

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 24899 of 2006****With****SPECIAL CIVIL APPLICATION NO. 27357 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **YES**

2 To be referred to the Reporter or not ? **NO**

3 Whether their Lordships wish to see the fair copy of the judgment ? **NO**

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? **NO**

5 Whether it is to be circulated to the civil judge ? **NO**

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EXECUTIVE ENGINEER....Petitioner(s)

Versus

DHIRUBHAI HARIBHAI PATEL &amp; 2....Respondent(s)

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Appearance:

MR KM PARIKH, ADVOCATE for the Petitioner(s) No. 1

MS NISHA THAKORE, AGP for the Respondent(s) No. 3

MR AD DESAI, ADVOCATE for the Respondent(s) No. 1 - 2

RULE SERVED for the Respondent(s) No. 1 - 3

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH****Date : 28/03/2013****ORAL JUDGMENT**

1. As common question of law and facts arise in these group of petitions they are disposed of by this common judgment and order.

1.1. Special Civil Application No. 24899/2006 has been preferred by the petitioner-Western Railway-acquiring body to quash and set aside the impugned order dated 21/04/2006 passed by the learned Presiding Officer, 1<sup>st</sup> Fast Track Court, Sabarkantha at Himatnagar in C.M.A. No. 131/2005 by which the learned Judge has dismissed the said application preferred by the petitioner to condone the delay of approximately seven years in preferring the review application to review the judgment and award passed by the learned Reference Court dated 15/09/1998 in Land Reference Case No. 3008/1989.

1.2. Special Civil Application No. 27357/2006 has been preferred by the petitioner-Western Railway-acquiring body to quash and set aside the impugned order passed by the learned Presiding Officer, 1<sup>st</sup> Fast Track Court, Sabarkantha at Himatnagar in C.M.A. No. 130/2005 by which the learned Judge has dismissed the said application preferred by the petitioner to condone the delay of approximately seven years in preferring the application to review the judgment and award passed by the learned Reference Court dated 15/09/1998 in Land Reference Case No. 3009/1989.

2. The facts leading to the present Special Civil Applications in a nutshell are as under;

2.1. The lands of the respondents-original land owners came to be acquired for the purpose of Kapadvanj Modasa Railway. The Land Acquisition Officer declared the award under Section 11 of the Land Acquisition Act (hereinafter referred to as 'the Act') in Land Acquisition Case No. 25/1979. The original land

owners were not satisfied with the amount of compensation awarded by the Land Acquisition Officer and, therefore, they made applications for Reference to the District Court, which were numbered as Land Reference Case Nos. 3008/1989 and 3009/1989. In the said Reference Cases, the petitioner was joined as opponent no. 2 and vide judgment and award dated 15/09/1998 the learned Reference Court partly allowed the Reference Cases and awarded compensation for the acquired land at the rate of Rs.40/- per sq meter. Being aggrieved and dissatisfied with the judgment and award dated 15/09/1998 passed by the learned Reference Court in Land Reference Case Nos. 3008/1989 and 3009/1989, the petitioner-acquiring body preferred appeals before this Court. It appears that there was delay in preferring the appeals and, therefore, the petitioner preferred Civil Application Nos. 598/2000 and 599/2000, which came to be dismissed by this Court vide order dated 01/03/2000. The orders passed by this Court dated 01/03/2000 in Civil Application Nos. 598/2000 and 599/2000 have attained finality as the said orders were not carried further in appeal. It appears that in the meantime and before even the aforesaid applications came to be dismissed by this Court, the original claimants preferred Execution Petitions before the learned executing Court to execute the judgment and award dated 15/09/1998 passed in Land Reference Case Nos. 3008/1989 and 3009/1989. By order dated 29/07/2006 the learned executing Court allowed those applications and directed the petitioner to pay/deposit the amount as per the judgment and award passed in the aforesaid Land Reference Cases. It appears that being aggrieved and dissatisfied with the order passed by the executing Court, the petitioner preferred Special Civil Application No. 9065/2007 submitting

