
(2009) 02 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 960 of 2009

Patel Kashuben Narottambhai and Another

APPELLANT

Vs

Special Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : (2009) 2 GLR 1421

Hon'ble Judges : Mohit S. Shah, J;H.N. Devani, J

Bench : Division Bench

Advocate : Harnish V. Darji, for the Appellant; Nikunt Kirit Raval, A.G.P. for Respondent No. 1 and Nilay Anjaria, for the Respondent

Judgement

Mohit S. Shah, J.—Rule. Mr. Nikunt Raval, learned A.G.P. waives service of rule for respondent No. 1 and Mr. Nilay Anjaria waives service of rule for respondent No. 2 - G.I.D.C, Mehsana.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioners claim to be the heirs of Patel Narottambhai Joitaram. It appears that upon acquisition of the land in question in Patan District, Patel Narottambhai Joitaram filed Land Acquisition Reference No. 82 of 2002 before the District Court, Patan. During pendency of the said Reference, Patel Narottambhai Joitaram expired, as is being stated by the petitioner. However, the petitioners did not make any application for being brought on the record of the Reference Case. The Reference Court, therefore, disposed of the said Reference along with the Land Acquisition Reference Nos. 66 to 91 of 2002 and other companion matters by judgment and award dated 21-2-2007 by which the amount of compensation was enhanced as per the directions given in the operative order dated 21-2-2007.

3. When the petitioners learnt about the aforesaid judgment and award, the

petitioners made an application dated 17-5-2008 for being joined as claimants stating that Patel Narottambhai Joitaram expired on 12-12-2004 and the petitioner? are the legal heirs of the deceased claimant. The application was registered as application Exh. 16 in Land Acquisition Reference No. 82 of 2002, but by order dated 21-11-2008, the learned Principal District Judge, Patan dismissed the application on the ground that the Reference case was already disposed of and award was declared on 21-2-2007, and therefore, the application filed thereafter cannot be considered.

4. Mr. Darji, learned Advocate for the petitioners submits that when the fact about the death of the original claimant is brought to the notice of the Reference Court, the Reference Court ought to have considered the application at least for the purpose of making the necessary modification in the award so that the legal heirs of the deceased claimant can get the fruits of the award. Mr. Darji also relies on the order dated 24-12-2008 passed by this Court in Special Civil Application No. 12586 of 2008 which was filed in somewhat similar circumstances.

5. Mr. Nikunt Raval, learned A.G.P. for the Land Acquisition Officer and Mr. Nilay Anjaria for the G.I.D.C. have submitted that their clients will abide by the order of this Court.

6. Having heard the learned Advocates for the parties, we are of the view that when the attention of the Reference Court was invited to the fact that the original claimant had expired during pendency of the reference, the Reference Court ought to have considered:

(i) whether the claimant in question at whose instance the reference was made to the Court, has expired,

(ii) whether the applicants are the legal heirs of the deceased claimant, and

(iii) whether the award would be required to be modified to reflect this circumstance.

It is obvious that upon the death of the original claimant, if his heirs are not brought on record within the time stipulated under the law of limitation, the reference would abate, and therefore, such application by the heirs of the deceased would have to be treated as application for setting aside abatement with a prayer for condoning delay, if any, and also an application for being brought on record as the heirs of the deceased claimant, again with a prayer for condonation of delay. The Reference Court would, thereupon, be required to modify the award in light of the findings already recorded in the common judgment covering the reference filed by the claimant who has died during pendency of the reference and the reference filed by the other claimants.

7. We have been coming across a number of cases where the reference Court declines to entertain such applications as if the Reference Court becomes functus officio upon rendering the judgment and the award. Once, the aforesaid aspects

are considered, it is apparent that the Reference Court can still exercise the powers of setting aside abatement, bring on record the heirs of a deceased claimant and passing a fresh award in favour of the heirs of the deceased claimant.

8. We also make it clear that while the provisions of the Limitation Act may not be applicable to the reference to be made u/s 18 of the Act, once made, in absence of any other provision regarding bringing on record the heirs of a claimant who dies during pendency of the reference, the provisions of Order 22 C.P.C. and the provisions of the Limitation Act for bringing on record the heirs of the deceased party will apply.

For taking the above view, we have derived support from the decision of the Constitution Bench of the Apex Court in *S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others*,

9. The Apex Court has held in Para 34 of the above decision that wherever the plaintiffs or appellants are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and in severable decree. Hence, the common judgment and award dated 21-2-2007 would continue to operate in case of all the other claimants, and only the award in case of the deceased claimant would be required to be modified after setting aside abatement and after bringing on record the heirs of the deceased claimant.

In Paras 26, 31 and 33, the Apex Court made the following observations:

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 C.P.C. as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings, and thereby, non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice....We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner in which it

would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no-fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and brining on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice.

...

31. But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard-and-fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it....

...

33. ...As far as possible, Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief, and thereby, render the rights themselves otiose, "ubi jus ibi remedium" where there is a right, there is a remedy being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice.

10. We accordingly allow the petition and direct that upon an application being made on affidavit along with the death certificate of the deceased - Patel Narottambhai Joitaram and with the necessary prayers for setting aside abatement with a prayer for condonation of delay and application for being brought on record as the heirs of the deceased with a prayer for condonation of delay, the Reference Court shall entertain such application and consider and decide the same in light of the principles laid down herein and by the Apex Court in *S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others*, and modify the award and pay compensation amount to the heirs of deceased-Patel Narottambhai Joitaram.

11. Rule is made absolute in the above terms. Direct Service is permitted.

12. A copy of this judgment shall also be circulated to all the Courts hearing the Land Acquisition References in the State of Gujarat.

It is hoped that after this judgment, the Reference Courts will not drive the heirs of deceased claimants to this Court unnecessarily.