

GAHC010195102023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2788/2023

THE UNION OF INDIA AND 2 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 11001.

2: THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
NEW DELHI.

3: THE COMMANDANT
34 BN.
CRPF
KATIMARI
NAGAON
ASSAM

VERSUS

DEPUTY COMMISSIONER AND 2 ORS.
NAGAON, DISTICT NAGAON, ASSAM.

2:HARESHWAR BORAH
S/O LATE KAMALESWAR BORA

R/O LAOKHUWA ROAD
NORTH HAIBORGAON
NAGAON TOWN
P.O. AND P.S.- NAGAON
DIST.- NAGAON
ASSAM
PIN- 782002.

3:MADHUMITA BORAH
W/O HARESHWAR BORAH

R/O LAOKHUWA ROAD
NORTH HAIBORGAON
NAGAON TOWN
P.O. AND P.S.- NAGAON
DIST.- NAGAON
ASSAM
PIN- 782002

Advocate for the Petitioner : MR. R K D CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : Date:30.01.2024

The applicants have filed an application under Section 74 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereinafter 'the 2013 Act') read with Section 5 of Limitation Act, 1963 praying for condonation of 440 days of delay in preferring the connected Land Acquisition Appeal against the judgment and award dated 25.02.2022 passed by the learned District Judge -cum Land Acquisition Rehabilitation and Re-settlement Authority (hereinafter 'the L.A.R.R.A') , Nagaon in reference (LA) case No. 1/2018.

2. The background of the case leading to the appeal is that the respondents Nos. 2 and 3 had preferred a reference under Section 64 of the Act being aggrieved with the action of the Deputy Commissioner, Nagaon in granting them a lumpsum compensation for acquiring several parcels of land belonging to them under the Act.

3. The respondent No. 2 was the absolute owner of a plot of land measuring 46 bighas 4 kathas under several Dag nos. of Reng Beng village under Kothiatuli Mouza, Nagaon. Except the land under the periodic patta No. 68, 69, 70 and 71 which were agricultural lands, the rest of the lands belonging to him were declared as Class-1 commercial land as per the approval of the Deputy Commissioner vide order, dated 28.06.2013.

4. The respondent No. 3 being the wife of the respondent No.2 was similarly the owner

of a plot of land measuring 27 bighas under periodic patta No.2 and Dag Nos. 291, 292, 302, 346 and 347 in the same village and Mouza of the same district. There was a double storeyed RCC building over her land and the value of which was assessed by the PWD as Rs.1, 44, 48, 757/- on 30.03.2013 and the said plots of lands were also declared as Class-1 commercial lands.

5. The land acquisition process was initiated in the year 2012 vide LA Case No. 37/2013. After due survey and report from various authorities, said plots of land of the respondents were found to be suitable for establishment of 'battalion camping site of CRPF' and preliminary notification was issued on 28.06.2016. Subsequently, the land of respondents were taken into possession on 17.08.2016 and the respondents were paid a lumpsum amount of compensation in part and they received a sum of Rs.9,69,60,000/- under protest on 02.08.2016.

6. The manifold grievances made by the respondents before the District Judge-cum -L.A.R.R.A, Nagaon and the written statement invited from the opposite parties was laid before the L.A.R.R.A, Nagaon at the time of hearing and after hearing both the parties, compensation was awarded in favour of the respondent Nos. 2 and 3.

8. It was urged by the learned counsel for the applicants that the Union of India in the Ministry of Home Affairs or the authorities in the Central Reserve Police Force were not impleaded as respondents in the Reference (LA) 1/2018. The learned District Judge, Nagaon passed impugned Judgment and award against the sole respondent therein i.e. the Deputy Commissioner, Nagaon as the applicants were not aware of the proceeding before the Reference court.

9. It is also submitted that being aggrieved by the judgment and award dated 25.02.2022, the sole respondent in reference LA Case No. 1/2018 i.e. the Deputy Commissioner, Nagaon had preferred LA Appeal No. 11/2022 before this court which was dismissed vide Judgment and Order dated 24.01.2023 with the observation that the Deputy Commissioner by any stretch of imagination cannot be held to be an aggrieved party either by the quantum or any other matter in an award duly passed by the authority constituted under the new Act.

