

(1993) 12 DEL CK 0006

In the Delhi High Court

Case No : Civil Revision Appeal No. 463 of 1978

Chandi and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-12-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 22 Rule 3
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 19

Citation : (1994) ILR Delhi 364 : (1993) 105 PLR 1 : (1994) RLR 66

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : K.L. Budhiraja, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This petition has been brought against order of Additional District Judge dated March 7, 1978 passed acting as Court of reference under the and Acquisition Act dismissing the application of the petitioners for being substituted as legal representatives of deceased Durga on the ground that the reference made u/s 18 of the Land Acquisition Act stood abated as the application was not moved within 90 days of the death of Sh. Durga.

(2) Facts, in brief, are that notifications under Sections 4 & 6 of The Land Acquisition Act had been issued for acquiring 365 bighas. 4 bids was of land in Village Bahapur and award was made in respect of some of the acquired land on March 13, 1962 by the Land Acquisition Collector.

(3) Sh. Durga was an occupancy tenant on some portion of the land which was owned by Delhi Simla Catholic Church Diocese. The compensation was granted to Sh. Durga at the rate Rs.25 per sq. yd. Sh. Durga had moved an application u/s 18 of The Land Acquisition Act before the Land Acquisition Court of Additional District Judge praying for enhancement of compensation on various grounds.

Delhi Simla Catholic Church Diocese had also moved an application u/s 18 for enhancement of the compensation.

(4) Both these references were pending but as there was dispute raised between Sh. Durga and Delhi Simla Catholic Church Diocese with regard to apportionment of the compensation, proceedings u/s 30 & 31 of The Land Acquisition Act were also initiated. The proceedings in the reference application were stayed sine die vide order dated December 13, 1966 till the decision of the proceedings u/s 30 & 31 of the Act. The proceedings u/s 30 & 31 of the Act came to be decided on December 23, 1972.

(5) Sh. Durga had died on November 5, 1974. The applications were moved by the legal representatives of deceased Durga on February 21, 1975 for revival of the reference proceedings as well as for substitution of the names of the applicants as legal representatives of Durga in the reference application. The applications were opposed by the Union of India on the ground that the proceedings have abated as the application has not been moved within 90 days of death of Durga. The Court had framed the following two issues :

1. Whether the application is within time ? if so. to what effect ?
2. Whether the petitioners are the only persons to be brought on record as the legal representatives of the deceased?

(6) After recording evidence, the impugned order was passed. It appears that on the date on which the impugned order was passed, no one appeared on behalf of the applicants and instead of dismissing the reference in default in accordance with the provisions of Civil Procedure Code, the land acquisition Court proceeded to decide the case on merits and it came to the conclusion that the reference stood abated.

(7) The learned counsel for the petitioners has, at first, contended that the impugned order could not have been passed on merits and it should be held by this Court that the applications in question stood dismissed in default. The learned counsel for the petitioners, in support of his contention, made reference to Order 17 Rule 2 of the old CPC 1908. It is true that a discretion has been given to the Court under Order 17 Rule 2 to proceed to pass orders, as required under Order 9 CPC in case of absence of one or the other party but the provisions also contemplate for passing any other order which may be just in the discretion of the Court. There has been a conflict of law under the unamended CPC as to whether the Court can or cannot pass an order on merits in absence of the parties under Order 17 Rule 2 Civil Procedure Code.

(8) As far as this Court is concerned, it has been held in *Hoechst Aktiengesellschaft Vs. M/s. B.S. Chemical Industries (Regd.)*, Air 1979 N.O.C. 107 that if the case is complete or substantially complete, then the Court has discretion under Order 17 Rule 2 to decide the case on merits and in such a case, the Court can record the decision on merits even if the plaintiff is absent and

similarly, decide the case on merits when the defendant is absent. In neither case, will the decision be considered to be dismissal of the suit in default or the passing of an ex-parte decree.

(9) In the present case, the evidence had been completed, so the Court of the Additional District Judge was entitled to pass the order on merits and thus, this order cannot be deemed to have been passed under Order 9 of the Code of Civil Procedure.

(10) Even the Supreme Court in the case of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, has held, while referring to the provisions of order 17 Rule 2 of the CPC 1908, that the Court is given widest possible discretion either to dispose of the suit in one of the modes directed in that behalf by Order 9 or make such other order as it thinks fit. The Court has a discretion which it must exercise and its hands are not tied by the so called ex-parte order.

(11) Assuming for the sake of arguments that the impugned order is to be deemed to have been passed under Order 9 Civil Procedure Code, then the remedy of the petitioner was to move the Court of Additional District Judge praying for setting aside the said order which the learned counsel for the petitioner termed as dismissing the applications in default. The revision has been filed in challenging the impugned order which would mean that this Court is to examine the correctness of the order on merits and not on the ground that it is to be deemed to be order of dismissal of the applications in default.

