

(1981) 05 AHC CK 0027

In the Allahabad High Court

Case No : Misc. Application No. Nil of 1980 in First Appeal No. 82 of 1980

National Thermal Power Corpn.

APPELLANT

Vs

Raghunath Pd. and Others

RESPONDENT

Date of Decision : 07-05-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 54
Limitation Act, 1963 — Article 116, 5

Citation : AIR 1981 All 344

Hon'ble Judges : N.N. Mithal, J;K.N. Singh, J

Bench : Division Bench

Judgement

K.N. Singh, J.—This application u/s 5 of the Limitation Act has been made by the National Thermal Power Corporation through the General Manager, Singrauli Thermal Power Project, Shakti Nagar, Mirzapur, for condonation of delay in filing the appeal against the judgment and decree of the District Judge, Mirzapur, dated 19-9-1979 enhancing compensation payable to the respondents Nos. 1 to 4.

2. The State Electricity Board, Uttar Pradesh required land for construction of a Thermal Power Station in the District of Mirzapur. On its request the State Government issued notification u/s 4(1) of the Land Acquisition Act, 1894, proposing to acquire about 1,412.02 acres of land situated in 16 villages in the District Mirzapur. On 19-10-1976 a notification u/s 6 of the Land Acquisition Act was issued for the purpose of construction of 2000 Megawatt Super Thermal Power Station at Kota and for construction of metal road from Bina to Power Station site in the district of Mirzapur by the U. P. State Electricity Board. The appellant is a State undertaking registered under the Companies Act, of which all the shares are held by the President of India. The Corporation was incorporated in November, 1975, its main object is construction of larger size Thermal Power Station and associate transmission lines in the Central Sector. Somewhere in December, 1976 the State Government and the State Electricity Board both agreed to transfer the construction of the proposed Thermal Power Station along

with the entire project to the corporation. Under the agreement, the compensation for the land acquired in pursuance of the aforesaid notification was to be paid by the appellant corporation.

3. On 17th January, 1978, the Special Land Acquisition Officer, Varanasi, after considering the objection of the affected land owners made his award under which respondents Nos. 1 to 4 who are real brothers were awarded a sum of Rs. 2,47,852.09 as compensation for an area of 145 bighas 18 biswas of their land acquired for the purpose of the said project. After the award the possession of the land was entrusted to the appellant corporation on 19-1-1978. Respondents Nos. 1 to 4 were not satisfied with the amount of compensation awarded to them, they made application before the Collector for making reference to the District Judge u/s 18 of the Act. The Collector made the reference to the District Judge, Mirzapur. Reference proceedings were taken before the District Judge. The Collector, Mirzapur was party to those proceedings. The appellant corporation was not a party to those proceedings and no notice was issued to it and it did not take any part in the proceedings, even though the District Judge was aware that the appellant corporation was interested as the project was being carried out by, it and it was liable to pay compensation.

The District Judge, Mirzapur, by his judgment dated 19-9-1979 enhanced the compensation awarded to the respondents No. 1 to 4 in all the District Judge awarded a sum of Rs. 11,26,672 as compensation for the land, together with trees, houses and well standing on the land. He further directed that the respondents should be paid interest at the rate of 6 per cent from the date of delivery of possession to the date of actual payment. The Collector, Mirzapur, who was party to the proceedings did not file appeal before this court against the judgment and decree of the District Judge, dated 19-9-1979 instead the appellant corporation filed appeal against the order of the District Judge before this court in accordance with Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code. The appeal was presented to this court on 22-4-1980 with a delay of 120 days. The appellant corporation has filed this application for condonation of delay in filing the appeal.

4. Sir S. P. Gupta learned counsel for the appellant corporation urged that the appeal has been filed within 90 days from the date the appellant corporation acquired knowledge of the judgment and order of the District Judge. The appellant corporation acquired knowledge of the District Judge's order on 19th March, 1980 and it filed the appeal on 22-4-1980 well within time. There is thus no delay in filing the appeal. In the alternative he urged that if there be any delay in filing the appeal, the appellant has made out sufficient cause for condonation of the same u/s 5 of the Limitation Act. We would now consider the submissions in seriatim as made before us.

