

State Of H.P. & Others Vs Madan Lal (deceased) through LRs & Others

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 10, 2025

Acts Referred: Land Acquisition Act, 1894 " Section 4

Hon'ble Judges: Vivek Singh Thakur, J

Bench: Single Bench

Advocate: Seema Sharma, J.L. Bhardwaj, Sanjay Bhardwaj

Final Decision: Dismissed

Judgement

Vivek Singh Thakur, J.

1. Both these applications for adjudication of common question of fact and law are being decided by this common order.

2. These applications have been filed for condonation of delay of 2 years, 1 month and 8 days in filing the Review Petitions against common judgment

dated 20.12.2017 passed in RFA No.249 of 2011 with Cross Objection No.450 of 2011, titled as State of H.P. and others vs. Madan Lal and others

and RFA No.250 of 2011 with Cross Objection No.451 of 2011, titled as State of H.P. and others vs. Kanshi Ram and others, whereby appeals filed

by the State against common Award passed by the Reference Court in Land Reference Petition Nos.144 and 146 of 2008, were dismissed and Cross

Objections filed by the respondents/Cross Objectors were allowed, by upholding the value of the land determined by the Reference Court @

`7,00,000/- per bigha for all categories of land irrespective of its classification alongwith other consequential benefits in accordance with provisions of

the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and by awarding additional interest of 15% per annum on the market value

of the land fixed by Reference Court since 01.01.1989 till the date of Notification under Section 4 of the Act, i.e. 28.07.2006 as damages for utilization

of land for construction of road.

3. The plea taken to justify the applications for condonation of delay is that in 19 similar situated RFAs, a judgment was passed on 31.07.2017. The

Department had filed Special Leave Petitions (SLPs) before the Supreme Court, and all those 19 cases were remanded vide order dated 14.08.2019

passed by Supreme Court in Civil Appeal No.6308 of 2019, titled as State of Himachal Pradesh and others vs. Kanshi Ram and others, and other

connected matters, and at that time Department came to learn about the decision dated 20.12.2017 passed in present matters, but no copy of judgment

was made available to the Department.

4. It is further case of the State that the concerned Executive Engineer vide letter dated 15.01.2020 sent the case file for further opinion to Engineer-

in-Chief, who forwarded the case to the Additional Chief Secretary (PWD) to the Government of Himachal Pradesh vide letter dated 29.01.2020 for

legal opinion from the Law Department.

5. It has further been stated that after taking the opinion of the Law Department, matter was sent to Engineer-in-Chief with copy to concerned

Superintending Engineer as well as to the office of Executive Engineer vide communication dated 15.02.2020 with direction to file Review Petition.

6. Engineer-in-Chief conveyed the opinion to Executive Engineer with copy to the Superintending Engineer vide communication dated 20.02.2020.

7. It is further case of the State that after receiving opinion from the Law Department, the Department applied for certified copy of the judgment

dated 20.12.2017 in the High Court on 20.03.2020, and the same was prepared on 27.05.2020 and made available on 03.06.2020. Thereafter, Review

Petition was prepared and copy vetted from the office of learned Advocate General on 10.07.2020.

8. With aforesaid submissions, it has been contended that delay in filing the Review Petition is neither intentional nor willful, but due to the reasons

narrated supra which were beyond the control of the applicants-appellants-State.

9. It has been further advocated on behalf of the applicants-State that when similar matters have been remanded back by the Supreme Court to the

Reference Court for fresh adjudication, impugned judgment in present matter deserves to be reviewed and matters are required to be sent for fresh

adjudication by the Reference Court, in terms of the remand order passed in similar matters referred supra.

10. It has been further claimed on behalf of the State that all these matters pertain to acquisition of the land for construction of the same road in the

same village at the same time and, therefore, to maintain uniformity in determining the compensation payable to the land owners, delay deserves to be

condoned for adjudication of the main matter on merit by remanding the same to the Reference Court.

11. Learned Senior Counsel for the non-applicants/ respondents has contended that 19 matters, being referred by the State, are not similar to present

matter for the reason that land in both sets of the cases was acquired by issuing different Notification with considerable gap in issuance of Notification

under Section 4 of the Act and the land Acquisition Collector had also passed separate Awards in all these matters and, therefore, for non proximity of

time in issuance of the Notification under Section 4 of the Act and also for the reason that land in 19 matters was acquired for construction of

Namhol-Bahadurpur road; there is no similarity in present matters with 19 matters referred by the State.

12. It has further been argued on behalf of the non-applicants/respondents that even otherwise negligence and lack of due diligence on the part of the

non-applicants/respondents are writ large from the averments made in the applications itself, which clearly indicate that Department was not acting

with due diligence, rather there is negligence on the part of the State causing delay in filing present Review Petition without having any sufficient

cause.

