

*CM-5454 & 5455-CI-2019 in/and
RFA-1656-1991*

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

CM-5454 & 5455-CI-2019 in/and
RFA-1656-1991
Decided on:-04.07.2023

Purshotam Dass

....Appellant..

vs.

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Nischal Chetanya Manchanda, Advocate,
for the appellant.

Mr. Shivendra Swaroop, DAG, Haryana.

HARKESH MANUJA J. (Oral)

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1. By way of present application, prayer has been made for seeking condonation of delay of 1825 days in filing the application for restoration of the appeal.

2. In the present case, the land of the appellant was acquired vide notification dated 24.11.1987, issued under Section 4 of the Land Acquisition Act, 1894, (for short' "the Act") for the purpose of connecting Tosham road with Loharu-Dadri road through Foodgrain Market, wherein, the award under Section 11 of the Act, was passed on 26.05.1989 by the Land Acquisition Collector, Bhiwani. Aggrieved thereof, the appellant preferred reference under Section 18 of the Act, which came to be dismissed

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vide order dated 04.05.1991 passed by the court of learned Additional District Judge, Bhiwani. Impugning the same, the appellant filed the present appeal, which was admitted on 26.09.1991 and remained pending final adjudication till it was dismissed for non-prosecution vide order dated 29.05.2014 on account of non-appearance of counsel representing the applicant-appellant. By way of CM-5455-CI-2019, prayer has been made for seeking restoration of main appeal since it has been filed after a delay of 1825 days, by way of present application, applicant-appellant prays for condonation of the same.

3. I have gone through the contents of the application, paper book as well as the record of the case.

4. Perusal of record shows that learned counsel representing applicant-appellant has been appearing in the main appeal on most of the hearings and his non-appearance on 29.05.2014 appears to be wholly unintentional and bonafide.

5. Moreover from the contents made in the application, it can be gathered that even the name of learned counsel representing the applicant-appellant i.e. Mr. Jagdish Manchanda, Advocate did not find mention in the cause list as the main appeal was filed by Mr. P.N. Makani, Advocate, who unfortunately expired, thereby, resulting into non-appearance of Mr. Jagdish Manchanda, Advocate beyond his control and as soon as the factum of dismissal of appeal came to his notice, application for restoration was filed.

6. In view of the discussion made herein above, application is allowed. Delay of 1825 days in filing the application for restoration of appeal is condoned.

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7. More than that, regarding the same acquisition, the market value of the acquired land already stands enhanced vide judgment dated 26.07.2019 passed in RFA 1654-1991, filed at the instance of other similarly situated landowners pertaining to the same acquisition.

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8. Prayer in this application filed under Order 41 Rule 19 read with Section 151 CPC is for restoration of the main appeal, which was dismissed for non-prosecution vide order dated 29.05.2014.

9. Considering the fact that, the delay in filing the restoration application stands condoned, besides the fact that non-appearance of Mr. Jagdish Manchanda, Advocate was on account of non-mentioning of his name in the cause list on the relevant date, thus, the same being inadvertent and bonafide reasons, the prayer made in the application is allowed and order dated 29.05.2014 passed by this Court is hereby recalled, thereby, restoring the main appeal to its original number.

10. On oral request of learned counsel for the applicant-appellant, to which learned State counsel has no objection, main appeal is taken up for hearing today itself.

Main case

11. In the present case, land owned by the appellant, situated in the revenue estate of Bhiwan-Jonpal-I was acquired vide notification dated 24.11.1987, issued under Section 4 of the Act, for the purpose of connecting Tosham road with Loharu-Dadri road through Foodgrain Market, wherein, the award was passed on 26.05.1989 by the Land Acquisition Collector, Bhiwani. Aggrieved thereof, the appellant preferred reference under Section

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18 of the Act, which came to be dismissed vide order dated 04.05.1991 by the court of learned Additional District Judge, Bhiwani. Impugning the same, the appellant has preferred the present appeal.

12. Learned counsel for the parties are ad idem that the matters pertaining to the same acquisition/same notification covering the same revenue estate, filed at the instance of few other land-owners came up before this Court, which were disposed of vide judgment dated 23.08.2022 passed in RFA No.1654-1991, titled ***“Bajrang Lal (deceased) through LRs and others vs. State of Haryana”***. Relevant part of ***Bajrang Lal’s*** case (supra) is reproduced hereunder:-

*“Thus, in the facts and circumstances of the matter in hand, it would be just and fair to award 12% cumulative increase to the claimant/landowners for the time difference between the sale deed, dated 16.07.1984 Annexure A-5 and the notification, dated 25.07.1986, under Section 4 of the Act, in RFA Nos.1660 and 1810 of 1990. Likewise, the claimant/landowners in RFA No.1654 of 1991, shall also be entitled to 12% annual increase on cumulative basis for a period of three years. Meaning thereby, the claimant/landowners in RFA Nos.1660 and 1810 of 1990 shall be entitled to compensation at Rs.29.61p. per square yard and in **RFA No.1654 of 1991 at Rs.33.16p. per square yard**. Needless to assert that they shall also be entitled to all the statutory benefits as are admissible in law.”*

13. In view of the aforesaid discussion, the controversy being squarely covered with the aforesaid judgment, therefore, the present appeal is disposed of in the same terms based on the agreed stand taken by both sides.

04.07.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No