

Before Hon'ble R. P. Sethi, G. S. Singhoi & H. S. Bedi, JJ.
TARA WATI,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Regular First Appeal 148 of 1993

July 5, 1994

Limitation Act, 1963—Section 5—Land Acquisition Act, 1885—Section 28-(A)—Limitation—Land owner whose land has been acquired by notification under the Land Acquisition Act, cannot seek condonation of undue and unexplained delay on the ground that another appeal out of the same acquisition is pending in Court—An application for condonation of delay cannot be dismissed by the Court on the ground that another appeal arising out of the same notification has been decided by the higher Court on merits.

Held, that the purpose and object of Section 28-A of the Land Acquisition Act is based upon the principles of justice and equity and cannot be allowed to make an instrument for encouraging or protecting litigation. It is also established principle of law that the appeal is the creation of the statute which can be availed of strictly in accordance with the provisions contained in the statute providing the remedy of appeal. All the pre-requisites for filing the appeal including the condition of limitation is to be satisfied before approaching the Court for the grant of the relief by the appellate authority.

(Para 5)

Held, that sufficient cause within the meaning of the Section must be a cause which is beyond the control of the party invoking the aid of the Section and the test to be applied would be to see as to whether it was a bona fide cause, inasmuch as nothing could be considered to be bona fide which is not done with due care and attention. The person involving the jurisdiction of the Court for condonation of delay is required to satisfy the Court that he was unable to present his appeal in time on account of some misadventure or incapacity or the circumstances beyond his control or such sufficient cause which bona fide prevented him in filing the appeal within the prescribed limitation. Precisely, the meaning of the word sufficient cause and its scope should not be crystalised by any rigid definition.

(Para 6)

Held, that the land owners whose land had been acquired by a particular notification cannot seek condonation of undue and unexplained delay on the sole ground that another appeal out of the

same acquisition is pending in this Court. Similarly application for condonation of delay can also not be dismissed merely on the ground that another appeal out of the same notification had been decided by the higher Court on merits. The application for condonation of delay has to be independently decided though the dismissal of another appeal with respect to the same notification may by a circumstance to be taken note of while deciding such application. The judgement of the Division Bench in *Raghubir Singh's case* (supra) in so far as it observes that the delay is required to be condoned when other appeals arising out of the same notification were pending for adjudication in this Court cannot be held to be a good law. The said judgement to that extent shall be deemed to have been overruled.

(Para 12)

Raghubir Singh and others v. State of Haryana 1990 (2) Current Law Journal 97.

Overruled.

Arun Jain, Advocate, for the Appellant.

H. L. Sibal, A.G. Haryana with Jagdev Sharma, Addl. A.G. Haryana, for the Respondent.

JUDGMENT

R. P. Sethi, J.

(1) Whether a landowner whose land has been acquired by a particular notification can seek condonation of undue and unexplained delay on the short ground that another appeal out of same acquisition is pending in this Court or should the application of such a landowner be dismissed by the Court on the ground that another appeal out of same notification has been decided by a higher Court on merits? is the question of law referred to us for authoritative pronouncement.

(2) The facts of the cases as noticed in Regular First Appeal No. 148 of 1993 and C.M. No. 207/CI of 1993 are that the State of Haryana,—vide notification issued under Section 4 of the Land Acquisition Act, 1894 (for short the 'Act') acquired the land situated in the revenue estate of Darra Kalan, District Kurukshetra for the purpose of development and utilization of the same for establishment of an urban estate. Regular First Appeal No. 441 of 1991 filed by some of the claimants is admittedly pending adjudication in this Court. The appellant-applicant, in the instant case, sought the condonation of delay of 11 years in filing the appeal on the basis

of the judgment of this Court in *Raghubir Singh and others v. State of Haryana* (1), wherein the delay in filing the appeal was condoned on the ground of pendency of other appeals arising out of the same notification. The learned Single Judge having thoughtfully considered the rival contentions raised in this case came to the conclusion that as the question of law raised was likely to affect large number of cases, it should be authoritatively pronounced by the larger Bench.

