

(2005) 02 DEL CK 0160

In the Delhi High Court

Case No : Regular First Appeal No. 651 of 1993 and CMs No's. 4332-33 and 6352-53 of 2004

Yad Ram and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Citation : (2005) 117 DLT 622 : (2005) 80 DRJ 725

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Virender Kr. Singh, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

B.C. Patel, C.J.—The land of the appellants measuring approximately 55 bighas and 6 bids was located in Village Sabhapur was acquired in pursuance to the notification dated 10.08.1983 issued under Sections 4, 6 and 17 of the Land Acquisition Act, 1894 (hereinafter to be referred to as, "the said Act").

2. The Award was passed by the Land Acquisition Collector on 19.09.1986 in terms whereof the appellants were held entitled to compensation @ Rs.12,000/- per bigha. The parties aggrieved by the said Award sought a reference, which was decided in terms of the impugned judgment of learned Additional District Judge dated 11.03.1993.

3. It may be noticed that there were some inter-se disputes between the parties about the respective shares, which, however, stood determined in pursuance to the reference made u/s 30/31 of the said Act.

4. In terms of the impugned judgment and decree, the rate of compensation was determined at Rs.21,500/- per bigha. The appellants, still aggrieved by the order of the Reference Court, preferred the present appeal.

5. The appeal was filed beyond time and, thus, along with the appeal, an

application being CM No. 1347/1993 was filed for condensation of delay in filing the appeal. The appeal was listed on 14.09.1993 when notice was issued in the application for condensation of delay. The respondents were served for the next date of 07.02.1994 and time was granted to the respondents to file reply. No reply was, however, filed and the application was listed on 24.08.1994. On the said date, neither counsel for the appellant nor counsel for the respondent appeared even at the second call and, thus, CM No. 1347/1993 was dismissed for non-prosecution. The result of dismissal of the application was that the appeal was consequently dismissed.

6. There was silence on the part of the appellants for almost a decade and it appears that only when the issue of compensation in respect of the same very Award was determined in RFA No. 545/1993 titled "Mangal Singh v. Union of India" decided on 18.03.2004 that the appellants apparently sought to take steps as to why they were not being paid the amount. It is stated at that stage that the appellants came to know of dismissal of the appeal for non-prosecution and the counsel appearing for the appellants never informed the appellants about the same nor did the counsel chose to appear on the date fixed. A new counsel was appointed to find out the facts and thereafter moved the applications in the year 2004 for condensation of delay in moving the application for restoration of the appeal, the application for restoration of the appeal, the application for impleadment of legal heirs of one of the appellants Shri Brahm Pal, who was since deceased having passed away on 13.09.1998 and for condensation of delay in moving the application for impleadment of legal heirs.

7. The matter did not rest at this since no steps were even taken to prosecute these applications as a result of which the matter was listed before the Court on 26.07.2004. The appellants were directed to take steps within a week, failing which the matter would automatically stand dismissed. It is only thereafter the steps were taken. There was some deficiency in the court fee filed thereafter. It is all these applications and the RFA which have now been listed before the Court.

8. A perusal of the Explanation given in these applications really gives no justification for the manner in which the appeal and the applications have been prosecuted. If the appellants are aggrieved by the manner of prosecution of the appeal and the application, it was for the appellants to take steps against the person who was negligent in this behalf. The only factor, which weighs with us, is that undoubtedly the appellants have affixed court fee and filed the appeal, which itself was not within time, but the delay is not inordinate in filing the appeal. The quantum of compensation now stands determined by this Court at Rs.27,000/- per bigha. It is this factor, which is persuading us to pass the orders in this matter as hereinafter, especially in view of the fact that learned counsel for the appellants states that the appellants be burdened with some costs and the appellants will not claim any interest for the period the appellants have failed to prosecute the appeal, which is from the original date till date.

9. In view of the aforesaid, CM No. 1347/1993 for delay in prosecuting the

appeal is allowed and the delay is condoned.

10. CM No. 4332/2004 being the application for delay in filing the application for restoration is also allowed subject to payment of Rs.5,000/- as costs to Delhi High Court Bar Association for Law Library.

11. CM No. 4333/2004 being the application for restoration of the appeal to its original number is also allowed.

12. In view of the demise of Shri Brahm Pal, one of the appellants, on 13.09.1998, CM No. 6352/2004 is allowed as the same is supported by the affidavits and the death certificate of the deceased. All the legal heirs mentioned in para 2 of the application are brought on record. The delay in filing this application stands condoned and the application being CM No. 6353/2004 also stands allowed.

13. Amended memo of parties be filed within 3 days.

14. CM No. 1348/1993 also stands allowed subject to just exceptions.

15. In so far as RFA is concerned, the appeal is allowed in terms of the judgment in Mangal Singh's case (supra) determining the compensation @ Rs.27,000/- per bigha subject to the condition that the appellants shall not be entitled to interest from the date of expiry of three months from the impugned judgment and decree till date.

16. The appeal is accordingly allowed leaving the parties to bear their own costs.