
(2012) 10 DEL CK 0036
In the Delhi High Court
Case No : C.M. (M) 1266 of 2010

Deepika

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, 151, 2, 2(2), 26(2)
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 18, 26, 26(2), 5

Citation : (2012) 9 AD 391

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : M.S. Rohilla with Mr. O.P. Kumar, for the Appellant; Sanjay Kumar Pathak with Ms. K. Kaomudi Kiran, Advocates for R-1/UOI-LAC, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This is a petition under Article 227 of the Constitution of India, for calling the record of execution petition no. 224 of 2008 titled as, "Kartar Singh and Others vs. Union of India", from the court of Sh. Sanjeev Kumar, Addl. District Judge (hereinafter called "ADJ"), Rohini Courts, Delhi, and to invoke the powers of superintendence of this Court in order to adjudge the legality, validity and propriety of the orders dated 08.07.2010, vide which the said execution petition was dismissed as being barred by time, and to set aside this order, as being illegal and without jurisdiction. The facts of the case are that a piece of land measuring 6 bighas, 2 biswas was owned by Sh. Kartar Singh, who held 50% share, and Joginder Kumar, Deep Chand (deceased) and Ramesh Kumar (deceased father of the Petitioner), who jointly held the rest of the 50% share. In the year 1981, the Land Acquisition Controller (hereinafter referred to as "LAC") passed an award under the Land Acquisition Act, 1894 (hereinafter called "the Act") with respect to the above mentioned piece of land. Reference was subsequently made u/s. 18 of the Act in 1984, and the Reference Court decided

the same by enhancing the compensation and granting Solatium and interest on the said compensation amount. The owners, being unsatisfied with the order of the Reference Court, preferred an RFA before this Court in the same year. Meanwhile, part payment of Rs. 7155.71 was received by the claimants wherein Kartar Singh obtained 50% of the amount and Ramesh Kumar, Joginder Kumar and Deep Chand each got 1/6th share in the amount. The RFA was then decided by the High Court in 1987, by which the amount of compensation was further enhanced and the order of the reference court was modified. Certain amendments were subsequently introduced in the Act because of which, the said compensation was increased by the Division Bench in 1989. The petitioner was born in 1990 and the petitioner's father, who was alone pursuing the aforesaid proceedings, died in 1992. In 2003, an execution petition was filed depicting the petitioner as one of the L.Rs. of deceased Ramesh Kumar. In 2008, the court of Ms. Poonam Chaudhary, ADJ directed the LAC to remit the payment of compensation, failing which attachment proceedings were to be initiated. Subsequently, on failure of the LAC to remit the amount within time, the bank account of LAC North West was attached. An amount of Rs. 68,318.95 was received and the office of the Dist. Nazir reported about the receipt of this amount through attachment. The Dist. Nazir was further ordered to issue show cause notice to the LAC as to how the remaining decretal amount has not been remitted.

2. The execution petition was transferred from the court of Ms. Poonam Chaudhary on 15.11.2008 to the court of Sh. Sanjeev Kumar, ADJ, who made an observation in May 2009 that the said execution petition was barred as per Article 136 of the Limitation Act, 1963 and called upon the learned counsel for the petitioners/decreed-holders to show how the present execution is maintainable. In consequence of the above observation, the petitioners filed an application u/s 151 of the C.P.C., on the ground that as per the judgment of this court in Sh. Babu (since deceased) through his L.Rs. vs. Union of India in C.R. No. 25/2002, the provisions of the C.P.C. and Limitation Act are not applicable to cases under the Act. It was also submitted that one of the decree-holders, Ramesh Kumar, who had been looking after the case expired in 1992, leaving behind seven minors, who were not aware of the case. The counsel for the petitioners further contended that, the judgment debtors were under an obligation to make payment of enhanced compensation within reasonable time and that there was default on their part, in making payment under Article 136 of the Limitation Act.

3. An application was also made u/s 5 of the Limitation Act for condonation of delay. Under this application it was contended that firstly, the provisions of the Limitation Act would not apply to Land Acquisition cases and that as per Section 26(2) of the Act, every award shall be a "deemed decree". The counsel again brought to the attention of the court the judgment of this Court in Sh. Babu (since deceased) through his L.Rs. vs. Union of India (supra). The counsel further argued that since no period for payment of the decretal amount was

specified, the period of limitation was renewed every day and hence the execution was within limitation. The judgment of Nageshwar Prasad vs. Smt. Sona Devi AIR 1965 Pat 273 was also relied wherein this Court held that the decretal amount is to be paid after a certain date and the period of limitation will start running from that date only. In the alternative, it was submitted on behalf of the petitioners that if the court still held this case to be covered by the Limitation Act, the said delay be condoned in the interest of justice. Various Supreme Court judgments were cited wherein it was held that the term "sufficient cause" must be given a liberal construction as to advance substantial justice and generally delays in preferring the appeals are required to be condoned (G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore,). The learned counsel also cited the case of Warlu vs. Gangotribai, (AIR SCW 3882) wherein a three Judge Bench condoned delay of 11 years in filing the Special Leave Petition.

