

(1999) 09 BOM CK 0032

In the Bombay High Court

Case No : Land Acquisition Reference No. 31 of 1980

Special Land Acquisition Officer (2)

APPELLANT

Vs

Shri Harichandra Ramji Patil and Others

RESPONDENT

Date of Decision : 16-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, Order 22 Rule 4, Order 9 Rule 8, 141, 151
Electricity Act, 1910 — Section 51
Land Acquisition Act, 1894 — Section 12, 18, 19, 20, 30
Limitation (Amendment) Act, 1908 — Article 176
Limitation Act, 1963 — Article 120, 121, 122, 137, 2
Telegraph Act, 1885 — Section 10, 16(3)

Citation : (2000) 1 BomCR 569 : (2000) 1 MhLj 256

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Ms. Geeta Shastry and Ms. R. Ambekar, S.R. Rajguru, R.S. Tripathi, C.M. Korde and M.B. Rele, for the Appellant;

Judgement

F.I. REBELLO, J.—When the matter came up for hearing it was contended on behalf of the State Government that when a claimant expires the application to bring heirs on record is of the legal representatives of the deceased claimant and not of the State Government. It was therefore contended that the question of the State Government bringing the legal representatives on record would not arise. Considering the contention and as it was arising in a large number of matters, I have heard learned Counsel appearing for the legal representatives of the claimant as also other Counsel who have intervened in the matter and have advanced arguments.

2. At the outset, it may be pointed out that after arguments had been concluded on behalf of the legal representatives of the claimants, their learned Counsel referred to order dated 3rd February, 1994 of a learned Single Judge of this Court wherein it appears that the Court had allowed the legal heirs to be substituted as legal heirs and representatives. There was no formal Chamber

Summons taken out to bring the legal representatives on record. The question raised before me however being of larger importance and as considerable time of the Court has been taken up in hearing arguments on the said contention the point is being disposed off by this order.

3. The question that requires to be considered is two fold namely (1) on the death of the claimant what is the procedure to be followed in bringing the legal representatives on record; and (2) Once the Court passes the order allowing the legal representatives to be brought on record, whether the existing practice followed, namely directing the Government Advocate to carry out the amendment and serve the legal representatives needs to be disturbed.

4. Under the Land Acquisition Act after an Award has been made u/s 12 of the Land Acquisition Act, any person aggrieved by the Award whether it be pertaining to title to the land or measurement of the land or apportionment of the compensation of fixation of market value can move the Collector u/s 18 of the Land Acquisition Act. The Collector or the Land Acquisition Officer as the case may be then u/s 19 of the Act has to make a reference to the Court. Similarly, u/s 30, if the Land Acquisition Officer or the Collector is not in a position to decide the dispute regarding apportionment or the person to whom the compensation or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Once a reference is made whether u/s 18 or section 30 then u/s 20 of the Act, the Court is bound to cause a notice to be served on the claimants and all other persons interested in the objection and if the objection is with regard to the area of the land or to the amount of compensation, the Collector, By virtue of section 50(2) in any proceeding before the Collector or Court where acquisition is for a local authority or any company, the local authority or company concerned is permitted to adduce evidence for the purpose of determining the amount of compensation. In these circumstances, the notice u/s 20 of the Act is also to be served by the Court on such a body for whom the land is acquired. Authority for the said proposition is found in the case of U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., . u/s 53 of the Act, the provision of the Code of Civil Procedure, 1908 shall apply to all proceedings before the Court under the Land Acquisition Act save in so far as they may be inconsistent with anything contained in the Land Acquisition Act. Section 54 of the Act provides the forum for Appeal against an award.

Under section 141 of the CPC the procedure in regard to suits shall be followed as far as it can be applied to applications in all proceedings in any Court of civil jurisdiction. The question therefore is whether the provisions of Order 22 of the Code of Civil Procedure, will apply where the sole claimant or one of the claimants expires during the pendency of reference before the Court. The second question is if the provisions of Order 22 apply then whether the provisions of the Indian Limitation Act would be applicable and if that be the case what will be the period of limitation to bring on record the legal representatives of a claimant expiring during the pendency of the proceedings. Will it be covered by Articles

120 and 121 or Article 137 of the Schedule to the Limitation Act, 1963 that is any other application for which no period of limitation is provided elsewhere in this Schedule. There is no dispute and there cannot be at least now that reference u/s 18 or u/s 30 of the Land Acquisition Act is not either a suit or an appeal. The earliest judgment for that proposition would be found in the case of Laxmanrao Deshmukh v. Collector of the Nagpur District, 1945 ILR 399.