10. It is also the submission of the learned counsel for the applicants that the Deputy Commissioner, Nagaon by his letter dated 19.04.2023 forwarded the copy of Judgment and award to Commandant 34 BN CRPF which was received on 21.04.2023. Then the applicant came to know about the proceedings before the Reference Court and the High Court through the letter as aforesaid for the first time. After examination of the matter, Commandant 34 BN CRPF referred the matter to the DIG (Law) on 17.05.2023 and intimated 34 BN that CRPF has no role in the acquisition proceeding and determination of compensation / price of the land and further directed to submit all the relevant documents to the legal cell of the department and the Director General, CRPF accorded approval on filing of appeal against the judgment and award of the District Judge in LA Reference Case No.1/2018. In the process there has been a delay of 440 days from the date of knowledge in filing the connected LA Appeal.

11. According to the learned counsel for the applicants, the Government has already paid around 10 crores to the respondents due to acquisition of their lands. The applicants have no knowledge regarding the subsequent proceeding pending in the court of District Judge, Nagaon as because the applicants were not made parties in the said proceeding and as such, the compensation was awarded in favour of the respondents without hearing the present applicants. It is also submitted that the applicants have a good arguable case on merit and as such, the delay may be condoned to advance substantial justice.

12. The respondent Nos. 2 and 3-in-person have filed objection by stating that earlier delay condonation application along with a connected appeal was filed on 16.06.2022 vide I.A. (Civil) 2141/2022 and LA Appeal No. 11/2022 before this Court by the Deputy Commissioner, Nagaon challenging the said Judgment and award dated 25.02.2022 passed by the District Judge-cum – L.A.R.R.A in LA Reference Case No. 1/2018 and subsequently the delay was condoned by this court vide order, dated 15.11.2022.

13. The respondent-in-person also pleaded that the LA Appeal No.11/2022 preferred by the Deputy Commissioner, Nagaon in connection with LA Reference Case No. 1/2018 was dismissed by this Court on 24.01.2023 wherein it was held that the Deputy commissioner in any stretch of imagination cannot be held to be an aggrieved party either by quantum or any other matter in an award duly passed by the authority. According to the respondent-in-person, the said Judgment and award dated 24.01.2023 has attained finality in law as

because as per Section 74 of the Act, only one appeal is provided to the High Court against an award passed by the authority under Section 69 of the Act and subsequent filing of appeal by one or more parties is prohibited as per well settled principle of law declared by the Hon'ble Apex Court.

14. By referring the judgment in *Surinder Pal Soni –vs- Sohan Lal (D) through LR & Ors* in Special Leave petition No. 26508/2018 and pointing out the law on "Doctrine of Merger", learned respondent- in- person has quoted as follows- " the settled position of law is that the logic underlining the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court had disposed of the list either way- whether the decree or order under appeal is set aside or modified or simply confirm, it is the decree or order of the superior court, tribunal or authority which is the final binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which could have been laid shall have to be kept in view."

15. The respondent- in-person further submits that it is, therefore, very well settled that it is not permissible for the parties to reopen the concluded judgments of the court as the same may not only tantamount to an abuse of the process of the court but would have far reaching adverse effect on the administration of justice.

16. It is also submitted by the respondent –in-person that Section 66 of the 2013 Act gives jurisdiction to the District Judge –cum- cum -L.A.R.R.A to cause service of notice on reference under Section 64 to the applicant i.e. land losers, all persons interested in the objection and the collectors. It is also pointed out that in its very specific terms, Union of India in the Ministry of Home Affairs or the requiring body i.e. CRPF is not included in Section 66. Therefore, Union of India in the Ministry of Home Affairs or the authority in CRPF cannot be added nor can be included, nor can be read into under Section 66. This is because Union of

India or CRPF is not a part of Section 66. Therefore, Union of India or the requiring body i.e. CRPF cannot become a party either to contest or to take part or to appear and adduce evidence in reference LA Case No. 1/2018.

