
(1987) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 34 of 1987

Gurbax Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 31-08-1987

Acts Referred:

Citation : (1988) 1 ILR (P&H) 186 : (1987) PLJ 609 : (1987) 2 PLR 494 : (1988) 1 RRR 54

Hon'ble Judges : Rajendra Nath Mital, J

Advocate : Mr. K.S. Grewal, Advocate., Advocates for appearing Parties

Judgement

Rajendra Nath Mital, J. (Oral)

1. Briefly the facts are that a reference under Section 18 of the Land Acquisition Act was pending before Additional District Judge, Ropar. The parties had completed their evidence and it was fixed for arguments on 4th September, 1976. On that day neither the counsel for the applicant nor the applicant was present and, therefore, he dismissed the claim application in default. The applicant filed an application for restoration on 15th November, 1976. The learned Additional District Judge after recording the evidence, dismissed the same holding that there were no sufficient ground for restoration of the claim petition, vide order dated 5th November, 1977, The appellant has come up in appeal against the said order.

2. The learned counsel for the appellant has argued that the learned Additional District Judge while deciding the matter held that the application for restoration could be filed within a period of 30 days but the same was filed after more than 30 days and consequently the application was not within limitation. According to the learned counsel, that was the main reason for dismissing the application. He contends that such an application could be filed within a period of 3 years under Article 137 of the Limitation Act (for short the Act) and, therefore, the application was within limitation. He also contends that a reference under the Land Acquisition ACT could not be dismissed in default. In support of his contention he

has placed reliance on a decision of this court in *Smt Kamla Devi v. State of Haryana*, 1986 PLJ 341 : 1986 R.R.R. 133. According to the counsel in the aforesaid circumstances the Court should not have gone on merits and dismissed the application for restoration.

3. I have given due consideration to the arguments of the learned counsel and find force therein. It has been held by this Court in *Baldev Singh and others v. State of Punjab and others*, 1982 PLJ 297 that Article 137 of the Act which provides a limitation of 3 years for filing the application for restoration is applicable to such application.

4. In view of the aforesaid dictum I hold that the observations of the learned Additional District Judge that the application for restoration was not within time are erroneous and liable to be set aside. It is further stated by the learned counsel that the evidence had been closed by the parties. If the evidence had been closed and the case was fixed for arguments, it was the duty of the court to have decided the reference on merits and should not have dismissed the same in default. It is also settled by this Court that a reference under the Land Acquisition Act cannot be dismissed in default for nonappearance of the claimant See [*Smt. Kamla Devi's case (supra)*]. After taking into consideration all the aforesaid circumstances, I am of the view that the learned Additional District Judge should have restored the reference.

5. For the aforesaid reasons I accept the appeal, set aside the order of the learned Additional District Judge and restore the land acquisition reference. The learned Additional District Judge shall now decide the reference on merits. No one has appeared on behalf of the respondent State and, therefore, I make no order as to costs. The petitioner is directed to appear in the trial Court on 28th September, 1987. The Court shall decide the reference after issuing notice to the respondent State.