

(2004) 07 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1026 of 1992

Guranditta and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Article 137

Citation : AIR 2005 P&H 18 : (2004) 138 PLR 546 : (2004) 4 RCR(Civil) 145

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Pritam Saini, for the Appellant; Daya Chaudhary, Senior Standing Counsel, for the Respondent

Judgement

Surya Kant, J.—Pursuant to acquisition of the house owned by predecessor of the petitioners by the Union of India, a reference u/s 18 of the Land Acquisition Act, 1894 (for short "the Act") was sought and on receipt thereof by the learned District Judge, Gurdaspur, the same was entrusted to the Court of Additional District Judge, Gurdaspur for adjudication. While it was fixed for petitioner's evidence on February 9, 1989, neither the petitioner nor his counsel appeared and consequently, the same was dismissed in default. An application for restoration was moved on May 8, 1989; inter-alia on the ground that in fact, an application for bringing on record the legal representatives of deceased Gurun Ditta was fixed for hearing on February 9, 1989 not the main case for petitioner's evidence and that when the case was called, Baldev Singh, one of the applicants, went to call his counsel who was busy in some other professional work and on return it was revealed that the case had already been dismissed in default. Upon notice, the afore-mentioned application was contested by the Union of India and an issue was framed as to "whether there were sufficient grounds for restoration of the case or not". While deciding the issue, the learned Additional District Judge, vide the impugned order dated September 23, 1991, held that the application was hopelessly time barred and the delay has not been

satisfactorily explained and as such no sufficient grounds were made out for recalling the order dated February 9, 1989. As a necessary corollary, the application for restoration was dismissed, prompting the petitioners to impugn the said order by way of present revision petition.

2. I have heard Shri Pritam Saini, learned counsel for the petitioner and Smt. Daya Chaudhary, learned Senior Standing Counsel for the Union of India, and have perused the record.

3. Shri Pritam Saini has contended that a reference was sought by the predecessor- in-interest of the petitioners u/s 18 of the Act and the same having been referred for adjudication, it could not have been dismissed in default by the learned Court, therefore, even assuming that the petitioners failed to explain the cause of their non-appearance of February 9, 1989, the learned court could not have dismissed the reference in default and ought to have answered the same merits on the basis of evidence on record. He further contends that the learned Additional District Judge has dismissed the application for restoration of the reference on the premise that the same was required to be moved within a period of 30 days whereas such an application could be filed within a period of 3 years, as held in a series of judgments by this Court. In this regard, reliance has been placed by him on Smt. Kamla Devi v. State of Haryana,¹ (1986)89 PLR 692, Gurbax Singh and Ors. v. State of Punjab,² 1987 PLJ 609 and Khazan Singh (Dead) by LRs v. Union of India,³ 2002(1) LACC 354.

4. On the other hand, Smt. Daya Chaudhary learned Senior Standing Counsel for the Union of India, contends that even as per the averments made in the application for restoration, the petitioners came to know that their reference had been dismissed in default on February 9, 1989 itself, yet the application for restoration was moved by them on May 8, 1989. The petitioners, thus, on account of their own acts and conduct were not entitled for any relief inasmuch as no ground much less sufficient was shown by them for recalling the order dated February 9, 1989 vide which the reference was dismissed in default.

5. Having heard learned counsel for the parties, I am of the view that the order dated February 9, 1989 vide which reference u/s 18 was dismissed in default by the learned Reference Court, is unsustainable in law. By now, in a catena of judgments, it is well settled that once a reference u/s 18 has been made, the Reference Court is under legal obligation to answer the same on merits on the basis of evidence on record and such reference cannot be dismissed in default. In this regard reliance can be placed upon Khazan Singh's case) (supra). In my view, the order dated February 9, 1989 itself being illegal per-se, the contents of subsequent application moved by the petitioners for its recalling, were hardly material. Needless to say that vide the impugned order dated September, 23, 1991, the learned Additional Sessions Judge held that the restoration application was time barred besides holding that no sufficient ground for restoration of the reference was made out.

6. This Court has consistently held that in the event of dismissal of a reference u/s 18 of the Act, in default, the limitation for filing restoration application would be governed by Article 137 of the Limitation Act. The application moved on May 8, 1989 by the petitioners for recalling the order passed on February 9, 1989 was, therefore, well within limitation though there might be some delay on their part in moving the same.

7. For the reasons mentioned above, the impugned order dated September 23, 1991 passed by the learned Additional District Judge cannot sustain in law and the same is set aside. The revision petition is accordingly accepted. The parties are directed to appear before the learned Additional District Judge at Gurdaspur on August 20, 2004.

8. Since the reference u/s 18 of the Act was dismissed in default about 13 years back, the learned Additional District Judge, Gurdaspur will see to it that the same is decided expeditiously. No order as to costs.