the directions given by the Court as far back as February, 1990. Daljit Singh had expired in November, 1985. More than 12 years have passed since then. His mother has not been given even the minimum means of sustenance as contemplated under the Regulations for the grant of family pension. The action of the respondents is highly unfair and arbitrary. It verges on contempt. Irrespective of technicalities of law, the action of the department in not carrying out the directions given by the court, is wholly unfair and illegal.

(12) In view of the above, the question posed at the outset is answered in the negative. It is held that the parents of a deceased employee cannot be excluded from the definition of 'Family' or denied the benefit of family pension.

(13) Resultantly, the appeal is dismissed. It is sad that respondent No. 1, the father of the deceased employee has already passed away. The award has become posthumous so far as he is concerned. However, it should not be allowed to become so even in the case of the mother. Accordingly, we direct that the amount of money due on account of family pension shall be released to the second respondent within 30 days of the receipt of a copy of this order. She will also be entitled to the interest on this amount @ 12% per annum from the date of accrual of pension till the date of payment. We also award token costs of Rs. 1000 to the respondent.

(14) A copy of this order shall be given *dasti* to the counsel for the parties on usual terms.

J.S.T.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

RAGHUBANSH,—*Appellant*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

L.P.A. No. 422 of 1991

3rd February, 1998

Limitation Act, 1963–S.5—Regular First Appeal filed after a delay of 12 years—Application filed to condone the delay stating financial constraints and lack of legal knowledge as grounds for

not preferring appeal in time—Application dismissed—In Letters Patent Appeal it is contended that it was on account of wrong advice that appeal was not filed—New plea not tenable—Appeal dismissed.

Held that we have perused the application under Section 5 filed by the appellant at the time of the presentation of the appeal to this Court. In this application it has been, *inter alia*, averred in paragraph 4 that "there is delay of about 12 years 10 days in preferring the appeal. This delay has been caused due to the financial constraints and lack of legal knowledge on the part of the applicant. The applicant in his own wisdom thought that he will be entitled to the higher compensation if so determined in the case of other claimants as the State is bound to grant the same treatment to its citizen even if he has not resorted to the remedy of appeal etc." There is not even a suggestion that there was wrong advice tendered by any counsel. After this application had been dismissed by the order under appeal, the appellant has averred in the grounds of appeal that he did not file an appeal "as he was advised that he can get the compensation redetermined according to the judgment of the Hon'ble High Court in the connected appeals by moving an application under Section 28-A of the Land Acquisition Act." This is a new story introduced by the appellant. There appears to be a conscious effort to improve upon the earlier pleadings. The attitude of the appellant is not straight forward.

(Para 4)

Further held that there is no ground to interfere with the discretion exercised by the learned Single Judge. The order passed by the learned Judge is neither contrary to law nor perverse. Consequently, it calls for no interference.

Harsh Aggarwal, Advocate, *for the Appellant.*

Madan Dev Sharma, Advocate, *for Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) Should the delay of more than 12 years be condoned ? The learned Single Judge has exercised his discretion and declined the request made by the appellant. Aggrieved by the order of the learned Single Judge the appellant has filed the present appeal. A few facts may be noticed.

(2) On the 9th July, 1973, the State of Haryana issued a notification under Section 4 for acquisition of land measuring 137 acres. On 5th November, 1973, the Collector gave his award. The aggrieved landowners including the present appellant sought reference under Section 18. Ultimately on the 21st January, 1978, the Additional district Judge, enhanced the compensation. The present appellant did not file any appeal against the award of the Additional District Judge. However, some other landowners filed R.F.A. No. 581 of 1978. *Vide* judgment dated the 5th August, 1985, this Court enhanced the compensation of Rs. 317.50 per Marla. Thereafter on the 3rd October, 1985, the appellant filed an application under Section 28-A for the grant of similar compensation to him. Averring that the application was not being decided, the appellant claims to have filed C.W.P. No. 15822 of 1989 in this Court. This petition was dismissed by this Court on the 5th December, 1989. S.L.P. (Civil) No. 1924 of 1990 was also dismissed *vide* orders dated the 23rd April, 1990. Thereafter on the 4th May, 1990 the appellant filed an appeal in this Court along with an application under Sections 5 and 14 of the Limitation Act, 1963. The learned Single Judge found that there was no sufficient cause for condonation of delay. Hence this appeal.

