

(1981) 11 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Civil Revns. No"s. 147 of 1980 and 51 and 194 of 1981

Shrimati Dhani Devi, Bachhitar Singh and Others

APPELLANT

Vs

Collector, Land Acquisition, Talwara and Another

RESPONDENT

Date of Decision : 02-11-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 3(2), Order 4 Rule 1(1), 2(2)
Land Acquisition Act, 1894 — Section 18, 26, 53
Limitation Act, 1963 — Article 120, 121

Citation : AIR 1982 HP 42 : (1982) ShimLC 90

Hon'ble Judges : Vyas Dev Misra, C.J.;Hira Singh Thakur, J

Bench : Division Bench

Advocate : Om Prakash Sharma and R.K. Sharma, for the Appellant; Inder Sinh, General, for the Respondent

Judgement

V.D. Misra, C.J.—Whether Order 22 of the Civil P. C. and the Limitation Act apply to proceedings before a court on reference u/s 18 of the Land Acquisition Act?" is the question which arises for determination,

2. The facts in the three cases are similar. In all these cases the claimants not being satisfied with the compensation awarded to them by the Collector asked the Collector to make references to the Court u/s 18 of the Land Acquisition Act (the Act), The references were duly made. During the pendency of the proceedings before the court, the claimants died. Applications under Order 22 of the Civil P. C. (the Code) for bringing the legal representatives on record were made. These applications were contested. It was inter alia contended that the applications were not made within limitation. The court found that the applications were barred as having not been made within the time allowed under the Limitation Act. The applications were dismissed and it was declared that the references have abated.

3. When these revisions came up be-fore me I found that High Courts have given

conflicting decision on the question. I, therefore, decided to refer the matters to a larger Bench and that is how these matters are before us,

4. Part III of the Act relates to "reference to Court and procedure thereon". Section 10 gives a right to any person interested who has not accepted the award, to make an application to the Collector asking him to make a reference to the court. Section 19 requires the Collector to give information to the court about the matters referred to in this section. One of the informations which the Collector is required to give is about the "names of the persons whom he has reason to think interested in such land". Section 20 enjoins upon the court to give notice about the date of hearing to (a) the applicant, (b) all persons interested in the objection except such (if any) of them as have consented without protest to receive payment of the compensation awarded: and (c) the Collector in case the objection is in regard to the area of the land or to the amount of the compensation. Section 26 prescribes the form of the award to be made by the Judge. It provides that :

"every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2), and Section 2, Clause (9) respectively of the Civil P. C., 1908."

Part VIII of this Act makes provisions for miscellaneous matters. The relevant provisions for our purposes is Section 53. It is in the following terms.

"Save in so far as they may be inconsistent with anything contained in this Act, the provision of the Civil P. C. shall apply to all proceedings before the Court under this Act,"

5. It is contended by Mr. Om Prakash Sharma, learned counsel for the petitioners, that once a reference has been made to the court it is the duty of the court to answer the reference. It is submitted that any provision of the Code which is inconsistent with this contention is not applicable. Mr. Sharma says that since it is the duty of the Collector u/s 19 to inform the court about the names of persons whom he has reasons to think interested in the land acquired, it is his duty to inform the court about the names of the legal representatives of the deceased claimant after his death. Various decisions to support this contention are cited.

6. Mr. Inder Singh, learned Advocate-General, submits that it is not the duty of the Collector to keep a watch on the proceedings going on before the court and to supply the names of the legal representatives from time to time. Once the reference has been duly made, it is contended, the duty enjoined upon the Collector by the Act comes to an end, It is also contended that though the proceedings before the court do not amount to a suit, the claimant partakes the character of a plaintiff whereas the Collector is a defendant and, therefore, Order 22 of the Code is applicable. He also cites several decisions in support of his contention. We will now examine these decisions.

7. In *Abdul Karim v. State of Madhya Pradesh*, AIR 1964 Madh Pra 171, a Division Bench was seized of a similar question whether Order 22 of the Civil P. C. and Limitation Act apply to such proceedings. It came to the conclusion.