17. It is further submitted that provisio to Sub-Section 2 of Section 95 of 2013 Act stipulates that the Union of India or the requiring body i.e. CRPF shall not be entitled to demand a reference to the LA authority concerned under section 64. Therefore, the question of making Union of India in the Ministry of Home Affairs or the requiring body i.e. CRPF as respondent in reference LA Case No. 1/2018 does not arise at all.

18. It is also stated that in Section 64 (1) of the 2013 Act , it is the collector who is required to refer the matter to the authority for determination of just and fair compensation. Therefore, it is essentially the Deputy Commissioner of the District who is required to be only respondent in the said reference LA Case No. 1/2018 as the requiring body i.e. CRPF authority has no role to play in the acquisition proceeding.

19. The learned respondent-in-person also contended that the interlocutory application filed by the applicants praying for condoning the delay of 440 days far exceeds the limitation period prescribed under Section 74 of Clause -(1) of 2013 Act which being a code by itself is a special law prescribed a limitation period different from the Limitation Act, 1963 and therefore, Section 5 of the Limitation Act, 1963 is not applicable to Section 74 (1) of 2013 Act as it prescribes a specific period of limitation different from what is prescribed under Article 116 of the Schedule of the Limitation Act. Accordingly, respondent -in-person has prayed for dismissal of the interlocutory application.

20. The learned respondent -in-person has also cited some other case laws:

1. Civil Appeal No. 1434/2023 (*Experian Developers Pvt.Ltd. -vs- Himanshu Dewan and Sonali Dewan & Ors.*)
2. State of Arunachal Pradesh -vs- NEFA Udhyog & Ors decided on 09.06.2004
3. Nivruti G.Ahire -vs- State of Maharashtra decided on 13.06.2007
4. Kunjay Ammed & Ors -vs- State of Kerala & anr. Decided on 19.07.2000

21. The learned Government Counsel, Mr. K.K. Bhattacharyya representing the State of Assam, i.e. the Deputy commissioner, Nagaon submits that he has no objection if the prayer of the applicants is allowed by condoning the delay of 440 days as because the matter pertains to huge amount of public money for payment to the respondent Nos. 2 and 3 from the government exchequer.

22. I have considered the submission of learned counsel for the parties and I have also perused the case laws relied on by the respondent- in- person.

23. Section 5 of Limitation Act reads as follows:

“5. Extension of prescribed period in certain case- any appeal or any application other than an application under any of the provision of Order XXI of the Code of Civil Procedure 1908 may be admitted after the prescribed period, if the appellant or the applicant satisfy the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

Explanation : the fact that the appellant or the applicant was misled by any order practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of the Section.”

24. The law of limitation is based on the legal maxim “*Interest Reipublice Ut Sit Finis Litium*” which means that it is for the general welfare that a period be put to litigation. It is more than settled that no litigant benefits by approaching the court late. Without any good cause none would like to have its claim extinguished.

25. In the case of *Collector, Land Acquisition, Anantnag –vs- Musstt.Katiji* reported in (1987) SCC 107, the Honb’le Supreme court has observed as follows-

"The legislature has conferred the power to condone delay by enacting [Section 5](#) of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose

for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiable liberal approach in matters instituted in this Court.

But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- 1. Ordinary 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 non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or of 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.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with

the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

26. In the case of [N. Balakrishnan Vs. M. Krishnamurthy](#), reported in (1998) 7 SCC 123, the Hon'ble Supreme Court has observed the following:-

"It is axiomatic that condonation of delay is a matter of rt discretion of the court [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory.

Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

*Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted of time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court*

has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide [Shakuntala Devi Jain Vs. Kuntal Kumari, AIR 1969 SC 575](#) and [State of West Bengal Vs. The Administrator, Howrah Municipality, AIR 1972 SC 749](#).

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary of guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

27. In *S. Ganesharaju (dead) through LRs. Vs. Narasamma (dead) through LRs.* reported in (2013) 11 SCC 341, the Hon'ble Supreme Court in no unequivocal terms held that expression "sufficient cause" as appearing in [Section 5](#) of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice and unless the opposite party is able to show mala fides in not approaching the Court within the prescribed period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matters on merits, meaning thereby that such technicalities have been given a go-by. It is apt to reproduce the following observations:-

"12. The expression "sufficient cause" as appearing in [Section 5](#) of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the Court within the prescribed period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matters on merits, meaning thereby that such technicalities have been given a go-by."