(3) Mr. Harsh Aggarwal, learned counsel for the appellant has contended that it was only on account of the wrong advice that the appellant had not filed an appeal in the year 1978. Since the delay has occurred on account of the wrong advice given by the counsel, it should have been condoned by the learned Single Judge. He has referred to a decision of Division Bench of this Court in *Rattan Lal* v. *State of Haryana,* (1). Reference has also been made by the learned counsel to the decision of the Apex Court in *The State of Haryana* v. *Chandra Mani & others,* (2). The claim made on behalf of the appellant has been controverted by the learned counsel for the respondents.

(4) We have perused the application under Section 5 filed by the appellant at the time of the presentation of the appeal to this Court. In this application it has been, *inter alia*,averred in paragraph 4 that "there is delay of about 12 years 10 days in preferring the appeal. This delay has been caused due to the financial constraints and lack of legal knowledge on the part of the applicant. The applicant in his own wisdom thought that he will be

(1) 1997 (2) P.L.J. 259.
(2) J.T. 1996 (3) S.C. 371.

entitled to the higher compensation if so determined in the case of other claimants as the State is bound to grant the same treatment to its citizen even if he has not resorted to the remedy of appeal etc." There is not even a suggestion that there was wrong advice tendered by any counsel. After this application had been dismissed by the order under appeal, the appellant has averred in the grounds of appeal that he did not file an appeal "as he was advised that he can get the compensation redetermined according to the judgment of the Hon'ble High Court in the connected appeals by moving an application under Section 28-A of the Land Acquisition Act." This is a new story introduced by the appellant. There appears to be a conscious effort to improve upon the earlier pleadings. The attitude of the appellant is not straight forward.

(5) Mr. Aggarwal has placed reliance on the decision in *Rattan Lal's* case. Herein the plea of the appellant was that delay had occurred on account of legal advice. This plea was accepted by the Bench. Such is not the position in the present case. It is undoubtedly true that in *Chandra Mani's* case it was observed that the Court should be liberal and the expression "sufficient cause" should be pragmatically construed in a "justice oriented approach". However, even by most liberal construction it does not appear to be possible to say a complete good bye to the Limitation Act and to hold that whatever be the delay and howsoever unsatisfactory the explanation, the Court is bound to condone it. It is true that some time a litigant may be misled by advice. If he approaches the Court and gives full facts, the Court can condone the delay. However, the averments should be clear and categoric. These should not be vague. In the present case the appellant rested on his "own wisdom". This is his categoric case in the application under Section 5. Later on, an attempt has been made to improve upon the matter and to say that he had waited on account of legal advice. This is clearly an attempt to improve upon the original pleadings. Which of the two is correct ? Even the counsel for the appellant does not know.

(6) Mr. Aggarwal submits that similar other appeals are pending. He refers to R.F.A. No. 1244 of 1984 (Des Raj v. State of Haryana).

(7) We had sent for this file. It has been put up by the Registry. We find that the notification as well as the award are different. The notification had been issued on the 18th July, 1973 and the award had been given by the Additional District Judge, Faridbad on the 26th March, 1984. In the present case the

notification under Section 4 was issued on the 9th July, 1973 and the matter was decided by the Additional District Judge, Gurgaon and not Faridabad on the 21st January, 1978. Thus, it is clear that the two cases have nothing common with each other. There was no delay in Des Raj's case which may have required condonation. The subject matter of dispute was different. Consequently, the pendency of that case can be of no assistance to the appellant.

(8) No other point has been urged.

(9) In view of the above, we find that there is no ground to interfere with the discretion exercised by the learned Single Judge. The order passed by the learned Judge is neither contrary to law nor perverse. Consequently, it calls for no interference.

(10) As a result the appeal is dismissed. However there will be no order as to costs.

J.S.T.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

CHANDIGARH ADMINISTRATION & OTHERS,—*Appellants*

versus

ASHWANI KUMAR AND ANOTHER,—*Respondents*

LPA No. 618 of 1992

The 1st September, 1998

Constitution of India, 1950—Art. 14—Chandigarh (Sale of Sites and Buildings) Rules, 1960—Rl. 9—Capital of Punjab (Development and Regulation) Act, 1952—S.8-A—Premises allotted for carrying on 'special trade' i.e. Atta Chakki—Resumption of site on ground of misuser when tenant found to be running a Karyana shop in part of the premises—Rule 9 mandating that site or building shall not be used for any purpose other than that for it was sold—Rule does not admit of even minor deviation which when proved warrants resumption—Rule 9 deserves to be strictly construed and enforced—Action of resumption is non-discriminatory—In case similar premises elsewhere are misused dafaulters should be visited with similar consequences of resumption—Resumption upheld—Landlord's request for restoration to be sympathetically considered