
(1989) 09 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 9 of 1982

Kamla Deri and Others

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 11-09-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 9
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Article 120, 121

Citation : (1990) 1 ShimLC 79

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : Rajiv Sharma, Harish Behal and Om Prakash Sharma, for the Appellant; M.S. Guleria, Asstt. A.G., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal arises out of Order No. 4084 of 1977, C. M. A. No. 172 of 1979, decided on 22-9-1981 and it was passed in the following circumstances.

2. A reference application u/s 18 of the Land Acquisition Act was moved by Shri Ranja Ram deceased. When it reached the court of reference, Ranja Ram died. An application under Order 22 Rule 3 of the CPC to implead the legal representatives of the deceased was to be moved within a period of 90 days from the date of the death under Article 120 of the Limitation Act and in case the same was not filed within this period, the consequence is the abatement of the appeal.

3. The record discloses that an application under Order 22 Rule 3 of the CPC was moved to which a reply was filed by the State. On the pleadings of the parties, two issues to the following effect were framed:

1. Whether the alleged applicants are the legal representatives of the Petitioner

deceased? OPA.

2. Whether the reference petition has abated as alleged? OPA.

3. Relief.

4. On issue No. 1 it was held that the Petitioner Ranja Ram had left behind Smt. Tibi Devi, widow, who has now died, Smt. Kamla Devi, Smt. Sarna Devi, Smt. Sandla Devi and Smt. Maya Devi (all daughters) as the legal heirs. On issue No. 2, it was held that the application was filed beyond the prescribed period of 90 days, so the same was dismissed as barred by time and the petition stood abated. The application under Order 22 Rule 9, to set-aside the abatement has to be filed within 60 days from the date of abatement as provided under Article 121 of the Limitation Act. As appears from the impugned order, the period to file this application came to an end on May 28, 1977 and this application was, in fact, filed on 10-8-1979. The application was thus time barred and the prayer of the Appellants to set-aside the abatement was rejected by an order dated 22-9-1981. Under issue No. 2, as framed in this case, the Additional District Judge, Kangra, came to the conclusion that the delay was not explained satisfactorily and, therefore, there was no reason or cause for setting aside the abatement.

5. Now, the Appellants pray by this appeal to set aside this order. Shri Rajiv Sharma, who appears in this case for the Appellants with Shri Harish Behal, submits that the impugned order is absolutely arbitrary, harsh, against all canons of justice. While elaborating his submission, Shri Rajiv Sharma urges that the Appellants had approached the Lawyer within time to take steps in the matter. On her part, the applicant had duly signed the application for the purpose but the fault for the late filing of the same was with her Counsel who did not take care to move the same in time. In these circumstances, placing reliance on Rafiq and Another Vs. Munshilal and Another, Smt. Lachi Tewari and Others Vs. Director of Land Records and Others, . Oil and Natural Gas Commission Vs. Tridib Nath Sanyal and Others, and Mata Din Vs. A. Narayanan, it is urged that for the mistake of the Counsel, the client should not suffer. It is also urged that the CPC is a procedural law and the provisions contained therein should be used in aid of doing substantial justice between the parties and not to scuttle the genuine and bona fide claims of the parties.

6. I see force in these submissions of Shri Rajiv Sharma. It appears that the application u/s 18 of the Land Acquisition Act had been moved by Shri Ranja Ram and it is difficult to believe that he would have discussed and told everyone about the steps he had taken in connection with this matter. These daughters of his are not expected to know all this. At the most, his wife could know something of it but to say that she knew about the court of reference is utmost difficult. Village ladies who are innocent, illiterate and rustic, do not, as a matter of fact, know many things that are usually done by the head of the family. They are not usually taken in confidence since the head of the family, by the unique sense of

being the head of the family, does not like all such matters to be discussed with women folk. Although some statement, pointing out to the pendency of the case in appeal is referred to and discussed in the impugned order, is there but this version appears to be the result of actually not knowing what she was referring to and appears to have been given casually and innocently. The facts and the circumstances of the case were such that the learned Additional District Judge should have believed the version of the ladies and allowed the application. Whether there was sufficient cause to move the application late, is a question of fact which has to be decided on the basis of the evidence, bona fides and the submissions of the parties. Circumstances of this case clearly establish that steps which could be taken by the Appellants, had been taken in time. The delay was on the part of the Counsel appearing for them. Moreover, the relief available under Order 22 Rule 9 of the CPC could also be granted in the application under Order 22 Rule 3 of the Code of Civil Procedure, but no such thing has been done.

7. The case pertains to the acquisition of land of the Appellants for the purpose of reservoir for Beas Dam. The Appellants have lost the land. They should not at least suffer due to the non-payment of adequate compensation for their land. Chance needs to be given to them to avail the benefit available u/s 18 of the Land Acquisition Act. The sum total of the aforesaid discussion is that, in the facts and circumstances of this case and the aforesaid discussion, the order under appeal is not sustainable and deserves to be set aside.

8. Accordingly, there is merit in this appeal and the same is allowed. The order dated 22-9-1981 is set-aside. The abatement of the reference in question is set aside. The reference court is directed to restore the same to its original number and proceed with the matter, after adding legal representatives of deceased Ranja Ram as Petitioners applicants in the case, move to decide the matter in accordance with law. The parties are left to bear their own costs.