

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

RFA.13564 of 2018 (O&M)

Smt. Bachni (now deceased) through her legal heirs
... Appellants

Versus

The State of Haryana
... Respondent
(2)

RFA.13607 of 2018 (O&M)

Sudershan Kumar (now deceased) through his legal heirs and others
... Appellants

Versus

The State of Haryana
... Respondent

Decided on : 18.03.2019

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

Present : Mr. Shoaib Khan, Advocate for the appellants .

G.S. Sandhawalia, J. (Oral)

Delay applications in refiling

Applications for condoning the delay of 58/65 days in refiling the appeals are allowed, in view of the averments made in the applications, duly supported by affidavit. The delay of 58/65 days in refiling the appeals is condoned.

CMs stand disposed of.

Main appeal (O&M)

Present appeals, bearing RFA Nos.13564 and 13607 of 2018 have been filed under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act') against the award of the Reference Court, Ambala dated 31.08.1988 and 30.10.1985, whereby compensation was awarded @

RFA Nos.13564 and 13607 of 2018 (O&M)

₹1,50,000/- per acre for the land falling in village Bhainsa Tibba, which was acquired vide notification dated 27.08.1981 issued under Section 4 of the Act. The appeals are barred by 10776-11812 days in filing the appeals.

The original landowner in RFA No.13564 of 2018 is stated to have died on 28.07.1993 leaving behind the legal heirs who have now filed the appeal alongwith an application to be impleaded. Similarly, in RFA No.13607 of 2018 all the three landowners have died and applications for bringing on record the legal heirs have been filed.

The grounds for condoning the delay revolve around the fact that for the notification in question the market value has been fixed @ ₹250/- per square yard (₹12,10,000/- per acre) in **RFA No.426 of 1994 'Kashmiri Lal and others Vs. State of Haryana'** decided on 22.02.2010 (Annexure A-1). It is the case of the appellants in the applications for condonation of delay that legal heirs of the deceased landowners happened to meet Hakam Singh two months ago, who revealed that in similar circumstances delay of 11077 to 11114 days had been condoned vide the judgment passed in **RFA No.3388 of 2016 'Upinder Singh and others VS. State of Haryana and others'** decided on 07.09.2017 (Annexure A-2) and, therefore, the present appeals have been filed. The plea taken is that they had shifted to some other places and, therefore, being illiterate not aware as such to the compensation which had been enhanced.

In such circumstances, counsel has vehemently argued that

in view of the judgments passed in '**Imrat Lal and others Vs. Land Acquisition Collector and others**' 2014 (14) SCC 133, '**Dhiraj Singh (D) through LRs. and others Vs. Haryana State and others**' 2015 (1) SCC (Civil) 236 and in '**Samiyathal & others Vs. Spl. Tahsildar & others**' 2015 (2) RCR (Civil) 441, the landowners are entitled for the benefit of the same amount of compensation and that they are willing to forgo the interest element for the delayed period which is of more than 30 years.

This Court is facing a deluge of such time barred appeals at the instance of the legal representatives where as the original landowners have died as also in the present appeals. In the present cases the lis had also died with the original landowners, who had chosen not to agitate for their grievances. Merely, because of similarly situated persons had filed appeals within the time prescribed, which remain pending before this Court for a period of two decades and had been allowed in the year 2010 would not give as such a fresh cause of action to the present appellants to seek compensation at the same amount. The colossal delay in filing the appeals has not been duly explained and in the absence of any sufficient cause the delay is not liable to be condoned.

The judgment of the Apex Court in **Imrat Lal (supra)** has held that Court should adopt a liberal approach and in identical matters whereby relief has been granted, should be granted to the landowners. Similarly, in **Dhiraj Singh (supra)**, the Apex Court has held that where the appellants were identically situated and the refusal to condone the

delay by the High Court was not justified. In **Samiyathal (supra)**, it was held that the landowners, on account of ignorance, poverty and other handicaps, were not able to approach the Reference court or have not contested the matter before the High Court or the Apex Court, can be given the same amount of compensation as granted to the other landowners whose land was acquired, while exercising the powers under Article 142 of the Constitution of India.

In **Mewa Ram (deceased by LRs) & others Vs. State of Haryana AIR 1987 SC 45** wherein there was a delay of more than 3 years, which was not condoned and the landowners had felt satisfied with the compensation as awarded by High Court in that case. Another set of landowners had successfully approached the Apex Court and got enhanced compensation on the basis of which condonation of delay which was sought was declined.

Similarly, the Apex Court in **Basawaraj & another Vs. Special Land Acquisition Officer 2013 (14) SCC 81**, has held that once no sufficient cause was shown and the litigants had not approached the Court, the delay was not liable to be condoned.

In **Brijesh Kumar & others Vs. State of Haryana & others AIR 2014 SC 1612**, 10 years 2 months and 29 days delay had not been condoned by this Court and the Apex Court refused to condone the delay by holding that the law of limitation may operate harshly and has to be followed with all its rigour where the statute so provides. Reliance was placed upon various judgments. Relevant portion of the judgment

read as under:

“7. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained every day by the Courts. The law of limitation is enshrined in the legal maxim “Interest Reipublicae Ut Sit Finis Litium” (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

8. The Privy Council in [General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim](#), AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it has been said that “a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.”

9. In [P.K. Ramachandran v. State of Kerala & Anr.](#), AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:– “Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

10. While considering a similar issue, this court in [Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors.](#) (2013) 12 SCC 649 laid down various principles inter alia:

“ x x x

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

vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play

x x x

ix) The conduct, behavior 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 x x x

vii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.” (See also: [Basawaraj v. Land Acquisition Officer](#) (2013) 14 SCC 81)

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.

13. In [State of Karnataka & Ors. v. S.M. Kotrayya & Ors.](#), (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in [Jagdish Lal & Ors. v. State of Haryana & Ors.](#), AIR 1997 SC 2366, observing as under:– “Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

15. In [M/s. Rup Diamonds & Ors. v. Union of India & Ors.](#), AIR 1989 SC 674, this Court considered a case where petitioner wanted to get the relief on the basis of the judgment of this Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:– “There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be

dormant and chose to sit on the fence till somebody else's case came to be decided.

16. In the instant case, after considering the facts and circumstances and the reasons for inordinate delay of 10 years 2 months and 29 days, the High Court did not find sufficient grounds to condone the delay."

The judgment passed in the case of **Upinder Singh (supra)** also would not as such applicable in the peculiar facts as the Coordinate Bench has not noticed the other judgments of the Apex Court which have been discussed above and specially the fact that the lis would have died with the landowners. The judgement relied upon in **RFA No.4237 of 2016 'Harphool (deceased) through LRs and others Vs. State of Haryana and others'** decided on 17.11.2016 also refers to the same principle while noticing the provisions of Section 28A of the Act for supporting the condonation of delay on the ground that a uniform rate of compensation should be granted to one and all. Even Section 28A provides the period of limitation of three months from the date of the Award, which seems to have escaped the notice of the Coordinate Bench.

In such circumstances, this Court is loath to call upon the respondents/State for filing reply to the applications for condonation of delay after a period of over 30 years.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the applications for condonation of delay of 10776-11812 days in filing the appeals along with applications for bringing on record legal representatives of the deceased-appellants are not liable to be allowed, in the present set of circumstances and the same are hereby,

dismissed, along with the main appeals in limine.

MARCH 18, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No