

**C.M No. 14237-CI of 2015 in/
RA-RF-58-CI of 2015 in
R.F.A No. 1773 of 2004**

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

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**C.M No. 14237-CI of 2015 in/
RA-RF-58-CI of 2015 in
R.F.A No. 1773 of 2004**

Date of decision: 27.07.2018

Harnek Singh

... Petitioner

Vs.

**Union of India through Land
Acquisition Collector, U.T. Chandigarh**

...Respondent

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

Present: Appellant in person along with
Mr. J.S. Brar, Advocate.

Mr. Suvir Sehgal, Sr. Standing Counsel, for the respondent.

G.S.SANDHAWALIA, J. (Oral)

C.M No. 14237-CI of 2015

Application for condonation of delay of 131 days in filing the review application, has been preferred by the landowner-appellant.

In view of the fact that the applicant had filed S.L.P against the orders and the appellant has been permitted to approach this Court vide order dated 28.09.2015 by the Apex Court, the delay as such is liable to be condoned as sufficient cause is made out.

Accordingly, the application is allowed. Delay of 131 days in filing the review application is condoned.

C.M stands disposed of.

RA-RF-58-CI of 2015

Present application under Order 47 Rule 1 C.P.C has been

preferred for review of judgment dated 20.05.2015.

Primary argument which could have as such convinced this Court to review the earlier order was on account of potentiality of the land as it was averred that it was abutting the main road and thus had the potentiality of the commercial usage as stated in grounds 7 (vii) of the review application. For the said purpose the record was re-summoned since the case had already been decided.

It is also pertinent to notice that there were two appeals both by the applicant and the Union Territory, who were aggrieved against award of the Reference Court dated 10.04.2004, wherein a sum of Rs.13,44,000/- per acre had been granted as compensation on account of acquisition which was initiated vide notification under Section 4 on 20.08.1998. Apart from that 125% increase was granted regarding valuation of trees since it was claimed that there was a nursery on the land which had been acquired of the appellant.

The perusal of the order which is under review would go to show that there was consent by both the landowners and the State/Chandigarh Administration that the matter was liable to be disposed of in terms of decision in RFA No. 3921 of 2007, "**Arunesh Chander Kaushik & Ors. Vs. Union Territory Chandigarh**", decided on 10.12.2009. The said judgment also pertain to the same notification in question dated 20.08.1998 and also to the land falling in the revenue estate Kajheri, where the land of the appellant is situated. It is a matter of record that judgment dated 10.02.2009 has been upheld by the Apex Court on 16.07.2010 in Special Leave to Appeal CC Nos.- 9903-9904 of 2010. The only issue as

such which was deliberated vide order which is sought to be reviewed was as to the number of trees, which were standing and as to whether they were 626 or 1092 in number. This Court had accepted the testimony of the official witnesses RW-1 Narender Pal and resultantly, not interfered with the quantum of the trees.

Counsel for the appellant and the appellant, who is appearing in person submitted that liberty was granted as such by the Apex Court vide order dated 28.09.2015 to bring to the notice of this court that the earlier the order was not justified and reliance on **Arunesh Chander Kaushik's case** (supra) should not have been placed.

It is in such circumstances this Court has perused the record to find out any specific claim or pleading was there in Section 18 petition regarding the location of the land and its potentiality as such for usage of commercial purposes which would entitle the appellant for additional compensation. The petition under Section 18 is bereft of any such details that the land is situated on the main road and had frontage or was opposite to the YPS school, which is now the argument raised.

Counsel for the appellant and appellant have further submitted that in the affidavit submitted in affirmative by the landowner objections dated 05.10.1988 and 07.02.2001 was to be read as part and parcel of the deposition. It is, accordingly, contended that in the said objections the necessary facts regarding the location of the land and its commercial potentiality as such had been specifically averred.

It is, however, conceded by the counsel for the appellant that two objections are not part of the Court record. Neither the affidavit

mentions that they have been attached as such when the affidavit was filed nor they have been shown any annexures. The award Ex. P/A of the Collector dated 25.09.2001 takes into count the landowners demand regarding the plot for nursery and for loss of business but does not even also refer to the said claim that the land acquired is situated abutting the main highway. The landowners also did not bother to place on record any site plan before the Reference Court to show that which portion of the land was abutting, the road in question on the basis of which Reference Court could have granted higher amount of compensation on the principle that the land was falling on the highway.

In the absence of any such pleading and evidence, which has come on record this Court does not think it appropriate to review the order on grounds which were never pleaded and proved before the Reference Court and to take a different view. The order as noticed was a consent order and the counsel & the appellant themselves were agreed that the matter was covered. In such circumstances prayer to review is only an attempt to argue the main case on merits and, therefore, it does not fall within the ambit of the provisions of Order 47 Rule 1, which would call for reviewing off the order.

Resultantly, the present review application is dismissed.

July 27, 2018
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(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No