

(1982) 02 GAU CK 0010
In the Gauhati High Court
Case No : First Appeal No. 78 of 1969

Nalini Kanta Das	Vs	APPELLANT
Collector of Cachar and Others.		RESPONDENT

Date of Decision : 12-02-1982

Acts Referred:

Civil Procedure Code, 1908 — Order 22 Rule 4, Order 22 Rule 9
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 9

Citation : (1982) 1 GLR 234

Hon'ble Judges : D.Pathak, C.J. and K.N.Saikia, J

Bench : Division Bench

Advocate : S.K.Sen, J.P.Bhattacharjee, S.N.Medhi, A.R.Paul Mazumdar,
Advocates appearing for Parties

Judgement

Pathak, C.J. (Actg.)

1. This appeal is directed against the judgment dated 5.7.69 passed by the District Judge, Cachar, Silchar in Misc. Case No. 120 of 1969.

2. On 25.4.81 when the appeal was posted for hearing, it was reported by the learned counsel for the respondent to the counsel of the appellant that respondent No. 5, viz., Nirmal Kumar Choudhury died in 1971. On the basis of the aforesaid information, the counsel for the appellant made enquiries but could not ascertain the fact of death of respondent No. 5, Nirmal Kumar Choudhury. However, on 25.5.81 an application under Order 22, rule 4 of the C.P.C. was filed for substitution of the legal heirs of deceased respondent No 5. In that application, it has been stated that the said respondent No. 5, Nirmal Kumar Choudhury was arrested in Sylhet (Bangladesh) during the Bangladesh war of 1970-71 and thereafter his whereabouts were not known. When the appellate received a letter from his counsel on 25.4.81 stating that it was reported by the counsel for the respondent that respondent No. 5 died in 1971, he made further enquiries but could not ascertain the fact whether respondent No. 5 is dead or still alive. However, on the basis of the said letter of the lawyer, it had come to

the knowledge of the appellant that respondent No. 5 died and the petitioner after further enquiries started for Gauhati to meet his counsel for necessary steps and reached Gauhati on 22nd May, 1981. He met his counsel on 23rd May, 1981 and instructed him accordingly. It is stated in paragraph 4 that since respondent No. 5 is reported by the counsel of the respondent as dead, the petition was filed for substitution of the legal heirs of respondent No. 5.

3. Along with the petition under Order 22, rule 4 of the C.P.C. the appellant also filed on 25.5.81 an application under Section 5 of the Limitation Act for condoning the delay in filing of the application for substitution of the legal heirs of respondent No. 5.

4. Shri J. P. Bhattacharjee, learned counsel for the respondent has raised a preliminary point that the appeal itself has abated because respondent No. 5 died in 1971 and till 25.5.81 no application for substitution of the legal heirs had been filed. The further contention of the learned counsel is that the application under Order 22, rule 4 does not disclose that there was sufficient cause for not filing the application within time. It is not disputed that from the date of information received from the counsel for the respondent on 25.4.81, the application for substitution is still within time. However the submission of the learned counsel is that the mere knowledge of the death of respondent is not enough to salvage the case of the appellant unless cogent reason for the delay has been explained. The learned counsel further submits that the application itself discloses that the appellant has not been able to ascertain the death of respondent No. 5. It is only there stated that as respondent No. 5 is reported to be dead, therefore this application is filed. The submission of the learned counsel centres round the point that mere knowledge without explanation for the delay will not be enough for setting aside the abatement. The learned counsel submits that the decree was passed in favour of all the respondents. That decree in its entirety is in favour of all the respondents and there is no scope for severing the decree in favour of any of the respondents. Therefore, the learned counsel proceeds to submit that if the appeal abates as against respondent No. 5, the entire appeal will fail, the decree appealed against being a joint decree. The learned counsel for the respondent in support of his submission refers to a decision of the Supreme Court in *Union of India vs. Ram Charan* AIR (1964) 215, where it has been held that mere allegation about the belated knowledge of death of the opposite party is not sufficient, but it must be supported by the reasons leading to not knowing of death within reasonable time. Their Lordships of the Supreme Court have observed that there is no question construing the expression "sufficient cause" liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representative of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside for the abatement within time, need not be overstrict in expecting such proof of the sufficient cause as it would accept

for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This however does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement. It is true that it is no duty of appellant to make regular enquiries from time to time about the health or existence of the respondent, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law. Rule 9 of O XK'T of the code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the Court, especially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit. It is for the appellant, in the first instance, to allege why he did not know of the death of the respondent earlier or why he could not know about it despite his efforts, if he made any efforts on having some cause to apprehend that the respondent might have died. The correctness of his reasons can be challenged by the other party. The Court will then decide how far those reasons have been established and sufficient to hold that the appellant had sufficient cause for not making an application to bring the legal representative of the deceased respondent earlier on the record.

