

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RFA-2777-2018 (O&M)

Date of decision: 10.07.2018

State of Punjab

....Appellant

Versus

Kirpal Singh & others

...Respondents

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

Present: Mr.P.S.Bajwa, Addl.AG, Punjab, for the appellant.

G.S. SANDHAWALIA, J. (Oral)

The present appeal, under Section 54 of the Land Acquisition Act, 1894, filed against the award of the Addl.District Judge, Amritsar dated 12.04.2016, is barred by 688 days.

The land which is acquired vide notification dated 25.06.2010 measures 25901 sq.ft., as per the award of the Land Acquisition Collector dated 05.05.2011, which is for the purpose of widening the road from the Gurudwara Sahib and for beautification of Gurudwara Baba Bakala Sahib. The award disposed of as many as 51 reference petitions.

The application under Section 5 of the Limitation Act, 1963, is bereft of any sufficient cause, which is *sine qua non* as it is the case of the State itself that they came to know of the award only after a period of more than 2 years, on 27.04.2018, as per para No.18 of the application. Thereafter, a report was submitted by the Departmental Committee and an appeal was recommended. Respondent No.5 had intimated that the execution was pending for 02.05.2018 before the Addl.District Judge and an amount of Rs.2,15,18,365/- was to be paid to the claimants. It is, thus, the case of the State that the concerned file was not submitted before the appellant's office and the appeal, thus, could not be filed within the statutory period of limitation.

Vide the impugned award, the amount has been enhanced from Rs.2920/- per sq.ft., as awarded by the Land Acquisition Collector, to Rs.4031/- per sq.ft.. The State was defending the litigation qua the 51 reference petitions through its Government Pleader and therefore, the explanation, as such, which has been given in the application under Section 5, does not show any diligence by the State after the matter was decided on 12.04.2016. A perusal of the certified copy of the award would go on to show that it was applied on 25.05.2018, after a period of more than 2 years. The State cannot take the benefit and claim some extra premium to seek condonation at the expense of the landowners. Sufficient cause, as such, has to be shown as to why the State chose not to get a legal opinion immediately after the decision and what withheld it from not even applying for the certified copy of the award. The landowners cannot be faulted, as such, and the argument raised by Mr.Bajwa that the landowners have filed appeals for enhancement, would not help in any manner, as the same are for the purpose of further enhancement of the compensation and were filed by the landowners with diligence. The State cannot, thus, claim condonation at the asking.

In similar circumstances, in **D. Gopinathan Pillai Vs. State of Kerala & another 2007 (2) SCC 322**, delay in filing of appeal against an award, which was on account of the official, had been condoned by the Civil Court, that the State should not suffer. The said order had been upheld by the High Court but set aside by the Apex Court on the ground that there was a gross negligence on the part of the State and no

case of sympathy was made out and even if there was, as such, negligence by the officials, the State would pay the penalty. It was left open for the State to take action against those officials. The landowners cannot be faulted and be asked to defend the litigation on account of the negligence of the State and the lack of interest.

Similar is the view taken in plethora of judgments as in **D. Gopinathan Pillai (supra)**. In **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation & another 2010 (5) SCC 459**, it was held that the State may get certain amount of latitude but at least a plausible and tangible explanation for the delay has to be given.

In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai 2012 (3) RCR (Civil) 73**, the delay which had been condoned, was of over 7 years in filing the appeals, was set aside and it was noticed that nobody even bothered to file applications for issuance of certified copies, which is also the case herein.

In **B.Madhuri Goud Vs. B.Damodar Reddy 2012 (12) SCC 693**, the delay condoned of 4 years of *ex-parte* decree, was also set aside on the ground that the explanation given that the document had been misplaced by the Advocate, was vague.

In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others 2013 (12) SCC 649**, delay of 2449 days in filing was set aside. The principles laid down read as under:

“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.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

In such circumstances, the explanation which has been given is found fanciful and lack of *bona fides* is imputable to the appellants, who cannot be allowed unfettered free play and in the absence of any sufficient cause having been shown in the application and also keeping in view the fact that acquisition is, as such, not of a large area of land and the interest of the State also, in comparison, is minimal, as noticed above, this Court is not inclined to condone the delay. It is also pertinent to notice that the State has chosen not to file any appeal till now qua the other 50 cases, which further shows the lack of interest and negligence of the appellant-Department.

Resultantly, no case is made out for condoning the delay and the application is dismissed. Consequently, the application for stay as well as the main appeal are also dismissed in limine.

10.07.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*