

IN THE COURT OF SH. SATISH KUMAR
ADDITIONAL DISTRICT JUDGE (NORTH-01): ROHINI
COURTS: DELHI

LAC No. 1619/2016

Union of India

.... **Petitioner**

Versus

Gaon Sabha Holambi Kalan & Ors.

....**Respondents**

Order on the application u/o IX Rule 13 r/w Section 151
CPC filed on behalf of IP no.3 Sh. Vikas Kumar Narwal and
another application u/o IX Rule 7 r/w Section 151 CPC with
additional affidavit also filed on behalf of IP no.3 Sh. Vikas
Kumar Narwal

02.08.2022

1. Vide this order, this court shall decide the two applications u/o IX Rule 13 r/w Section 151 CPC filed on behalf of IP no.3 Sh. Vikas Kumar Narwal as well as another application u/o IX Rule 7 r/w Section 151 CPC also filed by IP no.3 Sh. Vikas Kumar Narwal.

2. That to decide the aforesaid two applications, the brief material facts of this case are that this is a case of apportionment u/s 30-31 of Land Acquisition Act and the reference petition u/s 30-31 of LA Act alongwith cheques

of Rs.1,26,83,580/- was received and the cheque was deposited in the treasury and the notice was issued to the concerned interested parties except IP no.6 as IP no.6 appeared in person on the very first date i.e. 30.10.2006. After receiving the reference petition, this court proceeds in accordance with law and notice was issued to the concerned interested parties and IP nos.2, 3, 5, 7, 8, 9 and 10 were duly served for 19.01.2007 and the case was fixed for 01.05.2007 and on the said date, proxy counsel for IP no.1 appeared; IP no.3 Sh. Vikas Kumar Narwal appeared in person; Sh. Vinod Kumar, Advocate for IP no.4 appeared; IP no.6 alongwith his counsel Sh. S. Chaturvedi appeared; IP nos.7, 8 and 9 appeared in person and all the IPs requested for grant time for filing their claims to which the time was granted to all of them to file their claim and most of the IPs have filed their claims but IP nos.2 and 3 did not appear on 25.02.2009 and even their counsel also did not appear and the ld. Predecessor of this court vide order dated 25.02.2009, proceeded the IP nos.2 and 3 Ex-Parte and thereafter, an application to set aside the Ex-Parte order dated 25.02.2009 was filed by IP no.3 Sh. Vikas Kumar Narwal on 21.10.2021 (after the

period of 12 years) and the copy of the same was supplied to other IPs to file their reply who has filed their reply of the said application u/o IX Rule 13 r/w Section 151 CPC for setting aside the Ex-Parte order dated 25.02.2009 filed by IP no.3 Sh. Vikas Kumar Natwal and case was fixed for arguments on the application u/o IX Rule 13 CPC but on dated 14.12.2021, IP no.3 Sh. Vikas Kumar filed another application u/o IX Rule 7 r/w Section 151 CPC to set aside the Ex-Parte order dated 25.02.2009.

3. It has been stated by IP no.3 Sh. Vikas Kumar Narwal in his previous application u/o IX Rule 13 r/w Section 151 CPC that vide order dated 25.02.2009, he was proceeded Ex-Parte without giving him sufficient time to proceed and IP no.3 has a real and subsisting interest in the subject matter of the present suit/proceedings inasmuch as the IP no.3 was in joint cultivation with the IP no.2 on the property in question and IP no.3 is a necessary and proper party and in the said detailed application, it has also been mentioned that IP no.3 is the sole bread earner of a large family and since the year 2009, his family has gone through severe deprivation due to pro-longed illness and

death of family members and IP no.3 himself going through severe stress for the aforesaid reasons and not have been able to remember that whether he was duly served with the court notice for hearing and he has categorically mentioned in the said application that on 17.10.2012, the uncle of IP no.3 passed away. Sh. Suraj Mal, grandfather of IP no.3 passed away on 29.10.2013. Father of IP no.3 Sh. Kaptan Singh died on 06.05.2015. Grandfather (brother of Sh. Suraj Mal) of IP no.3 died on 16.01.2017. Sh. Mahavir Singh, Uncle of IP no.3 died on 01.05.2018. Ms. Seema, Sister-in-law of IP no.3 died on 05.05.2021 and because of the prolonged economic and psychological deprivation and due to two years lockdown, he could not file the application within time and by way of the aforesaid application, it has been prayed that the Ex-Parte order dated 25.02.2009 of IP no.3 in LAC 1619/2019 may kindly be set aside.

4. It is pertinent to mention that during the pendency of this application, when the application was taken up for arguments after filing the reply of all the interested parties, another application u/o IX Rule 7 r/w Section 151 CPC

was also filed by IP no.3 Sh. Vikas Kumar Narwal for setting aside the Ex-Parte order dated 25.02.2009 and it has been mentioned in the said application that because of the typographical error regarding the relevant section i.e. u/o IX Rule 13 CPC instead of the correct provision u/o IX Rule 7 CPC and the said typographical error was purely inadvertent and unintentional by the counsel of IP no.3 Sh. Vikas Kumar Narwal and by way of the said application also, it has been prayed that the order dated 25.02.2009 may kindly be set aside.

