

227-a IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-6408-CII-2023 in/and
FAO-2855-1996 (O&M)
Decided on:-25.09.2023

Satish Kumar and another

....Appellants..

vs.

Union of India and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S.S. Chopra, Advocate and
Mr. Rajesh Gupta, Advocate for the appellants.

Mr. S.K. Sharma, Senior Panel Counsel,
for respondent No.1-UOI.

Ms. Lavanya Paul, DAG, Punjab,
for respondent No.2.

HARKESH MANUJA J. (Oral)

CM-6407-CII-2023

Prayer in the application is for exemption from filing certified copy of the order of Hon'ble Supreme Court in SLP No.17667 of 2007 decided on 29.01.2014 (Annexure A-5).

Application is allowed as prayed for.

CM-6408 & 6409-CII-2023

Prayer in the application bearing CM-6408-CII-2023 under Section 5 of the Limitation Act, 1963, is for condonation of delay of 8731 days in filing the application for restoration of the appeal, whereas, prayer in other application bearing CM-6409-CII-2023, under Order 9 Rule 4 CPC, is for restoration of present appeal, which was dismissed for non-prosecution vide order dated 28.04.1997.

Impugning the award dated 01.06.1996 passed by the Arbitrator-cum-Additional District Judge, Ludhiana, the predecessor-in-interest of the appellants filed present appeal seeking further enhancement of compensation. The appeal was filed through Advocates Er. Bhupinder Singh and Gurmohan Singh and as per the contents of the applications, first one out of the two, left practice on account of his old age, whereas, Mr. Gurmohan Singh migrated to Canada, which resulted into dismissal of the appeal in hand for non-prosecution vide order dated 28.04.1997.

Learned counsel for the applicants-appellants submits that the original appellants were informed by their counsels that the disposal of the main appeal would take some time and an information about it shall be conveyed thus, they remained under the bonafide impression that their appeal was still pending adjudication. As per applicants, it was only in the month of February, 2023, it came to their notice that their appeal stood dismissed for non-prosecution vide order dated 28.04.1997. It was thereafter, on obtaining the certified copy of the order dated 28.04.1997, the present application for restoration of the appeal was filed along with an application seeking condonation of delay therein. Learned counsel further submits that the delay in seeking restoration of the appeal was neither intentional; nor willful, but occurred on account of bonafide reasons beyond the control of applicants-appellants.

Notice of the above applications was issued and Mr. S.K. Sharma, Advocate representing respondent-UOI even filed separate replies to the same, which have been taken on record. Learned counsel for respondent No.1 has opposed the prayer made in the applications while

submitting that the delay in filing restoration application was inordinate and that too without any justified or sufficient cause so as to enable this Court to interfere.

I have heard learned counsel for the parties and gone through the pleadings in the applications as well as replies filed on behalf of respondent No.1-UOI.

Perusal of record shows that the appeal was ordered to be dismissed for non-prosecution on 28.04.1997 in terms of order of even date passed in FAO-2667 of 1996. Order dated 28.04.1997, passed in connected FAO No.2667 of 1996, is reproduced hereunder:-

“Earlier counsel for the appellant had sought time, which was granted, to file process fee and copies of grounds of appeal with a view to serve the respondents. Even though time was taken to him, no steps were taken to serve the respondents. No one is present on behalf of the appellant. Appeal to stand dismiss for want of prosecution.”

Later, said appeal (FAO-2667-1996) was restored and decided on merits vide order dated 13.11.2007. Somehow, for the reasons stated in the applications one of the counsels representing the applicants-appellants having left practice and the other having migrated to Canada, the appeal got dismissed for non-prosecution for their non-appearance. It was only in February 2023, the applicants-appellants came to know the said fact and immediately filed the present applications. Nothing material to contradict the same has been pointed out. In the facts and circumstances of the present case, non-prosecution of the appeal as well as the delay in filing restoration application appears to be for bonafide reasons beyond the control of

applicants-appellants and the following observations made by the Honb'ble Apex Court in case of "**Rafiq vs. Munshi Lal**", 1981 AIR SC-1400, also help their cause. Relevant portion of Para 3 thereof is reproduced hereunder:-

"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job."

Nonetheless, the other landowners pertaining to the same acquisition proceedings have already been awarded market value @ Rs.390/- per square yard vide decision dated 05.07.2006 passed in FAO-269-1995 (along with other connected cases) by this Court, which later got modified before the Hon'ble the Apex Court, vide its decision dated 29.01.2014 to an extent, whereby the landowners were awarded 15% solatium and interest @ 6% on the compensation from the date of award passed by the Arbitrator and thus non-suiting the applicants on the basis of technicalities rather than deciding their appeals on merits would cause

serious injustice to them.

