

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

RFA No. 6325 of 2018 (O & M)

Date of decision: 20.02.2020

Harish Chander (D) through L.Rs. and others

....Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Anil Kumar Rana, Advocate,
for the appellants.

G.S.SANDHAWALIA, J. (Oral)

The present appeal filed under Section 54 of the Land Acquisition Act, 1894 (in short 'the Act') is directed against the award of the Reference Court, Faridabad dated 15.02.1988 whereby, the market value for the land which had been acquired at that point of time vide notification dated 04.11.1979 in villages Etmadpur and Mawai had been assessed at Rs.22/- per square yard. Apart from the appeal being barred by an inordinate delay of 11089 days, the applications have been filed for bringing on record the legal representatives of at least 5 appellants, who have expired wayback between 1996 to 2000 except Digeshwer, who is also the son of deceased-original appellant no. 1, who has also died.

In the application for condonation of delay also, the applicants have stated that they were under the bona fide belief that if any enhancement is made in case of other co-claimants, the same would be available to them and, thus, no sufficient cause has also been made out. The connected appeals had been filed by the land owners within the period of

limitation were firstly filed in the year 1989 and were decided on 19.10.2005 (Annexure A-11) and the market value was enhanced to Rs.50/- per square yard. The appellants had approached the Apex Court in Civil Appeal No. 19659 of 1992 directly challenging the order of the Reference Court, which was dismissed on 17.08.1994 (Annexure A-7). It is also their case that the review petition had also been dismissed by the Apex Court though the said order has not been appended.

Thereafter, the Apex Court allowed Civil Appeal No. 3777 of 2008 in the case of the similarly situated land owners on 01.04.2015 (Annexure A-12) and enhanced the market value to Rs.63/- per square yard. The applicants-appellants, in their wisdom, filed execution petition before the Reference Court, which was got dismissed as withdrawn on 11.05.2018 (Annexure A-8) on the ground that they had filed petition before the Supreme Court for determination of compensation. The order reads thus:-

“File has been taken up on the application moved by the counsel for the petitioner for the withdrawal of the execution petition. Following statement of his counsel has been recorded in the court.

“State that I withdraw present execution petition as petitioner before Supreme Court has been filed for determination of compensation.”

In view of the above statement made by learned counsel for the DH, execution petition is dismissed as withdrawn. File be consigned to record room after due compliance.”

Thereafter, CWP (Civil) No. 523 of 2018 was filed before the Apex Court, which was dismissed as withdrawn without prejudice to any other remedy in accordance with law on 05.07.2018 (Annexure A-9). Resultantly, the present appeal grossly time barred has been filed seeking

parity with the amount granted by the Apex Court on 01.04.2015 @ Rs.63 per square yard.

Counsel has relied upon the judgments of the Apex Court in ***Imrat Lal and others vs. Land Acquisition Collector and others, 2014 (14) SCC 133*** and ***Dhiraj Singh (D) through L.Rs. and others vs. Haryana State and others, 2014 (14) SCC 127*** and ***Samiyathal vs. Special Tehsildar, 2015 (2) RCR (Civil) 441*** to contend that the delay as such is liable to be condoned conditionally.

In the opinion of this Court, sufficient cause is to be shown for condoning the delay which apparently, in the present case, is not made out. A litigant cannot sit back and take advantage of his mistakes by approaching the wrong Courts at all time to his convenience and then come seeking enhancement though the land may have been acquired under the principle of eminent domain especially when his SLP and review application have been dismissed. It is to be noticed that the land was acquired for the development and utilization of land for residential sectors 31, 32, 35 and 36 by HUDA. Any enhancement which is made will have to be paid by the allottees and the subsequent purchasers, which has a rippling affect after a period of 30 years upon persons who are secure that the matter has been finalized. The inordinate delay as such has also been adversely commented upon by the Apex Court in ***Mewa Ram (D) through L.Rs. vs. State of Haryana, 1989 (3) SCR 660*** 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, in *Basawaraj & another Vs. Special Land Acquisition Officer 2013 (14) SCC 81*, it was 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

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. vs. 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 judgments which have been relied upon by counsel for the appellants as such have condoned the delay upto 12 years. In the present case, the delay is almost of 3 decades and in such circumstances, this Court is of the opinion that the law of limitation cannot be thrown out of the window for all intents and purposes.

Accordingly, the present appeal is dismissed. The original land owners have died between the years 1996 to 2000 and had chosen not to agitate for their grievances within a reasonable time to seek enhancement. The cause of action also died with them and in such circumstances, the applications to bring on record the legal representatives also are dismissed.

20.02.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No