

Before Rajesh Bindal, J.

STATE OF HARYANA AND ANOTHER,—Petitioners

versus

RAM KISHAN AND OTHERS,—Respondents

R.F.A. No. 1316 of 2009

7th September, 2010

Code of Civil Procedure, 1908—Limitation Act, 1963-S.5.—Appeal by State against enhancement of compensation—Certain objections raised by Registry of High Court—Delay of about 9 years in re-filing appeal—Engagement of a private counsel to represent State—Wastage of public money—No sufficient cause for condonation of delay of a huge period—Application for condonation of delay dismissed—Financial Commissioner and Principal Secretary directed to hold an enquiry into serious lapse and fix responsibility of person(s) who were at fault at various levels in not taking care of appeals—After fixing responsibility amount of loss suffered by State ordered to be recovered from guilty person(s) after due opportunity of hearing to him/them.

Held, that it is a case of serious lapse at various levels, which cannot constitute sufficient cause for condonation of delay of huge period of 8 years and 251 days in re-filing the appeal or even filing thereof. Hence, the applications for condonation of delay of 8 years and 251 days in re-filing the appeals are dismissed. Even the other applications filed seeking condonation of delay of 8 days in filing the appeals are also dismissed. Consequently, the appeals also meet the same fate.

(Paras 36 & 37)

Further held, that this Court is constrained to direct the Financial Commissioner and Principal Secretary to the Government of Haryana, Town and Country Planning Department to hold an enquiry into this serious lapse and fix the responsibility of the person(s), who were at fault at various levels in not taking care of the appeals filed by the State. The employees of the State, who are paid salary from the public funds, are expected to

work and take care of the interest of the State. Salary is not paid as a bounty. After fixing the responsibility, the amount of loss suffered by the State should be recovered from the guilty person(s) after due opportunity of hearing to him/them.

(Para 38)

D.D. Gupta, Additional Advocate General Haryana.

Arun Luthra, Advocate for the respondents in R.F.A. No. 1313 of 2009.

RAJESH BINDAL J.

(1) This order will dispose of Civil Misc. applications in R.F.A. Nos. 1308, 1313, 1315 and 1316 of 2009, as common questions of law and facts are involved.

(2) The facts have been extracted from R.F.A. No. 1316 of 2009.

(3) The State is in appeal seeking reduction in the amount of compensation awarded to the land owners for the acquired land. Along with the appeal, an application seeking condonation of delay of 8 years and 251 days in re-filing the appeal and 8 days in filing thereof, have also been filed.

FACTS

(4) The facts of the case are that *vide* notification dated 11th May, 1990, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'), State of Haryana acquired 141.08 acres of land in village Ankhir and 6.28 acres in village Fatehpur Chandela, Hadbast No. 122, Tehsil Ballabgarh, District Faridabad for development and utilisation of land as residential and commercial area in Sector 21-D, Faridabad. The Land Acquisition Collector (for short, 'the Collector') awarded compensation @ 3,50,000 per acre. Dissatisfied with the award of the Collector, the land owners filed objections. On reference under Section 18 of the Act, the learned court below assessed the market value of the acquired land @ 281.76 per square yard.

BRIEF BACKGROUND

(5) This is a unique case filed by the State in which condonation of delay of 8 years and 251 days in re-filing the appeal has been prayed for, besides 8 days in filing thereof. Appeal on behalf of the State was initially filed by engaging a private counsel and not through Advocate General's Office.

(6) Finding the same to be *prima facie* unjustifiable, this Court, on 16th February, 2010, directed the Financial Commissioner, Town and Country Planning, Government of Haryana to file affidavit explaining as to under what circumstance a private counsel was engaged to file the present appeal on behalf of the State and the relevant rules/instructions providing therefor. Further, as to in how much cases private counsel were engaged and who approved for their engagement. He was further directed to explain as to why number of communications, mentioned in para 5 of the application seeking condonation of delay in re-filing of appeal, were not responded by the concerned officers/officials of the department.

