

(2002) 02 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Miscellaneous No. 1585-CII and 1586-CII of 2000 in Civil Revision No. 484 of 2000

Lal Singh and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Feb. 26, 2002**Acts Referred:**

- Land Acquisition Act, 1894 - Section 28A
- Limitation Act, 1963 - Section 18, 5

Citation: (2002) 4 RCR(Civil) 634**Hon'ble Judges:** M.L. Singhal, J**Bench:** Single Bench**Advocate:** Sudershan Goel, for the Appellant; Satbir Godara, for the Respondent**Final Decision:** Allowed

Judgement

M.L. Singhal, J.

Delay in refiling the delay is condoned. Civil Miscellaneous No. 1585-CI1 of 2000 is disposed of. Through Civil Miscellaneous No. 1585-CII of 2000 filed u/s 5 of the Limitation Act, Lal Singh and others have prayed for the condonation of delay of 9 years and 3 months and 24 days in filing this revision.

2. Land belonging to Bir Singh, Birkha, Munshi Rain and other co-sharers measuring 58 kanals 19 marlas was acquired by Government of Haryana for construction of Jind Cooperative Sugar Mills Limited, Jind. Compensation at the rate of Rs. 22,000/-per acre was awarded by the Land acquisition Collector (hereinafter to be referred to as Collector). On the application of co-owners Lal Singh alias Lala and Birkha and others, reference was made by the Collector to the District Judge, Jind. The Additional District Judge, Jind allowed enhancement. On 5th August, 1985, Lal Singh and Birkha represented by his legal representatives Rukmani and others filed application before the Collector Jind u/s 28-A of the Land Acquisition Act, 1894

(hereinafter to be referred to as the Act) for the grant of same compensation to them as has been granted to the other co-owners. That application was dismissed by the Collector vide order dated 5th May, 1986 as barred by limitation. He held that the copy of the order was prepared on 3rd May, 1985 and delivered to Lal Singh and late Birkha represented by his legal representatives on 4th May, 1985. Application u/s 28-A of the Act should have been moved on or before 2nd August, 1985. Since it had been moved on 5th August, 1985 it was barred by limitation. They moved another application on 11th August, 1986 u/s 18 of the act saying that the dismissal of the application filed by them u/s 28-A of the Act vide order dated 5th May, 1986 was against law. It was also stated that application u/s 28-A of the Act could be moved upto 5th August, 1985 because 3rd August, 1985 and 4th August, 1985 were gazetted holidays. It was also stated that Additional District Judge, Jind had decided another land acquisition case No. 18 of 8th February, 1984 titled Chander Bhan v. State of Haryana on 27th February, 1986 and therefore, application u/s 28-A of the Act could not be termed as time barred. Application u/s 18 of the Act was referred by Collector to the District Judge, Jind.

3. This application filed u/s 18 of the Land Acquisition Act was dismissed as time barred by the Additional District Judge, Jind vide order dated 8th March, 1989. Not satisfied with this order dated 8th March, 1989 of Additional District Judge, Jind whereby he dismissed the application filed by Lal Singh and Late Birkha (represented by his L.Rs. Rukmani and others), they came up in revision to this Court. This revision was barred by a period of 9 years and 24 days. Through this Civil Miscellaneous they have claimed condonation of delay in filing this revision.

4. It was submitted by the learned counsel for the petitioners that they have made an application u/s 18 of the Act seeking reference to District Judge but no reference was made. On the application of other co-owners qua the land acquired through the same notification reference was made to the District Judge, Jind vide judgment dated 20th April, 1985 enhancement in the amount of compensation was allowed by the learned District Judge, Jind. On 5th August, 1985, they moved an application u/s 28-A of the Act before the Collector on the basis of the Award dated 20th April, 1985 which was dismissed as time barred by a period of 3 days vide order dated 5th May, 1986. On 11th August, 1986, they filed another application u/s 18 of the act seeking reference of their dispute to the District Judge, Jind. This application was referred by the Collector to the District Judge, Jind and was registered as Land Acquisition Case No. 2 dated 3rd March, 1987. The District Judge, Jind dismissed the reference vide order dated 8th March, 1999 being barred by time. Another reference LAC No. 16 dated 8th February, 1984, Chander Bhan v. State of Haryana was decided on 27th February, 1986. It was submitted that the petitioners claim the same amount of compensation as was allowed to the land owners in the said two cases. Petitioners could make this award as the basis of their claim u/s 28-A of the Act and could file an application upto 27th May, 1986. Against the award dated 20th April, 1985, Regular First Appeal No. 964 of 1985 Ratti Ram and Ors. v. State of Haryana was filed in the

