

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

% **Date of decision: 11th July, 2018**

+ **LA.APP. 198/2016 & CM No.26649/2016 (for condonation of 3109 days delay in filing the appeal).**

RAJ KUMAR & ORS

..... Appellants

Through: Mr. Deepak Khosla, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi, Adv. for R-1.

Ms. Mrinalini Sen Gupta and Ms. Niharika Jauhari, Advs. for DDA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This appeal under Section 54 of the Land Acquisition Act, 1894 impugns the judgment [dated 24th August, 2007 in LAC No.127/1/2006 (Old No.119/2003) of the Court of the Additional District Judge (LAC), Delhi] on a Reference under Section 18 of the Land Acquisition Act, enhancing the compensation for the acquired land of the appellants. The appellants seek further enhancement.

2. This appeal, accompanied with CM No.26649/2016 for condonation of 3109 days delay in filing thereof, came up before this Court first on 27th July, 2016 when notice of the appeal as well as the application for condonation of delay was issued. The respondent no.1 Union of India (UOI) has not filed any reply. Reply to the application for condonation of delay has however been filed by the respondent no.2 Delhi Development Authority (DDA).

3. The counsels have been heard.

4. The appellants seeks condonation of delay of 3109 days pleading (i) that the appellants are totally illiterate and are not conversant with the intricacies of law and specifically the law of limitation; (ii) the appellants were always under *bona fide* belief that they can prefer appeal after receipt of enhanced compensation; (iii) that even the counsel for the appellants did not advise the appellants to file further appeal before the High Court under the provisions of Section 54 of the Act; (iv) that the appellants, in the last week of May, 2016 met other villagers whose land was also acquired by the same award and during the general discussion it came to the knowledge of the appellants that the amount has been further enhanced by the Supreme Court; (v) thereafter the appellants contacted the present counsel who advised them to file appeal; and, (vi) after applying for and obtaining certified copy, this appeal was filed.

5. The counsel for the appellants has fairly stated that he is conscious of the dicta of the Full Bench of this Court in ***Tej Pratap Singh Vs. Union of India*** 2018 SCC OnLine Del 8368 on a reference made by the same Hon'ble Judge who on the first date when this appeal came up before this Court issued notice. As per the said dicta, it cannot be said that in all matters for enhancement of compensation under the Land Acquisition Act, the delay has to be condoned or a lenient view has to be taken. It was held that condonation of delay is not a vested right or granted on asking in all appeals seeing enhancement of compensation for acquisition of land; the social and economic condition of the appellant, including his educational background and other limitations are the most important and determinative factors to be taken into consideration so as to not deny justice and to

correct disparity; at the same time, indulgence need not be bestowed to the negligent and fence sitters, who had economic resources and were well versed and could have enforced right to appeal but for multifarious reasons were satisfied and did not pursue and enforce their right.

6. The respondent no.2 DDA, in its reply, has referred to (i) ***Mewa Ram Vs. State of Haryana*** 1986 (4) SCC 151 holding that merely because enhanced compensation has been granted in other cases, the same would not be a ground for filing of the appeal with condonation of delay to seek enhancement of compensation; (ii) ***Basawaraj Vs. The Special Land Acquisition Officer*** AIR 2014 SC 746, to contend that law of limitation has to be applied with all its rigour when the statute so prescribes, even if it may harshly affect a particular party; and, (iii) ***Brijesh Kumar Vs. State of Haryana*** (2014) 4 Scale 50 to contend that if some person has taken a relief by approaching the Court immediately after the cause of action had arisen, other persons cannot take benefit thereof at a belated state. The reply also mentions the factum of the reference which was then pending before the Full Bench of this Court as aforesaid.

7. I have considered the application for condonation of delay on the parameters laid down by the Full Bench.

8. Though the appeal is by three appellants but the appeal as well as the application for condonation of delay are accompanied with the affidavit only of appellant no.3 Pawan Kumar. No affidavit even of the other two appellants has been filed.

9. Though it is vaguely pleaded that the three appellants are illiterate and not conversant with the intricacies of law but no particulars whatsoever

of the educational qualification of either of the three appellants or as to the vocation of the three appellants or even the age of the three appellants have been pleaded / disclosed. The averments made in the application, blaming the Advocate earlier engaged, are equally vague. No name of the then Advocate of the appellants has been disclosed and it is not even pleaded that the appellants approached the said Advocate to find out the outcome of the Reference under Section 18 in which the appellants must have appeared as witnesses. A Reference under Section 18 is to be decided like a suit, after recording of evidence and which requires consistent interaction with Advocate and it is inconceivable that the appellants during the pendency of proceedings before the Reference Court were not aware of the stages thereof. No particulars in this regard also have been pleaded, as to when the appellants last contacted the Advocate appearing for them in the Reference Court. The Advocates in conducting land acquisition matters are known to collect their fees after the enhancement in compensation is granted and it is inconceivable that the appellants were not aware of the outcome of the Reference. In any case, as aforesaid, the application for condonation of delay has been filed merely to fulfil a requirement and perhaps in the standard form, without any relation whatsoever to the facts concerning the appellants. If the appellants are old and the litigation was being pursued by their children, no particulars of the said children also are given and it is not pleaded that the children of the appellants are also illiterate.

10. Though it is pleaded that the appellants learnt of the enhancement granted by the Supreme Court in May, 2016 but without giving the date on which the High Court or the Supreme Court so granted enhancement. No particulars of the persons from whom the appellants learnt of enhancement

have also been given. There is no explanation that if the said persons are from the same village, why the appellants did not come to know of enhancement earlier. The date chosen of learning of the enhancement in May, 2016 is just to justify the filing of the appeal in July, 2016. Else, there is no effort to even *prima facie* satisfy the Court of the appellants having so learnt of enhancement in May, 2016.

11. Thus, on the anvil of the dicta in ***Tej Pratap Singh*** supra, no case for condonation of delay is made out. CM No.26649/2016 is dismissed.

12. Axiomatically, LA.App. No.198/2016 is barred by time and is dismissed.

No costs.

JULY 11, 2018
'pp'..

RAJIV SAHAI ENDLAW, J