

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

101+218

**CM-8482-CI-2019 in/and
RFA No.2058 of 2019 (O&M)
Decided on : 04.12.2019**

Sujani Devi and others

... Appellants

Versus

The Land Acquisition Collector, Urban Estate, Gurgaon and another

... Respondents

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

Present: Mr. Gaurav Aggarwal, Advocate
for the appellants.

G.S. Sandhawalia, J. (Oral)

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Application for placing on record the amended memo of parties showing the correct LAC number and the village, is taken on record. Office to replace the earlier memo of parties.

CM stands disposed of.

CM-5212-CI-2019

Application for condoning the delay of 142 days in refiling the appeal is allowed, in view of the averments made in the application, duly supported by affidavit. The delay of 142 days in refiling the appeal is condoned.

CM stands disposed of.

Main appeal (O&M)

The present appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') is directed against the Award of the Reference Court, Gurgaon dated 28.08.2009 alongwith an application

for condoning the delay of 3096 days in filing the appeal. An application under Order 1 Rule 10 CPC seeking leave to file the appeal has also been preferred on the ground that applicants are co-sharers/co-owners. The land was acquired vide notification dated 31.01.2002 issued under Section 4 of the Act, which falls in village Tikri, Tehsil & District Gurgaon. The land was acquired for the purpose of Sewerage Treatment Plant at Gurgaon from two villages i.e. Tikri and Fazilpur.

2. A perusal of the paper-book would go on to show that the applicants had not filed the reference petition under Section 18 of the Act, but were successful in Execution No.66 of 2015, which was decided on 06.04.2016 (Annexure A-1), wherein they were granted the benefit of the Award of the Reference Court dated 28.08.2009, whereby some of the co-sharers had also given the benefits, lead case of which was **LA Case No.35 of 2006 'Hukam Chand Vs. State of Haryana and others'**, wherein the market value was assessed @ ₹660/- per square yard alongwith all statutory benefits. Resultantly, the Executing Court vide order dated 06.04.2016 (Annexure A-1) granted them the same benefits.

3. Counsel has submitted that the said judgment as such was subject matter of consideration in **RFA No.5758 of 2009 'State of Haryana' Vs. Subh Ram and others'** alongwith other connected matters. The appeals of the landowners alongwith those of the co-sharers were allowed on 22.01.2016 and the market value was fixed @ ₹65,08,000/- per acre alongwith all statutory benefits. The co-sharer Sarti Devi had filed **RFA No.3491 of 2010 titled as 'Sarti Devi Vs.**

Land Acquisition and others', which was also allowed on 22.01.2016 in the same terms. The relevant portion of the judgment passed in **Subh Ram (supra)** reads as under:-

“The appeals filed by the land owners are allowed to the extent indicated above. The land owners in all these appeals are held entitled to receive the compensation at the rate of Rs.65,08,000/- per acre for their acquired land, from the date of notification under Section 4 of the Act. Besides this, the land owners shall also be entitled for all the statutory benefits available to them, under the relevant provisions of the Act.

Resultantly, with the observations made above, all these 83 appeals stand disposed of, in the abovesaid terms, however, with no order as to costs.”

4. Once the appellants have got an alternative and efficacious remedy available and the benefit has already been taken in execution proceedings, it is always open for the appellants to file a fresh application before the executing court and the appellants cannot be allowed to change forum to suit their convenience.

5. Resultantly, once the appellants have already availed of his alternative and efficacious remedy, the question of condoning the delay and allowing the appellants to file the appeal would not arise. It is not the appellant's right as such is being taken away to seek the same amount of enhancement as other landowners. Therefore, this court is of the opinion that no ground is made out as such to allow the application for condonation of delay and permit to file the appeal after the inordinate delay which has taken place and sufficient cause as such is not made out. Resultantly, the application for condonation of delay and under Order 1

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Rule 10 CPC are dismissed and thus the appeal also stands dismissed.

6. Needless to say that it is open to the appellants to avail the alternative remedy in accordance with law and this order will not debar the appellants as such.

7. In case, any benefit is to be granted by the Executing Court, the benefit of interest for the delay period will not be granted to the landowners, in view of the law laid down by the Apex Court in '**Imrat Lal and others Vs. Land Acquisition Collector and others'** 2014 (14) SCC 133 and in '**Dhiraj Singh (D) through LRs. and others Vs. Haryana State and others'** 2015 (1) SCC (Civil) 236.

8. Dismissed.

DECEMBER 04, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No