The principle that can be called from the above decision is that the appellant is to state reasons for the delay in filing the application for substitution of the legal heirs. He is further to set forth in the application why he has not in a position to know the death of the respondent in order to justify a sufficient cause for filing the application for substitution of the legal heirs belatedly. The reasons stated by the appellant can be challenged by the respondents. We have already adverted to the reasons given in the application for substitution of the legal heirs. These reasons have gone unchallenged. He has candidly stated that after filing of the appeal only in 1971 he could learn that the respondent No.5 was arrested during the Bangladesh war of 1970-71 at Sylhet (Bangladesh) and thereafter his whereabouts were not known to the appellant. As the Supreme Court has already observed in the aforesaid case that it is not the duty of the appellant to make regular enquiries from time to time about the health or existence of the respondent, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for

setting aside the abatement.

Here in this case the reasons are that the appellant could only come to know about the death of respondent No. 5 from a letter received from his counsel informing that the counsel for the respondent had informed his counsel about the death of respondent No.5 in 1971. On the basis of the said information the appellant made certain enquiries but could not properly ascertain the fact of death of respondent No. 5. However, the appellant relying on the information conveyed through his counsel by the counsel for the respondent filed the application for substitution of the legal heirs. We are satisfied that the appellant was prevented by sufficient cause in not making any application for substitution of the legal heirs and for setting aside the abatement of the appeal. In our opinion the preliminary point raised on behalf of the respondent is not at all tenable.

5. Now we proceed to go through the merit of this case. The facts given rise to the present appeal are that an area of 2 katha 14 chataks of land in village Kalacherra town within pargana Kushiayarkul under Karimganj Police Station was acquired under Notification No. R A 71/56/34 dated 26.8.62 published in the Assam Gazette of 5.9.62 by the State Government for widening the KarimganjLakhmibazar Road. After service of notice under rule 9 of the Land Requisition Act, 1894, Shri N.M. Chakraborty filed a claim on 16.3.63 as attorney for Diptiman Chakraborty and three others and also as the agent for Smti Nanda Rani Mukherjee. The entire area of 2 katha and 14 chataks claimed by the petitioners to be in their khas possession by maliki right. The appellant Nalini Kanta Das, according to the respondents, is a licensee under the petitioners without having any jote right or other interest in the land. Therefore the petitioners claimed the entire compensation money assessed for the land acquired. Appellant Nalini Kanta Das filed a separate claim contending that he is a tenant over the land and that he has been given the land by Shii Nirmal Kumar Choudhury one of the landlords by making a residential house thereon. It is contended thatNirmal Kumar Choudhury got the land specifically in his share by partition with his other cosharers, Usha Rani Chakraborty and Nanda Rani Mukherjee. He claimed to have constructed permanent pucca building over the land with clear knowledge of Nagendra Chakraborty and the employees of the Khajanchibari Estate. He also claims the land by right of adverse possession and denies the title of Nanda Rani Mukherjee and Usha Rani Chakraborty. On 20.7.63. the Collector gave hearing and the claim petition filed by Nagendra Chakraborty, the authorised attorney was held to be barred by limitation and had been rejected. Out of the compensation money assessed a sum of Rs. 264.51p. has been awarded to Nalini Kanta Das treating him at a tenant on the land. Against this award objection was filed by Shri N. N. Chakraborty as the attorney for Diptiman Chakraborty and others and also by Ninda Rani Mukherjee. The main contention is that Shri Nalini Kanta Das is not entitled to get any compensation in respect of the land as he is only a licensee without any kind of interest in the land. Although objection is also raised in the petition regarding the

amount of compensation, at the time of hearing on 1.7.69 the petitioners assured that regarding assessment made by the Collector about the price of the land there would be no contest. Shri Nalini Kanta Das filed objection against the claim made by the proprietors. He claims to have been in possession of the land since 1950 and that his name is registered as the owner of the holdings in the Municipal register.

7. After scrutiny of the evidence adduced on behalf of the appellant as well as respondent the reference court came to a finding that the appellant was not entitled to any compensation and the entire compensation money assessed on the land of the Khajanchibari Estate should be paid to the proprietors of the Khajanchibari Estate. Against the aforesaid judgment, the present appeal has been filed.

8. We have ourselves scanned the evidence adduced on behalf of the parties. On behalf of the respondent, Anathbandhu Biswas was examined. He has stated that the appellant filed a reference application on 20.7.1963. Thereafter the witness also filed a reference case. It is in his evidence that the appellant had no jote right in respect of this homestead. The land was not settled with him. From his evidence it is found that in 1368 B. S., there was settlement operation in Karimganj and the appellant was shown as a tenant without any right in respect of the homestead. He has stated that after 1950, Nirmal Kumar Choudhury opened account in his name in respect of this land. But he did not pay any rent. After acquisition, the appellant took a rent receipt from the Manager in the name of Nirmal Kumar Choudhury. In his cross-examination, it has been stated that the land in dispute is within Karimganj Municipality and the appellant raised permanent structure with permission from the Municipality and the respondents have not filed any civil suit against the dispute case No. 685 of the Revenue Court. We have seen this dispute case ourselves which is marked as Ext. "D". The order of the dispute case shows that the appellant has got the status of a person recorded as underrayer.