"..... once a reference u/s 18 is made, the Court has to make an award, no matter whether the person at whose instance the reference has been made appears or fails to appear before the Court or fails to produce evidence in support of his objection, it is clear that there cannot be any dismissal or abatement of a reference proceedings. It follows, therefore, that the application of Order 22 of the Civil P. C. is altogether inconsistent with the very nature and scope of the proceedings u/s 18..... If the person who moved for the reference dies and no one comes forward to represent him in the Court, then it is clearly the duty of the Government to supply to the Court the names and addresses of the legal representatives of the deceased claimant to enable the Court to issue fresh notices to them u/s 20." As regards the application of Limitation Act, the Court observed :

"It must be remembered that Article 178 of the Limitation Act applies to suits and appeals arising out of a suit. It has no applicability to other proceedings. If Order 22 can properly be applied to proceedings which are not suit proceedings, then the relevant article of limitation would be the residuary Article 181 and not Article 176 of the Limitation Act."

8. A learned Single Judge of the Calcutta High Court followed this decision in *Ramnibas Jhunhunwalla Vs. Benarashi L. Jhunhunwalla*, In this case the question arose during the proceedings pending before the court under Arbitration Act for making an award a rule of the court. Before the judgment could be announced the parties died. It was held that provisions of Order 22 of the Code were not applicable though the court could bring the heirs on record in the exercise of its inherent jurisdiction.

9. A Division Bench of the Patna High Court in *Bhadar Munda and Another Vs. Dhuchua Oraon*, without noticing the aforementioned decisions, ruled that question of abatement does not arise in proceedings resulting from a reference made by the Collector to the court u/s 18 of the Act and so Order 22 of the Code does not apply. Another Division Bench of this High Court in *Shyam Shankar Sahai and Others Vs. State of Bihar*, held that a land acquisition case cannot be dismissed for default of non-appeal once of the claimants and that the court has to make an award even in the absence of any evidence.

10. A party contrary view was taken for the first time by a learned Single. Judge of the Gujarat High Court in *Alihusain Abbahbai and Others Vs. Collector, Panch Mahats*, The learned Judge differed from the view taken by the Division Bench of Madhya Pradesh High Court in the case of *Abdul Karim and Another Vs. State of Madhya Pradesh*, and ruled that Order 22, Rule 3 of the Code applies to a reference since there was no provision in the Act which was directly or by necessary implication inconsistent with it. It was observed that the court has to

make an award on the basis of the evidence produced before it to the proceedings on reference, and to case there was no evidence because of the absence of the claimant, the court has to reject the objection of the claimant and dismiss the reference because of lack of evidence since making of an award would amount to the court holding that the amount of compensation determined by the Collector was the proper amount. The learned Judge said AIR 1967 Guj 122 :

"It is, therefore, clear that the nature of a reference u/s 18 is not such that it must necessarily result to the making of an award by the Court and when I use the word "award" I mean it to the sense of an award determining the amount of compensation for the land. The reference is not different from an ordinary civil proceeding in which the applicant who is in the position of a plaintiff objects to the amount of compensation offered to the award of the Collector and claims additional compensation. If the applicant fails to appear at the hearing of the reference, the reference must by force of Order 9, Rule 8 which is made applicable by Section 53 be dismissed for want of appearance like any other civil proceeding and in the same way if the applicant does not produce evidence in support of the objection, the reference must be dismissed just as any other civil proceeding would be dismissed for want of evidence to support of the claim." As regards the application of the Limitation Act the Judge after noticing the decision of the Judicial Committee of the Privy Council to *Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Co. Ltd.* AIR 1933 P3 63 observed thus :

"This decision of the Privy Council clearly establishes that the "suit" contemplated by the Limitation Act is a civil proceeding commenced with the presentation of a plaint and the "plaintiff" in Article 178 must, therefore, mean a plaintiff in such a suit and cannot include an applicant to a reference. It is significant to note that though Section 53 makes the provisions of Civil R. C. applicable to a reference, it does not make Article 176 of the Limitation Act applicable to such reference. Article 176 of the Limitation Act cannot, therefore, be held to be applicable to a reference on the argument that an applicant in a reference is a plaintiff to a suit within the meaning of that Article."

