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**(2013) 05 AHC CK 0006**  
**In the Allahabad High Court**  
**Case No : F.A. (D) No. 214 of 2006**

Megh Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 30-05-2013

**Acts Referred:**

**Citation :** (2013) 99 ALR 430 : (2013) 6 AWC 6179 : (2013) 120 RD 418

**Hon'ble Judges :** Sibghat Ullah Khan, J

**Bench :** Single Bench

**Advocate :** Madan Mohan Singh and D.V. Singh, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Sibghat Ullah Khan, J.—In this appeal on 21.9.2012 and 5.11.2012 following orders were passed on the order sheet:

21.9.2012 In the earlier part of the day delay condonation application and the appeal were dismissed as infructuous with favourable findings in favour of the appellants, however while finalising the judgment it transpired that earlier appeal (First Appeal Defective No. 1266 of 1993) was filed by some of the claimants in the same reference mentioning in the memorandum of appeal under note-2 that appellants No. 1 and 2 had one fourth share, appellant No. 3 had one fourth share and appellant No. 4 had one fourth share and remaining one fourth share belonged to proforma respondents No. 4 to 7, who are appellants in this appeal. It was further mentioned in the said memorandum of appeal that the appeal was being filed for three fourth share only of the appellants and Court fees was calculated accordingly for three fourth share of the appellants No. 1, 2, 3 and 4 only and further claimants No. 1 to 4 (appellants in the present appeal) were impleaded as proforma respondents in the appeal against whom no relief was being sought.

In view of this, order passed in open Court in the earlier part of the day is recalled. This course is open in view of Supreme Court authority in Surendra

Singh and Others Vs. The State of Uttar Pradesh, and a Division Bench authority of this Court in Sangam Lal Vs. Rent Control and Eviction Officer and Others, .

List for further hearing on 3.10.2012 alongwith First Appeal Defective No. 1266 of 1993, decided on 28.1.2011 through judgment and decree passed on Civil Misc. Application No. 114669 of 2010 filed in the said appeal.

5.11.2012. In the appeal which was filed against the same award which is challenged through this appeal by the other co-tenure holders/parties in reference before the Court below [First Appeal (Defective) No. 1266 of 1993] an order was passed on 28.1.2011 by the Division Bench which is quoted below:

Heard Mr. D.V. Singh, learned Counsel appearing for the applicants/appellants and Mr. R.K. Mishra, learned Counsel appearing for the respondents.

This application has been made for the purpose of recalling the order passed by the Division Bench on 20.3.2003. All the appeals arising out of the same requisition and acquisition were heard by the Bench and the Bench has passed an affirmative order. The same has been challenged before the Supreme Court and the Supreme Court by its order dated 5.7.2010 dismissed the special leave petition. This matter, in which the application has been made, was also arising out of the same requisition and acquisition and pending as a bunch case before this Court. However, no order was passed in this application in view of the fact that the appeal was dismissed being barred by limitation and for not making the payment of Court fees. Now, the deficient Court fees has been paid and at this belated stage without any counter-affidavit, we cannot hold and say that the delay will not be condoned and the order which has been passed in other appeals could not be passed herein.

Against this background, we allow the restoration/recall application by condoning the delay, however, without imposing any cost. As a consequential effect, the appeal is treated to be as on day's list and is also allowed in the same terms and conditions as passed under the order dated 17.12.2009 in First Appeal No. 399 of 2009, Sahi Ram v. State of U.P. and others.

However, learned Standing Counsel is entitled to file counter-affidavit to the delay condonation application. Learned Counsel for the appellant has just now supplied two sets of copy of the grounds of appeal copy of the impugned judgment and copy of the delay condonation application alongwith affidavit to Sri S.P. Misra, learned Standing Counsel.

Learned Standing Counsel is directed to file counter-affidavit positively within one month. In view of the fact that appeal against the same award has already been allowed and other appeals arising out of the same acquisition have already been allowed holding the market value of the acquired land at the time of section 4 Land Acquisition Act Notification to be Rs. 71/- per sq. yd. it must be ensured that either the counter-affidavit is filed by the next date or matter is argued without counter-affidavit.

List on 6.12.2012.

Office is directed to supply a copy of this order free of cost to Sri S.P. Misra, learned Standing Counsel by tomorrow.

Appellants have also supplied deficiency in Court fees amounting to Rs. 13,428/- on 1.9.2011. Learned Standing Counsel has filed counter-affidavit to the delay condonation application. Cause shown for delay in filing the appeal is sufficient. Accordingly, the application is allowed. Delay in filing appeal is condoned.

2. The First Appeal No. 399 of 2009, Sahi Ram v. State of U.P. and others decided on 17.12.2009 was also directed against the same judgment and award, which has been challenged through this appeal deciding 39 L.A. References. The said appeal related to L.A. Reference No. 223 of 1991, Magh Singh and others v. U.P. State. In view of the fact that appeal directed against the same award by other co-tenure holders/applicants in the reference before the Court below/A.D.J. has been allowed on 28.1.2011 (supra), hence this appeal is also allowed in terms of the judgment and decree as passed on 17.12.2009 in First Appeal No. 399 of 2009, Sahi Ram v. State of U.P. Impugned award (judgment, award and decree dated 24.8.1992 passed by District Judge, Ghaziabad in L.A. Reference No. 190 of 199) connected with several other L.A. References including L.A. Reference No. 223 of 1991, Magh Singh and others v. U.P. State and others is set aside and it is directed that compensation must be paid to the appellants treating the market value of acquired land at the time of section 4, Land Acquisition Act Notification to be Rs. 71/- per square yard alongwith requisite solatium and interest. No order as to costs.