

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

RFA No. 2575 of 2019 (O & M)

Date of decision: 10.12.2019

Prabhati Devi (D) through L.Rs. and others

....Appellant(s)

Versus

State of Haryana and another

...Respondent(s)

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

Present: Mr. Sankalp, Advocate,
for Mr. Saurabh Dalal, Advocate,
for the appellants.

Ms. Vibha Tewari, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present appeal filed under Section 54 of the Land Acquisition Act, 1894 is directed against the award dated 30.09.2004 passed by the Reference Court, Jhajjar. The appeal is barred by as many as 5263 days in filing the same and thus, there is a delay of almost 14 years in filing the appeal. The ground taken is that the appellants are poor villagers and not literate and only came to know about the enhanced compensation after the order of the Apex Court only on 11.04.2019 and, therefore, the appeal has now been filed.

In similar circumstances, bunch of cases against the same award were dismissed on 05.09.2019, the lead case of which was ***RFA No. 862 of 2018, Darshan Singh vs. State of Haryana and another.*** The reasons given in the said order read as under:-

*“The State has opposed the prayer on the ground that there is willful delay in all the cases and relied upon the judgments passed in ***Mewa Ram (D) by his LRs & Ors State of Haryana (1986) 4 SCC 151, State****

of Nagaland vs. Lipokao & Ors. (2005) 3 SCC 752, D.Gopinanth Pillari vs. State of Kerala & Anr. (2007) 2 SCC 322. Reliance is also placed upon the order passed in RFA No.4872 of 2016 'Rajender Singh & Ors. vs. State of Haryana & Ors. decided on 06.04.2018 where there was a delay of 5079 days.

Similarly, in other appeals also, the sufficient cause is sought to be made out that the appellants had handed over documents/power of attorney to the clerk of the counsel in the Court below and they were assured that the appeal(s) would be filed. The documents were misplaced by the clerk and the appellants were under the impression that their appeals was pending. It was only in December, 2013 that they came to know that the enhancement was done by the Apex Court and they approached the Clerk of their counsel and thereafter applied for short order and collected necessary documents in 1st week of January, 2018 and thereafter they approached this Court and thus there is delay as such.

*No averments have been made as to which counsel had been engaged or entrusted with the responsibility of filing their appeals. It is highly implausible that for a period of 14 years no effort was made to find out that whether the appeal has been filed through the Advocate of this Court and whether the same had been taken up. It is not disputed that on the first occasion, a bunch of cases were decided on 10.02.2009 in **RFA-1-2006 State of Haryana vs. Jagbir Singh**. The matter was then disposed of by the Apex Court on 18.09.2013 in **Civil Appeal No.6837-6851 of 2009 Roop Chand & Ors. vs. State of Haryana** by remanding the matter to this Court. On 31.08.2015 this Court decided **RFA No.8 of 2005 Devinder Singh &***

Ors. vs. State of Haryana & Ors. enhancing the market value. Thereafter the matter was again taken to the Apex Court and eventually on 17.11.2017, the Apex Court had further enhanced the compensation. It is thus apparent that after the Apex Court decided the matter second time, the landowners have woken up to claim the higher compensation which is to the tune of Rs.12 lakhs for the notification dated 12.05.1995.

Counsel for the appellant Mr. Sanjay Mittal relied upon the judgments in ***Imrat Lal & Ors. vs. Land Acquisition Collector & Ors.*** 2015 (2) RCR (Civil) 437, ***Dhiraj Singh (D) thr. LRs vs. Haryana State & Ors.*** 2015 (2) RCR (Civil) 507 and ***Jethu Ram (since deceased) thr. LRs vs. Union of India & Ors.*** 2016 (4) Law Herald 3166 to submit that the applications for condonation of delay are liable to be allowed. It is not disputed that in RFA-4259-2018 and other connected matters, similar delay ranging from 4880 to 5027 days had been sought to be condoned against the same award, wherein this Court had declined to grant benefit of condonation said appeal.