(7) In response to the aforesaid order, Mr. D.S. Dhesi, Financial Commissioner and Principal Secretary to Government, Haryana, Town and Country Planning Department filed his affidavit dated 11th March, 2010 stating therein that private counsel were engaged to file the present appeal keeping in view the interest of the department by the then Director, Urban Estates-cum-Chief Administrator, HUDA. He further stated that there is no bar to engage a private counsel to file appeal on behalf of the State. However, the cases on behalf of the State are generally defended/contested by the office of Advocate General only.

(8) Explaining the delay, it was stated that Mr. O.P. Sharma, Advocate in his correspondence with the department concerned, instead of communicating the day to day proceedings in the case had been demanding counsel's fee. However, from the record it was revealed that no fee bill was submitted inspite of the fact that he was informed vide memo No. 240, dated 9th January, 2009 by the Director, Urban Estates.

(9) It was further stated that from 2007 to 2008, various officials met Mr. O.P. Sharma, Advocate, but instead of re-filing the appeal, he continued raising the issue of payment of fee bills and expenses. On 13th

January, 2010, an amount of Rs. 33,804 was sent to him by cheque, which was not accepted by him. The delay of more than 5 years was attributed to Mr. O.P. Sharma, Advocate. In addition, it was stated that in related cases, namely, R.F.A. Nos. 2540 to 2543 of 1999, affidavit was filed by Mr. S.S. Dhillon, the then Director, Urban Estates on 12th January, 2009 with the undertaking that responsibility of the officers for delay shall be fixed. Accordingly, charge sheets have been issued to Tejbir, Patwari, Ram Pal Kanungo, Jai Pal and Brahm Dutt (Naib Tehsildars) for major penalty and two of the Land Acquisition Officers, namely, Ram Kumar Beniwal and D.P. Singh, the matter has been sent to the Chief Secretary for further necessary action.

(10) On 6th April, 2010, considering the affidavit filed by Mr. D.S. Dhese, the State counsel was asked to produce the rules and the instructions issued by the State providing the manner in which the litigation on behalf of the State is prosecuted and defended and the circumstances in which private counsel can be engaged. Further finding that there were allegations against Mr. O.P. Sharma, Advocate, copy of the affidavit was furnished to him to enable him to offer his comments on the aspersions against him.

(11) Mr. O.P. Sharma, Advocate filed his affidavit dated 17th June, 2010 explaining his position in view of the allegations made against him in the affidavit of Mr. D.S. Dhese. It was submitted in the aforesaid affidavit that immediately on receipt of instructions, the appeals were filed. When the Registry returned the same with certain objections, the same were communicated to the department concerned along with fee bills. Along with the affidavit, Mr. O.P. Sharma, Advocate has annexed copies of number of letters, written by him to the concerned department and their response as well.

(12) On 17th May, 2010, this court while deprecating the conduct of the State, whereby subsequent affidavit was sought to be filed by the Deputy Secretary to the Government, directed the Financial Commissioner to file his own affidavit. On 27th May, 2010, affidavit of Mr. D.S. Dhese was filed in court, which was taken on record. It is stated in the affidavit that as per Rule 16.6(2) of the Law Department Manual, Legal Remembrancer is the only authority competent to select and instruct counsel

on behalf of the government in civil cases. However, normally, the Advocate General's office conduct the cases on behalf of the State. The circumstances, under which private counsel was engaged in the present case is sought to be explained by stating that the land in question was acquired for HUDA at its cost. Though, initially District Attorney, Faridabad opined that cases were not fit for filing appeal, however, the matter was re-examined and it was decided to file appeals in all cases to safeguard the interest of the State/HUDA, as the compensation was found to be on higher side. A counsel from the panel of HUDA was engaged at HUSA's cost in the year 1998 and presently, the department has withdrawn the cases from Mr. O.P. Sharma, Advocate and the instructions have been issued to Advocate General, Haryana to conduct the bunch of 17 cases on behalf of the State.