that the claimants were not entitled to receive interest on solatium awarded by the District Court and the learned Single Judge vide order dated 23/01/2008 dismissed the said Special Civil Application. It appears that prior to the aforesaid order passed by the learned Executing Court, however after a period of five years from the date of dismissal of Civil Application No. 598/2000 and 599/2000, the petitioner preferred Review Applications before the learned Reference Court to review the judgment and award dated 15/09/1998 passed in Land Reference Case Nos. 3008/1989 and 3009/1989 by which the learned Reference Court awarded compensation at the rate of Rs.40/- per sq meter, mainly on the ground that in other reference cases earlier the reference Court awarded compensation at the rate of Rs.7.50 per sq meter, which was not pointed out to the learned Reference Court at the time when the Reference Court decided the Land Reference Case Nos. 3008/1989 and 3009/1989. As there was delay of approximately seven years in preferring the review application, the petitioner submitted C.M.A. No. 130/2005 and 131/2005 requesting to condone the delay and by impugned orders the learned Judge has dismissed the said applications by observing that no sufficient cause has been shown for condonation of delay. Being aggrieved and dissatisfied with the impugned orders passed by the learned Presiding Officer, Sabarkantha at Himatnagar dated 21/04/2005 in C.M.A. Nos. 131/2005 and dated 19/04/2006 in C.M.A. No. 130/2005, the petitioner has preferred the present Special Civil Applications under Article 227 of the Constitution of India.

3. Shri K.M. Parikh, learned advocate has stated at the bar that he has instructions to appear on behalf of the petitioner

and he shall file the Vakalatnama on behalf of the petitioner within a period of one week from today.

4. Under the circumstances, this Court heard Shri K.M. Parikh, learned advocate appearing on behalf of the petitioner and Ms. Lopa Bhatt, learned advocate appearing on behalf of the contesting respondents-original claimants.

5. Shri K.M. Parikh, learned advocate appearing on behalf of the petitioner has vehemently submitted that the learned Judge has materially erred in not condoning the delay in preferring the Review Application. It is submitted that as such the petitioner had a strong meritorious case and if the Review Application is allowed, in that case, sizable amount of a public body can be saved and, therefore, the learned Judge ought to have condoned the delay. It is further submitted by Shri Parikh, learned advocate appearing on behalf of the petitioner that by impugned judgment and order dated 15/09/1998 passed in Land Reference Case Nos. 3008/1989 and 3009/1989 the learned Judge awarded compensation to the original claimants at the rate of Rs.40/- per sq meter. However, it had come to the knowledge of the petitioner that with respect to the very project for other lands acquired under the said notification in other Land Reference Cases earlier the Reference Court awarded compensation at the rate of Rs.7.50 per sq meter, however, the same was not brought to the notice of the learned Reference Court and, therefore, when the Review Application was submitted by the petitioner to point out the aforesaid facts, as there was delay in preferring the application for review, the learned Judge ought to have condoned the delay in preferring the Review Application. It is

submitted that as such the learned Judge ought to have appreciated that there was no *mala fide* intention in not preferring the application within the period of limitation. Making the above submissions, it is requested to allow the present Special Civil Applications.

5. The present petitions are opposed by Ms. Lopa Bhatt, learned advocate appearing on behalf of the contesting private respondents-original claimants. It is submitted that as such no error has been committed by the learned Judge in rejecting the applications to condone the delay of approximately more than seven years. It is submitted that as such no sufficient cause has been shown to condone the huge delay of seven years and, therefore, relying upon the decisions of the Hon'ble Supreme Court in the case of **Postmaster General and Ors. Vs. Living Media India Ltd and Anr.** reported in **(2012) 3 SCC 563** and in the case of **Lanka Venkateswarly (D) by Legal Heirs Vs. State of A.P. & Ors.** reported in **AIR 2011 SC1199**, it is requested to dismiss the present Special Civil Applications.

6. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the judgment and award passed by the learned Reference Court, which were sought to be reviewed, have been passed in the month of September, 1998 and as such the same came to be challenged by the petitioner before this Court alongwith the delay condone application and the same came to be dismissed by this Court as far back as in the year 2000. Thereafter, after a period of five years, the petitioner submitted an application to review the judgment and award

passed by the Reference Court dated 15/09/1998. As such, no cause has been shown at all to condone the delay of approximately seven years. It cannot be disputed that as such when the Appeals were preferred before this Court in the year 2000 alongwith the delay condone application they can be said to be aware of the impugned judgment and award passed by the learned Reference Court dated 15/09/1998 in Land Reference Case Nos. 3008/1998 and 3009/1998. Not only that even subsequently the Execution Petitions were also filed. As no sufficient cause has been shown to condone the huge delay of seven years, considering the decision of the Hon'ble Supreme Court in the case of **Postmaster General and Ors. (Supra)** and in the case of **Lanka Venkateswarly (D) by Legal Heirs (Supra)**, no error and/or illegality has been committed by the learned Judge in dismissing the delay condone applications. It is required to be noted that the judgment and award has been passed by the learned Reference Court in the year 1998 and till date i.e. after a period of 15 years the original claimants are waiting for the compensation for the lands, which has been acquired in the year 1987-1988.

7. Considering the aforesaid facts and circumstances of the case, both the applications fail and are accordingly dismissed. Rule is discharged. In the facts and circumstances of the case, no order as to costs.

**(M.R.SHAH, J.)**

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