5. Reference u/s 18 of the Land Acquisition Act, hereinafter referred to as the Act, is made to the District Court and the proceedings which are taken by the District Judge are judicial in nature. On receipt of the reference the District Judge

is required to determine the objection in a judicial manner. u/s 20 of the Land Acquisition Act, he is required to serve notice on the objector as well as on persons interested in the objection. Section 22 lays down that the proceedings shall be taken in open court and legal practitioners will be entitled to plead and act. Section 50(2) provides that in proceedings u/s 18 of the Act, the local authority or company for whose benefit the land is acquired may appeal and adduce evidence for the purpose of determining the amount of compensation. Section 53 makes the provisions of CPC applicable to those proceedings before the District Judge. Since the CPC is applicable, the provisions of Order 20, Rule 1 of C. P. C. would also apply. Under Order 20, Rule 1, the court is required to pronounce its judgment in open court on a date fixed by it and notice whereof should be given to the parties or to their pleaders. If judgment or order is announced after notice to the parties, limitation for filing appeal would run from the date of the judgment or order.

6. In the instant case the land in dispute has been acquired for the appellant and the District Judge was aware of it as the judgment under appeal mentions that the land has been acquired for the purpose of the appellant corporation and the compensation is payable by it. As the appellant was interested in the amount of compensation payable to the objectors and further as the amount of compensation is payable by the appellant corporation it is abundantly clear that the corporation was an interested person and entitled to be heard by the District Judge. There is no dispute that the District Judge did not issue any notice to the appellant corporation and it did not appear in those proceedings and adduce evidence to contest the claim of the respondent objectors. In *Sunder Lal Vs. Paramsukhdas*, , the scope of the expression "person interested" was considered and it was held that a person claiming interest in compensation to be awarded to an objection is a person interested. In *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's.*, , the Supreme Court held that a company, local authority or a person for whose benefit the land is acquired is an interested person and it has right to appear and contest the proceedings.

The Supreme Court set aside the contrary view taken by the Bombay High Court in *Himalayan Tile and Marble (Pvt.) Ltd. Vs. Francis V. Coutinho and Others*, and it further disapproved the contrary view of the Calcutta and Orissa High Court in *Comilla Electric Supply Ltd. Vs. East Bengal Bank Ltd. and Others*, and *State of Orissa Vs. Amarandra Pratap Singh and Another*, . In *Gordham Housing Society v. Behari Lal* 1980 All 345, a Full Bench of our court held that a co-operative society for whose benefit the land was acquired was entitled to file appeal before the High Court against the judgment and decree passed in reference by the District Judge as the society was a person interested in compensation. The Full Bench further held that even though the company or society for whose benefit the land is acquired may not strictly be a party to the proceedings but undoubtedly such a company or society is an interested person to file appeal after obtaining leave of the Court.

These decisions make it amply clear that the company for whose benefit land acquisition proceedings are taken is an interested person, entitled to take part in proceedings before the District Judge and to file appeal before the High Court against judgment of the District Judge.

7. Section 54 of the Act provides for appeal to the High Court against the judgment and decree of the -District Judge passed in reference proceedings in accordance with the provisions of the Code of Civil Procedure. Section 96 of the C. P. C. provides for appeal to the High Court from the original decree. Limitation for filing appeal before the High Court against a decree or order of the District Judge under the CPC is 90 days from the date of the decree or order as prescribed by Article 116 (a) of the Limitation Act. It would be seen that the limitation for filing appeal before the High Court commences from "the date of the decree or order". According to the strict literal meaning the period of 90 days would be computed from the date the judgment or order is pronounced.

The question arises when the period of limitation will commence if judgment is pronounced in the absence of the par ties or their counsel on a date of which no notice is given to them. If the date on which the judgment was pronounced is taken into account for the purpose of computation of limitation great injustice would be caused to the party concerned without any fault on its part. It is well settled that in the absence of communication of the order, right of the party concerned cannot be affected. Ordinarily an order takes effect on its communication to the parties. Communication is the essential element of an order, this is a basic element of fair play and natural justice. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , the Supreme Court considered the expression "the date of the Collector's award" as occurring in Section 18(2)(b) of the Act. The Supreme Court observed (at pp. 1504 and 1505) :--

"Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. So the knowledge of the party affected by the award made by the Collector u/s 12 of the Land Acquisition Act, 1894, either actual or constructive is an essential requirement of fairplay and natural justice. Therefore, the expression "the date of the award" used in proviso (b) to Section 18(2) of the Act must mean the date when the award is known by him either actually or constructively. It will be unreasonable to construe the words from the date of the Collector's award used in the proviso to Section 18 in a literal or mechanical way."

