Shivani Gupta
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RFA No. 3352 of 2018 (O & M)
Date of decision: 08.08.2018

State of Haryana through Collector, District Mohindergarh and others
....Appellant(s)

Versus

Balwan and others ...Respondent(s)

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

Present: Mr. Shivendra Swaroop, AAG, Haryana,
for the appellants.

G.S.SANDHAWALIA, J. (Oral)

Exemption Applications

Allowed as prayed for.

RFA No. 3352 of 2018 (O & M)

The present judgment shall dispose of 7 appeals i.e. RFA Nos. 3352 to 3358 of 2018, since common questions of facts and law are involved in all the appeals. Reference is being made to RFA No. 3352 of 2018.

The present appeals have been filed by the State against the order of the Reference Court, Narnaul dated 02.01.2017 which are barred by 464 days and applications have been filed for condoning the said period of delay. The Reference Court has enhanced the market value from Rs.20,00,000/- per acre which was given by the award of the Land Acquisition collector dated 02.03.2012 for the land situated in village Totaheri, Tehsil Narnaul, District Mohindergarh to Rs.24,69,852/-. The notification was issued on 08.04.2011 and the purpose of acquisition was

for the construction of the road widening four lane, maintenance, management and operation of MDR No. 129 from Rai Malikpur to Narnaul. The enhancement is on the basis of a sale deed dated 30.04.2008 (Ex.P-1) whereby, 11 kanals and 14 marlas exemplar was taken into consideration which was for Rs. 36,85,500/- and the rate per acre worked out to Rs.25,20,000/- for the same village. Keeping in view the fact that there was a difference of about two years and nine months between the notification dated 08.04.2011 and the sale deed in question, 10% cumulative increase was granted on the said sale deed for a period of 2 years to take the market value to Rs.30,49,200/- per acre. Since the land which was sought to the acquired was 21 kanals and 17 marlas, 10% deduction was also done on that account and thereafter, another 10% was done on account of a development cut to bring down the market value to Rs.24,69,852/- per acre.

Counsel for the State has vehemently submitted that Exs. R-1 and R-7 were wrongly discarded as such and on account of Section 25 of the Land Acquisition Act, 1894 as the market value of those sale deeds was below Rs.20,00,000/- per acre as awarded by the Land Acquisition Collector. A perusal of the chart would go on to show that Exs. R-1 and R-7 which were the sale deeds relied upon by the State were for sale considerations of Rs.6,25,698/- and Rs.15,00,885/- as per the certified copy. It is in such circumstances the Reference Court has rightly rejected the sale deeds relied upon by the State once the Collector himself had come to a conclusion that the market value was Rs.20,00,000/- per acre while fixing the market value. It is well known that sale deeds are executed in rural areas at lower rates to pay lesser amount of stamp duty.

Once exemplar had been produced of the same village, there is

no error as such which the Reference Court committed while relying upon the same and thereafter also, in view of the judgment of the Apex Court in ***General Manager, Oil & Natural Gas vs. Rameshbhai Jivanbhai Patel and another, 2008 (9) SCC 480*** that cumulative enhancement is to be granted. It is to be noticed that the land has been acquired for the purpose of widening of the Highway and, therefore, the potentiality of such land cannot be lost sight off and, therefore, the enhancement which has been granted at the rate cannot be faulted with in any manner. The deduction of smallness of plot has also been done though the total land acquired was 21 kanals 17 marlas whereas, the sale exemplar is also of a reasonably large chunk of land of half the size approximately 11 kanals 14 marlas and, therefore, the order does not seem to be suffering from any infirmity which would warrant interference on merits.

On the issue of limitation also, this Court is not willing to accept the explanation given in the application for condonation of delay of 15 months. A perusal of the application would go on to show that after the decision on 02.01.2017 by the Reference Court, the Legal Remembrancer, Haryana had issued necessary directions to file the appeal the date of which has not been mentioned. A plea has been taken that the post of LAO, Bhiwani was vacant upto 06.09.2017 and there were odd 495 cases pending of acquisition. The well conversant official attended the office of the Advocate General on 06.10.2017 and collected the opinion of the Legal Remembrancer which had not been received. Thereafter, the vetting was not done till 27.10.2017. The application and the affidavit was got prepared on 06.11.2017 and thus, the delay has occurred.

The appeal was filed only on 18.07.2018 and the delay from

November, 2017 to 18.07.2018 has also not been explained in any manner. It is not expected of the State that it can conveniently brush aside the delay and no valid reason has been given for setting aside such large periods of delay to the detriment of the land owners. The explanation which has been given does not make any sufficient cause and not an averment has been made how to get over the delay after the affidavits had also been vetted in November, 2017 till July 2018.

In ***Pundlik Jalam Patil (D) by LRs Vs. Ex. Eng. Jalgaon Medium Project and Ors, 2009(1) RCR 128,*** it has been held that the law is for the vigilant and not for those who sleep over their rights. The relevant portion reads thus:-

> *"14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'*
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> *xxx xxx xxx xxx xxx*

> *18. Shri Mohta, learned senior counsel relying on the decision of this court in N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed: It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."*

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:*
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> *i) There should be a liberal, pragmatic, justice-*

oriented, nonpedantic 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 application for condonation of delay is also liable to be dismissed.

Accordingly, both the applications for condonation of delay as well as the main appeals are dismissed.

08.08.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No