"14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his of cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rt rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that the appellants have shown sufficient cause seeking condonation of delay and the same has been explained satisfactorily."

28. In the case of [B.S. Sheshagiri Setty and others Vs. State of Karnataka and others](#), reported in (2016) 2 SCC 123, the Hon'ble Supreme Court has held the following observations:-

"28. If a statute does not prescribe the time limit for exercise of revisional power, it must be exercised within a reasonable time frame. In the instant case, it is evident that constant litigation has been carried on by the appellants, and therefore they cannot be accused of suddenly waking up after 13 years to claim their land. Further, in the context of limitation, it has been held by this Court in a catena of cases that when what is at stake is justice, then a technical or pedantic approach should not be adopted by the Courts to do justice when there is miscarriage of justice caused to a public litigant.

29. A three judge bench of this Court in the case of [State of Haryana v. Chandra Mani](#) (1996) 3 SCC 132 has held as under: (SCC pp. 135036, para 7) rt "The doctrine must be applied in a rational common sense pragmatic manner. 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 non- deliberate delay. 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. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

30. More recently, a two Judge bench of this Court observed in the case

of [*Dhiraj Singh v. State of Haryana*](#) (2014) 14 SCC 127 as under: (SCC p. 131, para 15) "15.....The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations."

29. In the case of [*Post Master General and others Vs. Living Media India Limited and others*](#) ; reported in (2012) 3 SCC 563, the Hon'ble Supreme Court refused to condone the delay on the ground that the affidavit filed by the appellant therein clearly indicated that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties. The following observations have been made by the Hon'ble Supreme Court:-

"26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned.

Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were of well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance

substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

Accordingly, the appeals are liable to be dismissed on the ground of delay."

30. From the conspectus of various judgments of Hon'ble Supreme court, it would not be too farfetched to conclude that when inordinate delay occurs due to sheer lethargy and negligence on the part of the government authorities in taking decision to approach appropriate forum/ court of law and such delay remains unexplained the courts would undoubtedly refuse to exercise its discretion to condone the delay. But once, it is established on record that there was no deliberate inaction, lethargy or willful deliberate negligence or malafides on the part of the government authorities in taking decision then in such situation, technical or pedantic approach should not be adopted by the courts to do the justice and in such cases, the approach of the court would be governed by the principles laid down by the Hon'ble supreme Court in the case of Katiji (supra).

31. Now coming to the provision of Section 74 of the 2013 Act which reads as follows:

"74. Appeal to High Court.-(1) The Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. (2) Every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

Explanation.--For the purposes of this section, "High Court" means the High Court within the jurisdiction of which the land acquired or proposed to be acquired is situated."

32. On a bare look at the aforesaid provision, it reveals that against the order passed under Section 69 of the 2013 Act, an appeal can be filed within a period of 60 days from the date of award and/or if the appellant satisfies the court that it was prevented by sufficient cause from filing the appeal within the said limitation, he could prefer an appeal within further period not exceeding 60 days. Since in the case in hand, appeal has been filed beyond the period of 120 days (60 + 60 days) from the date of award, the question which remains to be decided in the instant proceeding- whether delay beyond 120 days, if any, in maintaining the appeal can be condoned by applying the provision of Section 5 of the Limitation Act ! Another question which needs determination in the case in hand is - whether application under Section 5 of the Limitation Act is maintainable under Section 74(1) of the Act!.

33. Though the learned counsel for the applicants has attempted to curve out a case that provision of Section 5 of the Limitation Act are applicable even if appeals under Section 74 (1) of the Act are filed beyond the period of limitation but having carefully perused the provision contained under Section 29 (2) of the Limitation Act , this court finds it difficult to agree with the aforesaid contention of learned counsel for the applicant.

