

(2010) 09 DEL CK 0078
In the Delhi High Court
Case No : Ex. F.A. 14 of 2010

Union of India (UOI)

APPELLANT

Vs

Phool Singh

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Land Acquisition Act, 1894 — Section 18

Citation : (2010) 09 DEL CK 0078

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : Deepika, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present appeal has been filed assailing the order dated 12th April, 2010 passed by the Court of Sh. Ashwani Sarpal, ADJ, Delhi in Execution Petition No. 99/08/05 (New No. Ex.M-13/10) with LAC No. 61/68, village Khampur Raya, having case titled as Phool Singh v. Union of India.

2. The facts, as are relevant for the purpose of disposal of the present appeal are that the land owners had approached the Court of Reference u/s 18 of the Land Acquisition Act (hereinafter referred to as "the said Act") for enhancement of compensation as the land owners were not satisfied with the compensation granted to them by the Land Acquisition Collector.

3. The learned Court of ADJ while passing the decree u/s 18 of the said Act had enhanced the amount to be paid to the land owners. The land owners further went in appeal before this Court which was finally decided and the judgment and decree was drawn on 14th April, 1980 by this Court.

4. The respondents thereafter filed an execution petition on the 28th July, 1994 for execution of the judgment and decree dated 14th April, 1980 passed by this Court.

5. Thereafter, vide order dated 4th January, 2010 the Executing Court ordered for attachment of the bank account of LAC West and remittance of the amount to the Court. It is only thereafter that the appellant herein moved an application u/s 151 of the CPC for withdrawal of the attachment order dated 4th January, 2010 and for stay on the ground that the execution petition filed before the Executing Court reveals that the judgment was passed on 14th April, 1980 by this Court and the execution was filed on 28th July, 1994, after a lapse of more than 14 years from the date of the judgment.

6. Vide the impugned order, the Executing Court had dismissed the application filed u/s 151 of the Code of Civil Procedure, as aforesaid, filed on behalf of the appellant.

7. It is seen that the execution has been pending since 2000 which was finally disposed of on 23rd January, 2010. Notice of this execution was served in the office of the LAC and his representatives used to appear on some occasion but no objection was taken at any stage that execution could not proceed further being time barred. It is also seen that the application under XXII Rule 3 was moved on behalf of the Legal Representatives of the deceased/Decree Holder and in pursuance of notice of those applications the LAC submitted the reports, but even at that time no objection about the time barred execution or time barred applications were filed on behalf of the present applicant.

8. It is observed that most of the original Decree Holders have expired and execution was prosecuted by the Legal Representatives of the deceased/Decree Holder. This was so because the payment by the LAC under the decree was not made by the Judgment Debtor for about 15-16 years. It is only thereafter that order levying attachment of the bank account of the LAC was passed. A copy of the notice of attachment was served in the office of the LAC and he was directed to file objections, if any, on or before 23rd January, 2010 but no such objection was filed in time and the application resulting in the impugned order was filed only on 25th February, 2010. Thus, it is obvious and the record clearly demonstrates that at each and every step there is delay and laches on the part of the LAC.

9. The learned Executing Court vide the impugned order condoned the limitation on the verbal request made on behalf of the Decree Holders. The learned Executing Court further held that the Legal Representatives of the Decree Holders are the laymen and poor villagers who could not get the compensation amount in respect of the land belonging to their predecessor-in-interest. The learned Executing Court also came to the conclusion that since no objection was raised by the Judgment Debtor at any stage and the application was moved only after the disposal of the execution, it has been made belatedly and was devoid of merits.

10. In my view, the Judgment Debtor should have deposited the decreed amount in the Court, but for almost 20 years it took no such steps, resulting in

compelling the Executing Court to issue warrants of attachment of the bank account of the Judgment Debtor to recover the amount.

11. It is only after a long lapse from the date of filing of the execution and only when attachment had been levied did the appellant herein move the application resulting in the impugned order, for dismissal of the execution petition and for injuncting the release of payment under the decree.

12. In the instant matter it is seen that the Decree Holder and their Legal Representatives, who are coming to the Court for the last few decades, are now being asked to forgo their compensation even though they have lost their lands.

13. In the circumstances, the appellant/Judgment Debtor cannot be allowed to use the land without paying anything, on technical grounds or some lapses committed on behalf of the Decree Holders.

14. In view of the above, I see no infirmity in the order passed by the learned Executing Court so as to warrant interference of this Court in appeal. Before parting, it should also be pointed out that although the Executing Court vide the impugned order had directed that the payment lying in the Court be released to the Decree Holders only after the expiry of two months from the date of the impugned order to enable the Judgment Debtor to file an appeal before the High Court, even then the present appeal has been filed belatedly with an application for condonation of delay.

15. In the circumstances, the appeal is devoid of merits and is hereby dismissed.