5. Therefore proceedings in reference not being a suit, will the provisions of Order 22 of the CPC apply. There seems to be a consensus of judicial opinion that provisions of Order 22 of the CPC would apply except for the view taken by a Division Bench of the Patna High Court in the case of Bhadar Munda and another v. Dhuchua Oraon, AIR Pat 209. The Division Bench of the Patna High Court observed that the provision under Order 22 of the CPC do not apply to these proceedings notwithstanding section 53 of the Land Acquisition Act. The Division Bench observed that the application of Order 22 of the CPC is inconsistent with the very nature and scope of the proceedings under sections 18 and 30 of the Land Acquisition Act. The Division Bench noted the commentary in Sanjiva Row's Law of Land Acquisition and Compensation, revised and enlarged by J.P. Singhal, Fifth (1966) edition at page 808 to the effect that once a reference is made u/s 18, the Court must make an Award u/s 26 irrespective of whether the person at whose instance the reference has been made, does or does not appear before the Court, or fails to produce evidence in support of the claim or objection. The proceedings in reference cannot abate.

In Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, , a learned Single Judge of the Gujarat High Court held that by virtue of section 53 of the Land Acquisition Act the provisions of CPC are applicable to all proceedings before the Court under the Land Acquisition Act unless such provisions in the Code is inconsistent with anything contained in the Land Acquisition Act. The learned Judge observed that there is nothing in the Act which is directly inconsistent with Order 22, Rule 3 of the CPC and hence on a reference u/s 18 of the Land Acquisition Act provisions of Order 22, Rule 3 of the CPC will be attracted. In the very same judgment, the learned Judge also took the view that the provisions of the Indian Limitation Act would not apply as a reference is not a suit within the meaning of Article 176 of the Limitation Act of 1908. The learned Judge was of the opinion that there is no time limit prescribed for application to substitute legal representatives of the deceased claimant.

This issue came up for consideration before a Full Bench of the Delhi High Court in the case of Chander and Others Vs. Mauji and Others, . The issue before the Court was whether the provisions of Order 22 of the CPC and the Limitation Act, 1963 would apply to a proceeding u/s 30/31 of the Land Acquisition Act as also to an appeal arising out of the said proceedings. The matter arose before a learned Single Judge of that Court hearing an appeal, wherein an application was filed under Order 22, Rule 4 of the CPC for bringing on record the legal representatives of the deceased respondent in a pending appeal. There was also

an application u/s 5 for condonation of delay. Before the learned Single Judge reference was made in the case of *The Union of India Vs. Rameshwar Nath and Another*, as to whether provisions of Order 22 of the CPC was or was not applicable to appeals against decrees passed by the Court upon a reference u/s 18 of the Land Acquisition Act. The Division Bench therein had held that in a reference u/s 18 of the Land Acquisition Act the provisions of the CPC applies as also the provisions pertaining to limitation before the Court. In *Ram Piari and Others Vs. The Union of India*, a Full Bench of that Court held that the procedure laid by CPC has to be followed by the Court in deciding the reference by virtue of provisions of section 53 of the Land Acquisition Act. As the procedure laid down in the Code was applicable to those proceedings, the provisions of both Order 22 of the CPC and Limitation Act would apply. The learned Single Judge was of the view that there was a fundamental difference between the proceedings u/s 18 and sections 30 and 31 of the Act and it is in these circumstances that the matter was referred to the Full Court. One of the questions before the Full Court was whether the object and procedure of section 30 was inconsistent with the provisions of Order 22 of the CPC in regard to the suits and secondly whether the provisions of the Limitation Act in relation to abatement be made applicable to proceedings u/s 30 of the Land Acquisition Act by reference or by incorporation. After considering the various contentions, the Full Bench held that the object and procedure of section 30 are in no way inconsistent with the provisions of the CPC and that the provisions of the Limitation Act or that contained in Order 22 of the CPC are applicable to the proceeding u/s 30 of the Land Acquisition Act. The Full Court further held that the view taken by the Full Bench in *Ram Piari* (supra) is equally applicable to the proceedings u/s 30 of the Land Acquisition Act. It may be noted that in the case of *Mst. Ram Piari* (supra) the question again was of applicability of the provisions of Order 22 and Order 9 of the CPC and the provisions of Limitation Act, 1963 in proceeding arising from a reference u/s 18 of the Act. After considering the various provisions and on an analysis of the said provisions the Full Bench of the Delhi High Court held that Order 22 and Order 9 of the CPC are applicable to the proceedings in Court hearing the reference. The Full Bench also held that the provisions of the Limitation Act would apply and differed from the view of the learned Single Judge of the Gujarat High Court in the case of *Alihusain Abbasbhai & others* (supra). Articles 120 and 121 in the Limitation Act of 1963 it may be noted arise under the headings "Applications in specified cases".