The Apex Court in ***Mewa Ram*** had declined to grant the benefit of condonation of delay of more than 3 years, on the ground taken that similar matters were pending. Relevant portion of the judgment reads as under:-

“The petitioners had all applied for reference under section 18 of the Act and the civil court by adopting a different basis for computation, namely treating the land to be potential building site, substantially enhanced the amount of compensation. On appeal there was further enhancement by the High Court. The petitioners have withdrawn large sums of money at each

stage. For instance, the petitioner Mewa Ram withdrew on February 6, 1976 consequent upon the award of the Land Acquisition Collector Rs.1,19,000, an additional sum of Rs.28,938.20p. On March 23, 1978 after the judgment of the learned Additional District Judge, and Rs.2,75,105.42p. after the judgment of the High Court between December 11, 1981 and February 13, 1982. The judgment of the High Court not having been appealed from has admittedly become final. Evidently, the petitioners felt satisfied with the enhanced amount of compensation as awarded by the High Court @ Rs.12.25 per square yard because they did not apply for grant of special leave under Art. 136 of the Constitution for more than three years. Merely because this Court in the two cases of Paltu Singh and Nand Kishore enhanced the rate of compensation to Rs.17.50 per square yard, could not furnish a ground for condonation of delay under section 5 of the Limitation Act. 5.

Furthermore, there is no provision in the Act apart from section 28A for reopening of an award which has become final and conclusive. No doubt section 28A now provides for the redetermination of the amount of compensation provided the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made before him within thirty days from the date of the award, and the right is restricted to persons who had not applied for reference under section 18 of the Act. If these conditions were satisfied, the petitioners could have availed of the remedy

provided under section 28A of the Act. In that event, section 25 would ensure to their benefit. Any other view would lead to disastrous consequences not intended by the Legislature.”

*Similarly, in **Brijesh Kumar & Ors. vs. State of Haryana & Ors. AIR 2014 SC 1612**, the Apex Court had refused to condone the delay of 10 years and approximately 3 months and did not interfere with the orders passed by this Court as the landowners in those cases also had chosen not to file the appeals at the initial stage and filed the same after the delayed period. The relevant portion reads as under:-*

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof 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 person.”

In Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649 the principles applicable to condonation were laid out which are reproduced as under:-

(i) There should be a liberal, pragmatic, justice-oriented, nonpedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate

delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the

base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

The present set of appeals would fall under clause (iv) above as not only there is gross negligence on the part of the litigant as such and similarly clause (viii) would also come into play since these are cases of an inordinate delay. As per clause (ix), the scale of balance of justice of both parties is to be kept in mind and everything cannot be given a complete go-by in the name of liberal approach.

It is to be noticed that the effect of enhancement of market value as such has spiraling effect which is passed on to the consumers at a subsequent stage. It is not disputed that the land has been allotted to be developed and utilized for development of Section 9A Bahadurgarh. The effect of enhancement is but to be passed on to the allottees and the subsequent purchasers. It is not only that the State has to pay the compensation as it would only further recover the compensation from the subsequent purchasers. Persons who had purchased properties in the said developed area would be burdened with additional compensation along with interest in spite of having invested in the

same for a considerably long time and under the genuine impression that there is no further payment to be made to the developers which is HUDA in this case. The judgments referred to are thus not applicable as the appeals have been filed after the Apex Court decided the matter on two occasions.

It is also noticed that in some cases landowners have expired way back before the award was passed or around the period when the award was passed and applications have been filed along with present appeals to bring on record the LR's. It is thus clear that cause of action had also died with the original landowners and the present set of appeals have been filed by the LR's at a belated stage.

Keeping in view the overall factors which have to be balanced inter se parties, this Court is of the opinion that in such circumstances the delay of almost 14 years is not liable to be condoned in the present set of appeals in view of the above discussion.

Resultantly, the applications for condonation of delay are dismissed. Accordingly the appeals are also dismissed."

Accordingly, the present appeal is also dismissed in view of the above said reasons to maintain parity.

It is also pertinent to notice that appellant no. 1 has expired on 06.10.2004 and the legal representatives are now also sought to be brought on record. In such circumstances, no case is also made out to bring on record the legal representatives.

10.12.2019

shivani

Whether reasoned/speaking

Whether reportable

(G.S. SANDHAWALIA)
JUDGE

Yes/No

Yes/No