8. The Supreme Court again considered the question in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, . On an application made by Quisar Jehan Begum the Collector made a reference to the Court u/s 18 of the Land Acquisition Act for determining compensation. On behalf of the State an

objection was raised that the reference was incompetent as the application was made beyond the period prescribed in Clause (b) of the proviso to Section 18 of the Land Acquisition Act. The award was given by Collector on October 25, 1953. The objector made the application for interim payment of compensation on December 25, 1954, but the requisite application for making reference to the civil court was made on September 30, 1955 almost after a period of two years from the date of the award. The State raised the plea that the reference was incompetent as the application u/s 18 had been made beyond six months from the date of the award. The Supreme Court repelled the contention and observed (at p. 1604):--

"A literal and mechanical construction of the words "6 months from the date of the Collector's award" occurring in the second part of clause (b) of the proviso would not be appropriate and the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice, the expression used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. Whether the award was never communicated to the party, the question is when did the party know the award either actually or constructively."

9. In *Madan Lal Vs. State of U.P. and Others*, the Supreme Court again construed the expression "date of order for the purpose of computing limitation for filing appeal u/s 17 of the Indian Forest Act, 1927. Section 11 provided limitation of three months from the date of the order for filing appeal. The Supreme Court held that limitation would run from the date the aggrieved party came to know of the order and not from the date the order was actually passed. The law as declared by the Supreme Court in the aforesaid decision makes it amply clear that it is fundamental principle of justice that a party whose rights are affected must have notice of the order and in absence of such notice, his right to appeal cannot be taken away without there being any fault on his part. Fair-play and natural justice require that the party should be given notice of the award or the order and in the absence of notice, limitation for filing appeal would run from the date the party acquires knowledge of the order.

10. Learned counsel for the respondents urged that Article 116 (a) of the Limitation Act contemplates that the period of 90 days should be computed from "the date of the order" and not from "the date of knowledge of the order". He emphasized that if limitation was intended to run from the date of knowledge, the Limitation Act would have made specific provision to that effect. In this connection reference was made to Articles 3, 4, 59, 102, 120, 121 and 123 which provide that the limitation shall run from the date of knowledge. The scheme of the Limitation Act makes the legislative intent clear that the limitation for filing appeal against the order of the District Judge would run from the date the order was pronounced in court and not from the date the appellant corporation acquired knowledge of that order. He placed reliance on a number of decisions reported in AIR 1927 1 (Nagpur) , *Baldeo Prasad Shukul Vs. Sukhdeo*

Prasad Shukul, , Parasurama Odayar Vs. Appadurai Chetty and Others, . In our opinion none of these decisions support the respondents' contention.

11. In AIR 1927 1 (Nagpur) , a Full Bench considered the question whether an applicant could claim as a matter of right a deduction of the period between judgment and signing of the decree, when his application for a copy was not filed until after the signing of the decree. The Full Bench had no occasion to consider the question which is before us. In Baldeo Prasad Shukul Vs. Sukhdeo Prasad Shukul, , it was held that an application for review of an order was barred by limitation under Article 173 (old Limitation Act) if it was not filed within 90 days from the date of the order sought to be reviewed. In this connection the Bench observed that the fact that the judgment-debtor had no knowledge of the order made no difference as it was open to him to apply u/s 5 of the Limitation Act for extension of the period of limitation if in fact he could prove that he had no knowledge,

In Parasurama Odayar Vs. Appadurai Chetty and Others, a Full Bench of that Court considered the scope of Article 166 of the Limitation Act of 1908 corresponding to Article 127 of the Limitation Act of 1963 which prescribed Limitation of 30 days for setting aside sale in execution of a decree. The question was whether limitation would run from the date of the sale as provided by Article 127 or from the date of the knowledge of the date of sale. The Bench held that it was not permissible to add the words "the date of the judgment-debtor's knowledge of the sale" and as such limitation of 30 days would run from the date of the sale.

The Full Bench noted the two Supreme Court decisions in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, and observed that proceedings under the Land Acquisition Act are quite different than the proceedings before the executing court. The Bench further laid emphasis that once notice is given to the judgment-debtor for holding the sale under Order 21, Rule 66 and if the date of sale is fixed after such notice, the judgment-debtor has actual and constructive knowledge of the sale, therefore the judgment-debtor must file application for setting aside the sale within 30 days of the date of sale. In view of the distinguishing features as pointed out by the learned Judges of the Full Bench it is not possible to apply the principles laid down in that case in construing Article 116 (a) of the Limitation Act.

