
(1974) 12 DEL CK 0015

In the Delhi High Court

Case No : Civil Revision Appeal No's. 432, 462, 463, 486, 487 and 583 of 1974

Union of India

APPELLANT

Vs

Sanwalia etc.

RESPONDENT

Date of Decision : 19-12-1974

Acts Referred:

Citation : (1975) ILR Delhi 837

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : Harish Chandra and D.K. Kapur, for the Appellant;

Judgement

B.C. Misra, J.

(1) This order will dispose of six revisions. Nos. 462, 463, 432, 486, 487 and 583 all of 1974. The petitioner in all these cases are the Union of India. They arise out of different proceedings, which are of the same nature, viz. trial of the references u/s 18 of the Land Acquisition Act. They have raised a common question of law and can be conveniently disposed of by this judgment. All these cases are the union of India. They arise aut of different proceedprovisions or Order 22 of the CPC and Article 120 of the Limitation Act apply to the proceedings pending before the District Court in references made u/s 18 of the Land Acquisi- corporation Act (hereinafter referred to as "the Act"). A connected question which has been raised in other cases, is, whether a reference under the Act pending before the District Court can be dismissed in default of appearance in accordance with the provisions of Rule 3 or Rule 8 of Order 9 of the CPC and thereafter whether or not it can be restored in accordance with the provisions of Order 9 Rules 4 and 9 of the Code.

(2) This matter has received consideration in judicial authorities. The High Court of Madhya Pradesh in Abdul Karim and Another Vs. State of Madhya Pradesh, came to the conclusion that the proceedings under the Act are not governed either by the CPC or the Limitation Act, so neither of these provisions applies to

such proceedings. A contrary view was, however, taken by the High Court of Gujarat in Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, , wherein P. N. Bhagwati J. (as he then was) observed that the proceedings before the District Court under the Act are in the nature of civil proceedings and the provisions of the CPC apply to it. The learned Judge has, however, found that the provisions of Limitation Act do not apply and there is no limitation prescribed for moving an application under Order 22 of the Code in proceedings under the Act. This authority has also applied the provisions of order 9 of the CPC to the proceedings.

(3) Our High Court had to consider the applicability of provisions of Order 22 of the Code in relation to civil revisions and writ petitions. In Jhabbu Mal v. Sari Kishan Dutt Sharma, (1969) 71 Prld 41 T. D. Dua J. held that Order 22 of the Code in terms does not apply to Civil Revisions and the provisions of Limitation Act prescribing limitation for moving application for substitution does not apply to revisions. In respect of Writ Petitions, this court (Hardy J.) held in Ram Kishore Rasfogi v. The Appellate Officer, Jaisalmer House, (1969) Delhi 989 that the law of abatement as envisaged in rule 5(3) of Order 22 of the CPC does not apply in all its rigidity to the writ proceedings and even when we assume that the proceedings under Article 226 of the Constitution were of a civil nature and would be governed by the provisions of section 141 of the Code in so far as may be applicable, it was not enough to attract the provisions of Limitation Act for applications for substitution. A Division Bench of this Court (S. N. Andley and S. N. Shankar JJ). in Ram Kishore v. Union of India, Cw 1118 of 1970, decided on 24th July, 1973, held that the CPC does apply to writ petitions. After careful consideration, I am in respectful agreement with the view of the High Court of Gujarat expressed in Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, , and I find myself unable, with great respect, to agree with the view of High Court of Madhya Pradesh expressed in Adul Karim's case. In my opinion, section 53 of the Land Acquisition Act has in terms applied the provisions of the CPC to all proceedings before the court under the Act, save in so far as they be inconsistent with anything contained in the Act. The court has been defined by clause (d) of section 3 as principal civil court of Original jurisdiction. This is a regularly constituted court and so it will in my opinion, follow the established rules and procedure prescribed for matters coming up before it. Order 22 and Order 9 of the Code are, Therefore, clearly attracted to the proceedings before the court on a reference u/s 18 of the Land Acquisition Act. There is nothing in the provisions of the Act which be inconsistent with the aforesaid provisions of the Code of Civil Procedure.

(4) The provisions of the Limitation Act would, however, not be attracted. Article 120 of the Limitation Act of 1963 which corresponds to Articles 176 and 177 of the Limitation Act, 1908 prescribes a period of 90 days for applications to have the legal representatives of a deceased plaintiff or appellant or of a deceased defendant or respondent made a party. 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 Management of State Bank of Hyderabad Vs. Vasudev Anant Bhide etc.*,).

(5) As a result of the discussion, I hold that principle of Order 9 as well as Order 22 of the CPC apply to proceedings under the Land Acquisition Act before the District Court. The order by the District Court cannot be passed in favor of or against a dead man and so the legal representatives must be brought on the record and an application for substitution must be made. 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 and should it reject the application, then the court will proceed to decide the reference as if the deceased person were no longer a party before it. In the interim revisions, the Additional District Judge has allowed the legal representatives to be substituted in all the cases. These orders do not suffer from any jurisdictional error and do not call for interference. The revisions are, Therefore, dismissed.. leaving the parties to bear their respective costs.