

CM No.1808-LPA of 2022
LPA No.754 of 2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.1808-LPA of 2022
LPA No.754 of 2022
Date of decision : 12.09.2022

Lakha Singh and others

.....Appellants

VERSUS

Union of India and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. R.K. Verka, Advocate, for the appellants.

AUGUSTINE GEORGE MASIH, J.

This appeal has been filed against the judgment dated 14.12.2018 passed by the learned Single Judge dismissing the writ petition preferred by the petitioners (appellants herein), wherein prayer was made for directing the respondents to grant statutory benefit to them under Sections 23 (1-A), 28 & 34 of the Land Acquisition Act, 1894, where the basic grouse was that vide supplementary award dated 20.07.2015 (Annexure P-5), they have been given the benefit of *solatium* @ 30% for the land which was acquired under the National Highways Act, 1956 (hereinafter referred to as 'NHAI Act'), but interest was not granted thereon. Claiming the said benefit, reliance was placed upon the judgment passed by the Division Bench of this Court in **M/s Golden Iron and Steel Forgings Vs. Union of India and others**, 2011 (4) RCR (Civil) 375 as also the judgment of the Hon'ble Supreme Court in **Sunita Mehra Vs. Union of**

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India 2016 (8) SCALE 582, but learned Single Judge refused to exercise its writ jurisdiction in the light of the fact that there was an alternative efficacious remedy available to them under Section 3G (5) of the NHAI Act, wherein there was a further remedy after the award of the Arbitrator to approach the District Judge under the Arbitration and Conciliation Act, 1996.

2. Prior to considering the present appeal on merits, inordinate and unexplained delay of 1791 days in filing the appeal is the first hurdle where an application (CM No.1808-LPA of 2022) has been preferred along with the appeal by asserting that Lakha Singh, predecessor-in-interest of the petitioners, who was petitioner No.1 in the writ petition, was pursuing the matter and following the writ on behalf of the other petitioners also. It is, during the pendency of the writ petition, unfortunately Lakha Singh fell ill in the month of November, 2018 and the writ petition was dismissed on 14.12.2018. Although Lakha Singh died on 13.05.2020 but the appellants were not aware of the lawyer engaged by him and they came to know about the dismissal of the writ petition only after some other residents of the village got the benefit of interest on *solatium* on the basis of their writ having been decided on 17.11.2019 in their favour when the amount was deposited by the National Highway Authority of India with the Competent Authority in the month of May, 2022.

3. This being the explanation put forth for the delay in filing the appeal which we have not been able to accept, learned senior counsel for the appellants has relied upon large number of judgments to substantiate his contention by asserting that in the cases of land acquisition, the Hon'ble

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Supreme Court had been lenient in condoning the delay on approaching the High Court. It has further been submitted by him that the benefit of statutory benefits cannot be denied to the land-owners/agriculturists merely on the ground of delay and therefore, the matter should be heard on merits and the appeal decided on the basis of the grounds taken in the appeal. Submission has been made that the alternative remedy is not a bar for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India. Prayer has, thus, been made that the application for condonation of delay be accepted and the appeal be heard on merits and decided.

4. We have considered the submissions as have been made by the learned senior counsel for the appellants and with his assistance have gone through the judgments on which reliance has been placed upon by him i.e. Civil Appeal No.610 of 2012, titled as '**Ajay Pal Vs. State of Haryana**, decided on 17.01.20212; Civil Appeal No.10799 of 2013, titled as '**Amrat Lal and others Vs. Land Acquisition Collector and others**', decided on 29.11.2013; Civil Appeals No.6599-6601 of 2014, titled as '**Dhiraj Singh (D) through LRs etc. etc. Vs. Haryana State and others**', decided on 21.07.2014; and Civil Appeal No.9288 of 2017, titled as '**K. Subbarayudu and others Vs. Special Deputy Collector (Land Acquisition)**', decided on 19.07.2017.

5. A perusal of the above judgments would show that no doubt the Hon'ble Supreme Court, in the cases of land acquisition, had taken a lenient view and condoned the delay in filing the Special Leave Petitions as also where the land-losers had approached the High Court after delay but in none

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of the matters, where there has been delay in filing the intra-Court appeal, the Hon'ble Supreme Court has given a licence or has opined about taking a lenient view in filing an appeal. Approaching the High Court or the Supreme Court for the first time after delay and the acceptance or non-acceptance thereof is again dependent upon the facts and circumstances of a particular case. Merely because the Hon'ble Supreme Court in some of the matters has taken a lenient view and has exercised its equitable jurisdiction in accepting such delayed approach or has supported the exercise of jurisdiction under Article 226 of the Constitution of India by the High Court would not mean that a licence has been given to a land-loser to approach the Court as and when he so desired.

As has already been mentioned above that in case of intra-Court appeal, it is the facts and circumstances of the case which would enable the Appellate Court to exercise its jurisdiction of condoning the delay in filing the appeal. The lethargy, inaction and carelessness would not entitle or justify delayed approach to the Court while filing an appeal. The reasons as have been given for delay in approaching the Court in the present appeal do not satisfy this Court and the statutory requirement as has been laid down under Section 5 of the Limitation Act, 1963 for exercise of the power to condone such delay is satisfied. Therefore, we are not inclined to accept the explanations as have been given in the application for condonation of delay and thus, the appeal on this ground alone deserves to be dismissed.

6. Even on merits, we are not inclined to interfere. It is not in dispute that the exercise of extraordinary jurisdiction by the High Court

under Article 226 of the Constitution, the discretion lies with the High Court. The assertion of the learned senior counsel for the appellants that there is no bar as such for entertaining the writ merely because an alternative remedy is available which remedy has not been availed by the person, who has approached the Court but the facts and circumstances of each case and the efficacy of the alternative remedy apart from it being provided in the statute itself, may persuade the Court to come to such a conclusion. There may be a situation where merely to cover-up the period of limitation, the alternative remedy is being avoided and a writ petition has been preferred, in such situations the Court needs to be cautious and would be circumspect in exercise its writ jurisdiction. For once, the position would have been different had a person not being aware of its statutory rights which in itself would not be a ground to approach the Court by way of writ petition or not availing of alternative remedy and thereafter, asserting a right, which, with the efflux of time, would be not available. The interest of the opposing party, which has, by such passage of time, gained crystallized right cannot be obliterated.

It is, in the light of the above that the learned Single Judge has relegated the petitioners to the alternative and efficacious remedy under Section 3G (5) of the NHAI Act. It may be added here that apart from petitioners having remedy of approaching the Arbitrator under Section 3G (5) of the NHAI Act have remedy of approaching the District Judge under the Arbitration and Conciliation Act, 1996 against such award, if not satisfied. With these remedies being available to the appellants, non-exercise of its equitable jurisdiction under Article 226 of the Constitution of

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India by the learned Single Judge cannot be said to be without any basis or unjustified which would call for any interference by this Court in the present appeal.

7. In view of the above, the present appeal is dismissed both on delay and laches as also on merits leaving the appellants to avail of their alternative remedy in accordance with law.

(AUGUSTINE GEORGE MASIH)
JUDGE

12.09.2022
Harish

(ALOK JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No