

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

% **Date of decision: 24th September, 2018.**

+ **LA.APP. 311/2014**

UNION OF INDIA

..... Appellant

Through: Mr. Sanjay Kumar Pathak, Mr. K.
Kaomudi Kiran Pathak, Mr. Sunil
Kumar Jha, Mr. Kushal Raj Tater &
Mr. M.S. Akhtar, Advs.

Versus

**JAGDISH (DECEASED) THROUGH LRS
& ANR**

...Respondents

Through: Mr. Madan Lal Sharma, Adv. for R-
2,3&5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment and decree [dated 20th September, 2003 in LAC No.673/1989 of the Court of Additional District Judge, Delhi] on a Reference under Section 18 of the Act, enhancing the compensation with respect to acquired land of the respondents, from Rs.2,600/- per bigha to Rs.67/- per sq. yds.
2. The appeal is accompanied with CM No.11210/2014 for condonation of delay of 3818 days in filing thereof.
3. The appeal and the application for condonation of delay came up first before this Court on 16th July, 2014 when notice of the application for condonation of delay was ordered to be issued to the respondents. Since

then, the matter is pending for completion of service of respondents. The counsel, only for respondents no.2,3&5 appears and none appears for the other respondents despite service.

4. The counsel for the respondents no.2,3&5, on enquiry states that all the respondents have filed application for execution of the impugned judgment and decree and whereupon this appeal was filed and proceedings in the execution stand stalled in view of the pendency of this appeal. It is thus stated that compensation as per the impugned judgment and decree has not been disbursed to the respondents as yet.

5. The counsel for the appellant / applicant, on enquiry informs that (i) compensation with respect to acquired land of the respondents was determined by the Land Acquisition Collector (LAC) at Rs.2,600/- per bigha; (ii) the Additional District Judge however, in reference sought by the respondents as well as by others whose land was acquired vide the same notification, enhanced the compensation to Rs.67,000/- per bigha on the basis of judgment reported as ***Jas Rath Vs. Union of India*** (2002) 95 DLT 605 in an appeal before this Court arising from another Reference with respect to land of others acquired vide the same notification and award; (iii) the land owners as well as the Union of India (UOI) preferred Special Leave Petitions (SLPs) to the Supreme Court against the judgment aforesaid and which were disposed vide judgment reported as ***Ranvir Singh Vs. Union of India*** (2005) 12 SCC 59 vide which the appeals under Section 54 of the Act were remanded to this Court for decision afresh; (iv) on remand, this Court determined the compensation vide judgment reported as ***Jas Rath Vs. Union of India*** (2006) 130 DLT 700 (DB) at Rs.25,000/- per

bigha; and, (v) the land owners appealed against the aforesaid judgment of this Court and the Supreme Court, vide judgment reported as ***Lal Chand Vs. Union of India*** (2009) 15 SCC 769, has determined the compensation for the subject land at Rs.28,000/- per bigha.

6. Condonation of delay of 3818 days in filing the appeal is sought pleading as under:

- “2. That the learned Additional District Judge pronounced the impugned order on 20.09.2003. The application for certified copy of the same was made on 29.09.2003 and the same was prepared on 13.10.2003. After the receipt of the certified copy of the impugned order, the same was sent to the Dy. Legal Adviser (L&B) for his opinion, who vide his opinion dated 06.11.2003 suggested to file appeal before this Hon’ble Court. Thereafter, the file was submitted for approval of the competent authority who on 07.11.2003 gave approval for filing of the appeal. After approval, the file was sent to the Dy. Legal Advisor (L&B) on 10.11.2003 who vide letter dated 18.11.2003 forwarded the certified copy of the impugned order to the appellant for further necessary action. The file was then processed for approval of the competent authority for purchase of court fee. After purchase of court fee, on 20.01.2004 the case papers along with original certified copy of impugned order, requisite court fee and advance expenses were forwarded by the appellant to Shri Sanjay Poddar (the then counsel for appellant as Standing Counsel (LA) now designated as Sr. Advocate) for filing the appeal.
3. That it is humbly submitted that there were large number of cases pertaining to some award of village Rithala in which the appellant was advised to file appeals against the judgments of the learned Reference Court and land owners had also filed appeals. Since the certified copy of the impugned order, case papers and court fee etc. were handed over to the then Government counsel, the appellant all throughout remained under bonafide belief and impression that the appeal had been filed because the

noting on the department's file made by the concerned dealing official i.e. Naib Tehsildar (LA) had recorded that the appeal has been filed and documents handed over to Government Counsel.

4. That upon enquiry, it had transpired that an appeal was filed against the impugned order at that stage vide diary No.2861/2005 dated 18.11.2015 through the earlier Counsel Mr. Sanjay Poddar, Advocate (the then counsel for appellant as Standing Counsel (LA) now designated as Sr. Advocate). It appears that there were certain office objections and as per the information available on the website of this Hon'ble High Court, the same was refiled (as LA.APP.) on 31.05.2007 vide diary No.2069/2007 and 6045/2007; again on 31.05.2008 vide diary No.90108/2008 and then on 04.07.2008 vide diary No.94801/2008. Except the aforesaid details, what become of the said diary number, no further details are available on the website nor any further information could be provided by the Registry of this Hon'ble Court despite vigorous follow up by the office of the present counsel for the appellant. No information could be made available even by the office of the aforesaid previous counsel for the appellant.

