

(2009) 02 DEL CK 0099
In the Delhi High Court
Case No : CM (M) 1369 of 2007

Dayanand Dec. thr. Lr's

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Citation : (2009) 157 DLT 210 : (2010) 8 RCR(Civil) 1658

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : V. Shukla, for the Appellant; Sanjay Poddar and Gaurav Sarin, for the Respondent

Judgement

Manmohan, J.—Admit.

2. With the consent of parties, matter is taken up for final disposal.

3. Present petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 19th May, 2007, whereby the legal heirs of deceased petitioner Dayanand have been held as not entitled to statutory interest of 15% per annum from 16th March, 2003 to 31st October, 2006 on the ground that their application for impleading legal heirs was filed on 31st October, 2006, even when the deceased had passed away on 16th December, 2002.

4. Briefly stated, the relevant facts of this case are that a reference petition was filed by the predecessor-in-interest of the petitioners u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') before the Land Acquisition Collector (in short 'Collector') on 22nd November, 2002. The Collector, in turn, only on 20th October, 2005, referred the matter to Court in accordance with Section 19 of the Act. On the said date notices were issued by the Court to all the claimants including the deceased petitioner. The admitted position is that an application under Order 22 Rule 3 of the Code to bring legal heirs of the deceased Dayanand was filed on 31st October, 2006.

5. Learned Counsel for the petitioner submits that Order 22 Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code') applies only to proceedings pending before Court and not to proceedings u/s 18 of the Act which are pending before the Collector.

6. In this connection, he has drawn attention of this Court to the definitions of 'Collector' and 'Court' in Section 3(c) and 3(d) of the Act. The said definitions are reproduced hereinbelow for ready reference:

3. Definitions. (c) the expression 'Collector' means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Appropriate Government to perform the functions of a Collector under this Act;

(d) the expression 'Court' means a principal Civil Court of original jurisdiction, unless the Appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;

7. Consequently, he submits that when the proceedings began before the Court on 20th October, 2005, petitioner could not have sought impleadment of the legal heirs prior to the said date.

8. Mr. Poddar, learned Counsel for the respondent has drawn my attention to paragraph-10 of the present petition, wherein it has been stated that the petitioner being an illiterate lady aged about 68 to 70 years, had no information about the pendency of the reference initiated by her husband and it was only after receipt of the summons that she came to know about the date of hearing fixed for 27th September, 2006. Mr. Poddar submitted that this can be no ground for filing the Order 22 Rule 3 application at a belated stage.

9. In my view, the question that arises for determination in the present proceedings is whether the application under Order 22 Rule 3 of the Code for impleading the legal heirs could have been filed before the Collector or should the petitioner have waited, as it did in the present case, for a reference petition to be filed by the Collector before the Court? The answer to this issue would lie in the fact as to whether the Code of Civil Procedure, 1908 applies to a reference petition filed by the petitioner u/s 18 of the Act and this, in turn, would depend on the fact as to whether a Collector is a Court or not.

10. In my opinion, Sections 3(c) and (d) make it abundantly clear that the Collector is not a Court and as such, the Code of Civil Procedure, 1908 would not apply to proceedings pending before the Collector. Even Section 53 of the Act clarifies that Code of Civil Procedure, 1908 shall apply only to proceedings filed before the Court under the Act. The said Section 53 of the Act is reproduced hereinbelow for ready reference:

53. CPC to apply to proceedings before Court. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the [Code of Civil Procedure, 1908] (5 of 1908) shall apply to all proceedings before the Court

under this Act.

11. Hon?ble Supreme Court, in the following cases, has taken the view that the Land Acquisition Collector is not a Court and that provisions of Section 5 of the Limitation Act do not apply to proceedings pending before the Collector:

(i) Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, .

(ii) Kailash Vs. Nanhku and Others, .

12. Consequently, in my view, the petitioners were not legally bound to file an application under Order 22 Rule 3 of the Code till the proceedings were pending before the Collector. It was only when the Court took cognizance of the matter on 20th October, 2005 u/s 19 of the Act and on this date, the petitioner had the first opportunity to file an application under Order 22 Rule 3 of the Code. However, the petitioners filed an application only on 31st October, 2006. Consequently, in my view, petitioner would be entitled to interest upto 20th October, 2005 and then beyond the period of 31st October, 2006 but not for the intervening period between 20th October, 2005 and 31st October, 2006.

13. To the above extent, the impugned order dated 19th May, 2007 is modified and with these observations, the present petition stands disposed of.