

(1990) 12 GAU CK 0016
In the Gauhati High Court
Case No : First Appeal No. 97 of 1989

Collector of Barpeta, Assam

APPELLANT

Vs

Labanya Prabha Choudhury

RESPONDENT

Date of Decision : 17-12-1990

Acts Referred:

Civil Procedure Code, 1908 — Section 143
Civil Procedure Code, 1908 (CPC) — Section 143

Citation : (1991) 2 GLJ 418 : (1991) 1 GLR 165

Hon'ble Judges : A.Raghuvir, C.J. and S.N.Phukan, J

Bench : Division Bench

Advocate : P.Prasad, K.R.Pathak, D.K.Hazarika, Advocates appearing for Parties

Judgement

A. Raghuvir, C.J.

The instant application arises in an appeal under the Land Acquisition Act 1 of 1894. In the acquisition proceeding land of 8 bighas covered by Dag No. 496 of K. P. No. 1 of Village Raghabil under Gobordhana Mouza was acquired for construction of "Central Check Post". Section 4 notification under the Act was published on May 28, 1979. The Land Acquisition Officer valued the above 8 bighas of land at Rs. 400/per bigha and awarded compensation of Rs. 3680/ to the landholders. Aggrieved thereby on reference the Assistant District Judge, Barpeta valued the land at Rs. 5000/ per bigha as the acquired land was part of a tea estate, fit for tea cultivation, otherwise the land was developed for "seedbari" under rotational plantation scheme. The reference Court ordered compensation of Rs. 50,OvO/. The Collector of Barpeta aggrieved by the order of the Reference Court filed F.A. No. 97 of 1989 with a court fee of Rs. 11 jwhen the fee to be paid was Rs. 2646. 10 paise.

This Court allowed one week's time to pay the deficit court fee on June 26. On July 10 three weeks", on August 28, two weeks", on September 18 two weeks" and on November 15, 1989 two weeks" time was granted as a last chance. When the court fee was not paid, the appeal was dismissed on 1989. On July 2, 1990

an application for restoration was filed and on September 4, 1990 the same was dismissed. On November 7, 1990 another application is filed to set aside the order dated September 4, 1990 with court fee of Rs. 2635. 10 p, the amount payable in appeal.

The learned Senior Govt. Advocate argued that the court fee now is paid, the appeal be restored and heard on merits.

The day on which the balance court fee has been paid, the appeal cannot be restored as it was dismissed on December 4, 1989. If any authority is needed, it is found in AIR 1958 Madras 453 (Sitaraman vs. Pattabhiraman) para, as under : "(3) ..the petitioners referred to S. 148, CPC and argued that Ramaswami, L had given time under that section and that under the terms of that section this Court has power to enlarge the time even though the period originally fixed may have expired. S. 148 no doubt empowers the Court in its discretion to enlarge or extend the time for the doing of an act. But then, it presupposes that the suit or appeal or proceeding in which time was granted is still pending. Where the suit, Appeal or other proceeding has by virtue of any order passed by the Court ceased to exist, so to speak, S. 148 can have no application.

In the present case it is true that S.A. No. 326 of 1957 is still pending. But by reason of the order made by Ramaswami, J. on 2.9.1957 CMP No. 2995 of 1957 is no longer pending. This will mean, therefore, that the present application CMP No.333 of 1958 to extend the time in CMP No.2995 of 1957 will not lie. If the matter were res integra, I would have been inclined to say that time cannot be extended in CMP No. 2995 of 1957 but that it would be open to the petitioner to file separate application for stay. But as will presently appear the matter is not res integra."

In AIR 1957 AP 780 (P. Nasar Saheb vs. P. Nabi Saheb) there is another decision to the same effect "If an application for setting aside the ex parte decree is dismissed, it cannot be suggested, and indeed it is not suggested, that after the dismissal, any further relief can be asked for in that application. If in such an application a conditional order is made and if on noncompliance with that condition the application is dismissed by the Court, it cannot also be argued that further orders can be made in that application. If it is the legal position, we do not see how when an application automatically stands dismissed on noncompliance with a particular condition, a party will be in a better position than in the other two cases. Under section 148, Civil Procedure Code, where any period is fixed or granted by the Court, for the doing of any act prescribed or allowed by this Code, the Court, may, in its discretion from time to time enlarge such period even though the period originally fixed or granted may have expired. The period prescribed under the section can be extended only during the currency of the previous order. Once an order has become defunct, no question of extending the time made under that order can arise."

The petition is dismissed.