

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

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**RFA No.708 of 2020 (O&M)
Decided on : 13.03.2020**

Dharmo Devi (since deceased) through her legal heirs and others

... Appellants

Versus

Estate Officer, Haryana Development Authority, Hissar (Presently at
Jhajjar) and another

... Respondents

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

Present: Mr. C.S. Singhal, Advocate for
Mr. Vikrant Hooda, Advocate for the appellants.

G.S. Sandhawalia, J. (Oral)

CM-1881-CI-2020

Application for condoning the delay of 44 days in refiling the appeal is allowed, in view of the averments made in the application, duly supported by affidavit. The delay of 44 days in refiling the appeal is condoned.

CM stands disposed of.

CM-1883-CI-2020 in/and RFA-708-2020 (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, Jhajjar dated 30.09.2004, pertaining to the notification dated 12.05.1995 and is barred by 5458 days in filing. Alongwith appeal an application bearing **CM-1882-CI-2020** has been filed that the matter is covered by the **Civil Appeal No.19175 of 2017** decided on 17.11.2017 by the Apex Court.

Sufficient cause which is sought to be made out is that there was a mistake in the memo of parties and the parties had filed application for correction to the same, which was allowed on 30.09.2014. In the said order there was also a mistake, so another application was filed for rectification of the same and the same was allowed on 05.02.2019 (Annexure A-1), due to which the delay has occurred. Thus, the delay is sought to be condoned.

A perusal of the said order (Annexure A-1) passed by the Reference Court would go on to show that there were some typographical and clerical errors, which were ordered to be corrected. Various petitioners had also died and their legal heirs were sought to be brought on record, which was allowed by the successor Court.

In similar circumstances, this Court in **RFA No.862 of 2018 'Darshan Singh Vs. State of Haryana and another'** decided on 05.09.2019 alongwith three connected appeals, pertaining to the same notification, noticed that the delay was of 14 years. It was also noticed that no effort was made to file an appeal, which is also a factor in the present case. The Reference Court while deciding the cases had not only decided the reference petition from which the present appeal arises, but also had decided as many as 359 references.

The first bunch of cases was 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.

The landowners have woken up from their slumber and are seeking the same amount of compensation after the Apex Court has finally decided the matter on 17.11.2017. Reliance has been placed upon **'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** to submit that application for condonation of delay is 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 (D) by his LRs & Ors State of Haryana (1986) 4 SCC 151** 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, non-

pedantic 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 non-serious 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.

Keeping in view the above factors which are balanced inter se the parties, the delay of almost 16 years is not liable to be condoned in the present appeal, more so in view of the fact that applications of the similarly situated landowners have also been dismissed in **Darshan Singh (supra)**. Therefore, to maintain parity, this Court is of the opinion that sufficient cause which is sought to be made does not show that there was any activity to pursue the litigation as such by the landowners, rather there has been negligence on their side, as admittedly from 2004 to 2014, they did not act. Even thereafter from 2014 to 2019 no effort was made

to file the appeal and the present appeal has only been filed on 12.12.2019.

Resultantly, the application for condonation of delay and the main appeal stand dismissed.

13.03.2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

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