(3) The learned counsel appearing for the appellant-applicant has contended that the law laid down in *Raghubir Singh's* case (*supra*) was based upon the appreciation of different provisions of the Act and requires no modification or reconsideration. He has particularly relied upon the provisions of Section 28-A of the Act in support of his contention. Section 28 A of the Act provides :—

“28-A. Re-determination of the amount of compensation on the basis of the award of the Court.—(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written applications to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court :—

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an enquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

(4) A bare perusal of the Section shows that the same is applicable only in cases where the person aggrieved had not applied to make a reference to the Court under Section 18 of the Act. In "*The Scheduled Caste Co-operative Land Owning Society Ltd. Bhatinda v. Union of India and others* (2), it was held as under:--

"It is obvious on a plain reading of sub-Section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The re-determination has to be done by the Collector on the basis of the compensation awarded by the Court in the reference under Section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the collector for re-determination and not all those like the petitioners who had not only sought a reference under Section 18 but has also filed an appeal in the high Court against the award made by the reference Court. The newly added section 28-A, therefore, clearly does not apply to a case where the claimant has sought and secured a reference under Section 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of Section 28-A, finds support from the judgment of this Court in *Mewa Ram (deceased) by his Lrs. and others v. State of Haryana through the Land Acquisition Collector, Gurgaon* (1986) 3 SCR 660."

(5) In the instant case, it is admitted that the applicant herein had actually availed of the remedy under Section 18 of the Act by getting a reference made to the Court for determination of the question raised by her. The purpose and object of Section 28-A of the Act is based upon the principles of justice and equity and cannot be allowed to made an instrument for encouraging or protecting litigation. It is also established principle of law that the appeal is the creation of the statute which can be availed of strictly in accordance with the provisions contained in the statute providing the

(2) 1990(4) J.T. Supreme Court 1,

remedy of appeal. All the pre requisites for filing the appeal including the condition of limitation is to be satisfied before approaching the Court for the grant of the relief by the appellate authority.

(6) The provisions regarding limitation as codified under the Limitation Act clearly indicate that the said Act is a disabling act which cannot be strained or stretched beyond the natural meaning of the language used in different sections. The Act being self contained and exhaustive code cannot be permitted to be used to take away from any one which is required to be construed strictly though adopting the approach of leaning its benefit to the claimants. The Supreme Court in *Binod Bihari Singh v. Union of India* (3), has held:

“Limitation Act is a statute of repose and bar of a cause of action in a Court of law, which is otherwise lawful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence and public policy.....”

The rules of limitation are founded on consideration of public policy and the provisions of the Act dealing with the limitation are required to be interpreted with the approach which advances the cause of public policy and not otherwise. The intention of the provisions of the law of limitation is not to give a right where there is none but to impose a bar after the specified period authorising a litigant to enforce his existing right within the period of limitation (See A.I.R. 1968 Allahabad 246). The object of limitation laws is to compel a litigant to be diligent in seeking remedies in a Court of law and put a bar on the stale claims. The interest of the society requires that the party should be put to litigation keeping in view its nature. The law assists the vigilant and not those who sleep over their rights. It is also acknowledged position of law that law of limitation only bars a remedy and does not take away the right of the Courts to adjudicate the lis according to law and do not revive the rights of the parties unless permitted under a particular statute. Principles of Section 5 of the Limitation Act correspond to Sections 331 and 337 of the Code of Civil Procedure of 1859 and were first introduced in the Limitation Act of 1871 and thereafter repeated again with some modifications of Limitation Act of 1877. The Limitation Act, 1908 extended the principle of the section to applications for leave to appeal and to other applications to which the Act might be made applicable by or under a particular enactment for the time being in force. The Section was again amended,—vide

(3) A.I.R. 1993 S.C. 1245.

