

(2002) 03 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1113 of 2001

Dilbagh Singh

APPELLANT

Vs

Collector Land Acquisition, Industries Department Punjab and
Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 54
Limitation Act, 1963 — Section 5

Citation : (2002) 2 ILR (P&H) 503 : (2002) 2 RCR(Civil) 764

Hon'ble Judges : G.S. Singhvi, Acting C.J.; M.M. Kumar, J

Bench : Division Bench

Advocate : Sarjit Singh and Jagdev Singh, for the Appellant; S.K. Bhatia, D.A.G. for Respondent Nos. 1, 3 and 4 and Puneet Jindal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, A.C.J.—This appeal is directed against order dated 5.9.2000 vide which the learned Single Judge dismissed the application for condonation of delay as well as the Regular First Appeal filed by the appellant against the award of the District Judge, Kapurthala.

2. The facts necessary for deciding the appeal are that vide notification dated 24.9.1985 issued u/s 4 of the Land Acquisition Act, 1894 (for short, the Act), the State of Punjab acquired 1100 acres of land situated in eight different villages including the land of the appellant situated in village Rawal Bechirag, District Kapurthala. The Land Acquisition Collector awarded compensation at the following rates:-

Chahi - Rs 22691/- per acre Barani - Rs.13731/- per acre Gair Mumkin - Rs.12483/- per acre

Application filed by the appellant u/s 18 of the Act for enhancement of compensation was dismissed by the District Judge, Kapurthala alongwith similar

applications vide award dated 3.4.1996.

3. After 2 years and almost 5 months, the appellant filed R.F.A. u/s 54 of the Act alongwith an application u/s 5 of the Limitation Act for condonation of 793 days delay. The same were registered as RFA No.3024 of 1998 and C.M. No. 3596-CI of 1998. In support of his prayer for condonation of delay, the appellant made the following averments:-

"2. That the State of Punjab vide notification dated 24.9.1985 had acquired 1100 acres of land situated in 8 villages including the village of the appellant. The Collector has announced the award on 22.1.1986 vide order No.3. The award regarding compensation of other villages was also announced on the same date. The land owners had sought references and the reference was sent in 1989. The reference sought by the appellants was registered as reference No. 25 of 22.9.1989. Another reference sought by appellant was registered as reference number 24 of 1989. The reference sought by land owners of village Manga Bodha was registered as reference No.29 of 1989. The appellants came to know about the judgment dated 4.5.1998 in the first week of June, 1998. The appellants made enquiries and came to know that the reference regarding their land has been decided on 3.4,1996. the appellants applied for the copy on 5.6.1998 and the copy was received on 6.6.1998. The High Court was closed for summer vacation and therefore the appeal was filed on 29.6.1998.

3. That the appellants could not file the appeal because the references arising out of the same notification were pending and the appellants were under the impression that all the cases were being decided together. The appeal could not be filed earlier because of the bona fide mistake that all the references would be decided together and could not contact the counsel as appellants brother was looking after the case.

4. That there were two cases regarding the land of the appellants' family. Besides the reference No.25 concerning the appellants there was another reference No. 24 of 1989 which was concerning the appellant as well as his brothers Jasbir Singh, Raghubans Singh, Satnam Singh and Gurcharan Singh. Raghubans Singh was looking after both the cases. Raghubans Singh was under the bona fide belief that all the references would be decided together. On learning that other references had been decided in May, 1998, Raghubans Singh enquired about reference Nos.24 and 25 and came to know that the same had already been decided on 3.4.1996. The delay, it is submitted, has occurred because of a bona fide mistaken belief of Raghubans Sjngh and is inadvertent."

4. On being noticed by the Court, respondent No. 2 filed reply to contest the application for condonation of delay by making the following averments:-

"3 & 4. That all the averments made in these paras are mis-statements are not based on true facts and circumstances of the cases. The reason given that the brother of the appellant/claimant was looking after the case is totally wrong and figment of imagination. It is the appellant/claimant himself who has stepped in

the witness box and has made statement, which is the only evidence on record. This clearly shows that appellant/claimant was himself aware of the case and was therefore grossly negligent in not filing the appeal within the prescribed limitation period.

5. That appellant/claimant has been grossly negligent and has miserably failed to show any sufficient cause for condonation of inordinate delay of 793 days.

5. After hearing counsel for the parties, the learned Single Judge dismissed the application for condonation of delay as well as the main appeal by recording the following observations:-

"After hearing the learned counsel for the parties this Court is of the considered opinion that delay of 793 days in filing the present appeal cannot be condoned from any angle of vision or on any parameter.

It Was submitted on behalf of the appellant that a huge area of 1100 acres was acquired by single Notification. The appellant was not aware about the passing of the award by the Court. He came to know about the passing of the award only through other land-owners. The law helps the vigilant and not to the person who wants to sleep over his rights. The petitioner was represented before the Court through his lawyer. He should have contacted his lawyer from time to time about the passing of the award.

