

The Indian Law Reports

CIVIL MISCELLANEOUS

Before Mehar Singh and A. N. Grover, JJ.

THE LAND ACQUISITION COLLECTOR,—*Applicant.*

versus

WAZIR SINGH,—*Respondent*

Civil Miscellaneous No. 1750-C of 1965.

April 28, 1966.

Land Acquisition Act (I of 1894)—S. 18—Reference under—On death of petitioner his legal representatives making application for being impleaded—No formal order passed but legal representatives prosecuting the petition to the knowledge of the respondent and the decree passed in favour of the dead petitioner instead of his legal representatives—Decree—Whether nullity—Code of Civil Procedure (Act V of 1908)—Order XXII—Rules 3 and 9—Effect of.

Held, that when the petitioner died and his legal representatives made the application to be impleaded in his place and were allowed to prosecute the reference, lead evidence and address arguments, to the knowledge of the respondent who had been supplied a copy of the application of the legal representatives, it cannot be said that the reference abated because no formal order was passed by the Court impleading the legal representatives. Because of the absence of the formal order on the application, the decree was passed in favour of the deceased petitioner and not his legal representatives. The error committed by the Court cannot lead to the conclusion that it is a decree in favour of a dead person and hence is a nullity or not valid. In substance it is a decree in favour of the legal representatives of the deceased petitioner who were all the time on the record of the reference and taking active part in the prosecution of the reference to the date of the decree.

Application under order 22, Rule 4 C.P.C., read with section 151 C.P.C. praying that before the printing of the appeal is undertaken by the office, the question of the validity of the decree of the lower court be decided by issuing notices to the heirs of the deceased respondent Wazir Singh.

S. K. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL, for the applicant.

H. R. AGGARWAL, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—An appeal No. 199 of 1964 from the decree, dated February 24, 1964 of the Additional District Judge of Ferozepore, having been filed by the Land Acquisition Collector of Ludhiana, is pending in this Court. The appeal arises out of a reference under section 18 of the Land Acquisition Act at the instance of Wazir Singh of Ferozepore, whose land had been acquired, against the award of the Collector in regard to compensation for the acquisition. The learned Additional District Judge accepted the reference in that and he increased the amount of compensation to double by the decree under appeal.

The appeal was filed on June 4, 1964. The respondent shown in the memorandum of appeal has been Wazir Singh. However, Wazir Singh had died on January 1, 1962, by the time the reference of his application came to the Court of the Senior Subordinate Judge of Ferozepore (with delegated powers of the District Court) on February 1, 1962, for hearing. The learned single Judge has, in his order of reference, gone into the detailed history of the case and pointed out, how the trial Court was careless in not attending to the facts of the case and not noticing that the legal representatives of Wazir Singh, deceased had themselves on March 26, 1962, made an application for being impleaded to the reference in place of Wazir Singh deceased. In any event, without the trial Court making any express order that the application of the legal representatives of Wazir Singh deceased was accepted and they were impleaded as such on the record of the reference, the trial of the reference proceeded, with the counsel on behalf of the and Acquisition Collector having a copy of the application of the legal representatives of Wazir Singh deceased to be impleaded as such in the reference and thus with the knowledge of that application having been made to the Court. The parties fought out the litigation, led evidence, producing witnesses, and advancing arguments throughout the case until the date on which the trial Court made its decree. In the decree the name of Wazir Singh, appears in whose favour it has been made instead of his legal representatives.

It was with the copy of the decree in that form that the Land Acquisition Collector, the appellant, filed the appeal. On process having been issued in the name of Wazir Singh, return was that he had died some considerable time earlier. On that C.M. 298-C of 1965 was moved by the appellant's side on January 13, 1965, for

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impleading the legal representatives of Wazir Singh deceased, for him, in the appeal of the Land Acquisition Collector, but when that application came for final hearing before Sharma J., it was withdrawn on behalf of the appellant and was thus dismissed by the learned Judge on April 29, 1965. It was after that that another application, C.M. 1750-C of 1965 was moved on May 20, 1965, on behalf of the appellant that in appeal No. 199 of 1964, the question of the validity of the decree of the trial Court, in the wake of the death of Wazir Singh, before that decree, be decided first, before the record of the appeal is printed for final hearing. It is this application that came for hearing before Narula J., and the learned Judge has by his reference order of March 4, 1966, referred it to a larger Bench for the decision of the question that arises out of the application on the facts and because of the carelessness with which the reference was handled in the Court of the Senior Subordinate Judge at Ferozepore. This is how this case comes before this Bench.