Act No. X of 1922 and keeping in view the long judicial experience and pronouncements made by various Courts, Section 5 has suitably been modified to achieve the objectives,—*vide* the provisions of Limitation Act No. 36 of 1963. To attract the provisions of Section 5 of the Limitation Act a Suitor is under an obligation to show that he had sufficient cause for not preferring the appeal or making application within the period of limitation prescribed under the said Act or under any other statute governing the filing of the appeals or applications. Even though normally the grounds of sufficient causes have been spelt out by various pronouncements of different High Courts and the Apex Court yet no ground can be held to be generally applicable without exception. The question of existence of sufficient cause is to be decided on the basis of the facts and circumstances of each particular case. The Courts have found it difficult to generally define precisely the meaning of sufficient cause or sufficient reason. Making such an attempt would amount to crystallised into a rigid definition with judicial discretion which the Legislature has for the best of all reasons left undetermined and unfettered. Sufficient cause within the meaning of the Section must be a cause which is beyond the control of the party invoking the aid of the section and the test to be applied would be to see as to whether it was a *bona fide* cause, inasmuch as nothing could be considered to be *bona fide* which is not done with due care and attention. The person invoking the jurisdiction of the Court for condonation of delay is required to satisfy the Court that he was unable to present his appeal in time on account of some misadventure or incapacity or the circumstances beyond his control or such sufficient cause which *bona fide* prevented him in filing the appeal within the prescribed limitation. Precisely the meaning of the word sufficient cause and its scope should not be crystallised by any rigid definition.

(7) It is acknowledged position of law that the Courts only interpret and not legislate the laws. Section 28-A of the Act is a measure of legislation whereas the interpretation of Section 5 is merely a judicial act which cannot be stretched to the extent of enacting or legislating laws. The Supreme Court in *Ajit Singh v. State of Gujarat* (4), held that a party is entitled to wait until the last day of limitation of filing the appeal but when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier a duty is cast upon such a party to establish sufficient cause proving that because of some events or the circumstances arising before the limitation expired, it was not possible to file the appeal within time. No event or circumstance arising after the

(4) A.I.R. 1981 S.C. 738.

expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of the limitation which may further delay the filing of the appeal but that the limitation had been allowed to expire without the appeal being filed is required to be traced to a cause arising within the period of limitation.

(8) In *G. Ramegowda v. The Special Land Acquisition Officer, Bangalore* (5), the Supreme Court has held that the contours of the area of discretion of the Courts in the matter of condonation of delay in filing appeals are set out in a number of pronouncements of this Court such as *Ram Lal v. Rewa Coalfield Ltd.* (6), *Shakuntala Devi v. Kuntal Kumari* (7), *Concord of India Insurance Co. Ltd. v. Nirmala Devi* (8), *Mata Din v. A. Naryanam* (9), *Collector Land Acquisition v. Katiji* (10). It was further held that there is no general principle saving the party from all mistakes of its counsel. Each case is required to be considered on the particularities of its own special facts. The Courts were, however, required to give liberal construction to the provisions of Section 5 of the Act in advancing substantial justice and delay may be condoned where no gross negligence or deliberate inaction or lack of *bona fides* is imputable to the party seeking condonation of delay.

(9) The learned counsel for the appellant-applicant has also referred to the Division Bench judgment of this Court in *Devi Dawar Temple v. Union of India* (11), in support of his contention. In that case, the Division Bench considered the factum of death of Shri Sher Chand who was Mohtmim of the Temple and had filed an application under Section 18 of the Act but could not file an appeal in the Court within the period of limitation as there was no Mohtmim of the temple till the appointment of Baba Khem Singh as new Mohtmim on 3rd June, 1988. Immediately after his appointment as new Mohtmim Baba Khem Singh moved the Land Acquisition Court on behalf of the temple for the payment of the compensation as awarded by the Additional District Judge, Bhatinda which was allowed. He applied for certified copy of the judgment and preferred an appeal

(5) A.I.R. 1988 S.C. 897.

(6) 1962 (2) S.C.R. 762 (A.I.R. 1962 S.C. 361).

(7) (1969) 1 S.C.R. 1006 (A.I.R. 1969 S.C. 575).

(8) (1979) 3 S.C.R. 694 (A.I.R. 1979 S.C. 1666).

(9) (1970) 3 S.C.R. 90 (A.I.R. 1970 S.C. 1953).

