

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No.10131-CI of 2016 in/and
RFA No.3644 of 2016 (O&M)
Date of Decision : 06.09.2016.**

Vijay Kumar Dahiya and others

.....Appellants

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr.S.S.Kaliramna, Advocate for the appellants.

ARUN PALLI, J. (Oral)
CM-10129-CI of 2016

For the reasons set out in the application, which is duly supported by an affidavit, the same is allowed. Consequently, the appeal is taken on Board.

CM No. 10130-CI of 2016

For the reasons set out in the application, the delay of 19 days that has occurred in re-filing the accompanying appeal is condoned.

C.M. disposed of.

CM No.10131-CI of 2016

This is an application for condonation of delay of 1210 days in filing the accompanying appeal.

Notice in the application.

On the asking of the Court, Mr. Shivendra Swaroop, AAG, Haryana, present in Court, accepts notice on behalf of the respondents.

An analysis of the averments set out in the application reveal that, originally, the appeal was filed on 01.03.2013, and it was bared by 19 days. It was returned by the registry with certain objections. And, was refiled on 04.06.2016, after all the objections were removed. It was rechecked by the office but was found to be barred by 1210 days. The basis of calculation, to work out the period of delay is; that the memorandum of appeal, when it was originally filed, was not accompanied with the copy of the grounds. And, thus, was not validly constituted or drawn up. Consequently, the appeal could not be considered to have been filed on 01.03.2013, but only on 04.06.2016, when it was re-filed, appended therewith the grounds of appeal.

It is maintained, for a bunch of appeals, arising out of the same acquisition, were filed through the office of the counsel for the applicants, in the process, and purely on account of an accidental omission, copy of the grounds of appeal was not annexed with the paper-book. Further, the matter in issue, was squarely covered by the judgment, dated 20.05.2016, rendered by this court, in RFA No.4475 of 2012, vide which this court had enhanced the compensation from Rs.1,26,00,000/-per acre to Rs.2,80,00,000/- per acre, in the appeals (pertaining to the revenue estate of village Kherki Majra Dhankot) arising out of the same acquisition.

I have heard counsel for the parties and perused the records.

Concededly, the appeal was filed on 01.03.2013 and, but for the slip up, which resulted into a delay of 1210 days in filing the appeal, it was barred by just 19 days. Apparently, the mistake was purely accidental in nature. But, yes, appeal could be refiled, after removing all the objections,

within a reasonable period. It is not disputed either that, in the appeals arising out of the same acquisition, this court, as recently as on 20.5.2016, has awarded enhancement to the other land owners. It would be apposite, at this stage, to refer to certain observations made by the Hon'ble Supreme Court in **Samiyathal and others versus Special Tehsildar and others**, 2015 (2) RCR (Civil) 441, which read thus:

“ We further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other landowners whose land was acquired by notification dated 22.05.1991, but who may have on account of ignorance, poverty and other similar handicaps, not been able to approach the Reference Court or may not have been able to contest the matter before the High Court and this Court.

The needful be done in respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article 142 of the Constitution.”

Subsequently, in reference to the decision, rendered in **Samiyathal (supra)**, the Hon'ble Supreme Court in **Imrat Lal and others versus Land Acquisition Collector and others**, 2015(1) SCC (Civil) 242, observed:-

“13. 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 co-villagers, 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 half baked

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.”

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15. In view of the above discussion, the appeal is allowed, the impugned order is set aside and the delay in filing RFA No.5477/2011 by the appellants is condoned.”

A plain reading of the afore extracted passages show that an emphasis is laid; that in the acquisition matters, involving claim for award of just compensation, the court should adopt liberal approach, and, therefore, either grant time to the party to file better affidavit, to explain delay or suo motu take cognizance, of the fact that in the matters arising out of the same acquisition, the other land owners were awarded enhancement in the compensation. Obviously, cause of a land owner, has to be viewed from a different perspective, for he is not a litigant by choice, but owing to the compulsory acquisition of his holding. And, gains nothing, but rather loses by delaying his own cause.

The matter can be analysed from yet another stand point. The provision of Section 28-A of the Land Acquisition Act, 1894 (for short “the Act”), entitles the land owner to seek redetermination of compensation awarded by the Collector, within a specified time, in the event of

enhancement, by the reference court, in the matters arising out of the same acquisition, notwithstanding that he never even sought a reference under Section 18 of the Act, and the time that had elapsed in the interregnum. *Ex facie*, the purport and intent of the provision is to award uniformed compensation to all the land owners, who are identically situated and circumstanced.

However, I am also reminded, to point out that in the case of **Imrat Lal (supra)**, the Hon'ble Supreme Court had deprived the land owners, of interest, for the period of delay, i.e., 1110 days in filing the appeal before this court. For, it was observed in paragraph 12 of the judgment:-

“12 While we agree with Shri Narender Hooda that the averments contained in the application for condonation of delay were extremely vague and did not provide satisfactory explanation for the long delay of 1110 days, but it cannot be ignored that in identical matters another learned Single Judge had granted relief to the landowners by enhancing the compensation and this factor should not have been overlooked by the learned Single Judge while deciding the application for condonation of delay.”

Whereas, such is not the position in the matter in hand. For, originally, the appeal was filed on 01.03.2013, whereas this court had awarded enhancement in the appeals arising out of the same acquisition, vide its judgment, dated 20.5.2016. Therefore, this is not a case, where the appellants had chosen to prefer an appeal, post decision, of this Court, on 20.5.2016, inspired by the enhancement awarded in the other appeals. Therefore, the delay, that has occurred in filing the accompanying appeal is

not intentional, but bona fide.

Consequently, the application is allowed, and delay in filing the accompanying appeal is condoned.

RFA No.3644 of 2016

For, learned counsel for the parties are ad idem that the matter in issue is squarely covered by the judgment, dated 20.5.2016, rendered by this Court, in RFA No.4475 of 2012 and other connected matters, (**Ram Chander and another versus State of Haryana and others**), the present appeal is also disposed of in terms thereof.

06.09.2016

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No