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7. That it is pertinent to mention here that the aforesaid status relating to challenge to impugned order could be ascertained during the execution proceedings initiated by and on behalf of the respondents for execution of the impugned order particularly when the learned Executing Court directed the appellant to state as to whether any appeal was filed against the impugned order which is sought to be executed therein. Pursuant to said directions the LAC(NW) vide letter dated 24.01.2013 addressed to the present counsel, while referring to telephonic information given by Mr. Sanjay Poddar, Sr. Advocate that an appeal was filed as per the opinion of the Legal Cell, but particulars thereof were not traceable; had requested the present counsel to provide LA. App. Number and further requesting him that if the appeal is not filed, to take steps to file the appeal.

8. That the office of the present counsel made vigorous efforts but no information was forthcoming despite visits and enquiries from the Registry of this Hon'ble Court. However, after noticing the facility / Link of Case History on the official website of this Hon'ble High Court, the aforesaid status was obtained by the present counsel and was informed by him to the LAC (NW) vide letter dated 06.08.2013. Efforts were still made by making enquiry from the Registry of this Hon'ble Court to locate or find out either the appeal paper-book, if lying under objection in the Registry, or the judgment or decision therein, if it is already decided. However, the efforts made bore no fruits as no information could be provided by the Registry till 31.05.2014.
9. That no concrete details could be ascertained from any source and thus, the file has then been processed for filing appeal and the case was entrusted to Mr. Sanjay Kumar Pathak, Advocate. In view of the urgency, the case papers were handed over to the said Government Counsel who, after going through the relevant file / record, prepared the appeal and accompanying applications and affidavit on 11.05.2014 and sent the same for approval and further necessary action by the competent authority.
10. That in the meanwhile, the necessary approval was obtained from the competent authority which was conveyed vide sanction dated 21.05.2014 and the file was processed for purchasing the requisite court fee.
11. That after finalization and completion of procedural formalities, the present appeal and accompanying applications are being filed immediately thereafter."

7. The counsel for the respondents no.2,3&5 opposes the condonation of delay application, contending that (i) the appeal has been filed after a delay of nearly 12 years; (ii) important rights have vested in favour of the respondents; and, (iii) Full Bench of this Court in ***Tej Pratap Singh Vs. Union of India*** (2018) 249 DLT 670 (FB) has laid down the parameters for

condonation of delay in land acquisition compensation matters and in terms of which also the delay is not liable to be condoned.

8. I have, in other appeals of land owners, coming up before this Court for enhancement of compensation, with about the same delay as on behalf of UOI in the present case i.e. appeals filed much after enhancement in compensation is given by this Court or by the Supreme Court in other appeals arising from the order of the Reference Court qua other land acquired vide the same notification and the award, including in the appeals of the counsel for the respondents no.2,3&5, following the principle of parity, been condoning the equivalent delay subject to the land owners being not entitled to interest on enhancement for the period of delay and further subject to costs of Rs.30,000/-. I have as such enquired from the counsel for the respondents no.2,3&5, why should the same principle be not followed qua the appeal of UOI and whether ***Tej Pratap Singh*** supra differentiates between appeals of UOI and appeals of land owners.

9. The counsel for the respondents no.2,3&5 though unable to contend that ***Tej Pratap Singh*** supra differentiates between appeals of land owners and appeals of UOI, however contends that while land owners are lay people and illiterate, the same cannot be said about UOI.

10. In today's day and time, especially with respect to land owners of acquired land in the city of Delhi, it cannot be said that they are necessarily lay persons, without knowledge of their rights or illiterate. In fact, most of such land owners are educated and already pursuing other vocations in the city of Delhi. Thus, the said argument cannot prevail. Even otherwise, once the legislature, in Section 28A of the Act, has enshrined the principle

of parity and the said principle has been extended by the courts to situations other than those to which, strictly speaking, Section 28A applies, in my view parity cannot be only in the matter of enhancement of compensation and has to be necessarily also in correcting the error if any in determination of compensation by the Reference Court. It would be highly unjust that while the respondents get Rs.67,000/- per bigha as compensation, as determined by the Reference Court, others similarly placed as the respondents get only Rs.28,000/- per bigha as compensation.

11. Even otherwise, the appellant, in the application for condonation of delay, has satisfactorily explained the delay occasioned in preferring the appeal. It cannot be lost sight of that when there are a large number of orders and large number of appeals to be filed, such mistakes are humane and *bona fide*.

12. I am therefore satisfied that the appellant has satisfactorily explained the delay. Accordingly, the delay is condoned subject to the appellant paying costs of Rs.30,000/- to the counsel for the respondents no.2,3&5 within six weeks of today. If the costs are not so paid, the application for condonation of delay as also the appeal shall stand dismissed.

13. CM No.11210/2014 is disposed of.

14. The appeal is also taken up for hearing.

15. There is no dispute that the appeal has to be decided in accordance with the dicta in *Lal Chand* supra.

16. In accordance with *Lal Chand* supra, the appeal is allowed and the compensation determined by the Reference Court is set aside and the

respondents shall be entitled to compensation in accordance with ***Lal Chand*** supra.

17. I have enquired from the counsels, how the equities, as applied qua interest while condoning the delay on the part of the land owners, are to be balanced in the present case. It has further been enquired, where is the compensation, as determined by the Reference Court, lying.

18. The counsel for the appellant UOI states that he has no instructions in this regard.

19. The counsel for the respondents no.2,3&5 states that the compensation as determined by the Land Acquisition Collector (LAC) was deposited by the appellant UOI with the LAC and has already been received by the respondents. It is further stated that to the knowledge of the respondents no.2,3&5, the enhanced compensation as determined by the Reference Court was not deposited by the appellant UOI before the Reference Court.

20. In the circumstances, it is further ordered that the respondents shall also be entitled to, besides solatium, statutory interest till the date of disbursement of the balance compensation as determined in ***Lal Chand***.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 24, 2018

‘gsr’