(10) (1987) 2 S.C.C. 107 (A.I.R. 1987 S.C. 1353).

(11) 1994 P.L.J. 16.

without any delay. Keeping in view the facts and circumstances of the case, this Court in that case held, "we are of the opinion that it is just and equitable and also in the ends of justice to condone the delay in filing the appeal". No general proposition was laid down nor *Raghubir Singh's* case (supra) was referred to or relied.

(10) In *Raghubir Singh's* case (supra), the observations made are to the effect :—

"After hearing the learned counsel for the parties we are of considered opinion that it was a fit case where the delay in filing the first appeal arising out of the land acquisition proceedings should have been condoned; particularly when the other appeals arising out of the same notification were already pending for adjudication in this Court. Not only that, in a subsequent Regular First Appeal No. 818 of 1986, decided on November 24, 1988, arising out of this very notification, compensation was enhanced by this Court. The appellant may also be entitled to the enhanced compensation."

(11) It is, therefore, clear that the general rule regarding limitation that canvassed before the learned Single Judge was not laid down even in that case where reliance was placed upon the judgment of the Supreme Court dated 16th April, 1985 in Civil Appeal No. 1588 of 1988, wherein the Supreme Court had observed :

"We are of the view that the delay in filing the appeal should have been condoned on the peculiar facts and circumstances of the present case and particularly in view of the fact that this is a case of acquisition of an adjoining piece of land arising, out of the same notification. We, therefore, allow the appeal, condone the delay and set aside the order passed by the High Court refusing to condone the delay, and after condoning the delay we sent the case back to the High Court so that a Division Bench of the High Court may hear and dispose of it on merits after taking into account the relevant factor....."

(12) We are, therefore, of the opinion that the land owners whose land had been acquired by a particular notification can not seek condonation of undue and unexplained delay on the sole ground that another appeal out of the same acquisition is pending in this court. Similarly application for condonation of delay can also not be dismissed merely on the ground that another appeal out of the same

notification had been decided by the higher Court on merits. The application for condonation of delay has to be independently decided though the dismissal of another appeal with respect to the same notification may be a circumstance to be taken note of while deciding such application. The judgment of the Division Bench in *Raghubir Singh's case* (supra) in so far as it observes that the delay is required to be condoned when other appeals arising out of the same notification were pending for adjudication in this Court cannot be held to be a good law. The said judgment to that extent shall be deemed to have been over-ruled.

(13) In the instant case, the appellant-applicant had sought condonation of delay on the strength of the judgment of *Raghubir Singh's case* (supra) and non-availability of funds. However, at the time of initial hearing on 9th November, 1993 the learned counsel for the appellant submitted and the Court noted that, "the other ground of insufficiency of funds is not pressed into service during the course of arguments." Otherwise also the plea regarding non-availability of sufficient funds for court fee and other expenses was without any basis inasmuch as it had been established that after the judgment of the Additional District Judge, Kurukshetra, deciding the reference under Section 18 of the Act on 3rd October, 1981 the enhanced compensation with interest etc. was deposited in the Court of the Additional District Judge, Kurukshetra on 24th October, 1983. Had the appellant been vigilant she could have filed the appeal after the receipts of the compensation deposited in the Court. It is not the case of the appellant that she had not received the compensation deposited by the respondents despite the fact that a duty was cast upon her to prove that she was not possessed of sufficient funds required for the purpose of filing the appeal. No useful purpose would be served in sending this matter back to the learned Single Judge for decision on merits. The appellant-applicant is proved to have not sufficient cause for condoning the delay in filing the appeal. Consequently, Civil Misc. No. 207/CI of 1993 alongwith R.F.A. No. 148 of 1993 shall be deemed to have been dismissed.

(14) As the facts of other cases, i.e. *Rajinder Pal v. Haryana State*, *Vipan Pal v. Haryana State*, *Sham Sunder v. Haryana State* and *Vishnu Parshad v. Haryana State* and the point of law raised are identical, all the four Civil Misc. applications shall be deemed to have been dismissed and the appeals held barred by time.