ARGUMENTS

(13) Learned counsel appearing for the applicants/appellants submitted that there was delay in re-filing the appeal for the reason that the counsel, who had filed the appeal initially, was under stress on account of threat perception and further his fee bills were not paid by the department. The submission was that delay should be condoned and the appeals be heard on merits, especially considering the fact that the compensation payable to the land owners for the land acquired vide same notification was subsequently reduced by this Court. As far as engagement of a private counsel to file appeal on behalf of the State is concerned, the submission was that the counsel from the panel of HUDA was engaged at the cost of HUDA, which was within the knowledge of the then Advocate General and the same should be considered as his implied consent.

(14) On the other hand, learned counsel for the respondents submitted that delay in re-filing of the appeal is required to be justified for sufficient cause or *bona fide* reasons. None of them is available in the present case. It is a case of gross negligence, which is not sufficient for condonation of huge delay of about 9 years in re-filing of the appeal. Placing reliance upon **Swaran Lata etc. versus State of Haryana, (1)** and **Bani Singh versus State of Haryana and others, (2)** the submission was that the application be dismissed.

(1) 2010 (2) Law Herald P&H) 1532 (S.C.)

(2) 2010 (2) Law Herald (P&H) 1309

(15) Heard learned counsel for the parties and perused the paper book.

DISCUSSIONS

(16) Before I proceed further to deal with respective contentions of the parties, I deem it appropriate to notice the objections raised by the Registry on 1st April, 2000 after the time of initial filing of the appeal on 16th December, 1999, where it was returned. The same are as under :—

- “(1) As to how this appeal is within limitation ?
- (2) The opening sheet is incomplete.
- (3) Fair typed copy of judgment should be filed.
- (4) Certificate of stamp vendor may be obtained.
- (5) Any other case ?

Returned to be filed within a week.”

(17) Apparently except that the appeal being initially time barred by 8 days, for none of the objections any information was required from the concerned department. The file was returned after objections on 1st April, 2000. The same was re-filed after more than four years on 24th August, 2004. It was returned on 1st October, 2004 *inter alia* noticing that aforesaid objections (1), (2) and (4) had not been complied with. Thereafter, it was re-filed on 14th January, 2009 after more than four years and returned back on 16th January, 2009 again *inter alia* noticing that objections (2) and (4) dated 1st April, 2000 had not been complied with. It was again re-filed on 27th January, 2009, though not strictly complying with the directions raised by the Registry but by mentioning that the matter be put up before the Bench as it is. Thereafter, it was cleared by the Registry on 16th February, 2009.

(18) The fact stated by Mr. S.S. Dhillon, Director, Urban Estates, in his affidavit dated 12th January, 2009 that the appeals were re-filed on 22nd December, 2008 is apparently wrong.

(19) In spite of the fact that admittedly the amount of compensation in other appeals arising out of the acquisition was reduced by this court *vide*

judgment dated 10th August, 2005, in LPA No. 1367 of 2001 **State of Haryana versus Suresh Chand Garg**, but still neither the counsel nor the State/HUDA thought of taking care of the fact that all the cases filed by them have been decided or not. In fact, energies of the State or its instrumentalities are used/mis-used more in prosecuting or defending frivolous or unnecessary litigation to benefit some favourites or for other reasons best known to it, instead on the litigation where the same is required to be used more.

(20) The contention raised by learned counsel for the appellants that the counsel, who filed the appeal initially, was under stress on account of threat perception has no legs to stand. Though an order passed by this Court on 26th July, 2001 in Criminal Writ Petition No. 748 of 2000 has been cited, whereby security was provided to Mr. O.P. Sharma, Advocate and his family on account of some threat perception, however, on a categorical question put to the learned counsel for the State as to whether Mr. O.P. Sharma, Advocate had been appearing in the court during the period of his alleged threat perception or not, the answer was in positive specifically stating that he had been regularly appearing in the court even during that period. Accordingly, there is no reason for him not to have taken care of the appeals in hand. Pendency of fee bills with the department also cannot be said to be a justifiable reason to claim condonation of huge delay of 8 years and 251 days in re-filing the appeal, especially when the claim of the State is that a private counsel was engaged at the relevant time to take extra care of the interest of the State.