12. Learned counsel then placed reliance on the Supreme Court decision in Union of India (UOI) Vs. Ram Charan and Others, where it was held that limitation for an application to set aside abatement of suit would commence on the death of the deceased respondent. Article 171 (old Limitation Act 1908) did not provide that limitation shall run from the date of appellant's knowledge thereof. The court held that the period of limitation prescribed for making an application for setting aside abatement is three months under Article 177 of the I Schedule of the Limitation Act. The Court observed that the legislature expected that

ordinarily within 3 months, the plaintiff should know the death of defendant. Article 171 further prescribed two months' limitation for making application for setting aside abatement. In view of these two provisions the court held that the date of knowledge of the abatement was not relevant while construing Article 171. In our opinion Ram Charan's case is distinguishable as in that case the application for setting aside the abatement was made by a party to the proceedings. Further no application for setting aside the abatement within time prescribed under Article 171, had been made by the Government. In the instant case the appellant corporation was not party to the proceedings before the District Judge and it had no notice of the judgment and order pronounced by the District Judge. The principles laid down in the case of Ram Charan, therefore, do not apply to the instant case.

13. The appellant's contention is supported by other decisions of High Courts. In *Mata Prasad Vs. Dewakar Bharti and Others*, , the question was whether an appeal filed by the defendant against the judgment of the trial court was within time. The court held that since no intimation was given to the defendant conveying the information of the date of the order, limitation for filing appeal should be deemed to commence from the date of knowledge of the passing of the order although according to strict interpretation, limitation should run from the date of the order. The court further held that if the appeal is filed within 30 days from the date of knowledge, there is no question of condoning delay as the appeal would be within time. On coming to that conclusion the court placed reliance on the observations made by the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . In *Bajrang Singh Vs. The State of Rajasthan and Others*, , the question was whether the period of limitation of 90 days as prescribed by Section 39 of the Rajasthan Land Reforms and Resumption of Jagirs Act against an order passed u/s 33 of the Act Commence from the date of order is communicated to the parties concerned or from the date the order is actually passed. A Division Bench held that when the legislature provided 90 days time for filing appeal from the date of the decision, it had in mind the basic principles which have to be followed by a civil court in pronouncing its judgment in accordance with Order 20, Rule 1. If the order was not passed in the presence of the party, the period of limitation would commence from the date the party concerned received communication of the order. The view that limitation for filing appeal would run from the date of knowledge if the order was not communicated to the party concerned and it had no notice of the date of judgment or order was accepted in *Jagdamba v Gram Samaj* (1977 AWC 143), *Narendra Nath Ghai v. State of U. P.* (1979 ARC 170) and *Narendra Kumar v. Board of Revenue* (1980 All Civ 331).

14. Learned counsel for the respondent further urged that while construing the provisions of Limitation Act, equitable considerations have no place. The expression date of the order could not mean "the date of the knowledge of the order" merely on the ground of hardship and inconvenience. He placed reliance on the Supreme Court decision in *Municipal Board, Pushkar Vs. State Transport*

Authority, Rajasthan and Others, . In that case the scope of the expression "date of the order" as occurring in Section 64-A of the Motor Vehicles Act 1939 was considered. Under that provision an application in revision could be entertained by the State Transport Appellate Tribunal if made within 30 days of the date of the order. The Supreme Court observed that the words "date of the order" could not mean the date of the knowledge of the order in absence of clear indication to that effect. No doubt, observations made by the Supreme Court in that case support to respondent's contention but the Supreme Court determined the question on the particular facts of the case. The observation of the Supreme Court is confined to the facts of that case. But even assuming that those observations apply to the proceedings under the Land Acquisition Act, the Supreme Court has explained the same in Madan Lal Vs. State of U.P. and Others, .

15. In Madan Lal's case the question was whether an appeal filed u/s 17 of the Indian Forest Act, 1927 against the order of the Forest Settlement Officer passed u/s 11 of the Act was within time. Section 17 provided for appeal against the order of the Forest Settlement Officer. The appellate authority held that the appeal filed on behalf of the State was within time as the department had no knowledge of the order of the Forest Settlement Officer. It further held that the limitation for filing appeal would run from the date the State acquired knowledge of the order. Madan Lal filed a writ petition challenging the order of the appellate Tribunal on the ground that the Tribunal had no jurisdiction to entertain the appeal as it was barred by time. The High Court dismissed the writ petition of Madan Lal and it upheld the appellate Tribunal's order treating the appeal within time. Madan Lal took up the matter in appeal before the Supreme Court, to assail the judgment of the High Court and the Appellate Tribunal. Reliance was placed in the earlier decision of the Supreme Court in Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others, where the court had held that the date of the order could not mean the date of knowledge of the order.

