

(1961) 01 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 157 of 1954

Batan Singh and Others

APPELLANT

Vs

Nathu Birju

RESPONDENT

Date of Decision : 27-01-1961

Acts Referred:

Land Acquisition Act, 1894 — Section 23
Limitation Act, 1908 — Section 12
Punjab High Court Rules and Orders — Rule 2

Citation : AIR 1961 P&H 503 : (1961) 2 ILR (P&H) 518

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : D.N. Aggarwal and R.N. Aggarwal, for the Appellant; Roop Chand, for the Respondent

Judgement

P.C. Pandit, J.—This is a regular first appeal u/s 54 of the Land Acquisition Act No. 1 of 1894, against the award of the Senior Subordinate Judge, Hoshiarpur, dated 23th January, 1954,

2. The first preliminary objection raised by the learned counsel for the respondent is that the appeal is barred by limitation. It was stated by the learned Senior Subordinate Judge in the order under appeal that the main decision was given by him in Petition No. 14 of 1951, Surjan Singh v. The State, which was to form part of the order under appeal. It appears from the record that an application for certified copy of the order in petition No. 14 of 1951, Surjan Singh v. The State was made on 26th March, 1954, and it was ready on 12th April, 1954.

Another application for certified copy of the order under appeal was made on 10th May, 1954, and the same was ready on 13th May, 1954. The memorandum of appeal was filed in this Court on 15th May, 1954, along with the certified copies of both the orders. It will be seen that 18 days were spent in the preparation of the certified copy of the main order. Limitation for filing the appeal

was consequently extended to 13th May, 1954. The application for the certified copy of the order under appeal was consequently made within the extended period of limitation. Four days were spent in preparation of the certified copy of the order under appeal. The last day of limitation for filing the appeal was, therefore, 17th May, 1954. The appeal having been filed on 15th May, 1954, was well within time.

3. It may be mentioned Here that both the orders, i. e., the order under appeal and the main order passed in petition No. 14 of 1951, Surjan Singh v. The State, formed the judgment in this case and the time spent in obtaining Copies thereof would be excluded in computing the period of limitation u/s 12 of the Indian Limitation Act. In this view of the matter, it is not necessary to deal with the application dated 4th September, 1954, u/s 5 of the Indian Limitation Act filed by the appellants.

4. The second preliminary objection raised by the learned counsel for the respondent is that Santa applicant in the Court below had died on 28th March, 1954, i. e., after the order under appeal had been passed by the Senior Subordinate Judge, while this appeal had been filed on 15th May, 1954 by his sons who along with the memorandum of appeal had not put in an application for permission to appeal as legal representatives of Santa deceased and as such the appeal is liable to be dismissed on this ground alone. It is however, conceded that on an objection being raised by the office, an application along with an affidavit was made by the appellant on 7th September, 1954, and the same was granted subject to just exceptions by a learned Single Judge of this Court on 23rd September 1954. Learned counsel for the respondent invited my attention to Rule 2 of Chapter 1-C Volume V of the Bules and Orders of the Punjab High Court, the relevant portion of which runs-thus -

"Whenever by a decree or order which is appealable to the High Court the interest of -

(a) * * ; or (b) a legal representative as such of a deceased party to such decree Or order; or

(c) *** ; or (d) a person whose interest arose after the date of such decree or order by reason of any creation- or devolution of interest, by through, or from any party to such decree or order is affected,

and such beneficiary, legal representative, assignee, or person was not or has not been made a party to such decree or order or to proceedings thereunder or thereon, and desires to present to the High Court for admission a memorandum of appeal from such decree, or order, he may name himself therein as an appellant if at the time when he presents such memorandum of appeal for admission he along with such memorandum of appeal presents an application for leave to make himself an appellant and, except as hereinafter provided, an affidavit stating such facts as may be necessary in support of his application:

Provided always, that a Judge of the High Court may, by an order, allow in his discretion a reasonable time in that behalf for the presentation of such an affidavit, if it appears to him that the applicant could not by the exercise of due diligence have procured such affidavit in time for presentation along with the memorandum of appeal."

5. This rule however, nowhere Provides that its non-compliance will result in the dismissal of the appeal. No question of abatement can Possibly arise in such a case, because the legal representatives of Santa deceased had, as a matter of fact, filed the appeal within the prescribed period of limitation, showing themselves as his sons. Putting in an application as contemplated by the rule referred to above was, in this case, a mere formality which also had been complied with on the objection raised by the office. Learned counsel for the respondent was unable to draw my attention to any law or authority providing that in such a contingency the appeal either abates or is incompetent and should be dismissed on this ground. I, therefore, see no merit in this preliminary objection as well.

6. Coming to the merits of this case, the only matter that has been argued before me is regarding the apportionment of the amount of compensation paid for the lands acquired by the Government. Appellants are the occupancy tenants of this land and the respondent is the landlord thereof. The Senior Subordinate Judge in apportioning the amount of compensation has relied on a single Bench authority by Bhide, J., in Ram Kishen v. Jati Ram, AIR 1931 Lah 649, which lays down -

"In apportioning compensation paid for land acquired by the Government between occupancy tenants and their landlords the proportion of interests of the landlord and the occupancy tenant in the land acquired, may be fairly taken to be the same as that between the malikana paid by the tenant to the landlord and the land-revenue."

7. A similar matter came up for decision in Telu Ram v. State of Punjab, F. A. 210 of 1950, decided by Gosain and Harbans Singh, JJ., on 26th September, 1958 (Punj), wherein their Lordships followed a Division Bench authority of the Calcutta High Court in Dinendra Narain Roy v. Titu Ram, ILR 30 Cal 801, which held -

"In apportioning compensation money, awarded under the Land Acquisition Act, between the Landlord and the tenure-holder, the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand, and that of the tenant on the other, and to divide the sum awarded between them in accordance with these values. Where the rent is fixed in perpetuity the landlord is not entitled to more than the capitalized value of his rent."

8. To the similar effect is the authority reported as Hakim Singh v. Collector, Gurdaspur, AIR 1932 Lah 123 (2) wherein it was observed by Jai Lal, J.-

"Where the land leased in perpetuity on a fixed rent is acquired under the Land Acquisition Act and the question is as to the proportion in which compensation should be divided between the lessor and the lessee, the Court ought to proceed on the principle of ascertaining what is the value of the interest of the zamindar on the one hand with which he has parted and that of the tenant on the other, and to apportion the compensation money between them in accordance with those values."

9. On the basis of the above authorities, I would accept this appeal and remand the case to the Senior Subordinate Judge for determining the amount of compensation to be awarded to the occupancy tenants (appellants) and the landlord (respondent) in the light of the observations made above. In the circumstances of the case, however, there will be no order as to costs in this Court. Parties have been directed to appear before the Senior Subordinate Judge Hoshiarpur on 27-2-61.