11. A Division Bench of the Calcutta High Court in *State of W. B. v. Dwijen-dra Chandra Sen* AIR 11979 Cal 182 differed from the judgment of Madhya Pradesh High Court in *Abdul Karim's case* AIR 1964 M P 171 and agreed with the judgment of the learned single Judge of the Gujarat High Court in *Alihusain Abbahbai and Others Vs. Collector, Panch Mahals*, and ruled that a reference under the Act cannot be regarded to any way different from the ordinary civil proceedings attracting provisions of Order 22. The Court, however, after noticing the decision in *Alihusain's case* that Article 176 of the Limitation Act did not apply, left this question open.

12. A Division Bench of the Punjab High Court in *Phuman v. State of Punjab* ILR (1963) Punj 442 came to the conclusion that there was nothing in the Act which was inconsistent to the provisions of Order 22 of the Code and, therefore, this

Order will be applicable. As regards the applicability of the Limitation Act, it was observed:

"Since the provisions of the Code have been made applicable to the references u/s 18 of the Act as well, therefore, Order 22 also applies to them. In other words, the applications u/s 18 of the Act are treated as "suits" and the applicants as plaintiffs. Until this is done, the provisions of Order 22 would never apply. Moreover, Section 141 of the Code clearly mentions that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. It is undisputed that these proceedings are in a Court of civil jurisdiction, It follows, therefore, that the procedure provided in the Code for suits shall be followed in dealing with the applications u/s 18 of the Act."

"..... Having found that the applications u/s 18 of the Act are in the nature of suits and the applicants thereunder are to be treated as plaintiffs, it is clear that the limitation provided for making an application under Order 22, Rule 3, would apply to these proceedings as well, It is conceded that the Article applicable for making an application under Order 22, Rule 3 of the Code is Article 176 and no other Article. Therefore, the residuary Article 181 would not apply, as contended by the learned counsel for the appellants. It is true that the Limitation Act as such has not been made applicable to the proceedings before the Court under the Act, but since the provisions of the Code have been made applicable and in Order 22, Rule 3, Sub-rule (2), it has been mentioned that the application under that rule has to be made within the time limited by law, therefore, the provisions of Article 176 of the Limitation Act would apply. If the provisions of Order 22 of the Code are applicable to these proceedings, then the only Article applicable would be Article 176. The argument of the learned counsel that the applicant u/s 18 of the Act may be equated with a plaintiff in Order 22 of the Code, but he cannot be equated with the plaintiff in Article 176 of the Indian Limitation Act is without any force, because if he is being treated as a plaintiff for the purposes of Order 22, Rule 3, he must be treated as a plaintiff for the purposes of Article 176 which is the only Article applicable to the applications under this Rule, as provided in Sub-rule (2) of the same."

13. A learned Single Judge of Delhi High Court in *Union of India v. Sanwalia* ILR (1975) Del 337 held that the provisions of Order 9 as well as Order 22 of the Code will apply to proceedings under the Act. However, it was ruled that the application for substitution can be made at any time and the reference will not abate, but if the application is not made within a reasonable time, the reference may be dismissed for non-prosecution, It was observed;

"The provisions of the Limitation Act have to be strictly construed and they are applicable only to the kinds of suits, appeals, and applications which are specified in the Limitation Act, They do not apply to the proceedings under the Land Acquisition Act, except to the extent specified in the Land Acquisition Act, e.g. for making a reference u/s 18 a limitation is prescribed by the Act, The provisions of

the Limitation Act cannot be applied by analogy or by implication. They must clearly and expressly apply (see *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63; *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, and the *The Management of State Bank of Hyderabad Vs. Vasudev Anant Bhide etc.*, "

14. Because of the conflicting decisions the matter was referred to a Full Bench of Delhi High Court in *Ram Piari and Others Vs. The Union of India*, The Court while holding that the provisions of Order 22 will apply to the proceedings on a reference u/s 18 of the Act also held that the application has to be moved within time. The reason given was that though the proceedings do not amount to a suit, "however because of the applicability of the procedure prescribed in the Code to the proceedings before the Court partake the nature of a suit. During the proceedings before the Court in the reference application the claimants will partake the status of plaintiffs while the non-claimants and Collector would occupy the position of defendants". The Full Bench accepted the reasoning of the *Phuman's* case ILR (1963) Punj 442 that because of the provision of Sub-rule (2) of Rule 3 of Order 22 the application has to be made "within the time allowed by Law". The Full Bench differed from *Alihusain Abbahbai and Others Vs. Collector, Panch Mahats*, which had held that Limitation Act was not applicable for making an application under Order 22, Rule 3. The only reason given for the difference was the one reproduced above.