13. Perusal of the record indicates that in 19 matters, Section 4 Notification was issued on 30.07.2005 for acquisition of land for construction of

Namhol-Bahadurpur road and land was acquired by passing Award No.6 dated 08.05.2007 by the Land Acquisition Collector. Whereas, in present

matters, Section 4 Notification was issued on 28.07.2006 for acquisition of land construction of the same road and Award No.13 dated 11.10.2007

was passed by the Land Acquisition Collector in these matters. There is no proximity or similarity of the time of issuance of Section 4 Notification and

passing of Award by the Land Acquisition Collector and with respect to the road for which land was acquired.

14. It is also transpired from the record as well as submissions made on both sides that after remanding matters by the Supreme Court vide order

dated 14.08.2019, passed in Civil Appeal No.6308 of 2019, Reference Court had decided Land Acquisition Reference No.135/2008/2019 alongwith

other connected matters vide Award dated 05.05.2021, by affirming valuation of land @ `7,00,000/- per bigha.

15. The State did not prefer any appeal against the aforesaid Award passed by the Reference Court within time. However, in the year 2022, appeals

were preferred alongwith applications for condonation of delay, which were dismissed by the High Court vide order dated 17.03.2023 passed in

CMP(M) No.1255 of 2022, alongwith connected applications. Nothing has been placed on record to demonstrate that any further appeal was or has

been ever preferred by the State against dismissal of the said applications filed for condonation of delay.

16. Applicant-State has failed to disclose that how, after remanding of 19 matters by the Supreme Court, Department came to know about judgment

dated 20.12.2017 passed in RFAs in present matters. Though it has been stated that no copy of judgment was made available to the Department, but it

has not been disclosed that who did not make copy available to the Department and, further that if there is laxity on the part of any officer/official

amounting to dereliction of duties in providing copy to the Department then, who was such officer/official and what action was taken against him/her.

17. Even if it is considered that Department came to know about passing of order of remand by the Supreme Court on 14.08.2019 then also, what the

concerned officers/officials were doing till January 2020, has not been disclosed.

18. It is apt to record that even in these applications, averments with respect to date of applying for certified copy, attestation and delivery/receipt are

wrong. In CMP(M) No.698 of 2020, copy of the impugned judgment was applied on 12.03.2020 which was attested on 03.06.2020, but was not

collected by the Department till 17.06.2020, and in CMP(M) No.698 of 2020 copy was applied on 27.01.2020 which was attested on 12.03.2020 but

was not collected by the Department till 17.06.2020. Firstly, dates disclosed are wrong. Secondly, on what count this delay was caused in receiving

copy, has not been explained. Not only this Review Petition was prepared and vetted from the office of learned Advocate General on 10.07.2020, but

it was not filed till 07.09.2020. Even after filing the Review Petition on 07.09.2020 objections were not removed till 05.10.2020.

19. Pleadings in the applications did not disclose any cause much less sufficient cause, for not preferring the Review Petition within limitation period.

20. Though recital of dates of moving of file from one place/officer to another may not be sufficient cause, however, in present applications, it has not

been disclosed that what was done since August 2019 and what was the reason since then till 15.01.2020 to remain silent in the matter. Further, why

copy of the impugned judgment was not obtained immediately after having knowledge of passing of judgment dated 20.12.2017.

21. It is also apt to record that though certified copy of the impugned judgment was not available with the applicants, but matter was processed for

opinion from the Law Department, which indicates that Department was having copy of the impugned judgment with it, otherwise there was no

question of sending the matter to the Law Department for opinion. In absence of impugned judgment in record, it would have not been possible for the

officers of the Department, including the Additional Chief Secretary (PWD) to the Government of Himachal Pradesh, to refer the matter to the Law

Department for opinion, and Law Department, for want of availability of impugned judgment, would not have been able to render its opinion. If copy

was available with the Department, then for preparation of Review Petition, there was no reason to wait for receipt or supply of certified copy from

the Copying Agency.

22. Story does not end here. There is also no reason explained in the applications for not filing the Review Petition immediately after its preparation on

10.07.2020, but for waiting for filing the same in September 2020.

23. The applications do not disclose any plausible reason much less sufficient cause for not filing the Review Petition within limitation period or even

after having the knowledge of passing of the judgment and/or having opinion of the Law Department, rather material placed on record reflects that

matter has been dealt with by the applicants-appellants in causal manner.

24. The Department has its own Law Officers and privilege for consultation and advice from the said Law Officers as well as from the office of

learned Advocate General. But despite that, applications lack in disclosing material particulars with respect to the reasons and about persons

which/who did not make copy available to the Department in time and any action taken against erring officers/officials in this regard.