It was also submitted by the learned counsel for the appellant that against this very notification several appeals are pending in the High Court. This is not a precedent to the present appeal. Every case is to be considered on its own merit. The appeal has not been filed within limitation and sufficient cause has not been explained u/s 5 of the Limitation Act. The consequences are very fatal."

6. Sh. Sarjit Singh argued that the view taken by the learned Single Judge on the issue of condonation of delay is too narrow and pedantic and is contrary to the law laid down by the Supreme Court in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , and therefore, the impugned order may be set aside. He stated that a large number of R.F.As. filed against the awards passed by the District Judge in relation to the acquisition in question are pending for hearing and this, by itself, should have been treated as sufficient cause for condonation of delay in filing the R.F.A.

7. Sh. Puneet Jindal supported the order under challenge and argued that even though the recent decisions of the Supreme Court suggest that the Court should adopt a liberal approach in the matter of condonation of delay, the appellant should not be given any relief because the explanation given by him for delay in filing of the R.F.A. was wholly unsatisfactory. Learned counsel submitted the appellant's plea of ignorance about the proceedings was rightly not entertained by the learned single Judge because he had appeared as a witness in support of his claim. He, however, conceded that a number of R.F.As. arising out of the awards passed by the District Judge, Kapurthala in relation to the same

acquisition are pending in this Court. Sh, Jindal gave out number of one of such R.F.A. as 3259 of 1998.

8. Mrs. S.K. Bhatia, learned Deputy Advocate General, Punjab supported the arguments of Sh. Jindal and submitted that the L.P.A. may be dismissed as not maintainable.

9. We have given serious thought to the respective arguments. In our opinion, learned counsel for the appellant is correct in his submission that the view taken by the learned Single Judge on the issue of condonation of delay is contrary to the liberal approach reflected in the recent decisions of the Supreme Court and, therefore, the impugned order deserves to be set aside. The solitary reason assigned by the learned Single Judge for declining the appellant's prayer for condonation of delay appears to be that he had not contacted his lawyers from time to time. In this context, it is important to bear in mind that majority of people living in the rural areas of the country are illiterate and ignorant of their rights. They are also not aware of this intricacies of law and proceedings in the Courts and Tribunals. Most of the time, they are busy in earning their livelihood and suffer injustice at the hands of all and sundry including the State. Therefore, while considering the plea for condonation of delay raised by a peasant or litigant coming from rural area, the Court has to adopt an extremely liberal approach, more-so when the case involves depriving the applicant of his source of livelihood. If the old and antiquated rule that each day's delay should be satisfactorily explained is applied in such cases, then grave injustice would be done to a majority of population living in rural India and persons like the appellant would be deprived of their legitimate right to seek justice.

10. In *Collector, Land Acquisition, Anantnag v. Mst. Katji* (supra) the Supreme Court made a departure from the old school of thought on the interpretation of the expression sufficient cause appearing in Section 5 of the Limitation Act and held that the courts should adopt liberal approach in condoning the delay. This is clearly reflected in the following portions of the judgment:

"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when

delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

11. In Rama Kishen v. U.P.S.R.T.C. their Lordships condoned the delay in filing the application for compensation before the Motor Accident Claims Tribunal and remanded the case despite the fact that the story put forward by the appellants was not found convincing.

12. In M.K. Prasad Vs. P. Arumogam, their Lordships of the Supreme Court reiterated the liberal approach in condonation of delay by recording the following observations:

"In construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section.

XX XX XX XX XX XX XX XX Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigating him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra-vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex pane decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties."

13. We may now revert to the case in hand. A perusal of the averments contained in the application for condonation of delay in filing the R.F.A. shows that the case of the appellant was being pursued by his brother Raghubans Singh, who remained under a mistaken impression that all the references arising

out of the acquisition of 1100 acres of land would be decided simultaneously. Therefore, he did not try to enquire about the decision of the references filed by the appellant and his family members. The averments contained in the application were supported by the affidavit of Raghubans Singh. In the reply filed on behalf of respondent No. 2, an attempt has been made to discredit the version of the appellant by saying that he had himself appeared in the witness box. In our opinion, the appearance of the appellant as a witness cannot lead to an inference that he was himself pursuing the matter before the District Judge. That apart, he and his brother cannot be accused of lack of vigilance because the latter remained under a bona fide impression that all the references arising out of the same acquisition would be decided by open award.

14. We are further of the view that the pendency of appeals arising out of the awards passed by the District Judge in other cases relating to the same acquisition constituted a valid ground for condonation of delay in filing of the R.F.A. by the appellant and the learned Single Judge erred in declining his prayer.

15. Hence, the appeal is allowed. The order of the learned Single Judge is set aside. The delay in filing of the R.F.A. is condoned. The R.F.A. may now be listed for hearing before the learned Single Judge along with other similar appeals.