from 27th November,1998 and not from 30th December,1995, as per proviso to Section 28 of the Land Acquisition Act. The amount of interest calculated from 27th November,1998 is deposited, as per the submission made by learned Counsel for the applicant. It appears from the facts of the case that this aspect of the matter was not considered and there was a mistake on their part and, therefore, delay has been caused in preferring the First Appeal.

4. Learned counsel for the respondents has vehemently opposed the condonation of delay and submitted that already First Appeals were preferred against the judgment and award and final decision has been given by this Court also. Learned counsel for the respondents submitted that there are no reasonable reasons for condonation of delay and, therefore, delay may not be condoned.

5. Having heard the learned Counsel for both the sides and looking to the reasons given in this Civil Application, it appears that there are reasonable reasons for condonation of delay. The reasons given in this Civil Application are sufficient enough for condonation of delay. It appears that initially, Legal Department of the State received an opinion to prefer an appeal by the office of District Government Pleader, Mehsana, on 18th July, 2002, but, the Legal Department of the State informed to the office of the District Government Pleader, Mehsana, of accepting judgment and award dated 15th December,2001 passed by the Trial Court. Subsequently, the acquiring body realized that the direction given by impugned judgment and award, was directly opposite to proviso to Section 28 of the Land Acquisition Act. The amount of interest ought to be paid from the date on which, the possession was taken whereas the trial court has awarded the interest from the date on which the notification u/s 4 is published or from the date of taking over the possession, whichever is earlier. In fact, this overburdens, the applicant to pay approximately more than Rs. 1.50 Crores in all the matters. It also appears that the present applicant is the acquiring body and there was a bonafide mistake on the part of the acquiring body in not preferring First Appeal in time. As soon as, this aspect was realized by the present applicant, immediately the First Appeal was preferred. In fact,

interest from the date of taking over the possession of the property i.e., 27th November, 1998 is deposited, as per submission of learned Counsel for the applicant and paid to the claimant whereas further application has been moved by the original claimant to get additional interest from 30th December, 1995, which is date of publication of notification u/s 4 of the Land Acquisition Act, which has resulted in filing of the First Appeal, along with delay condonation application.

6. In view of the aforesaid facts and reasons and no prejudice is going to be caused to the respondents, if delay is condoned, otherwise also, as per proviso to Section 28 of Land Acquisition Act, acquiring body i.e., petitioner has deposited amount of compensation along with interest w.e.f. 27th November, 1998 (date on which possession is taken by S.S.N.N. Ltd.). It is also alleged that this amount has been withdrawn by the claimants. As a cumulative effect of these reasons, delay in preferring the First Appeal is hereby condoned. Rule made absolute with no order as to costs. The Registry is hereby directed to enlist the aforesaid First Appeals on the board on 7th March, 2008.