The learned counsel for the appellant, the Land Acquisition Collector, with reference to *Birbal and others v. Harlal and others* (1), contends that abatement of the proceedings and reference before the Senior Subordinate Judge can be set aside in appeal by this Court without sending the case back to the trial Court, but, in my opinion, the question of abatement does not arise on the facts in this case. The reason is simple. After having made an application under section 18 of the Land Acquisition Act to the District Judge of Ferozepore, Wazir Singh, died within a short time and before the case came by transfer for hearing in the Court of the Senior Subordinate Judge of Ferozepore. In that Court the legal representatives of Wazir Singh, moved an application on March 26, 1962, for being impleaded as such, with a copy of the application to the counsel for the Land Acquisition Collector, the opposite party in the reference, but the case was handled with such carelessness in that Court because of the transfer of the presiding officer probably, that no specific and express order in that respect was made by the Court. But, as already stated, the legal representatives of Wazir Singh deceased, with their counsel and the Land Acquisition Collector as such represented by counsel attended to the litigation and to all sides and aspects of the litigation to the date of the decree of the trial Court. The consequence then on these facts is obvious that although there is no express order of the Court saying in so many words that

(1) I.L.R. 1954 Punj. 326=1953 P.L.R. 331.

the legal representatives of Wazir Singh, deceased had been impleaded as such in the reference, since in fact they were allowed to participate and conduct the proceedings as such by the Court, with the active connivance and knowledge of the side of the Land Acquisition Collector, with his counsel present, it must be implied that those legal representatives have represented Wazir Singh, deceased throughout in lawful manner in the prosecution of the reference under section 18 of the Land Acquisition Act, a state of affairs to which by conduct and acquiescence the appellant, the Land Acquisition Collector, has been a party. The question of abatement could only arise if within the period of limitation prescribed the legal representatives of Wazir Singh, deceased did not apply to be made party to the reference in the trial Court, but they made the application some considerable time before the expiry of the requisite period of limitation, a fact not questioned by any party here. Mere lack of express order of the Court in this respect does not mean that the legal representatives of Wazir Singh, deceased have not been on the record representing him in the reference. So there is no question of abatement of the original reference under section 18 of the Land Acquisition Act on account of the death of Wazir Singh, deceased in the circumstances as detailed above.

There is no doubt that in the decree the name shown is that of Wazir Singh, deceased and not of his legal representatives in whose favour the decree has been made, but that surely is a clerical mistake, of which the appellant, the Land Acquisition Collector, should have sought correction from the trial Court before filing the appeal. Nobody on his side attended to this in spite of his counsel knowing that the reference was pursued by the legal representatives of Wazir Singh, deceased. The appeal was filed with the names and descriptions of the parties in the memorandum of appeal as taken from the copy of the decree; hence Wazir Singh, deceased had been shown as respondent to the appeal. The appeal by the appellant, Land Acquisition Collector, has been filed against a wrong respondent. In this respect again there is no question of any abatement, but the question is one of the consideration of the conduct of the appellant in filing and conducting the appeal in the circumstances. This is an aspect of the matter which is not for consideration before us.

When it was reported on the process issued in the appeal of the appellant, the Land Acquisition Collector, that Wazir Singh had died considerable time earlier, as the facts have been stated above, an application was moved by the appellant's side to implead the legal

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 representatives of Wazir Singh, deceased as respondents to the appeal, but it was subsequently withdrawn and its dismissal obtained. In other words, the appellant thereby did not wish to implead the legal representatives of Wazir Singh, deceased as respondents to the appeal.

It was after that that the present application (C.M. No. 1750-C of 1965) was moved to obtain a decision that the decree of the trial Court against which appeal No. 199 of 1964 has been filed by the appellant, the Land Acquisition Collector, is not a valid decree or is a nullity on the ground that Wazir Singh, deceased had died before the trial Court passed the decree and he was not represented before the trial Court in the proceedings of the reference leading up to the decree. The ground, as has already been explained, is without substance. The legal representatives of Wazir Singh, deceased applied to be made party to the reference within limitation, a copy of their application was given by them to the counsel for the appellant, the Land Acquisition Collector, in the trial Court, and although no express order was made by the trial Court impleading them as such, but both the Court and the parties have treated them as party to the reference and they have participated in the same as such throughout to the stage of the decree. In these circumstances the conclusion that has been reached is that even in spite of the absence of express order by the trial Court in this behalf having regard to the circumstances of the case the legal representatives of Wazir Singh, deceased must be taken to have represented him in the proceedings of the reference and properly according to law to the date of the decree. So merely because there is an error in the decree that it is stated to have been passed in favour of Wazir Singh, deceased and not in favour of his legal representatives, that error cannot lead to the conclusion that it is a decree in favour of a dead person and hence is a nullity or not valid. In substance it is a decree in favour of the legal representatives of Wazir Singh, deceased, who were all the time on the record of the reference and taking active part in the prosecution of the reference to the date of the decree. The conclusion, therefore, is that the decree is not invalid or a nullity, and on this conclusion this application, C.M. No. 1750-C of 1965 fails and is dismissed with costs, counsel's fee being Rs. 75.

There remains the question of appeal No. 199 of 1964 and we direct that it be immediately fixed for hearing first to see whether it is or is not a competent appeal, and this course would avoid costs to the parties of printing and the like.

A. N. GROVER, J.—I agree.

B.R.T.