16. The Supreme Court distinguished the case and observed that on the special facts of that case observations were made that the date of the order could not mean the date of knowledge. The Supreme Court referred to its decision in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, in holding that ,it is a fundamental principle of justice that parties whose rights are affected must have notice of the order and in absence of such notice the aggrieved parties' right to file appeal cannot be taken away. The Supreme Court upheld the Appellate Tribunal's finding that the limitation for filing appeal would run from the date the State acquired knowledge of the order, even after considering its earlier decision in Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others, . In view of the later decision of Supreme Court in Madan Lal Vs. State of U.P. and Others, , it is not possible to accept the respondents' contention. Since the appellant had no notice of the order of the District Judge, limitation for filing appeal by the appellant would run from the date it acquired knowledge of the order.

17. Learned counsel for the respondents then urged that the appellant had acquired knowledge of the District Judge's order on 19th January, 1980, when it received the letter of the Special Land Acquisition Officer, Varanasi dated 10-1-1980. But even thereafter appeal was not filed within time. On perusal of that letter we find that it was addressed to Tehsildar and a copy was endorsed to the appellant. It stated that the respondents had obtained a decree from the District Judge, Mirzapur and the decretal amount was to be paid to them, any delay made in payment would increase the liability of interest. Apart from this information, no other details were mentioned in the letter. The Senior Administrative Officer of the appellant corporation made enquiries from the Special Land Acquisition Officer. The Special Land Acquisition Officer by his letter dated 20-2-1980 informed the corporation that against the District Judge's order, no appeal would be filed as advised by the Deputy Deposit (sic) the amount so awarded.

The corporation thereupon made enquiries about the details of the decree from the Land Acquisition Officer and who by his letter dated 19-3-1980 gave the details of the decree passed by the District Judge, Mirzapur. On receipt of that letter the Senior Administrative Officer of the corporation took steps for obtaining copy of the judgment for filing appeal. It is thus clear that the appellant came to know of the details of the District Judge's order on the receipt of the letter dated 19-3-1980. The date of the knowledge would thus for (sic) after 19th March, 1980 and not 19-1-1980 when it had received only a vague intimation of the order, of the District Judge.

18. For the purpose of filing appeal, the party concerned must have full knowledge of the decree or order. A vague knowledge that some decree has been passed in proceedings against the party concerned is not sufficient. In *Bapurao Sakharam Karmarkar Vs. Sadhu Bhivba Gholap*, , the question of sufficiency of knowledge for the purpose of computing limitation under Article 164 (old Limitation Act) was considered. Macleod, C. J. observed -

"We think the words of the article mean something more than mere knowledge that a decree had been passed in some suit in some court against the applicant. We think it means that the applicant must have know ledge not merely that a decree has been passed by some court against him, but that particular decree has been passed against him in a particular court in favour of a particular person for a particular sum. A judgment-debtor is not in such a favourable position as he used to be when he had thirty days from the time when execution was levied against him. But we do not think that the legislature meant to go to the other extreme by laying down that time began to run from the time the judgment-debtor might have receiv- ed some vague information that a decree had been passed against him."

19. The above observation was quoted with approval by Supreme Court in *Parma Lal v. Murari Lal* (AIR 1967 SC 1384). The Supreme Court further observed -

"the test of sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of his previous dealing with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him the defendant has knowledge of the decree sought to be set aside, time begins to run against him under Article 164. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient " that the defendant has knowledge of the material facts concerning the decree, so that he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree." Applying the test laid down by the Supreme Court to the facts of the instant case, we find no reasons to accept the respondent's contention that the appellant had acquired knowledge of the decree on 19-1-1980. As noted earlier the appellant for the first time got the full details of the order of the District Judge by the letter of the Special Land Acquisition Officer dated 19-3-1980, so the date of knowledge would be the date of receipt of that letter. Since the appellant filed appeal on 22-4-1980, it is well within time,

20. Coming to the second question raised by the appellant's counsel that even if the date of the order for filing appeal is taken to be the date when the District Judge actually passed the order, the delay in approaching this court is liable to be condoned. He urged that the appellant was not a party to the proceedings, it had no notice of the date when the order was to be pronounced and on receipt of the information about the order, it acted diligently in obtaining the details of the order for filing the appeal. We would now consider the averments made in the respective affidavits. Sri O. P. Gupta, Law Officer of the appellant-corporation has filed affidavit explaining the delay. In his affidavit he has asserted that the appellant's headquarter is situated at Delhi and its office at Shakti Nagar in District Mirzapur is at about a distance of 200 kilometres from the City of Mirzapur where the court of District Judge is situated.