4. Sh. Sanjeev Kumar, learned ADJ dismissed the two applications u/s. 151 of C.P.C. and Section 5 of the Limitation Act on the ground that as per Section 26(2) of the Act every award passed is a "deemed decree", and thus, the award passed by the High Court in the RFA is a decree and so the provisions of Order 21 of the C.P.C. as also of Limitation Act will be applicable. As regards the argument on the date on which the decretal amount was to be paid, the Ld. ADJ held that since there was no prescribed date for payment of the decretal amount, the period of limitation will start running from the date of the decree itself. Thus, the present decree was held enforceable and executable immediately. Addressing the plea that the decree could not be executed till the deceased decree-holder's children attained majority, Ld. ADJ stated that the other decree-holders i.e. Kartar Singh, Joginder Singh and minor Deep Chand (who was represented by his mother), were majors at the time when the decree was passed, so they were capable of giving valid discharge. Hence the time of limitation will not stop running on the death of Ramesh Kumar. And finally, the Ld. ADJ dismissed the condonation of delay on the ground that Section 5 of the Limitation Act stipulates that cases under Order 21 C.P.C. are specifically barred. On all these grounds the two applications have been dismissed. This order is under challenge in this court.

5. From the facts of the above case it is clear that the main issue is whether the term "deemed decree" as stated u/s. 26(2) of the Land Acquisition Act would be a "decree" as defined u/s. 2 of the C.P.C. At this juncture, it would be apt to look into the relevant part of Section 26:-

26. Form of award... (2) Every such award shall be deemed to be a decree and the statement of the grounds of every award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908.

The law makes it very clear that a "deemed decree" should be taken to mean a "decree" as defined u/s 2(2) of the C.P.C. Further, Section 53 of the Act explicitly

states that the C.P.C. is to apply to proceedings under this Act, unless otherwise stated. Thus, it is evident that the principles of C.P.C. would apply to this award, which would, in effect, bring into application the provisions of the Limitation Act also.

6. Now that the applicability of the Limitation Act to the present execution petition has been established, let us look into the question of condonation of delay u/s. 5. Section 5 of the Limitation Act gives power to the court to condone any delay in filing of an appeal or application. The period prescribed for execution of a decree is provided for under Article 136 which is twelve years. In the present case, the decree was passed in January 1989 by the Division Bench of this Court. The petitioners/decreed-holders filed an execution petition in December 2003. There has been a delay of two years and ten months over and above the prescribed period of limitation. The petitioners have approached the doors of justice after a period of 14 years and 10 months. The Supreme Court in *Antony Sami Vs. Arulanandam Pillai (D) by Lrs. and Another*, held that the High Court was correct in dismissing an execution petition as time barred. The facts of this case are similar to the one at hand as regards the delay in filing the execution petition. The relevant paragraphs of that case read as under:-

In the case in hand a specified date was mentioned in the decree for the judgment-debtor to carry out the aforesaid direction i.e. 23-9-1966 and if he failed to carry out the direction it was open to the decree-holder to seek help of the executing court..... The decree-holder for reasons best known to him did not choose to execute the decree till April 1980. The conclusion is inescapable that the execution petition was filed after expiry of the period of limitation prescribed under the Act. The appellate court was right in dismissing the execution petition as time barred and the High Court committed no illegality in confirming that order.

7. In addition to this, the provisions of Section 5 of the Limitation Act expressly bar the power to condone delay in regard to applications made under Order 21 of the C.P.C., which deals with execution of a decree. The Supreme Court in the case of *Damodaran Pillai and Others Vs. South Indian Bank Ltd.*, held that:-

16. An application u/s 5 of the Limitation Act is not maintainable in a proceeding arising under Order 21 of the Code. Application of the said provisions has, thus, expressly been excluded in a proceeding under Order 21 of the Code. In view of the matter, even an application u/s 5 of the Limitation Act was not maintainable. A fortiori for the said purpose, inherent power of the court cannot be invoked.

In view of the above discussion and applying legal provisions to the facts of the case at hand, it is evident that the law protects only the vigilant and not the ignorant. I find no illegality or irregularity in the impugned order of the Ld. ADJ dated 08.07.2010. The petition is hereby dismissed.