15. In *R.P. Conduit Manufacturing Co. v. Union of India* ILR (1978) Del 513 a Division Bench of the Delhi High Court was seized of the question whether Order 9, Rule 9 of the Code and the Limitation Act will apply to the proceedings on reference u/s 18 of the Act, While holding that the provisions of Order 9 will be applicable since there was nothing inconsistent with anything contained in the Act, it was ruled that the Limitation Act was not applicable. The reason given was that applicability of Article 122 of the Limitation Act, which is applicable to a suit, has to be construed independently of Section 53 of the Act which makes the provisions only of the Code applicable. The applicability of the Code, it was observed, does not mean the automatic application of the Limitation Act since these are two different enactments,

16. Before we proceed further we would like to notice the view taken by the Karnataka High Court. A learned Single Judge of that Court in *Ramaiah v. Special Land Acquisition Officer* AIR 1974 Kant 122 held that it was the duty of the Court on a reference u/s 18 to make an award irrespective of the fact whether the claimant remains absent or whether he is present but fails to adduce evidence. It was, therefore, ruled that a reference cannot be dismissed under Order 9, R. 8 and the provisions of Order 9, Rule 9 were, therefore, not applicable. However, a Division Bench of that Court in *Pullamma and Others Vs. The Additional Special Land Acquisition Officer, Bangalore and Others*, overruled *Ramaiah's* case AIR 1974 Kant 122 and held that it could not be said that reference proceedings once launched must culminate in an award and that the Court had no discretion to pass any order other than the one that amounts to an award.

17. We do not agree with the view that once a reference has been made the court is bound to give an award. The scheme of the Act is that the Collector makes an award which is an offer to the claimant whose land has been acquired. If the offer is accepted the matter ends. But if the claimant does not accept the offer, he has a right to have the compensation judiciously determined. For this he has to make an application u/s 18 of the Act asking the Collector to make a reference to the court. In this application he is required to state the grounds on which objection to the award is taken. The Collector is required to give the necessary information mentioned in Section 19 of the Act to the court while making a reference. Once the reference is registered by the court it is required to serve a notice on the applicant and others. In other words, proceedings start before the court when it takes cognizance of the reference by registering it. Since the applicant has raised objections to the award made by the Collector, it is but natural that he should support his objections. But in case the applicant disappears from the scene, what should the court do? u/s 26 of the Act the court, while making its award, is required amongst others, to give the grounds of awarding each amount. In the absence of the applicant the court cannot justify the amount awarded by the Collector on the ground that applicant is no more interested in supporting the objections raised by him. In these circumstances relevant provisions of the Code, which are not inconsistent with the Act, can be made applicable because of Section 53 of the Act. There is nothing in the Act which militates against the legal representatives of the deceased applicant being required to be brought on record so that the proceedings can continue. The provisions of Order 22, in our judgment, are applicable to the proceedings on reference under the Act.

18. The contention before us about the applicability of the Limitation Act is twofold. Firstly, since the claimant has to be regarded as a plaintiff and the Collector as a defendant, therefore, the relevant Article 120 of the Limitation Act will be applicable. Secondly, since Sub-rule (2) of Rule 3 of Order 22 in terms requires the applications to be made "within the time allowed by law" it is Article 120 of the Limitation Act which will become applicable.

19. The first contention has to be rejected straightway. It is now well settled that the proceedings on a reference u/s 18 of the Act do not amount to a suit. In this connection one has to remember that the word "suit" is a term of art in law, It does not mean any litigation between two persons. It is true that the word "suit" is not defined anywhere --not even in the Code. But then Order 4 of the Code relates to the institution of suits, Rule 1 (1) tells us how the suit is commenced. It states : "every suit shall be instituted by presenting a plaint to the court or such officer as it appoints in this behalf in other words, the suit comes into existence only by presentation of a plaint. It is true that by a deeming fiction any proceeding can be deemed to be a suit but there is nothing in the Act which shows that the proceeding on a reference amounts to a suit, It is true that u/s 26 of the Act (already reproduced) an award given by the court on a reference is to be deemed to be a decree within the meaning of Section 2, Clause (2) of the

Code. However, this does not mean that the proceeding is to be deemed to be a suit, If the object of the Legislature was to make the proceeding a suit it would have used the deeming provision and made the proceeding a suit and not confined itself to only making the award a decree.