The appellant corporation had no knowledge of the reference proceedings before the District Judge as such it could not contest the proceedings. On receipt of the letter of the Special Land Acquisition Officer dated 10-1-1980, the corporation made enquiries from the Special Land Acquisition Officer and for the first time it came to know of the details of the order of the District Judge on receipt of the letter of the Special Land Acquisition Officer dated 19-3-1980. On receipt of that letter the corporation made enquiries from the court of the District Judge and made an application for obtaining copy of the judgment on 27-3-1980. The copy was received on 3-4-1980. The corporation thereupon authorized its Revenue Officer Sri K. S. P. Srivastava to obtain legal opinion of the counsel at Allahabad, but due to bereavement in his family Sri Srivastava could not proceed to Allahabad Thereupon the corporation deputed Sri O. P. Gupta, its Law Officer to file appeal. Sri Gupta filed appeal on 22-4-1980.

21. Kaghunath Prasad respondent No. 1 has filed counter-affidavit in opposition to the application for condoning the delay. In his affidavit he has asserted that the officer of the appellant corporation had knowledge of the proceedings

pending before the District Judge as he had talked to them about the reference proceedings pending in the court of District Judge. He has however not named any officer who may have been present in the court or with whom Raghunath Prasad may have conversed regarding the proceedings before the District Judge. His assertions are vague. Sri Raghunath Prasad¹ has further asserted that the District Judge had made local inspection of the land on May 20, 1979 and on that date Govind Lal Amin, one of the employees of the appellant corporation was present at the spot and as such the corporation had full knowledge of the proceedings.

In his rejoinder affidavit Sri O. P. Gupta has asserted that Govind Lal was, no doubt in service of the corporation but his services were dispensed with and he appears to have colluded with the respondents. He has further asserted that Govind Lal was never deputed by the corporation to be present at the time of local inspection made by the District Judge, in fact, the corporation had no knowledge about the local inspection made by the District Judge, Raghunath Prasad has then asserted that a the corporation had sent its vehicle for providing transport to the District Judge for the purpose of going to the spot but Sri Gupta has denied this allegation. The respondents have failed to place any material before us in support of their contention that the corporation had knowledge of the proceedings or that it had knowledge of the judgment or order of the District Judge prior to 19-3-1980, The averments contained in the affidavit of Sri Raghunath Prasad are vague. On perusal of the affidavit filed by the parties, we are satisfied that the appellant corporation has made out sufficient cause for condoning the delay in filing the appeal. We, therefore, allow the application and condone the delay, if any, in filing the appeal.

22. Learned counsel for the respondents then urged that the appeal against the judgment and decree of the District Judge is not maintainable by the appellant corporation for whose benefit the land in question was acquired. According to the learned counsel appeal, if any, could be filed by the State or the Collector and not by the appellant corporation. He placed reliance on the Supreme Court decision in Municipal Corporation of Ahmedabad v. Chandu Lal Shamaldass Patel (1970 SCD 298). On the other hand, learned counsel for the appellant urged that the decision of the Supreme Court in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR's., , is a direct authority for the proposition that the company or the local authority is competent to file appeal against the judgment and order of the District Judge. Learned counsel for the respondents further urged that as there is conflict in the aforesaid two decisions of the Supreme Court, the earlier view taken by the Supreme Court should be accepted and the appeal should be dismissed.

It is settled principle of law that if there is conflict in two decisions of the Supreme Court comprising of equal number of Judges, the later decision should prevail (See U.P. State Road Transport Corporation Vs. The State Transport Appellate (Tribunal), U.P. Lucknow and Others, . It is however, not necessary for

us to express any final opinion on the question of maintainability of appeal as by our order dated 7-10-1980 while granting leave to appeal to the appellant, we have already directed that the question of maintainability of appeal should be considered at the time of the hearing of the appeal.

23. In view of the above observations we hold that there is no delay in filing the appeal and in the alternative the delay is liable to be condoned as the appellant has made out sufficient cause for approaching this Court with delay. We order accordingly.