9. The appellant examined himself as D.W. 1. He has stated that the acquired land is a part of his homestead. This holding stands in his name and within Karimganj Municipality. He has stated that he raised permanent pucca house thereon with the permission of the Karimganj Municipality. It is in his evidence that Nirmal Kumar Choudhury settled the land with him. It is further found from his evidence that during the settlement operation, the appellant was shown as a tenant. He denied that he is a licensee in respect of the land. He has deposed that Nirmal Kumar Choudhury ousted Watir Ali from the land and after ousting him, settled the land with him. From the evidence and other materials on record, there is no dispute that due to the acquisition of the land, the appellant was deprived of the occupation and use of the land where his homestead stood. It is the case of the respondent that he was merely a licensee and was allowed to stay in the homestead over the land under acquisition. It is further found from Ext. "D" that during the settlement operation in the dispute case he was found to

be an underrayat. Considering the entire matter we are left with no doubt that he was a "person interested" in the compensation assessed on the land under acquisition. If he is a person interested in the land under acquisition then he will be definitely entitled to compensation not as a tenant but a person interested in use and occupation of land. In *Sundarlal vs. Paramsukhdas*, AIR 1968 SC 366, their Lordships of the Supreme Court has held that the definition of "person interested is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land. A person interested is a person if he claims an interest in compensation to be awarded A person claiming an interest in compensation is entitled to be heard under Sections 20 and 21. The provisions of the Act including Sections 20 and 21, do not prescribe that his claim to an interest in compensation should be "as compensation". This is really a contradictory statement. For a fortiori he has no interest in land, and compensation is given for interest in land. He can never claim compensation qua compensation for what he claims is an interest in the compensation to be awarded. This is to say that a person claiming an interest in compensation may not claim that the compensation awarded for the acquired land is law, if it affects his interests.

A close reading of the scheme of the Act seems to be to first deal with the person who are interested in land. These person are heard under Section 5 of the Act. The ordinary meaning of "a person interested in land is expanded by Section 5A (3) for purpose of this section, to include a person who would bi entitled to claim interest in compensation. It would be strange to come to the conclusion that the Legislature is keen that a person claiming an interest in compensation should be heard before the land is acquired. On the contrary, it follows from Section 5A(3) that a person claiming an interest in compensation would be one of the person whose interests are meant to be safeguarded. It appears from sections 6 to 10 that a person claiming an interest in compensation is not expressly mentioned. But in section II he is expressly mentioned, and it is directed that the Collector shall inquire into respective interests of persons claiming the compensation and shall make an award. Section 12 makes the award final and conclusive as between persons interested, i.e., including persons claiming an interest in compensation. Under Section 14 the Collector has power, inter alia to summon the parties interested.

Under Section 18 any person interested can claim a reference. A person claiming an interest in compensation would also be entitled to claim a reference. After reference is made the Court is enjoined under Section 20 to determine the objections, serve, among others, all persons interested in the objection A person claiming an interest in compensation would, it seems to us, be a person interested in the objection, if his claim is likely to be affected by the decision on the objection Section 21 restricts the scope of enquiry to a consideration of the interests of the persons affected by the objection. Bat it does not follow from Section 21 that there is any restriction on the grounds which can be raised by a person affected by the objection to protect his interests. The restriction that is

laid is not to consider the interests of a person who is not affected by the objection. Section 29 deals with apportionment of compensation, if there is agreement, and Section 30 enables the Collector to refer disputes as to apportionment to the Court. From the above discussion it follows that a person claiming an interest in compensation is entitled to be heard under Section 20 and 21 of the Act. In *Dr. G.H. Grant vs. State of Bihar* AIR (1966) SC 237, it has been observed that the scheme of land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the person who are entitled to receive compensation, and there is nothing in Sec. 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land was, since the award, devolved.

10. Here in this appeal it is not disputed that, even according to the respondents the appellant is a licensee who has been occupying the land constructing permanent structure. By the acquisition proceeding the land has been acquired and the appellant is deprived of the right of the use and occupation of the land. Therefore we have no hesitation to hold that he is a "person interested" in the compensation awarded for the acquisition of the land. It is not necessary for us here to determine the status of the appellant whether he is a tenant or an underraiyat. It is sufficient to hold that the appellant being a "person interested", he cannot be deprived of the compensation awarded in respect of his land under acquisition.

11. In the result, this appeal is allowed and the appellant shall be entitled to the compensation as person interested in the compensation. In the facts and circumstances of the case, we make no order as to costs.