(21) This court can primarily visualise three reasons for engagement of a private counsel to represent the State—one that the State itself loses faith in Advocate General's office and second can be to benefit a counsel. There can be another exceptional situation where the issue involved is such that services of an expert on the subject is required. The case in hand does not fall in the third category. Engagement of private counsel to represent the State at the cost of HUDA was sought to be explained by claiming that interest of State/HUDA was to be better safe guard. But the facts speak otherwise. In the present case also, ultimately it was decided that the cases are to be conducted by the Advocate General's office. It is generally assumed that the persons at the helm of affairs who are paid from the State exchequer watch and take care of the interest of the State, but the facts in the present case are quite different and show a totally disturbing state of affairs.

(22) The facts of the case are not so simple as are sought to be projected. The initiation even after nine years to re-file the appeals was not *suo-motu* but the process started only when this court took up the issue when certain applications were filed for withdrawal of the appeal by the land owners in R.F.A. Nos. 2540 to 2543 of 1999. Finding that a few days prior thereto, in another R.F.A. No. 818 of 2003, also application for withdrawal of the appeal was filed, which was permitted to be withdrawn, when subsequently applications for withdrawal of the appeals in R.F.A. Nos. 2540 to 2543 of 1999 were listed, this court became curious to know as to what was the reason that the land owners had started withdrawing the appeals, when at the most finally the same could be dismissed. Notice of the applications was issued to the State on 24th September, 2008 in C.M. Nos. 8989, 8997, 9273 and 9274-CI of 2008 in the aforesaid appeals. The learned State Counsel was also required to file affidavit as to under what circumstances R.F.A. No. 818 of 2003 was withdrawn and also the reason for seeking permission of withdrawal in the aforesaid four appeals. The reason, which appeared latter was that compensation, as was awarded by the learned Reference Court was reduced by this Court and there was no cross appeal filed by the State in the cases of the appellants in the appeals, where the applications for withdrawal thereof were filed.

(23) In response to the notice, affidavit of Mr. D.P. Singh, Land Acquisition Collector, Urban Estate, Faridabad dated 17th October, 2008 was filed in R.F.A. No. 2542 of 1999 stating therein that the cases were entrusted to Mr. Om Parkash Sharma, Advocate *vide* letter No. 2041 dated 22nd March, 1999 to file appeals on behalf of the State, but the appeals could not be filed so far. It was further stated that Director, Urban Estates Department, Haryana had again been requested *vide* memo No. 3484 dated 8th October, 2008 and No. 3621 dated 16th October, 2008 to take decision for filing appeals either through Mr. Om Parkash Sharma, Advocate or Advocate General, Haryana.

(24) Regarding the reasons for withdrawal of R.F.A. No. 818 of 2003, it was submitted that the matter has been referred to Land Acquisition Officer, Panchkula as the same pertained to that area. To put the records straight regarding R.F.A. No. 818 of 2003, the only fact required to be mentioned here is that ultimately it was disclosed that after the announcement of award, disposed of reference petition by the learned court below and

pendency of appeal before this court for enhancement of compensation for a period of more than 5 years, the acquired land was released by the State to the appellant therein. Considering the same to be *prima facie* illegal, the matter was referred to be considered as a Public Interest Litigation, which is separately pending, though not concerned with the present case.

(25) On 5th December, 2008 in R.F.A. Nos. 2540 to 2543 of 1999, this court passed the following order :

“An affidavit of D.P. Singh, HCS, Land Acquisition Collector, Urban Estate, Haryana, Faridabad dated 17th October, 2008 was filed explaining that a bunch of seven cases were entrusted to Shri Om Parkash Sharma, Advocate of this court for filing appeal by Director, Urban Estate Haryana, Panchukla, *vide* memo dated 22nd March, 1999 and as the position exists today the appeals in fact were not filed. The affidavit is silent as to whether the appeals entrusted to counsel had been filed in time in court or not. Let the Chief Administrator, HUDA find out the lapse and file an affidavit in detail in court with regard to fixing responsibility of the guilty officer.”

