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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 653/2015**

JAGAT SINGH (DECEASED) THR LRS & ORS Petitioners

Through: Ms. Sukhda Dhamija and Mr. S.K.
Rout, Advs.

Versus

UNION OF INDIA & ANR Respondents

Through: Mr. Nikhil Rohatgi and Mr. Shashank
Khurana, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 24th November, 2014 of the Court of learned ADJ-04: South West Dwarka Courts, New Delhi in Execution No. 298/2014 of an award for acquisition of land.
2. The petition was entertained and notice thereof issued. The counsels have been heard.
3. The counsel for the petitioners has argued –
 - a. that the Land Acquisition Collector fixed the compensation for acquisition of the land of the petitioners at Rs.13,82,000/- per acre.
 - b. that in a reference proceedings to the District Judge, the rate of compensation was enhanced to Rs.15,00,000/- per acre.
 - c. that the petitioners preferred an appeal to this Court being LA. Appeal No.137/2012.

- d. that there was a delay of 189 days in filing and 517 days in re-filing the said appeal before this Court.
- e. that the said delay in filing and re-filing was condoned making it clear “that for the delayed period, the appellants shall not be granted interest in the event of their appeal succeeding”.
- f. that this Court in the aforesaid appeal enhanced the compensation to Rs.16.50 lacs per acre.
- g. that the petitioners being still dissatisfied preferred a Special Leave Petition to the Supreme Court and which was granted and vide order dated 13th February, 2014 therein, the rate of compensation was enhanced to Rs.21 lacs per acre.

4. It is the contention of the counsel for the petitioners that though the petitioners admit that they are not entitled to interest on the enhancement in compensation from 15 lacs per acre to Rs.16.50 lacs per acre granted by this Court for the period aforesaid of 189 days and 517 days but the Learned Additional District Judge by impugned order has denied interest due to the petitioners for the said period also on the enhancement given by the Supreme Court from Rs.16.50 lacs to Rs.21 lacs. It is contended that under the order dated 30th April, 2012 of this Court in LA Appeal No. 137/2012 the petitioners could be denied interest only on the enhancement ordered by this Court and not on the enhancement subsequently ordered by the Supreme Court.

5. Per contra the counsel for the respondent No.2 DDA states that the question of the petitioners going to the Supreme Court would not have

arisen if this Court had not entertained LA.No.137/2012 and since the petitioners have availed of the benefit of approaching the Supreme Court against the order of this Court in LA Appeal No.137/2012, they should not be entitled to interest for the aforesaid delay of 189 days and 517 days on the enhancement ordered by the Supreme Court. It is contended that if this Court had not entertained LA Appeal No.137/2012 and dismissed the same as barred by time, there would have been no order on merit which could have been appealed subsequently to the Supreme Court.

6. I have considered the rival contentions.

7. The Order dated 30th April, 2012 of this Court in LA Appeal No. 137/2012 on the application for condonation of delay in filing and re-filing the LA Appeal No. 137/2012 is as under:

“CM No. 7354/2012 (u/S 5 of Limitation Act)

What has occasioned delay of 189 days’ in filing the accompanying appeal is disclosed in Paragraphs No. 3 and 4 of the application, which is supported by affidavit of the appellant.

Notice.

Mr. Sanjay Kumar Pathak and Mr. Arun Birbal, Advocates, accept notice of the application on behalf of respondents No. 1 and 2 respectively and state that only opposition to this application is that for the period of delay, the appellants ought not be granted the interest on the compensation amount in the event of it being enhanced.

Since the reasons disclosed in Paragraph No.3 and 4 of the application do not disclose gross negligence for the delay occasioned, therefore, this application is allowed and the delay of 189 days’ in filing the accompanying appeal is condoned, while making it clear that for the delayed period, the appellants shall not be granted interest in the event of their succeeding in the appeal.

Application is disposed of in aforesaid terms.

CM No. 7353/2012 (u/S 151 CPC)

The reason for the delay of 517 days' in re-filing the accompanying appeal is stated in Paragraph No. 3 of the application, which is supported by affidavit of learned counsel for the appellants.

Notice.

Mr. Sanjay Kumar Pathak and Mr. Arun Birbal, Advocates, accept notice of the application on behalf of respondents No. 1 and 2 respectively.

Since the reasons disclosed in the application does not display gross negligence, therefore, this application is allowed and the delay of 517 days' in re-filing the accompanying appeal is condoned, while denying interest for the period of delay.

Application stands disposed of accordingly."

8. I am unable to agree with the contention of the counsel for the respondent No.2 DDA.

9. This Court cannot speculate, whether the petitioners, if LA Appeal No. 137/2012 had been dismissed as barred by time and not admitted, would have gone to the Supreme Court or not and whether the Supreme Court in such a case would have condoned the delay in filing the LA Appeal No. 137/2012 and if so, on what terms. All that can be observed is that a perusal of the order dated 13th February, 2014 supra of the Supreme Court shows that the SLP/appeal preferred by the petitioners was considered alongwith a large number of other appeals and vide common order in all the appeals, concerning not only the land of others, situated in the village, in which the land of the petitioners is situated but also with respect to land in other adjoining villages, was enhanced as aforesaid. It is thus well nigh possible that even if the delay, in the petitioners filing LA. Appeal No. 137/2012 had not been condoned, the petitioners, if had approached the Supreme Court thereagainst, may have had the benefit of the enhancement granted by the

Supreme Court.

10. Moreover, not only does a perusal of the order dated 30th April, 2012 set out hereinabove so shows but even otherwise in law this court could not have, as a condition for condonation of delay in preferring LA Appeal No.137/2012, deprived the petitioners of the interest on enhancement in compensation to be granted by the Supreme Court against the order of this Court.

11. I am thus of the view that while the petitioners are not entitled to interest for the period aforesaid, on the enhancement granted by this court but are entitled to the interest for the said period on the enhancement granted by the Supreme Court over and above the enhancement granted by this Court.

12. The counsel for the respondent No.2 DDA has also contended that the view taken by the Additional District Judge in the impugned order is a plausible view and ought not to be interfered under Article 227.

13. I am unable to agree. The view taken by the Additional District Judge in the impugned order is to the monetary prejudice of the petitioners for compensation of their land and once this court finds that the view taken is not borne out from the order of this Court, it would be a perverse view and such perversity cannot be permitted to remain.

14. The petition is thus allowed.

15. The impugned order is set aside.

16. The petitioners are held entitled to the interest amount computed in terms of above in the execution proceedings from which this petition arises. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

JULY 13, 2017
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