

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

RFA No. 3842 of 2016 (O & M)

Date of decision: 10.01.2018

Rashid

....Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ram Bilas Gupta, Advocate, for the appellant.

Mr. Shivendra Swaroop, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 10641-CI of 2016 has been filed for condonation of delay of 9038 days (more than 24 years) in filing of the appeal against judgment dated 07.11.1991 passed by the Additional District Judge, Faridabad. Vide the said order, the appellant had been granted compensation of the acquired land @ Rs.90 per square yard while deciding the reference petition under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act'). The Land Acquisition Collector had assessed market value at Rs.3,50,000/-. The appellant-applicant admittedly did not challenge the said order which pertains to the notification dated 20.04.1987 under Section 4 of the Act which had been issued for the acquisition of land measuring 438.36 acres for the public purpose and development and utilization of Section 48 at Faridabad in the Revenue Estate of village Badkhal.

It has been pleaded in the application that in RFA No. 505 of

2017, Krishan Kumar vs. State of Haryana, delay of 6454 days in filing the

appeal was condoned on 24.02.2014 and the appellant therein could claim compensation as per the decision dated 16.03.2010 in RFA No. 1015 of 1992, Chet Ram and others vs. State of Haryana. Accordingly, the application has been filed that the delay should be condoned and the compensation should be enhanced to Rs. 200/- per square yard.

State has filed its reply to the application that the same is not maintainable and the appellant has not come with clean hands. The delay has not been properly explained and the appeal has been filed only after coming to know about the enhancement in connected case and is abuse of the process of law.

It is not disputed that in RFA No. 1015 of 1992 whereby the notification dated 22.08.1988 was involved, the 16 appeals were disposed of keeping in view the fact that Division Bench in LPA No. 920 of 1994 decided on 27.07.2005 had assessed the market value of land of village Mewla Maharajpur @ Rs.200 per square yard pertaining to the same notification. The matter had been taken to the Apex Court and the SLP was also dismissed. Accordingly, the appeals had been allowed and the market value was fixed at @ Rs.200 per square yard keeping in view the fact that the time gap between the two notifications was almost 1 year and 4 months and, therefore, the market value at lower rate could not be fixed since the lands were adjacent to each other and acquired for the same purpose for carving of Sector 46 and Part-II of Sector 47, Faridabad. The appeals were of 1992, 1993 and 1994 and, thus, filed within limitation at that point of time whereas, it is to be noticed that the present appeal has been filed after almost a period of 24 years.

Counsel for the State has, thus, validly opposed the application

and appeal on the ground that the statutory benefits cannot be granted as the State would unnecessarily be burdened with interest and solatium in the litigation which has already been finalized and opposed the appeal.

Keeping in view the above, this Court is of the opinion that the appellant-applicant is entitled for the benefits of the compensation at par with other land owners keeping in view the judgments of the Apex Court in ***Imrat Lal and others vs. Land Acquisition Collector and others, 2015 (2) RCR (Civil) 437*** and ***Dhiraj Singh (D) through L.Rs. and others vs. State of Haryana and others, 2014 (14) SCC 127*** wherein, it has been held that delay can be condoned and the equities can be balanced by denying the appellants interest for the period for which appellants did not approach this Court. The relevant observations in *Imrat Lal's case (supra)* reads thus:-

“17. We appreciate the statement made by the learned Senior Additional Advocate General and hold that the appellants shall be entitled to enhanced compensation at the rate of Rs.1216 per sq. yard with other statutory benefits. However, it is made clear that the appellants shall not be entitled to interest for the period of delay i.e. 1110 days.”

The relevant observations in *Dhiraj Singh's case (supra)* read thus:-

“14 The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same circumstances.

15 Equities can be balanced by denying the appellants' interest for the period for which they did not

approach the Court. 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. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic.”

In ***Ramo Bai and others vs. State of Haryana and others, 2016 (13) SCC 407***, principle has further been balanced by denying the statutory benefits for the delay in filing and claiming compensation at par. The relevant observations read thus:-

“5. Be that as it may. Since this Court has granted compensation at the rate of Rs.325/- per Sq.Yd. in all cases except that of Inder Singh, covered by the same Notification, we are of the view that the interest of justice would be advanced if the compensation at the rate of Rs.325/- per Sq.Yd. is also granted to the appellants herein.

6. However, we find force in the submission made by the learned counsel for the State that in any case appellants would not be entitled to any statutory benefits for the period covered by the delay in filing or refiling the special leave petitions on which leave has been granted.

7. Therefore, all these appeals are partly allowed holding that appellants will be entitled to the land value fixed at Rs.325/- per Sq.Yd. alongwith all statutory benefits. However, the appellants shall not be entitled to any statutory benefits for the period of delay in filing the special leave petitions and the period of delay in refilling the special leave petitions after curing the defects.”

Thereafter, in ***K. Subbarayudu and others vs. Special Deputy***

Collector (Land Acquisition), 2017 (8) SCALE 61, delay of 3671 days in filing the appeal was also condoned on the same condition by the Apex Court keeping in mind the principle that the lifeline of the agriculturalist is lost and, therefore, there may be omission on the part of the claimants to adopt extra vigilance but the same need not be used as a ground to depict them with negligence for want of bona fide. It was further clarified that the declining of the interest could be done on the element of enhanced compensation and also of solatium and other statutory benefits for the period of delay and it was, thus, clarified that the other statutory benefits like solatium and other benefits and interest on the same would be the entitlement of the appellants. The relevant portion reads thus:-

“14. When the concerned court has exercised its discretion either condoning or declining to condone the delay, normally the superior court will not interfere in exercise of such discretion. The true guide is whether the litigant has acted with due diligence. Since the appellants/claimants are the agriculturists whose lands were acquired and when similar situated agriculturists were given a higher rate of compensation, there is no reason to decline the same to the appellants. Merely on the ground of delay such benefit cannot be denied to the appellants. The interest of justice would be served by declining the interest on the enhanced compensation and also on the solatium and other statutory benefits for the period of delay.

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xxx

xxx

19. Compensation awarded to the appellants is enhanced to Rs.1,500/- for each pomegranate tree and Rs.250/- for each lime tree. The appellants are also entitled to all statutory benefits like solatium and other benefits and interest on the same. It is further directed

that the appellants shall not be entitled to any interest during the period of delay of 3671 days. The appeal is partly allowed in the above terms. Parties are to bear their respective costs.”

The contention of the State counsel that solatium also should not be paid in view *Ramo Bai's case (supra)*, thus, cannot be accepted. The Constitutional Bench of the Apex Court in ***Sunder vs. Union of India, 2001 SCR 176*** has held that solatium is an integral part of compensation and keeping in view the provisions of Sections 23 and 26 of the Act, it has been held that splitting up the compensation into different components for purposes of payment of interest would not be appropriate keeping in view the provisions of Section 34 of the Act.

Therefore, it is clarified that the interest is being declined but the solatium as such cannot be declined which will be part and parcel of the market value in view of the decisions of the Apex Court.

Accordingly, the application for condonation is allowed. The appeal is also allowed on the ground of parity subject to the condition that the appellant will be entitled for compensation @ Rs.200 per square yard alongwith solatium but he shall not be given statutory benefits of interest for the period from passing of the award till filing of the appeal.

10.01.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No