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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 695/2003 & CM Nos. 37583/2017 (condonation of delay of 4607 days), 37584/2017 (for recalling of order dated 1st February, 2005) and 3086/2018 (u/O XXII R-2 CPC)

MANGE RAM (DECEASED) THROUGH LRS Appellant
Through: Mr. Anand Yadav, Adv.

versus

UNION OF INDIA & ANR. Respondents
Through: Ms Ruchika Pathi, Adv. for R-1.
Mr. Sunil Fernandes, Standing Counsel, Mr. Arnav
Vidyarthi and Ms. Anju Thomas, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.08.2018

1. This appeal under Section 54 of the Land Acquisition Act, 1894 was preferred impugning the judgment and decree dated 9th May, 2003 in LAC No. 1036/1993 of the court of Additional District Judge, Delhi, being a reference under Section 18 of the Act.
2. The appeal was entertained and notice thereof ordered to be issued. Vide order dated 25th March, 2004, the delay in filing the appeal was condoned and the appeal admitted for hearing. The appeal came up for hearing on 1st February, 2005, when none appeared for the appellant and the appeal was dismissed for non-prosecution.

3. CM No. 37584/2017 has been filed for restoration of the appeal along with CM No. 37583/2017 for condonation of delay of 4607 days in applying for restoration. The said applications were entertained and notice thereof ordered to be issued.
4. The counsel for the respondent No.1 Union of India and the counsel for the respondent No. 2 Delhi Vidyut Board, since substituted by BSES Rajdhani Power Limited appear.
5. The appellant/ applicant has also filed CM No. 3086/2018 for substitution of legal representatives of the appellant No.1 Sukhbiro Devi.
6. The application is filed within time and the right to pursue the application subsists. Even otherwise, appellant Nos. 2 to 8 are the only heirs of appellant No. 1.
7. CM No. 3086/2018 is allowed.
8. The factum of death of appellant No. 1 is taken on record and the appellants No. 2 to 8 substituted also as heirs of appellant No.1.
9. The counsel for the respondent No.1 Union of India on enquiry, whether the compensation with respect to other land acquired vide the same Notification and Award has attained finality, states that this Court vide judgment dated 22nd July, 2016 in RFA No. 715/2003 titled ***Balwant Singh vs. Union of India*** has further enhanced the compensation with respect to other land acquired vide the same Notification and Award.
10. The counsel for the respondent No.1 Union of India has contended that judgement in ***Balwant Singh*** was pronounced on 22nd July, 2016 and the application for restoration of the appeal has been filed only on 13th October, 2017 and there is no sufficient cause pleaded for the long delay of

13 years in applying for restoration of the appeal. It is argued that the application for restoration and for condonation of delay in applying therefor are liable to be dismissed.

11. The counsel for the respondent No.2, being the beneficiary of the acquired land, has drawn attention to ***Brijesh Kumar Vs. State of Haryana*** (2014) 11 SCC 351 and has contended that Supreme Court therein, in para 11 has held that if some person has taken the relief by approaching the Court just or immediately after the cause of action has arisen, other persons cannot take benefit thereof by approaching the Court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent persons. It is further argued that in that case, the Supreme Court refused to condone the inordinate delay of 10 years 2 months and 29 days in approaching the Court. It is further argued that the delay in the present case is even more, that is, of about 13 years.

12. Per contra, the counsel for the appellant/ applicant has drawn my attention to paras 13, 21 to 23 of ***Kalawati Vs. Union of India*** 111 (2004) DLT 81 (DB) to contend that on the principle of parity, the appellants are entitled to equal treatment as given to other co-owners.

13. The appellants/applicants, in their application for restoration of the appeal and for condonation of delay in applying therefor, have pleaded that the appellants, on or about 30th August, 2017 received information that appeal filed by ***Balwant Singh*** had been decided and the compensation had been enhanced from Rs. 19,000/- to Rs. 37,000/- per bigha; that the

appellants thereafter contacted the counsel who had filed the appeal and the counsel informed that he will look into the matter; the said counsel, however did not give any information and thereafter the appellant contacted the present counsel who informed that this appeal stood dismissed as aforesaid on 1st February, 2005.

14. The aforesaid would show that the reason is, invariably given of fault of the earlier counsel.

15. It is not as if the earlier counsel who had filed the appeal is not a regular practitioner of this Court. He is equally specialized in land acquisition matters as the present counsel is.

16. In this circumstance, I have asked the counsel for the appellants/applicants, whether he enquired from the earlier counsel the reason for his not pursuing the appeal. This becomes all the more important because the appellants, in their application, have not given any reason whatsoever as to why they were not pursuing the matter with their advocate.

17. The counsel states that he does not know the earlier counsel.

18. It is quite obvious that reckless allegations have been made against the earlier counsel without any regard to truth.

19. As far as the respective judgments cited by the parties are concerned, a Full Bench of this Court, on a reference as to the principles to be followed for condonation of delay in such matters, in *Tej Pratap Singh Vs. Union of India* 249 (2018) DLT 670 has held that no general principles can be laid down and each application for condonation of delay has to be decided as per its own facts and keeping in view the principle of parity enshrined in the Act by introduction of Section 28A in the Act.

20. In the facts and circumstances aforesaid, though I am of the opinion that the appellants should be entitled to compensation as enhanced in ***Balwant Singh*** but do not find the appellants/applicants entitled to interest for the period of delay of 4607 days during which the appeal remained dismissed in default and burden the appellants/applicants with costs of Rs.30,000/- payable in equal proportion to the counsel for the respondent No.1 and the counsel for the respondent No. 2.

21. On the aforesaid terms, the delay in applying for restoration is condoned and the appeal is restored to the original position.

22. The appeal is allowed and the appellant shall be entitled to compensation at the same rate as awarded in ***Balwant Singh*** (supra). The appellants shall however not be entitled to interest for the period of delay of 4607 days on the enhancement.

23. Decree sheet be drawn up subject to payment of costs as aforesaid within three weeks of today.

RAJIV SAHAI ENDLAW, J

AUGUST 27, 2018
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