34. Plain reading of Section 29 (2) of the Limitation Act clearly suggests that where any special or local law prescribes for any suit, appeal or application, a period of limitation

different from the period prescribed by the schedule, the provision of Section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit , appeal or application by any special or local law, the provision contained in Section 4 to 24 (inclusive) shall apply only in so far and as to the extent to which they are not expressly excluded by such special or local law. Since in the case at hand, there is a specific bar under Section 74 (1) of the Act to entertain appeal after the expiry of 120 days (60+ 60 days), there appears to be merit in the contention of learned respondent –in-person that the application under section 5 of the Limitation Act praying therein to condone the delay in filing appeal under Section 74 (1) of the 2013 Act is not maintainable. Under Section 74 of the 2013 Act, it has been provided that a person aggrieved may file appeal in the High Court within 60 days of passing of an award. Provisions of aforesaid Section provides that if the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, it can allow the party to file an appeal within a period, not exceeding 60 days.

35. Section 5 of Limitation Act permits extension of prescribed period and if the applicant satisfies the appellate court that he has sufficient cause for not filing the appeal or make an application within the period of limitation but by not prescribing whereas under provision of Section 74 (1) of the 2013 Act, extension beyond the period of limitation is only 60 days from the date of expiry of initial period of 60 days but since extended period allowed stands already fixed under Section 74 of the 2013 Act, question remains to be decided that whether the Section 5 of the Limitation Act applies or whether it is excluded in view of specific provision under Section 74 (1) of the 2013 Act.

36. Having perused the judgment passed by the Hon'ble Apex Court in Union of India –vs- Popular Construction Company, reported in (2001) 8 SCC 470 and other judgments of Hon'ble Apex Court i.e. [Garikapati Veeraya v. N. Subbaiah](#), AIR 1957 SC 540, [Anant Mills Company Limited v. State of Gujarat](#), AIR 1975 SC 1234, [Ganga Bai v. Vijay Kumar](#), (1974) 2 SCC 393, [Sita Ram v. State of U.P.](#), (1979) 2 SCC 656, [N. Balakrishnan v. M. Krishnamurthy](#), (1998) 7 SCC 123, [State of Madhya Pradesh v. Pradeep Kumar](#), (2000) 7 SCC 372, [State of Orissa v. Mamata Mohati](#), (2011) 3 SCC 436, [Hukumdev Narain Yadav v. Lalit Narian Mishra](#), (1974) 2 SCC 133, [Nasiruddin v. Sita Ram Agarwal](#), (2003) 2 SCC 577, [Fairgrowth](#)

Investments v. Cuttodian (2004) 11 SCC 472, Singh Enterprises v. Commissioner of Central Excise, Jamshedpur, (2008) 3 SCC 70, Commissioner of Customs, Central Excise, Noida v. Punjab Fibres Limited, Noida, (2008) 3 SCC 73, Good Earth Steels (P) Limited v. Commissioner of Central Excise, (2008) 3 SCC 77, Consolidated Engineering Enterprises v. Prl. Secretary, Irrigation Department, (2008) 7 SCC 169, State of Goa v. Western Builders, (2006) 6 SCC 239, Coal India Limited v. Ujjal Transport Agency, (2011) 1 SCC 117, Commissioner of Central Excise & Customs v. Hongo India (P) Ltd. (2009) 5 SCC 791, Smt. Hetal Alpesh Muchhala v. Adityesh Educational Institute & others, (2009) SCC Online Bom. 1454, Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others, (2010) 5 SCC 23, Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5, Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, Transport Commissioner v. Nand Singh, (1979) 4 SCC 19, Muthiah Chettiar v. CIT, AIR 1951 Mad 204, CCE v. M.M. Rubber Co., 1992 Supp (1) SCC 471, Ketan v. Special Director, Directorate of Enforcement and Antother, (2011) 15 SCC 30, M.P. Steel Corporation v. C.C.E. (2015) 7 SCC 58, Bihar Industrial Area Development Authority v. The State of Bihar, The Collector, Patna and others, First Appeal No. 96/2016, D.D. 13.11.2017, State of Haryana v. Hindustan Machine Tools Limited, AIR 2015 P&H 45, Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and others, (2017) 5 SCC 42, Patel Brothers v. State of Assam, (2017) 2 SCC 350, P. Radha Bai and others v. Ashok Kumar and another, AIR 2018 SC 5013, Bengal Chemists and Druggists Association v. Kalyan Chowdhury, (2018) 3 SCC 41, Partap Singh v. Directorate of Enforcement, (1985) 2 SCC 71, Mangu Ram v. MCD, (1976) 1 SCC 391, Nasir Ahmmed v. National Investigation Agency, (2015) 3 KLT 320, Farhan Sheikh bv. State (National Investigation Agency), (2019) SCC Online Del. 9158, Abdul Ghafoor and another v. State of Bihar, (2011) 14 SCC 465, Simplex Infrastructure Limited v. Union of India, (2019) 2 SCC 455, Basavaraj v. Land Acquisition Officer, (2013) 14 SCC 81, Rohitash Kumar and others v. Om Prakash and others, (2013) 11 SCC 451, this court is persuaded to conclude that S.74 of the 2013 Act excludes application of S.5 of Limitation Act for condonation of delay in filing the appeal under S.74 of 2013 Act.

