IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 180 of 2018 (O & M)
Date of decision: 20.02.2018

Central Government through its Joint Secy., New Delhi, now State of Haryana

...Appellant(s)

Versus

Hanif and others ...Respondent(s)

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

Present: Ms. Safia Gupta, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') against the order of the Reference Court dated 01.10.2011 whereby, the petition under Section 30 of the Act was decided and it was directed that the compensation amount be disbursed to the private respondents herein as per their share as mentioned in statement no. 19.

Firstly, coming to the delay application, this Court is of the opinion that no valid ground as such is made out for condoning the inordinate delay of 2178 days in filing the appeal. It is not disputed that against the opinion of the District Attorney, Mewat, the Legal Remembrancer had opined vide letter dated 29.11.2011 that the department did not agree with the view of the District Attorney and it was not a fit case for filing the appeal. The Government thereafter decided on 29.02.2012 to file an appeal and accordingly, instructions were issued by the office of the Legal Remembrancer on 27.03.2012. The certified copy was sent on

24.04.2012 and the opinion of the District Attorney was sent on 18.05.2012. After a period of 5 months, the office of the Advocate General asked for other details including the copy of the petition and the written statement, copy of award, statement of witnesses etc., which was again repeated on 21.02.2013 and it was replied on 03.04.2013 that the documents had already been supplied. It has been further pleaded that the matter remained under process in the office of the Advocate General from 03.04.2013 to 25.05.2015. The dealing official of the appellant had retired/expired and, therefore, the matter could not be pursued.

The Court fee was demanded on 26.05.2015 alongwith the draft affidavit, which was sent for vetting on 28.07.2015 to the office of the Advocate General, Haryana. The matter was submitted before the Financial Commissioner, Revenue on 26.08.2015 for approval and the advise of the Advocate General. On 18.09.2015, the matter again was sent to the office of the Advocate General to opine whether RFA should be filed or not. Opinion was received on 24.12.2015 from the office of the Advocate General and the case was submitted before the higher authorities on 11.07.2016 and the dealing official submitted the case to the higher authorities on 22.07.2016. The matter was discussed with the Financial Commissioner, Revenue and the Tehsildar was called vide letter dated 08.08.2016 to send some record vide letter dated 25.10.2016 and the case was again submitted by the official on 25.01.2017 and the case was discussed by the Additional Secretary, Revenue with the Law Officer and was submitted by the dealing official on 06.03.2017 to the authorities.

On 17.03.2017, the Financial Commissioner, Revenue called a meeting to discuss the matter and ultimately, the Government decided to file the RFA. Draft applications sent to the Advocate General's office were vetted alongwith the application for delay and eventually, the additional affidavit of the Land Acquisition Collector, Nuh, Mewat was received on 01.08.2017. The dealing assistant had retired and new one joined on 18.09.2017 and resultantly, the file was put up on 29.09.2017. It is in such circumstances, the delay is sought to be condoned for the filing till 16.12.2017.

A perusal of the above sequence of events would go on to show that the file has been dealt with in a very casual manner at all levels on different occasions leading to vested rights accruing to the private respondents. It has time and again been held that the State cannot as such be given premium for its inaction and law of limitation is not to be thrown out of the window merely because State is appellant. A different treatment cannot be as such afforded to the State who is also an equal litigant in the Courts of Law if not more than the private individual. The observations of the Apex Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649*** would be relevant in this case, where the principles were laid down. The relevant principles in *Esha Bhattacharjee's case* read thus:-

> *"15. From the aforesaid authorities the principles that can broadly be culled out are:*
>
> *i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
>
> *ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms*

are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

> *xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
>
> *xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
>
> *xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."*

Resultantly, keeping in view the above, the application for condonation of delay is without any merit and the same is dismissed as apparently there is gross negligence and no failure of justice would be caused if the appeal is dismissed.

Coming to the merits of the case also, this Court is of the opinion that the reasoning granted to deny the State compensation is well justified. The private respondents no. 1 to 8 had filed a petition under Section 30 of the Act for disbursement of compensation pertaining to the land measuring 4 kanals 16 marlas situated in the revenue estate of village Kherli Kankar, Tehsil Nuh on account of the fact that there is a dispute between the parties regarding the entitlement of compensation which was acquired for the construction of KMP Express Highway.

The present appellant, who was arrayed as respondent no. 6, took the plea that on account of the fact that the owners could not get the land redeemed within a period of 30 years they were entitled to compensation and the appellants objected to the compensation amount sought by the private respondents who were coming on the strength being the proprietors of "Shamlat Patti Ruda". It was noticed by the Reference Court that the mutation which was entered in favour of the appellant was dated 09.08.2008 well after the notification dated 05.10.2006 issued under Section 4 of the Act and even after the award dated 13.08.2007. It was noticed that the Kanungo (Sales) who had appeared as a witness on behalf of the appellants namely Mrs. Sudarshan Kumari, RW-3 could not state that in what circumstances the possession was of respondent no. 13-Munir or in favour of the appellants. Keeping in view the revenue record, it was accordingly held that they were proprietors of Shamlat Patti Ruda Hasab Hissa Jaddi.

Accordingly, the defence of being a mortgagee was also rejected on the ground that what were the terms and conditions of the mortgage, whether it was simple or English or it was by way of deposit of title deeds and what was the extent of mortgage money and the period of mortgage had not been brought on record on the basis of which ownership as such was being claimed. The mere mutation being entered as such which had been sanctioned at the back of the private respondents after the entire acquisition proceedings would not give a right as such. It is to be noticed that the Full Bench of this Court has also held in ***Ram Kishan and others vs. Sheo Ram and others, 2008 (1) RCR (Civil) 334*** that a mortgagee as such does not become the owner if land is not redeemed and the principle that once a mortgagee always a mortgagee has been prepounded. The view has been upheld by the Apex Court in ***Singh Ram (D) through L.Rs. vs. Sheo Ram and others, 2014 (9) SCC 185*** and, therefore, the claim as such on that strength is without any basis. The relevant portion reads as under:-

> *"14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right*

under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.

15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly."

The factum of the mutation taking place much later has already been noticed and that the revenue entry would not as such give title. Resultantly, the findings which have been recorded that on the basis of the revenue record the private respondents were entitled for the compensation being in possession as such as per their shares does not suffer from any infirmity which would warrant interference in the present appeal.

Keeping in view the above, the application for condonation of delay and the main appeal are dismissed in limine.

20.02.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No