High Court. The High Court vide judgment dated 19th March, 1987 allowed enhancement in compensation. It was submitted that the petitioners were entitled to the same relief as had been granted to the appellants of Regular First Appeal No. 964 of 1985. It was submitted that in the order dated 8th March, 1989 learned Additional District Judge, Jind did not consider the effect of judgment dated 19th March, 1987 passed by this Court in Regular First Appeal No. 964 of 1985 which entitled the petitioners to seek the same amount of compensation within a period of 30 days from the date of judgment dated 19th March, 1987. It was submitted that it was the duty of the Court to take into consideration the effect of the judgment of this Court and grant appropriate relief to the petitioners because this was a supervening event that happened during pendency of LAC No. 2 of 3rd March, 1987 (ibid). It was submitted that instead of filing promptly revision against the order dated 8th March, 1989 passed in LA case No. 2 of 3rd March, 1987, they were wrongly advised by their counsel in the trial Court that they should file execution applications for the realisation of the same amount of compensation which had been allowed to other co-owners, on whose reference u/s 18 of the Act, enhancement had been ordered by the Additional District Judge, Jind and then by the High Court. It was submitted that they acted on the wrong advice of their counsel and filed execution for the realisation of the amount of compensation as had been allowed in Regular First Appeal No. 964 of 1985. Their execution application was dismissed as not maintainable vide order dated 27th July, 1989 of Additional District Judge, Jind and it was after the dismissal of their execution applications that they realised that the proper remedy for them was to knock the door of this Court through revision against the order of the Additional District Judge dated 8th March, 1989. It was submitted that on account of the wrong advice of the counsel, they could not file application u/s 28-A of the Act on the basis of the judgment of this Court dated 19th March, 1987 in Regular First Appeal No. 1985 while the proceedings were pending before the trial Court i.e., LAC No. 2 of 3rd March, 1987. It was submitted that equity demands that delay should be condoned and revision be heard on merit as if the delay is not condoned and revision is not heard on merit, the amount of compensation awarded to them for their land acquired would be far less than the amount of compensation awarded to other co-owners whose land was acquired through the same notification. It was submitted that all of them are co-sharers and it would be unjust to award this compensation to one co-sharer and that compensation to another co-owner. It was submitted that it is for this reason that Parliament enacted Section 28-A in LA, the object of which is to apply to the LA Collector for giving them the benefit of enhancement which had been given to the other co-owners who had gone in reference u/s 18 of the Act to the District Judge, Jind though they themselves had not gone in any such reference to the District Judge.

5. This payer of the petitioners was opposed by the Jind Cooperative Sugar Mills Limited through its Managing Director urging that there is no sufficient cause made

out for condoning the delay of 9 years 3 months and 24 days in filing of the revision.

6. It was submitted by the learned counsel for the petitioners that they bonafide filed execution application for the recovery of enhanced amount enhanced in the Regular First Appeal decided on 19th March, 1987. It was submitted that they bonafide believed on account of advice of the counsel that they could file execution applications for the recovery of amount enhanced by Courts on the reference made by other co-owners though they themselves had not gone in for any such reference. It was submitted that the period which was spent by them bonafide in the Execution Court in prosecuting the Execution Nos. 61 and 62 of 29th May, 1989 should be excluded. In support of this submission he drew my attention to *Badlu and Anr. v. Shiv Charan and Ors.* (1990) S.C.C. 401 where it was held that delay caused in pursuing the appeal bonafide, diligently and in good faith in wrong Court due to mistake of law or fact resulting from mistaken advice given by lawyer should be condoned. He drew my attention to *Shiv Shankar Dal Mills etc. v. State of Haryana and other etc.* AIR 1980 S.C. 937 where it was held that in our jurisdiction, social justice is a pervasive presence and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of judicial process to embrace the basic rule of distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong. Where public bodies under colour of public laws, recover people's moneys later discovered to be erroneous levies the dharma of situation admits of no equivocation. There is no law of limitation, especially for public bodies, on virtue of returning what was wrongly recovered to whom it belongs.

It was submitted that delay should be condoned and limitation as the ground of attack should not be allowed to be taken by Jind Cooperative Sugar Mills Limited Jind for the construction of which land belongings to Lal Singh and others was acquired so as to enable them to claim the same amount of compensation which has been paid to other co-owners who had knocked of door of the Court of District Judge, Jind u/s 18 of the Act.

7. Learned Counsel for the respondent on the other hand submitted that delay can not be condoned without recording satisfaction of reasonable or satisfactory explanation of any ordinate delay. It was submitted that law of limitation has to be applied with all its rigor prescribed by statute. The Courts have no power to extend the period of limitation on equitable grounds. In support of this submission, he placed reliance on [P.K. Ramachandran Vs. State of Kerala and Another](#), .

8. It was held in [N. Balakrishnan Vs. M. Krishnamurthy](#), that rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every* legal remedy must be kept alive for a legislatively fixed period of time. It must be remembered that in every case of delay there can become lapses on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the

door against him. If the explanation does not smack of malafide or it is not put forth as part of dilatory strategy, the Court must show utmost consideration to the suitor.

9. In this case, there has been no lack of diligence on the part of Lal Singh and the legal heirs of Birkha. They have all along been claiming that they should be awarded the same amount of compensation which had been awarded to their co-owners of the land which was acquired through the same notification. They moved an application u/s 28-A of the Act. After their application filed u/s 28-A of the Act was dismissed as time barred by a period of 2 days, they filed execution for the recovery of the amount enhanced by the District Judge and then by this Court. Section 28-A is intended to come to the rescue of those who had failed to seek reference u/s 18 of the Act to the District Judge and thus missed the bus to claim that amount of compensation which had been awarded to others whose land had been acquired through the same notification.

10. For the reasons given above, this Civil Miscellaneous is allowed. Delay in filing the revision is condoned.

11. For motion hearing in the revision, put up before the appropriate Bench on 13th March, 2002.