37. It has been further held by the High Court of Karnataka in the case of *The Deputy Commissioner and Special Land Acquisition Officer –vs- M/S S.V. Global Mill Ltd.* reported in

2019 0 Supreme (Kar) 1798 that special statutes having specific provision regarding limitation would prevail over the limitation Act which is a general law and Section 5 is not applicable to Section 74 as it provides specific period of limitation, different from what is prescribed under Article 116 of the Schedule of Limitation Act.

38. In the Case of S.V. Global Mill (supra) , it has been held as follows:

"88. Applying the aforesaid judicial dicta, it is held that the phrase 'within sixty days from the date of the Award' in Section 74(1) of the 2013 Act and the expression 'within a further period not exceeding sixty days' in the proviso thereto must be interpreted to mean that there is a specific limitation prescribed in the 2013 Act, which is a code by itself in the matter of grant of fair compensation in respect of acquisition of land and other matters incidental thereto. Therefore, the special statute having a specific provision regarding limitation period would prevail over the [Limitation Act](#), which is a general law and hence, [Section 5](#) of the Limitation Act is not applicable to Section 74(1) of the 2013 Act as it prescribes a specific period of limitation different from what is prescribed under [Article 116](#) of the [Schedule to the Limitation Act](#).

89. But, the matter does not end. The further consideration which has to be made is as to whether the other provisions of the [Limitation Act](#) which are applicable to appeals would apply to Section 74 of the 2013 Act having regard to [Section 29\(2\)](#) of the Limitation Act. While on a consideration of the scheme of the 2013 Act, in light of the decisions of the Hon'ble Supreme Court, it is held that [Section 5](#) of the Act does not apply, it is necessary to consider as to whether [Sections 4](#) and [12 to 14](#) would apply. Thus, the interpretation is to be placed on the expression "within sixty days from the date of the Award" in Section 74(1) of the 2013 Act. Does it mean that the said period of sixty days must be calculated in a mechanical or pedantic manner or in a practical way? If [Section 12](#) of the Limitation Act is considered, it is noted that in computing the period of limitation for any appeal, the day from which

such period is to be reckoned has to be excluded i.e., date of the award in the instant case. In other words, the day on which the judgment i.e., the Award in the instant case, was made or drawn has to be excluded. This is also having regard to [Section 9](#) of the General Clauses Act, 1899. The time taken for preparing the certified copy of the Award sought to be appealed against, has to be excluded. If an extreme situation is considered, there could be expiry of sixty days from the date of the Award in the preparation of the certified copy of the award itself, in that, after the pronouncement of the judgment, the reference court would take some time for the preparation of the award and thereafter the certified copy of the Award would have to be made ready, by which time, sixty days may lapse from the date of the award. In such a case, there is no doubt further period of sixty days for filing of the appeal under the proviso to Section 74(1) of the 2013 Act, would apply. But the question is, if for any reason beyond the control of the appellant the certified copy of the Award is received by the aggrieved party beyond 120 days, i.e., (60 days + 60 days) from the date of the Award, then whether the period of limitation could be construed by exclusion of the periods mentioned under [Section 12](#) of the Limitation Act. While considering the expression 'sixty days from the date of the Award' and 'further period not exceeding sixty days', in our view, the day on which the Award was signed which is the date of the Award would have to be excluded. Further, the period taken for preparation of the certified copy of the judgment and Award would also have to be excluded. If after such exclusion of the aforesaid period, if the appeal is filed within a period of sixty days, then there would be no delay in filing of the appeal to the High Court. If it is beyond that period, then the proviso would apply, provided the appeal is filed within sixty days as mentioned in the proviso to Section 74(1) of 2013 Act.