25. The Hon'ble Supreme Court in Postmaster General and Others Vs. Living Media India Ltd. ,and another reported in (2012) 3 SCC 563

has observed as under:-

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides,

a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage

of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in

view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable

explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due

to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with

diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters

everyone under the same light and should not be swayed for the benefit of a few.”

26. The Supreme Court in University of Delhi Vs. Union of India and others, reported in (2020) 13 SCC 745 had observed that there may be

insufficiency of routine explanation and every day's delay need not be explained but reasonable and acceptable explanation is very much necessary

to indicate sufficient cause to justify the delay.

27. In the present case, Appellant-Corporation has failed to render reasonable and acceptable explanation to show sufficient cause which prevented

the Corporation from filing the appeal within limitation period.

28. The Supreme Court in Principal Commissioner Central Excise, Delhi-I Vs. Design Dialogues India Private Limited, reported in (2022) 2

SCC 327, had declined to condone the delay on the ground that similar matters were pending before the Supreme Court with observation that unless

the case is brought within parameters of Postmaster General and Others Vs. Living Media India Ltd. case, the Court would not be inclined to

condone the delay.

29. The Supreme Court in Commissioner of Customs, Chennai Vs. Volex Interconnect (India) Private Limited, reported in (2022) 3 SCC 159,

had declined to condone the delay for absence of any, cogent, explanation, for, condonation, of, delay, in, terms, of Postmaster

General and Others Vs. Living Media India Ltd.

30. The Supreme Court in State of Uttar Pradesh and others Vs. Sabha Narain and others, reported in (2022) 9 SCC 266, had declined the

request to condone the unexplained delay for showing no sufficient cause by referring Postmaster General and Others Vs. Living Media India Ltd.,

with imposition of costs of Rs.25,000/- for wastage of judicial time.

31. Even otherwise, on merits, subsequent decision by the same Court or by the Supreme Court does not create any right to the party to file Review

Petition for modifying the judgment. Appropriate course would have been to file an appeal against the impugned judgment. Change of law or contrary

subsequent judgment is no ground for filing Review Petition. Ground taken by applicants-appellants-State that similar matters have been remanded

back to the Reference Court also does not exist on date as even after remand, the Reference Court has determined value of the land at the same rate

which has attained finality as detailed supra.

32. Learned Deputy Advocate General, referring Para 30 of judgment passed by Supreme Court in Sheo Raj Singh (deceased) through Legal

Representatives and others vs. Union of India and another, (2023) 10 SCC 531, has submitted that Court should ensure that substantive rights of

private parties and the State are not defeated at the threshold simply due to technical considerations of delay.

33. Learned Deputy Advocate General has not noticed next observation made by the Supreme Court in the same paragraph wherein it has been

observed by the Supreme Court that however condonation of delay being a discretionary power available to Courts, exercise of discretion must

necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, irrespective of length of delay.

34. In present case, there is not only considerably long delay, but there is only excuse, and for absence of sufficiency cause, and for want of material

particulars especially acceptable explanation for casual approach, prayer of applicant cannot be accepted. In this regard, paragraphs 31 and 32 of

Sheo Raj Singh's case, are also relevant which read as under:-

31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned

whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish

between an "explanation" and an "excuse". An "explanation" is designed to give someone all of the facts and lay out the cause for something. It helps

clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care

must, however, be taken to distinguish an "explanation" from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing

and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An "excuse" is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as

just an "excuse" would imply that the explanation proffered is believed not to be true.

Thus, said there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to

be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are often accepted for condonation of long

delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for

adjudication.

35. In present matters, there is inordinate unexplained delay. For the finality of the value of acquired land in other alleged similar matters, on the basis

of which present Review Petitions have been proposed to be filed, even after condonation of delay, Review Petitions are likely to fail. Therefore,

rejection of these applications will not cause to suffer public interest.

36. In present matter, neither there is any public interest involved nor the applicant-State has a good case on merit for condonation of delay.

37. Therefore, even on merit, no ground is made out in favour of applicant for allowing Review Petition and also for failure in pointing out any error

apparent on the face of record, illegality, irregularity or perversity in the impugned judgment.

38. For the material placed before me and applying the principles propounded by the Supreme Court in its pronouncements referred (supra), I am of

the considered opinion that no case is made out for condonation of delay.

39. Accordingly applications are dismissed and disposed of however, despite a fit case to impose cost, by taking lenient view, cost is not being imposed.

40. Proposed Review Petitions alongwith applications, also stand disposed of in aforesaid terms.