

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

**RFA No.3712 of 2016 (O&M)
Date of Decision : 07.03.2017.**

Smt. Kamla Devi

.....Appellant

Versus

State of Punjab through Collector, Gurdaspur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Rajeev Dev Sharma, Advocate for the appellant.
Mr. K.K.Gupta, Addl. A.G. Punjab.

ARUN PALLI, J. (Oral)

CM No.10291-CI-2016

This is an application for condonation of delay of 4438 days in filing the accompanying appeal.

Despite opportunity no reply has been filed to the application.

For the reasons set out in the application as also the decisions of the Hon'ble Supreme Court in Imrat Lal and others v. Land Acquisition Collector and others, 2015(2) RCR (Civil) 437 and Dhiraj Singh (D) Tr. LR.s. v. Haryana State and others, 2015 (2) RCR (Civil) 507, delay of 4438 days in filing the accompanying appeal is condoned.

For, the matter is being remitted to the reference Court, to balance the equities, it is clarified that in the event the claim of the appellant is accepted or is even partially allowed, the applicant shall not be entitled to any interest on the enhanced compensation, for the period of delay in filing the appeal i.e 4438 days.

CM stands disposed of.

RFA-3712-2016

The claimant/landowner is in appeal against the award, dated 12.12.2003, rendered by the reference Court, vide which, her claim under Section 18 of the Land Acquisition Act, 1894, (for short 'the Act'), was dismissed, for, it was not substantiated by any evidence.

The dispute is only qua assessment of compensation for the superstructure. The claim of the applicant/appellant is that her house, under acquisition, was built with A Class masonry, joinery and was ideally located. The said site was connected by pucca roads, and was equipped with all the civic amenities. But, as the appellant failed to lead any evidence, her claim under Section 18 of the Act, for enhancement of compensation was rejected by the reference Court. Whereas, the case of the respondents is that what indeed was acquired was a double storey temporary constructed structure with CGI roofing sheets, consisting of two rooms and verandah.

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

Ex facie, the appellant has been remiss in pursuing her cause. But it is also true that she was only afforded three opportunities before her evidence was closed by order. What appears to have been lost site of the reference Court is that she was not a litigant by choice but owing to the compulsory acquisition of her property. Thus, in the event, the applicant is not afforded one effective opportunity to lead and conclude her evidence, she would suffer an incalculable loss. Needless to assert, that there indeed existed a structure for which she was granted compensation by the

Collector. Whether she is entitled to any further enhancement or not, would of course, be determined after she is granted an opportunity to lead evidence. In my view, the ends of justice shall be secured if the impugned award is set aside and the appellant is permitted to lead evidence.

Accordingly, the appeal is allowed and as a necessary consequence, the impugned award, dated 12.12.2003, is set aside, the matter is remitted to the reference Court for re-decision in accordance with law. The appellant shall be afforded only one effective opportunity to lead and conclude her evidence on the date that shall be specified by the reference Court. In the event of any default, the matter shall not be adjourned at any cost and the evidence of the appellant shall be deemed to have been closed. Parties to the lis are directed to appear before the District Judge on 17.04.2017. It shall be the discretion of the District Judge either to decide the reference himself or assign the matter to any other Court of competent jurisdiction.

07.03.2017

*Manoj Bhutani***(ARUN PALLI)**
JUDGE

Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No