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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION OBJECTION NO. 120 OF 2012
IN
CROSS OBJECTION (ST) NO. 11215 OF 2012
IN
FIRST APPEAL NO. 1563 OF 2003**

Narayan Tatya Chalke (since deceased)
through his legal heirs & legal
representatives -
Harishchandra Narayan Chalke & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr. Rajiv L. Patil for the Applicants

Ms. Manisha Mhaispurkar, AGP for the State

CORAM : SMT. V.K. TAHILRAMANI, J

DATE : 20th JULY, 2012.

P.C.:

1. The present application is filed by the Respondents in the First Appeal. The First Appeal arises out of an award made under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The Applicants are the original Claimants in the Reference. The First Appeal is preferred by the Respondent-State of Maharashtra for challenging the award under section 18 of the said Act. The acquisition relates to lands situated at Village Karanjade, Taluka Panvel, District Raigad. The lands were notified for acquisition by issuing a notification under section 4 of the said Act on 03rd February, 1970 for the public purpose of setting up



of satellite city of Navi Mumbai. An award was made under section 11 of the said Act on 18th September, 1986. According to the Claimants, the compensation offered was very low, hence, Reference was made. In the reference under section 18 of the said Act, a claim was made at the rate of Rs.25/- per sq meter. By the impugned Judgment and award, the learned Reference Court has fixed the market value at the rate of Rs.18/- per sq meter. The learned Judge also granted statutory benefits to the Claimants.

2. The First Appeal is preferred by the State of Maharashtra praying for quashing and setting aside the said award. The First Appeal was admitted on 27th April, 2004. The Respondents in the claim petition filed a memorandum of cross-objection on 10th April, 2012 seeking an enhancement in compensation awarded by the Reference Court. The claim made by the Respondents-Claimants in the cross-objection is for the market value at the rate of Rs.25/- per sq meter. The present application is filed praying for condonation of delay of 7 years and 6 months and 23 days in preferring the Cross-Objection in the First Appeal.

3. The submission of the learned counsel appearing for the Respondents-Claimants is that the Cross-objection has been filed before the First Appeal could be placed for final hearing. His submission is that considering the scheme of Rule 22 of Order XLI of the Code of Civil Procedure, 1908, the Court has to adopt a liberal approach while condoning the delay in



filing Cross-objection. He submitted that the case is covered by a decision of this Court dated 31st March, 2008 in Civil Application No. 4588 of 2006 in First Appeal No. 1081 of 1991¹. He stated that in the aforesaid decision of this Court, delay of 12 years in filing Cross Objection was condoned.

4. The learned Assistant Government Pleader appearing for the Applicants submitted that there is a gross unexplained delay of 7 years and more in preferring Cross-objection and the delay should not be condoned.

5. I have carefully considered the submissions. The reasons for delay set out in the Civil Application are (i) the applicants are poor agriculturists; (ii) they were not aware of legal provisions and (iii) they were under an impression that once Appeal is prepared, then the Appellate Court once again considers the matter afresh and therefore, they will get enhanced rate. They were not aware that they would have to file separate First Appeal or Cross Objection for enhanced compensation. In addition, the learned counsel for the Claimants pointed out that in the case of adjoining lands, a higher compensation than that awarded in the reference has been awarded by this Court.

6. It is an admitted fact that the claimants have approached this Court with memorandum of Cross-objection very much during the pendency of the substantive First Appeal. Therefore, when this Court considers the First Appeal, this Court would have to

¹ Jana Rama Chimane & Ors Vs The State of Maharashtra



consider the decision wherein higher compensation was granted, to see whether they are applicable to the present case. Moreover, it is well settled law that while considering the application for condonation of delay under section 5 of the Limitation Act, the Court has to adopt a liberal and justice oriented approach. In view of the above facts and in view of the decision of this Court in the case of Jana Chimane (Supra), I am inclined to pass the following order:-

- i. The Application is allowed in terms of prayer clause (a) subject to the Respondents in the Appeal paying costs of Rs. 1000/- to the State of Maharashtra within a period of 12 weeks from today. The deposit of amount of costs in this Court within the stipulated period will be treated as a sufficient compliance with this order.
- ii. It is made clear that payment of costs will be a condition precedent.
- iii. If amount of costs is paid within the stipulated time, the Cross-Objection shall be registered and shall be placed for final hearing along with First Appeal before the appropriate Court;

Application disposed of.

[SMT. V.K. TAHILRAMANI, J]

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