

(1972) 07 OHC CK 0018
In the Orissa High Court
Case No : First Appeal No. 160 of 1967

Sub-Collector and Land Acquisition Officer	APPELLANT
Vs	
Macherla Satyanarayana	RESPONDENT

Date of Decision : 17-07-1972

Acts Referred:

Limitation Act, 1963 — Article 116

Citation : AIR 1973 Ori 139

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : Advocate General and Addl. Standing, for the Appellant; N.V. Ramdas and N.B.K. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—This is an appeal filed by the Sub-Collector and Land Acquisition Officer, Berhampur against the decision of the learned Subordinate Judge, Berhampur on a reference u/s 18 of the Land Acquisition Act.

2. 44 decimals of land located in Berhampur town were acquired by notification dated 26-12-1958. The respondent-claimant did not accept the compensation and raised a dispute which was ultimately referred to Court u/s 18 of the Act.

3. After hearing parties by order dated 15-10-1966, the reference was disposed of. The learned Subordinate Judge found the claimant to be entitled to additional compensation. The decree of the learned Subordinate Judge was prepared on 7-11-1966. On 20th of November, 1966, an application was made by the appellant for obtaining a certified copy of the same and it was granted on 3-12-1966. This appeal was presented on 10-7-1967. Objection was raised on the plea of limitation. The appellant did not file any petition for condoning limitation, but contended that there was no limitation because the decree of the learned Subordinate Judge had not indicated the date when it was signed. That was corrected on 27-6-1967 and as the appeal was filed on 10-7-1967, there

was no limitation. A Division Bench of this Court by order dated 4-10-1967, directed as follows:--

"No question of limitation is involved in this case as there was no date given in the original decree and the decree was for the first time corrected by order dated 27-6-1967."

The objection regarding limitation was accordingly waived and notice to the respondent was issued.

4. Mr. Ramdas has raised a preliminary point regarding maintainability of this appeal his ground being that the appeal is barred by limitation. The decree was dated 7-11-1966. The time available u/s 12 of the Limitation Act is 12 days. As such long before 10-7-1967, the limitation for filing of the appeal expired. In the absence of any application for condonation of the limitation, this appeal should have been dismissed on the ground of having become barred by limitation on the date of its presentation. The stand taken by the learned Advocate General when the order dated 4-10-1967 overlooking the objection on the ground of limitation was made was not justified.

5. The legal position is well settled that where an order holding that an appeal is not barred by limitation has been passed without hearing the respondent, he is entitled to challenge that order when he appears in the appeal. See *Municipal Councillors of Puri Municipality Vs. Madhusudhan Das Mohapatra, an re Raman*), AIR 1958 Mad 312; *Mantena Durgaraju Vs. Melam Pallam Raju and Others*, We are, therefore prepared to examine the question of limitation afresh.

6. There is no dispute that the decree in this case was drawn up on 7-11-1966. The original of the decree from the lower Court records bears the date and signature by the Subordinate Judge. In the certified copy granted to the appellant that date had been omitted. An application was made to the trial Court on 19-6-1967 as would appear from the order sheet in the reference u/s 18 of the Land Acquisition Act for putting the date in the award. The matter was disposed of by the learned trial Judge on 27-6-1967 In that days" order he has clearly stated :

"On a scrutiny of the record. I find that the original award has been dated 7-11-1966 which has been omitted from the certified copy granted to the Government Pleader on 3-12-1966. On merits, therefore, the present application cannot be sustained inasmuch as there is nothing to amend the original award or the decree. But the error appearing on the certified copy being a clerical error can be corrected. The certified copy of the award filed along with the application is, therefore, corrected by insertion of the date 7-11-1966."

It is thus not a case of correction of the decree and as such a fresh period of limitation would not run from 27-6-1967. The appellant obtained the certified copy on 3-12-1966, There has been no justification shown as to why no steps were taken for rectifying the defect in the certified copy until June 1967. We

must assume that the Government Pleader or the learned Advocate General was aware of the period of limitation in the matter of filing of appeal to this Court. The application for the decree was made on 20th of November, 1966. We must assume that it was known to the appellant that by then the decree had been drawn up. Even conceding in favour of the appellant that there was room to think that the decree was dated 3-12-1966 when the certified copy thereof was given to the appellant, there was no justification to wait for beyond 90 days in the matter of the filing of the appeal. We would accordingly hold that the appeal was certainly barred by limitation on the date it was presented. The order passed on 4th of October, 1967, was upon a wrong representation to the Court, that is, "there was no date given in the original decree and the decree was for the first time corrected by order dated 27-6-1967". As we have already indicated this is not a fact. Even if this were a fact, we do not see any rationale in the representation which was accepted by this Court. It was not open to the appellant to sit tight for more than three months on the plea that no date was given in the decree.

By application of mere common sense, the appellant could know that the decree must have been of a date prior to 3-12-1966 (that is, the date when the certified copy was granted) and accordingly steps should have been taken within the period of limitation from that date.

7. On our finding that the appeal was barred by limitation and in the absence of an application for condoning limitation, the only consequence that must necessarily follow is dismissal of the appeal as being barred by limitation. We would accordingly dismiss the appeal as barred by limitation. The respondent shall have his costs on contested scale as he was drawn to this Court on erroneous representations made on behalf of the appellant on 4-10-1967.

B.K. Ray. J.

8. I agree.