

(1990) 09 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3199 of 1989

Sarti (died) By L.Rs.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-09-1990

Acts Referred:

Citation : (1992) 2 LJR 73 : (1991) PLJ 380 : (1991) 2 RRR 466

Hon'ble Judges : Ashok Bhan, J

Advocate : S.D. Bansal, Advocate, Advocates for appearing Parties

Judgement

Ashok Bhan, J.

1. This order of mine shall dispose of two Civil Revision Nos. 3199 of 1989 and 3200 of 1989. The order is dictated in Civil Revision No. 3199 of 1989 titled as Surti and another v. State of Haryana. On 11.1.1969 the State of Haryana acquired some agricultural land situated in the revenue estate of Jind. The notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act") was published to that effect in the Gazette on 18.11.1969. The Land Acquisition Collector gave his award against the petitioners and other land holders who filed a reference application under Section 18 of the Act. The claimants included brothers and sisters of the petitioner as well. The District Judge enhanced the compensation to Rs. 11,500/ per acre but the reference application of the petitioner was dismissed by him on 9.4.1975 in default for nonappearance of the counsel of the petitioner or the petitioners themselves.

2. Thereafter some other claimants/landholders filed appeal in this Court (Regular First Appeal No. 1743 of 1978) in which the compensation was further enhanced. After the decision of the Regular First Appeal, the petitioners moved an application under Section 28A of the Act in the light of Land Acquisition Act (Amending Act 64 of 1984). Since their application was not decided for quite sometime they then filed Civil Writ Petition No. 8974 of 1987 in this Court. Defence taken by the State in the written statement filed to the writ petition was that reference of the petitioner under Section 18 of the Act had been dismissed

in default on 9.4.1975 and therefore the application Under Section 28A of the Act was not maintainable. As according to Section 28A of the Act only those persons can claim enhanced compensation under Section under Section 28A who did not file the reference application under Section 18. The writ petition was thus dismissed being not maintainable by this Court. The petitioners thereafter claiming the knowledge of the dismissal of their reference application from the written statement filed by the State on 11.2.1988 in the writ petition filed an application in the Court of District Judge on 18.2.1988 i.e. after about 13 years of the dismissal of the application in default for setting aside/recalling the order of dismissal in default. Notice was issued to the State of Haryana in the said application and following issues were framed :

(1) Whether there is any sufficient ground for restoration of L.A. case dismissed in default on 15.2.1975 ? OPA.

(2) Whether the application for restoration is within limitation? OPA.

(3) Relief.

The Additional District Judge vide his order dated 27.3.1989 dismissed the reference application being barred by time and on the ground that no sufficient grounds were shown for restoration of the land acquisition case dismissed in default on 15.2.1975. That order has been impugned by way of present revision petition in this Court.

3. It has been contended by the learned counsel for the petitioner that reference application under Section 18 of the Act could not be dismissed in default and in support of this argument he has cited *Kamla Devi v. State of Haryana*, 1986 RRR 133 (P&H) : 1986 PLJ 341; *Gurbax Singh and others v. State of Punjab*, 1988 LAC 75 : 1988(1) RRR 54 and *Suraj Bhan v. State of Haryana*, 1988(2) RLR 444. This proposition of law cannot be disputed in view of the law laid down by this Court in the above noted three judgments. But in this case, a finding has been recorded by the Additional District Judge that the present reference application was filed after 13 years of the original dismissal of the reference application whereas the limitation for filing an application for restoration as per the law laid down in *Baldev Singh and others v. State of Punjab and others*, 1982 PLR 124 is only three years. A further finding has been recorded by the Additional District Judge that the petitioner had knowledge all along regarding the filing of reference under Section 18 of the Act and the case put up by the petitioner that they came to know about the dismissal of their reference in default on 18.2.1988 is an afterthought. The learned counsel appearing for the petitioner has argued that since the order of dismissal of the reference in default was without jurisdiction the question of limitation would not arise as the order is void ab initio. However, he was unable to cite any authority in support of this view whereas the judgment of this Court reported as *Baldev Singh's case* (supra) says that Article 137 of the Limitation Act, 1963 would come into play and limitation for getting such references restored would be three years. In view of this, the contention of

the learned counsel for the petitioner cannot be accepted and it is held that the application for restoration of the reference before the District Judge was barred by limitation as it was filed after 13 years.

4. The second argument of the learned counsel for the petitioner is that the petitioner came to know about the dismissal of the reference application on 10.2.1988 when the objection to this effect was taken by the State in reply to the Writ Petition No. 8914 of 1987. Immediately thereafter i.e. on 18.2.1988 the present application was filed in the Court of District Judge for restoration of the reference. According to the learned counsel for the petitioner, the limitation of three" years is to be counted from the date of knowledge i.e. 10.2.1988. The District Judge has discussed this point at length and came to a firm finding that the petitioner had knowledge of the pendency of the reference and had participated in the proceedings on some dates and therefore it cannot be believed that they came to know about the dismissal or the pendency of the reference application on 10.2.1988. For coming to this conclusion the District Judge has relied upon the statement of the petitioner AW 1 Smt. Sarupi herself, who in her statement has not stated even a single word that she had obtained knowledge of the dismissal of reference when the State filed its written statement to the writ petition on 10.2.1988. In cross-examination she stated that reference was instituted by her, her sister Sarti, her brothers Ram Sarup, Amar Singh, Chandgi and Ram Chander who were also claimants and she and her sister did not come to the Court but only male members used to come/present in their case. She specifically stated that she was not aware of the proceedings because her brothers used to come to the Court. It is clear from the order sheet in the original land reference that she had given a Vakalatnama in favour of Shri S.K. Aggarwal, Advocate, to conduct the case on her behalf. The petitioners had put in appearance through their counsel Shri Aggarwal who took part in the proceedings on a number of dates. Replication was also filed in those proceedings on behalf of the petitioners. Ultimately their case was fixed for 9.4.1975 for framing of issues but on that date Shri Aggarwal, Advocate representing the petitioners made statement that he had no instructions to appear and conduct the case and, therefore, petition be dismissed in default. Thus in pursuance of this statement reference was dismissed in default by the Additional District Judge, Jind on 9.4.1975. In view of this it cannot be held that the petitioners did not have the knowledge regarding the filing of the reference application or of its dismissal in default. The story put forth by the petitioners that they came to know about the dismissal of their reference application from the written statement filed on 10.2.1988 by the State in Civil Writ Petition No. 8974 of 1987 cannot be believed. Otherwise also in my view even if it is held that the Court can recall the order of dismissal for default under the inherent powers at any time I do not think this to be a fit case in which such power should be exercised as the petitioner seeks to recall an order which, was passed in the year 1975 i.e. after a period of 13 years when the petitioner and her counsel stopped appearing in the case intentionally.

5. For the foregoing reasons I find no substance in the revision petition and the same is dismissed with no order as to costs.