(12) The counsel for the petitioner has referred to Emmanuel Simon Peters Vs. Alice Peters and Another, . In the said case, an appeal had been dismissed on merits, although there was no appearance put in by the appellant on the date of hearing. The appellant had moved an application for setting aside of the order pleading sufficient cause for absence. In this judgment, it was held that the appeal could not have been dismissed on merits and the order dismissing the appeal on merits would tantamount in law to a judgment dismissing the appeal in default of appearance and that being so, the provisions of Order 41 Rule 19 of the CPC applied for setting aside of such dismissal in default.

(13) This judgment would have applied if the appellant had moved some application before the Court concerned for setting aside of the order. This judgment is of no help in deciding the present civil revision. The decision in this civil revision could have been kept in abeyance if the petitioner had moved some application before the Court concerned for setting aside of the impugned order treating the order as dismissal of his applications in default but as no such application is moved, so there is no question of this Court holding that the impugned order is to be set aside assuming the order to be dismissed in default.

(14) On merits, it has been urged by the learned counsel for the petitioners that the provisions of Limitation Act were not applicable to the land acquisition proceedings and the applications for substitution being moved within a

reasonable time ought to have been allowed by the learned lower Court. There is a conflict of authority on the point whether provisions of Order 22 of the CPC apply to proceedings under The Land Acquisition Act. However, this Court has interpreted the provisions of Section 53 of The Land Acquisition Act and has come to the conclusion in *Union of India Vs. Sanwalia, etc.*, ILR (1975) 1 Del 837 (4) that the provisions of Order 22 of The CPC apply to proceedings under The Land Acquisition Act before the District Judge. However, it was also held in this very judgment that the provisions of Limitation Act are not applicable and an application for bringing on record the legal representatives of deceased applicant ought to be moved only in a reasonable time.

(15) So, it has to be held that strict provisions of Limitation Act being not applicable in the present case, the Additional District Judge was not right in holding that the appeal has abated as the application was not moved within 90 days of the death of the applicant, Sh. Durga

(16) In the application, it was mentioned by the applicants that they came to know about the pendency of the reference only after death of Sh. Durga on February 20, 1975 and thereafter, the application was moved on the following day, but in cross-examination it was admitted that proper record of the reference was available at the house even before the death of Sh. Durga and that record was made available to the counsel.

(17) I do not think the learned Additional District Judge was right in holding that the reference has to be treated as abated as the application has not been moved within time and there was no sufficient cause for condensation of delay. The learned Additional District Judge has not given any finding that the application has not been moved within a reasonable time. It appears that the Additional District Judge was applying the provisions of Limitation Act in coming to the conclusion that no sufficient cause has been shown for condensation of delay when he ought to have only examined whether the applications have been moved in a reasonable time or not.

(18) It is not disputed that the reference in respect of the same land u/s 18 of the Act filed by the owner of the land, in which Durga was the occupancy tenant, was pending and had not been dismissed in default or in any other way. It is obvious that if the market value of the land is to be enhanced for the benefit of the owner of the land, the said benefit should accrue also to the applicants, whose predecessor in interest was the occupancy tenant in the same land.

(19) It is a matter of common knowledge that the reference made u/s 18 of The Land Acquisition Act remained pending for a number of years without any progress being made as far as recording of evidence is concerned or staying of disputes under Sections 30 & 31 of the Act are concerned. It is because of such delays that the Additional District Judge had stayed the proceedings vide his order dated December 13, 1966 till the decision of the proceedings under Sections 30 & 31 of The Land Acquisition Act. Those proceedings under Sections 30 & 31

of the Act determined in 1972, still the proceedings u/s 18 of the Act, which were stayed sine die, were not revived. It is only after death of Durga that his legal representatives came forward for getting the proceedings revived and getting themselves substituted as legal representatives.

(20) Sh. Durga had died on November 5, 1974. Under the Limitation Act, the application for bringing on record the legal representatives could be moved within 90 days i.e. by February 5, 1975 and thereafter, within 60 days application could be moved for setting aside of the abatement. Those 60 days were to expire on 4th or 5th April 1975 whereas these applications were moved on February 21, 1975. As the provisions of The Limitation Act are not applicable, so the Additional District Judge should have taken a liberal view and should have allowed the applications for bringing on record the legal representatives as the same have been moved within a reasonable time keeping in view the facts and circumstances of the case.

(21) The Additional District Judge was not right in holding that the applicants were not the only legal representatives of the deceased. The applicants have set up that the deceased had executed a valid Will in their favor and the other legal heirs of the deceased have no objection. Notices were issued to the other legal heirs and they did not contest the application. So, the applicants were the only legal representatives of the deceased and thus, they were the only persons to be substituted as legal representatives.

(22) I allow the civil revision and set aside the impugned order and direct that the applicants be substituted as legal representatives of the deceased Durga in the reference application which should be now revived in the records of the Additional District Judge for proceeding further in accordance with law. Parties are directed to appear before the Additional District Judge concerned for further proceedings on 9th February 1994.

(23) Parties are left to bear their own costs in these proceedings. Lower Court record be sent to the concerned Court before the date fixed.