6. Once section 53 makes applicable the provisions of CPC to the extent that they are not inconsistent to the provisions of the Code, it will be difficult to contend that the provisions of Order 22 would not apply. Even if it is construed that the reference is not a suit yet the reference has to be made to a Civil Court and considering section 141 of the CPC the provisions of the CPC will also apply in so far as the applications to a Court are concerned. A co-joint reading of section 141 of the CPC read with section 53 of the Land Acquisition Act, 1894 and considering the views expressed by the Full Bench of the Delhi High Court

which has considered various other judgments, I am in respectful agreement with the view as taken by the Full Bench of the Delhi High Court in the case of Chander & others (supra) as also in the case of Ram Piari (supra) that Order 22 of the CPC as well as the provisions of the Limitation Act apply.

Once it is held that the provisions of Order 22 are attracted there is no difficulty in holding then that the duty is cast on the claimants to move such an application. In a suit the plaint proceeds on the footing that it is the plaintiffs who have a cause of action and it is the plaintiffs who moved the Court based on the cause of action. Language of Order 22 refers to survival of the right to sue. The application therefore has to be made by the party interested in contesting the proceedings and in whom the right to sue survives. As it is the plaintiff who sues, for the relief it will be the surviving plaintiffs or their legal heirs, who must apply. Similarly, in so far as reference is concerned, the reference is made on the application of the parties to the dispute who are not satisfied with the offer made by the Collector / Land Acquisition Officer. The onus thereafter to prove the contention as to apportionment or the measurement of the land or compensation is by the party whose lands are acquired u/s 18. In a case u/s 30 it could be either of the parties who had filed the claim before the Land Acquisition Officer or Collector claiming that they are interested in the property. In such a case the State is not an interested party.

7. That brings us to the question of the applicability of the provisions of the Indian Limitation Act. A perusal of section 3 of the Indian Limitation Act, will show that the provisions are applicable to every suit instituted, appeal preferred and an application made. u/s 2(1) suit does not include an appeal or an application. u/s 2(b) application includes a petition. Part I of the 3rd division of the Schedule to Limitation Act relates to applications. Considering, therefore, the definition of an application and suit, section 3 of the Indian Limitation Act and Articles 121 and 122 of the Schedule to the Limitation Act under the head applications the provisions of the Indian Limitation Act will apply. This is the view also taken by the two Full Benches of the Delhi High Court in the case of Chander & others (supra) and Mst. Ram Piari (supra). The provisions pertaining to bringing the legal representatives on record and/or abatement will be covered by the Limitation Act. The need for a period of limitation is a matter of public policy. See Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . Once it is held that provisions of Limitation Act apply then the period of limitation will be as per Articles 120 and 121 of the Indian Limitation Act, 1963 as they cover applications.

It may in passing be mentioned that in so far as the application of the provisions of Indian Limitation Act in proceedings before the Collector or Land Acquisition Officer is covered by the judgment of the Apex Court in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, . The question was whether the provisions of section 5 of the Limitation Act could be applied to extend the period of limitation in making a reference. The

matter arose from a decision of the Gujarat High Court. Therein it was held that the Collector could exercise powers u/s 5 of the Limitation Act. This was considering the amendment u/s 18 brought about to the Land Acquisition Act (Maharashtra Extension and Amendment) Act XXXVIII of 1964. A consistent view had been taken by the Gujarat High Court that by virtue of operation of sub-section (3) a Collector was designated a Court subordinate to the High Court and as sub-section (5) of the Limitation Act stands attracted. The Apex Court has held that though by virtue of the amendment the Collector was held as a Court it was for limited purpose of the High Court exercising review jurisdiction u/s 115. That could not mean that for making a reference it will be a Court for the purpose of section 5 of the Limitation Act. In other words before the Collector or Land Acquisition Officer in proceedings for reference the provisions of the Limitation Act would not apply.