(26) On 15th January, 2009, the applications filed by the land owners in the aforesaid appeals for seeking withdrawal of the appeals was allowed and the appeals were dismissed as withdrawn.

(27) In terms of the order passed by this court in the aforesaid four appeals, Mr. S.S. Dhillon, Director, Urban Estates, Haryana filed his affidavit stating therein that the appeals were initially filed on 6th April, 1999 and after the Registry raised some objections, the same were re-filed only on 22nd December, 2008 after a delay of more than nine years. It was further mentioned that delay of more than 5 years is on the part of the counsel and 4 years on account of negligence of 52 officers/officials of the Land Acquisition Office, Faridabad and Director, Urban Estates, Haryana, Panchkula.

(28) The fact, as is evident from a perusal of the paper book is that the appeals in fact were not re-filed on 22nd December, 2008 but on 14th January, 2009 and another fact, which is important is that there was no effort either by the State or the counsel to re-file those appeals even

after a delay of about 9 years and the process started only after this court took cognizance of the matter finding suspicion as to why the appeals had not been filed in a few cases by the State when in number of cases, arising out of the bunch of cases in the same acquisition, the appeals in fact had been filed and the amount of compensation had also been reduced by this court. Meaning thereby to state that the counsel or the appellants had acted of their own to re-file the appeals even after 8 years and 251 days would not be correct.

(29) There is another apparent contradiction in the fact stated in the application filed for seeking condonation of delay in re-filing, namely, that in a communication, which was endorsed to Mr. O.P. Sharma, Advocate on 2nd December, 2005 from the Land Acquisition Officer, Faridabad to Director, Urban Estates, Panchkula on the subject regarding appeal in land acquisition case on behalf of the State for Sector 21-D, Faridabad, it was mentioned that letters Patent Appeals filed by the State and the land owners had been dismissed by this Court on 3rd March, 2005, accordingly no appeal in the above case was required to be filed, whereas in paragraph 12 of the application, it was stated that this court *vide* judgment dated 10th August, 2005, passed in L.P.A. No. 1367 of 2001, titled as “**State of Haryana versus Suresh Chand Garg**”, had reduced the market value of the land to Rs. 250 per square yard. This court is unable to visualise any reason for not filing the appeal when it was known that the earlier filed appeals had been accepted and the amount of compensation had been reduced.

(30) This is not a case in isolation in which private counsel was engaged to conduct case on behalf of the State for the reasons best known to the authorities but which are not beyond imagination. In another matter bearing F.A.O. No. 4712 of 2009, similar situation was noticed, wherein though the appeal had been filed by the State of Haryana under the signatures of the Government Pleader, however, at the time when the arguments were being addressed by learned Additional Advocate General, a private counsel sought to put in appearance stating that he had been instructed by the Executive Engineer of the department concerned to which the case related to, to put in appearance on behalf of the appellant. Finding the same to be *prima facie* unjustifiable, this court directed the Home Secretary to explain as to under what circumstances a private counsel had

been engaged. In the aforesaid appeal, the dispute pertained to the award given by an arbitrator. The objections filed by the State against the award had been dismissed by the court below and it was in the appeal.

(31) The counsel, who was engaged to put in appearance in this court was, in fact, not even a member of the High Court Bar but a counsel practising at District Courts, Karnal. Finding the sequence of events in the case to be disturbing, where a private counsel was instructed to appear by the lower functionaries in the department inspite of the fact that *ex post facto* sanction for his engagement was declined by the Financial Commissioner and Principal Secretary to the Government of Haryana, Public Health, Engineering Department, the information was sought as to under what circumstances private counsel were engaged to appear before the Courts at public expense and also to explain the head of expenditure out of which the fee was being paid. It was explained in the affidavits of the Home Secretary as well as the Principal Secretary, Public Health, Engineering Department in the following terms :

“that some time the Law Officers in the Advocate General Office are exceptionally busy and this case being of a high technical nature and an old one pertaining to the year 1996 requires sufficient time. Therefore, in the best public interest, it was considered necessary to engage a private counsel who could do justice by devoting sufficient time and prepare and pursue the case to its logical end.”