As such, considering the averments made in the applications and in view of the discussion made herein above, besides relying upon the principle of parity as regards award of same compensation to the similarly situated landowners as laid down by the Hon'ble Supreme Court in case of **“Ningappa Thotappa Angadi (Dead) through LRs versus Special Land Acquisition Officer and Another”, 2020 (19) SCC 599**, the same deserves to be allowed. For reference, relevant para Nos.9 to 11 of the ***Ningappa Thotappa Angadi's case*** (supra) are reproduced hereunder:-

“9. *The afore-cited view has been consistently followed by this Court in a series of cases before and after the decision in Dhiraj Singh's (dead) case (supra). In [Imrat Lal & Ors. v. Land Acquisition Collector & Ors.](#) (2014) 14 SCC 133, it was observed that the delay in filing the Special Leave Petition cannot be the reason to deny just and fair compensation to the claimants. This Court observed that a liberal approach should be adopted in such like matters. In [Huchanagouda v. Assistant Commissioner and Land Acquisition Officer](#), 2019 SCC Online SC 990 also this Court condoned the delay and restored parity in the matter of grant of compensation though with a condition “that for the period of delay in filing and in refiling the Special Leave Petitions, the appellant-claimant(s) shall not be entitled to any interest on the enhanced compensation and statutory amount.”*

10. *It is undeniable that this Court vide judgment dated November 11, 2016 passed in C.A. No. 2927/2010 ([Ningappa Thotappa Angadi v. Special Land Acquisition Officer & Anr.](#)) has set aside the order of the High Court and restored the compensation as was awarded by the Reference Court. In the cited case, this Court held as follows:*

“We have heard the learned counsel for the parties to some length and carefully perused the material on record.

We are of the considered opinion that the impugned judgment and order of the High Court deserves to be set aside and judgment and order passed by the Reference Court restored. We say so because, this Court has in a similar appeal directed against the very same order set aside the impugned judgment and restored the enhancement granted by the Reference Court. We see no reason to take a different view in the present case. We, accordingly, allow this appeal and while setting aside the impugned judgment insofar as the same relates to the appellant, restore the judgment and order passed by the Reference Court. The parties shall, however, bear their own costs.”

11. The appellant(s) are also similarly placed claimants. They are, thus, 3 2019 SCC Online SC 990 entitled to seek parity and claim the same amount of fair and just compensation as has been awarded to other land owners. The appellant(s) are, however, not entitled to seek interest for the period for which they did not approach this Court.”

Accordingly, application (bearing CM-6408-CII-2023) for condonation of delay of 8731 days in filing the restoration application as well as the application (CM-6409-CII-2023) for restoring the main appeal are allowed. The main appeal is ordered to be restored to its original number and is taken up for hearing today itself for final disposal.

Main case

Learned counsel for the parties are *ad-idem* that the matter in issue as regards the determination of enhanced compensation is squarely covered by the decision rendered by this Court in FAO-269 of 1995 (along with other connected matters), decided on 05.07.2006, titled as “**Dr. Jagdish Parkash vs. The Competent Authority**”; whereby the compensation was

assessed @ Rs.390/- per square yards, besides grant of solatium @ 15% as well as interest @ 6% from the date of award passed by the Arbitrator as per the decision dated 29.01.2014 passed in Civil Appeal No. 1052 of 2014 (along with other connected cases), titled as **“Union of India Vs. Vidya Rani and another”**. Para 15 thereof being relevant, is reproduced hereunder:-

“15. In the result, the appeals are disposed of. We modify the judgment and order passed by the High Court and award 15% solatium and interest at the rate of 6% on the compensation from the date of award passed by the arbitrator. The acquiring authority is directed to pay the aforesaid amount within three months’ from the date of receipt of this Court’s order.”

2. Accordingly, the present appeal is disposed of in terms of the above mentioned two decisions dated 05.07.2006 passed by this Court in **Dr. Jagdish Parkash’s** case (supra) (FAO- 269 of 1995) and dated 29.01.2014 passed by Hon’ble the Supreme Court in **Vidya Rani’s** case (supra) and the appellants are entitled for market value @ Rs.390/- per sq. yards, besides 15% solatium thereupon along with interest @ 6% on the amount of compensation from the date of award passed by the Arbitrator as well as all other statutory benefits. However, appellants shall not be entitled to interest on the enhanced compensation for the period of delay in filing restoration application.

3. Pending misc. application(s), if any, shall also stand disposed of.

25.09.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No