5. That upon notice of both the said applications, the reply has been filed by IP no.2, 6 and 8. Arguments at length advanced by ld. counsel for parties heard.

6. Having heard the submissions made by ld. counsel for parties as well as after gone through the case file particularly in the ordersheet, it is revealed that the reference petition u/s 30-31 of Land Acquisition Act alongwith cheque was received in this court on dated 30.10.2006 and notice was issued to the interested parties and on dated 01.05.2007, IP no.3 Sh. Vikas Kumar

Narwal appeared in person and thereafter, he appeared so many dates but did not file his claim in this reference petition and thereafter, he used to remain absent on several dates and vide order dated 25.02.2009, he was proceeded Ex-Parte and thereafter, the application u/o IX Rule 13 r/w Section 151 CPC was filed for setting aside the Ex-Parte order dated 25.02.2009 by IP no.3 Sh. Vikas Kumar Narwal and when the said application was taken up for arguments after filing reply of other IPs, another application u/o IX Rule 7 CPC was filed for setting aside the Ex-Parte order dated 25.02.2009.

7. It has been argued by ld. Counsel for IP no.3 Sh. Vikas Kumar Narwal that the delay of 12 years to file the aforesaid application was neither intentional nor deliberate but because of sudden demise of the uncle and father and other relatives of IP no.3 and IP no.3 was under the stress and because of that reason, he could not file the said application well within the stipulated period. This argument of Ld. counsel for IP no.3 is immaterial inasmuch as the IP no.3 is an employee in DTC and regularly working in the DTC, Rohini Depo and never

remained absent for a long period even after the death of his father and other relatives which has been mentioned in the aforesaid application and it appears that IP no.3 was not of under **so much stress** that he could not file the application well within the stipulated period.

8. It is pertinent to mention that perusal of record, it reveals that till date, no claim has been filed by IP no.3 Sh. Vikas Kumar Narwal and during the course of arguments, IP no.2 Sh. Virender Kumar who is also an advocate by profession has supported the argument of ld. counsel of IP no.3 and make a submission to the court that he has no objection if the court allow the application of IP no.3 and perusal of record, it reveals that IP no.2 has always supported the IP no.3 inasmuch as it has been stated that the IP no.2 and IP no.3 were in joint cultivation of land to which the present reference petition is pending for adjudication/answer.

9. Ld. counsel for IP no.3 has relied upon the case law i.e. 'Khazan Singh Vs. UOI' decided on 24.01.2002 in Civil Appeal no.667 of 2002 by Hon'ble Supreme Court of

India as well as another case law 'State of Haryana Vs. Chandra Mani' and Ld. counsel for IP no.3 has argued that sufficient cause cannot be laid down by hard and fast rules and discretion given by Section 5 should not be defined or crystalized so as to convert a discretionary matter into a rigid rule of law and the expression 'sufficient cause' should receive a liberal construction and counsel for IP no.3 has also argued that he has already mentioned the sufficient cause in his aforesaid applications and make a submission that his application may kindly be allowed and order dated 25.02.2009 whereby the IP no.3 was proceeded Ex-Parte may kindly be set aside.

10. This argument of Ld. counsel for IP no.3 is meaningless and immaterial on the ground that the case law which has been cited by counsel for IP no.3 as well as the facts of the present matter are altogether different and Ld. counsel for IP no.3, by filing the aforesaid case law has tried to mislead this court inasmuch as there is an inordinate delay of 12 years to file the application to set aside the Ex-Parte order dated 25.02.2009. It is also pertinent to mention that IP no.2 Sh. Virender Kumar, who is an advocate by

profession was also proceeded Ex-Parte on the same date on 25.02.2009 but he has moved the application to set aside the Ex-Parte order and the same was set aside by the court long years back and if the IP no.2 was in joint cultivation of land with IP no.3, then, he ought to have filed the application well within the time when the IP no.2 has filed the application.

11. It is worth mentioning that no sufficient cause has been shown by IP no.3 in the aforesaid application and the application has been filed much beyond the period of limitation. Though, there is no limitation of mentioning the sufficient cause but it should be within a reasonable time and this application has been filed after a period of 12 years and it appears that the sole purpose of IP no.3 is only to delay the proceedings of this reference petition by this way or the other and intentionally and deliberately, he has not filed the said application well within the stipulated period. Therefore, the application of IP no.3 is meritless and the application should be dismissed with heavy cost but this court restrain itself not to impose any cost to the applicant i.e. IP no.3. The application u/o IX Rule 13 r/w

Section 151 CPC as well as amended application u/o IX
Rule 7 r/w Section 151 CPC being filed by the IP no.3 Sh.
Vikas Kumar Narwal is hereby dismissed accordingly.

(SATISH KUMAR)
Addl. District Judge-01/North
Rohini Courts/Delhi/02.08.2022