20. Simply because the courts have at different occasions illustrated the position of the parties to a reference by saying that the claimant partakes the character of a plaintiff or be regarded as a plaintiff, it does not follow that the claimant does in terms become a plaintiff. The similarities have been made just for the sake of illustration. No amount of similarity can make a claimant a plaintiff in the eyes of law. It would thus be fallacious to conclude that since the claimant "partakes the character of a plaintiff" or can be "regarded as a plaintiff, he becomes a plaintiff in terms of Article 120 of the Limitation Act, 1963 (equivalent to Article 176 of the old Limitation Act), Similarly, It would not be correct to hold that since the proceedings u/s 18 of the Act are "treat-ed as suits" so these are suits,

21. It cannot be disputed that Section 53 of the Act makes only the provisions of the Code applicable to a limited extent, and that there is nothing in this Act to make the provisions of Limitation Act applicable. Indeed by no stretch of imagination can Limitation Act be made applicable to these proceedings when it has not been so made applicable by any provision in the Act.

22. The only contention now left is about the effect of Sub-rule (2) of Rule 3 of Order 23 of the Code which requires the application to be made "within the time limited by law". This provision reads

"(2) Where within the time limited by law no application is made under Sub-rule (2), the suit shall abate....."

23. Is the effect of this provision to make the Limitation Act or Article 121 of the Limitation Act applicable to these applications? The answer in our opinion is : no. The Limitation Act applies to suits by its own force and not because of any provision of the Code, If the said sub-rule was not there, it does not follow that applications under Sub-rule (1) of Rule 3 could be made beyond the time limited by law, The phraseology has been used in order to prescribe the result which would follow on failure to make the application. The consequence is abatement. But this is to be only after the period for making application expires. Therefore, it would not, in our opinion, be correct to conclude that Sub-rule (2) en-joins application of Article 120 of the Limitation Act,

24. The matter can be looked from another angle also. Article 120 of the Limitation Act, 1963 describes the application thus : "Under the Civil P. C. 1908 (5 of 1908), to have the legal representative of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party." The time from which the period begins to run is described thus: "The date of death of the plaintiff, appellant, defendant or respondent as the case may be", This leaves no doubt that the Article relates to the death of a plaintiff or an appellant. As already

discussed, simply because a claimant, who has asked for a reference, partakes the character of, or can be regarded as, a plaintiff, it does not mean that he becomes a plaintiff under the Code, Article 120, therefore, will have no application. It may, however, be clarified that though no provision of the Limitation Act is thus applicable, the application has to be made within a reasonable time, What is a reasonable time? It will depend on the circumstances of each case and it will be for the trial court to determine the same,

25. We will now refer to each case individually. In Civil Revision No. 147 of 1980, the application under Order 22, Rule 3 was dismissed only on the ground that the application has not been made within time. While deciding it the learned trial court seems to have applied the principle of the Limitation Act that each day's delay must be explained. This approach, in our opinion, was not justified

26. In Civil Revision No. 194 of 1981, the application under Order 22, Rule 3 was dismissed on the ground that it was not Within time and there were no sufficient grounds for condonation of delay. In other words, the learned trial court extended the provisions of the Limitation Act to these proceedings which was not correct.

27. In Civil Revision No. 51 of 1981, the petitioners had moved an application under Order 22, R. 3 of the Code. Despite repeated adjournments for over two years they failed to produce any evidence to show that they were the legal representatives. On 3rd Sept., 1980 when the order was passed, though the Advocate of the petitioners was present, neither the petitioners nor their witnesses were produced. In these circumstances the learned trial court closed the evidence under the provisions of Order 17, Rule 3 and dismissed the application. In our view the learned Judge was right in dismissing the application. Therefore, this revision has to be dismissed.

28. Civil Revisions 147 of 1980 and 194 of 1981 have to be accepted for the reasons mentioned above. The impugned Orders in these petitions are set aside and the cases are remanded to the trial court with a direction to proceed according to law and in accordance with the observations made in our judgment. No order as to costs.