

**136/ CM-16071-C-2018 in/and
RA-RS-112-C-2018
and
RA-RS-103-C-2017 (O&M)
in
RSA-3119-2009**

Saraswati and others

vs.

State of Haryana and others

Present: Mr.Raman Sharma, Addl.A.G., Haryana,
applicant in RA-RS-112-C-2017

Mr. Bikram Chaudhary, Advocate,
for the applicant-MC in RA-RS-103-C-2018.

Mr. C.B. Goel, Advocate,
for the non-applicant/appellants in RA-RS-103-C-2017.

CM-16071-C-2018

Vide this application, the State (respondent no.1 in the accompanying appeal), seeks condonation of a delay of 772 days in filing the accompanying review application, i.e RA-RS-112-C-2018, seeking therein a review of the order/judgment of this court dated 26.07.2016, allowing the accompanying appeal for the reasons given therein.

As regards this application, Mr. Raman Sharma, Addl. AG, Hayana, submits that the delay has occurred in view of the long procedure needed to be adopted by the State and that actually the order that is sought to be reviewed came to the notice of the State only when one Smt.Sangeeta wife of Pawan moved an application before the SDO (Civil), Loharu, for the implementation of the judgment, with the SDO endorsed a noting to that effect on 11.04.2017, and with the matter sent to the Naib Tehsildar and the SHO for carrying out the order.

On the site being visited by the concerned officials of the State, an objection was raised by the officials of the Municipal Council, Loharu, who

thereafter contacted the office of the Deputy Commissioner, Bhiwani, to apprise him of the factual position regarding the dispute, after which the Municipal Council also filed a civil suit seeking mandatory injunction against the appellants in the accompanying appeal but with the application filed alongwith that suit, under Order 39 Rules 1 and 2 CPC, having been dismissed.

Thereafter, the Municipal Council also filed an appeal against that order which again was dismissed and with it recorded in that order that the Municipal Council was not the recorded owner of the land and in fact it was the State Government as was so recorded.

Thereafter, opinion in the matter was sought from the office of the Advocate General, Haryana, and such opinion was given on 11.09.2018, and with it also found that the office of the Advocate General, Haryana, had also not put up the case to the concerned Law Officer for any opinion on the judgment.

Thereafter, the matter was processed and the review application was prepared, which was vetted by the office of the Advocate General on 24.09.2018, leading to the delay in filing the accompanying application on 28.09.2018.

It is to be observed here that though obviously counsel for the non-applicant respondent opposes the application and submits that such a long delay cannot be condoned, however looking at the detailed explanation given in the application which is duly accompanied by the affidavit of the Collector, Bhiwani, also looking at the fact that the State is an impersonal body, therefore, even in terms of the ratio of the judgment of the Supreme Court in **Municipal**

Committee, Hodal vs. Krishan Murari, (1996) 1 SCC 311, wherein a delay of about 900 days was condoned by the Supreme Court, this application is allowed and the delay of 772 days in filing the RA-RS-112-C-2018 is condoned.

RA-RS-112-C-2018

Vide this application, a review of the judgment of this court dated 27.06.2016 is sought, by which the appeal of the non-applicant/appellants was allowed by this court essentially in view of the statements made by counsel for the parties.

However, learned counsel for the applicant State points out that even as per the presence marked of the counsel appearing on that date, before this court, none appeared for the applicant State though it is respondent no.1 in the appeal.

Mr.Goel, learned counsel appearing for the non-applicant/appellants vehemently opposes a review of the order of this court on the ground that counsel for the respondent Municipality was very much present and in fact the application for impleadment of the Municipality was dismissed for the reasons given in that order; and importantly, though no State counsel has been shown to be present at the beginning of the judgment under review, however, arguments of the counsel have been duly noticed in paragraphs no. 5 and 7 of the judgment.

He further submits that the State also has filed a suit against the appellants, which he contends is on the same cause of action though that is refuted by learned counsel for the applicant State.

Without going into that matter on merits at all at this stage, simply on the ground that no counsel for the State is shown to be present as per the order sheet of the order under review, and in fact no State counsel has even been named by me while noting in paragraphs no.5 and 7 of the aforesaid judgment; and the application of the Municipality for impleadment had been dismissed on that date; therefore, it at least partly being public land as in question, with justice not only to be done but also seen to be done, the application is allowed and the accompanying appeal is ordered to be restored to its original number and status as existed immediately prior to the passing of the order dated 27.06.2016.

Adjourned to 29.09.2022 for arguments.

To be listed as per roster.

RA-RS-103-C-2017 (O&M)

As regards the review application filed by the Municipality, in view of the above passed order, it is virtually rendered infructuous; though of course with the judgement/order in question having been reviewed, as regards the application for impleadment of the Municipal Council, that would be considered alongwith the appeal itself.

August 10, 2022

dharamvir///

**(AMOL RATTAN SINGH)
JUDGE**