(32) Aforesaid assertions were made by the senior functionaries of the State on the functioning of the Advocate General's office when number of officers in the Advocate General's office is more than double the number of Judges in the Court. However, as is noticed in the order passed by this court in the aforesaid case, the factual statement made by the senior functionaries of the State in the affidavits filed by them was put to the Advocate General, who denied the allegations against his office at bar stating that no one from the litigant department had ever contacted his office.

(33) Apparently finding it difficult to explain the manner in which public money was being wasted and aspersions were sought to be made on the working of the Advocate General's office, the learned Additional

Advocate General appearing in the aforesaid appeal on 19th May, 2010 and 27th May, 2010, on instructions from the Xen., stated that private counsel—Shri R.K. Vij had returned the brief and also the entire fee amounting to Rs. 88,000 paid to him and the Advocate General's office has been instructed to prosecute the appeal.

(34) The aforesaid may be one of the many examples which show the manner in which the tax-payers' money is either being wasted or being distributed as largess to the favourites. It cannot be disputed that people pay taxes out of their hard earned money. Custodians of the public money have no right to waste the same. This wasteful expenditure needs to be checked.

(35) While dealing with C.M. NO. 8256-C of 2010 in R.S.A. No. 2718 of 2010—**Swaran Kaur and others versus Sukhdev Singh and others**, decided on 6th August, 2010, this court declined the prayer for condonation of delay of 1460 days in re-filing the appeal, while observing as under :

“It is also pertinent to mention that every now and then, the applicants are filing loosely drafted applications for condonation of delay in re-filing which would hardly disclose any reason to persuade this court to invoke its inherent jurisdiction under Section 151 of the C.P.C. to come to the rescue of the applicants and generally the delay is being caused due to lackadaisical attitude of the advocate who is having the custody of the court file after it is returned by the Registry because it is an experience of the court that there are generally certain objections which could be even removed within a day but still the court files, after return by the Registry, kept on lying in the offices of the Advocates because it has become their perception that condonation of delay in re-filing is a mere formality with the court as they have to only file an application without any affidavit. But there has to be a limit of complacency. It must be understood that a litigant, who has succeeded before the First Appellate Court, expects notice in the appeal up to a particular period of time and thereafter, he becomes supremely confident that no appeal has been filed against him and the judgment and decree in his favour

has become final, but he is taken aback when he receives a notice from this Court after a period of many years when the appeals are re-filed and the delay in re-filing thereof is condoned. The successful litigant before the First Appellate Court has a right to sit back and relax after the expiry of prescribed period of time that no appeal is filed against him by his opponent.

Thus, keeping in view the totality of the facts and circumstances, I do not find the reasons assigned in the present case to be sufficient in order to condone the delay of 1460 days in re-filing the appeal and as such, the present application, i.e., C.M. No. 8256-C of 2010 is dismissed, which results into dismissal of the main appeal as well.”

(36) If the facts of the present case, as enumerated above, are considered, the inescapable conclusion is that it is a case of serious lapse at various levels, which cannot constitute sufficient cause for condonation of delay of huge period of 8 years and 251 days in re-filing the appeal or even filing thereof.

(37) In view of my aforesaid discussion, the applications for condonation of delay of 8 years and 251 days in re-filing the appeals are dismissed. Even the other applications filed seeking condonation of delay of 8 days in filing the appeals are also dismissed. Consequently, the appeals also meet the same fate.

(38) Before parting with the order, this court is constrained to direct the Financial Commissioner and Principal Secretary to the Government of Haryana, Town and Country Planning Department to hold an enquiry into this serious lapse and fix the responsibility of the person(s), who were at fault at various levels in not taking care of the appeals filed by the State. The employees of the State, who are paid salary from the public funds, are expected to work and take care of the interest of the State. Salary is not paid as a bounty. After fixing the responsibility, the amount of loss suffered by the State should be recovered from the guilty person(s) after due opportunity of hearing to him/them.

(39) A copy of the action taken be placed on record before this Court.