8. Support for the view taken above as also for the view taken by the Full Bench of the Delhi High Court can also be found in the judgment of the Apex Court in the case of *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, . Before the Apex Court the matter arose from an appeal from the judgment of the High Court of Kerala. The respondents before the Apex Court had filed an application under sections 10 and 15 of the Indian Telegraph Act, 1885 read with section 51 of the Indian Electricity Act, 1910 claiming compensation against the appellant. A petition was filed in the District Court before the District Judge u/s 16(3) of the Indian Telegraph Act claiming enhancement of the compensation. A contention taken was that the petition was barred by time in view of Article 137 of the Limitation Act, 1963. It was contended that Article 137 of the Limitation Act, 1963 did not apply to applications to the District Judge under the Indian Telegraph Act. The District Judge held that the application was covered by Article 137 and the application having been filed beyond three years was barred by time. A revision was preferred before the High Court of Kerala wherein an application was made for condoning delay for filing revision. In view of its earlier order in the case of *Kerala State Electricity Board Vs. Illippadical Parvathi Amma*, , the order of the District Judge was set aside and the matter was remanded for decision according to law. The Kerala High Court had taken the view that the applications are not covered by Article 137 of the Limitation Act, 1963. The matter then reached the Apex Court. After considering various authorities, the Apex Court in para 20 observed that the provisions of the Telegraph Act which contemplates determination by the District Judge of payment of compensation payable u/s 10 of the Act, indicate that the District Judge acts judicially as a Court. Where by statute, the matters are referred for determination by a Court of Record with no further provision the necessary implication is that the Court will determine the matters as a Court. The Court held that statute makes the reference to the District Judge as the Presiding Judge of the District Court. In many statutes reference is made to the District Judge under a particular title while the intention is to refer to the Court of the District Judge. The Court held that the Telegraph

Act in section 16 contained intrinsic evidence that the District Judge is mentioned there as the Court of the District Judge. The Apex Court thereafter considered the changed definition of the words "applicant" and "application" contained in section 2(a) and 2(b) of the Limitation Act, 1963. It observed that the object of the Limitation Act was to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis was not applicable with regard to Article 137 of the 1963 Limitation Act. The Court observed that Article 137 also applies to applications under the Code of Civil Procedure. In other words the Court observed that the provisions of the Indian Limitation Act will apply. In the instant case also reference is to the Court. The Court is defined to mean the principal Civil Court of the original jurisdiction which in the District being the District Court and elsewhere a High Court exercising its original jurisdiction. It is, therefore, clear that the provisions of the Indian Limitation Act will be attracted. Once an application is maintainable under Order 22 of the Code of Civil Procedure, limitation will be covered by Articles 120 and 121 of the Schedule to the Indian Limitation Act.

In *Shyamsundar Mantri Vs. Land Acquisition Collector, Cuttack*, , the Division Bench of the Orissa High Court was considering whether the reference Court could dismiss a land acquisition case for non-appearance under Order 9, Rule 8 of the Code of Civil Procedure. The Court held that provisions of Order 9 are not attracted and consequently the application was not maintainable. The Court however, held that a matter can be restored by invoking Court's jurisdiction u/s 151 of the Code of Civil Procedure. I am not able to concur with the said view. As already pointed the provisions of Order 9 would also be attracted, as the provisions of CPC would apply for reasons already aforesaid.

Therefore, I am clearly of the opinion that the provisions of Order 22 would apply and once an application is made under Order 22, it will be governed by Articles 120 and 121 of the Limitation Act, 1963. The application will have to be by the legal representatives of the claimants in whom the right to sue survives.

9. Having said so, the next question is as to whether the procedure followed whereby the Government Advocate/State were directed to carry out the amendments needs to be interfered with. Ultimately by bringing the legal representatives on record what the Court in fact directs is an amendment of the reference. Reference technically cannot be amended by the Court or by the claimant. That can be done by the Collector himself or the Land Acquisition Officer. It is in that context that the direction for amendment of the reference to bring legal representatives on record is being followed. Considering the above, I do not find that the practice and procedure as being followed till date whereby the State is directed to carry out the amendment needs to be interfered with or disturbed. However, once the application is made by the legal representatives of the claimants, the question of the State serving notice afresh on the legal representatives would not arise, unless fresh notice is directed to be issued by

the Court to legal representatives who are not represented before it.

10. In the instant case, on the merits of the matter, time to carry out amendment is extended for a period of four weeks from today.

11. P.A. to give ordinary copy of this order to the parties concerned.

12. Amendment allowed. Time extended.