

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

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LPA No.1042 of 2022 (O&M)
Date of Decision: November 21st, 2022

Joga Singh and others

...Appellants

Versus

The State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Dr. Khushbir K. Bhullar-Waraich, Advocate
for the applicant-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.2524-LPA-2022

Prayer in this application is for condonation of delay of 105 days
in re-filing the present LPA.

The reason assigned for the delay in re-filing is that the Clerk of
the counsel lost his bag in the High Court Complex and the original paper book
in the case was misplaced. It is thereafter that the same was traced and re-filed
leading to the delay of 105 days in re-filing the appeal. The application is
supported by the affidavit of the Clerk of the counsel.

In the light of the above, the present application is allowed.

Delay of 105 days in re-filing the appeal stands condoned.

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Learned counsel for the appellants has sought to contend that there
is no limitation as such prescribed for a Constitutional Court to exercise its
extraordinary writ jurisdiction. Support is being taken from the judgment of the
Hon'ble Supreme Court in *SLP (Civil) No.467-468-2020* titled as *Vidya Devi
Versus The State of Himachal Pradesh & Ors.* Decided on 08.01.2020, where it

has been so held by the Hon'ble Supreme Court. Counsel has tried to refer to the factual aspect to contend that there was an inordinate delay with regard to the projection of the claim by the petitioner before the Hon'ble Supreme Court which has been although taken against her while dismissing the claim by the High Court but the Hon'ble Supreme Court had proceeded to hold that the Constitutional Court is not fettered to exercise its powers under the writ jurisdiction, where equity has to be exercised. She on this basis contends that the order passed by the learned Single Judge cannot sustain and deserves to be set aside.

Challenge in this appeal is to the judgment dated 25.05.2022 passed by the learned Single Judge, whereby the writ petition filed by the petitioners seeking a writ of mandamus directing the respondents to allot the land which was remaining as per the entitlement of Sardha Singh predecessor-in-interest of the petitioners in view of the land left by him in Pakistan i.e. 16-1 standard acres as projected in Annexure P-4. The said writ petition has been dismissed on the ground of delay and laches. The learned Single Judge has proceeded to not accept the prayer by contending that there has been inordinate delay on the part of Sharda Singh having exercised his rights for allotment of the land. It has come on record that Sharda Singh died in the year 1979 and no steps were taken for allotment. Even the successors did not take recourse to appropriate remedies as provided under the Haryana Evacuee Properties (Management and Disposal) Act, 2008, which were available to them. Application under the Right to Information Act, 2005 was submitted, to which response was received on 08.06.2012 but still no steps were taken till a legal notice was served upon the respondents after about seven years i.e. in the year 2019.

The writ petition has been filed after a period of about seven years of receipt of the information and, therefore, the inaction on the part of the appellants in approaching the Court has been found to be unexplained and the appellants have been sleeping over their rights, which do not entitle them for seeking a writ of mandamus as has been prayed for.

After considering the submissions as have been made by the learned counsel for the appellants and on going through the judgment passed by the Hon'ble Supreme Court, there can be no doubt with regard to the legal proposition that there is no limitation as such prescribed for exercising the equitable jurisdiction under the Constitution as conferred upon the High Courts and the Hon'ble Supreme Court but then each case has to be seen in the facts and circumstances relevant to the same. The case in which the Hon'ble Supreme Court has taken recourse of not taking delay as a ground for rejection of the claim i.e. *Vidya Devi's case (supra)* was a case where an 80 years old illiterate widow coming from a rural background had approached the Court with her grievance where after acquisition of land, no compensation had been granted to her. In the present case, it is not a case where predecessor-in-interest of the appellants was not aware of his rights, rather Sharda Singh had sought allotment of the land and had been granted partial relief in that. It is with regard to the remaining claim that neither Sharda Singh nor his successors have approached the authorities for release of their claim as has been projected above. Facts in the present case are totally different where nothing has come on record which would indicate that the successors of Sharda Singh are illiterate or were not aware of their rights. If a person is aware of his rights and sleeps over it, no undue benefit muchless equitable benefit accrues to a person and the Court is not obliged

to entertain such petitions where the person does not exercise his rights within a reasonable time.

The present appeal, therefore, being devoid of merit stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 21st, 2022
Puneet

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No