90. Similarly, under [Section 13](#) of the Limitation Act, while computing the

period of limitation prescribed for filing of an appeal under Section 74(1) of the 2013 Act in cases where leave to sue or appeal as a pauper is applied for, the time during which the appellant has been prosecuting in good faith his application for such leave regarding payment of the Court fees prescribed for filing of an appeal to the High Court, shall have to be excluded by treating the appeal as having the same force and effect as if the court fees had been paid in the first instance. [Section 13](#) of the Limitation Act may have relevance to appeals filed by land losers as court fees would have to be paid on the enhanced compensation sought by the land- loser.

91. Similarly, in computing the period of limitation for filing an appeal under Section 74(1) of the 2013 Act, the time spent in prosecuting bona fide with due diligence an appeal before an appellate court not being the competent court in good faith has to be excluded. In fact, [Section 14](#) of the Limitation Act has been made applicable to [Section 34\(3\)](#) of the Arbitration Act in the cases of Popular Construction Limited, Consolidated Engineering Enterprises, Ketan, Western Builders, Simplex Infrastructure Limited and such other cases where provisions similar to Section 74(1) of the 2013 Act have been considered.

92. Thus, there can be no exception to the period of limitation to file an appeal to the High Court and the 60 days has to be computed after application of [Sections 12, 13 and 14](#) of the Limitation Act. In other words, while applying the period of limitation prescribed under Section 74(1) of the 2013 Act in the matter of filing an appeal to the High Court against the judgment and Award of the reference court, while considering as to whether the appeal filed is within the period of 60 days, the exclusion of time as envisaged under [Sections 12, 13 and 14](#) must be made applicable. In our view, such an interpretation would also be in consonance with [Article 300A](#) of the Constitution, which recognizes the Constitutional right of a person to his property as no person can be

deprived of such a Constitutional right except by authority of law. The same is also in line with the interpretation made by the Hon'ble Supreme Court vis-à-vis other special statutes. Further, on a reading of Section 74(1) of the 2013 Act, there is no bar, either express or implied, which excludes application of Sections 12 to 14 of Limitation Act. On the other hand, if a mechanical interpretation is given to the words "within sixty days from the date of the Award" and the expression "a further period not exceeding sixty days", without taking into consideration Sections 12, 13 and 14 of the Limitation Act, it would result in violation of the Constitutional right of a land-loser to seek enhancement by filing an appeal to the High Court and also disable him from seeking enhancement of compensation. The application of Sections 12 to 14 of Limitation Act is in order to advance justice as the reasons for exclusion of the periods mentioned in those Sections while computing the limitation period are those which are beyond the control of the party seeking to file an appeal to the High Court. In the same vein Section 4 of the Limitation Act is applicable. Thus, a pedantic interpretation of the 2013 Act must be avoided. It must be interpreted in such a manner that the judicial dicta with regard to the applicability of a distinct limitation period under the Special Act in light of Section 29(2) of the Limitation Act on the one hand, is balanced with the Constitutional right of a land-loser on the other hand. This would also advance the cause of justice of the stake holders involved in the acquisition of land under the 2013 Act as in the instant case."

39. In view of the above discussion, this Court is of the view that application under Section 5 of the Limitation Act is not maintainable for condoning the delay in filing the appeal under Section 74 of the 2013 Act in view of the specific bar under Section 74 (1) of the said 2013 Act whereby the specific period of limitation has been given as 60 days and which can be extended upto further 60 days. Thus, no appeal beyond the period of total 120 days (60+ 60 days) is maintainable. Therefore, the present application filed by the applicants for condoning

the delay of 440 days is not maintainable and deserves to be dismissed.

40. Consequently, in view of the above and the law taken note of as aforesaid, the present application is dismissed as not maintainable. Accordingly, the connected appeal is also dismissed.

The interlocutory application stands disposed of.

JUDGE

Comparing Assistant