

Sarwan Singh v. Labh Singh and another (V. Ramaswami, J.)

---

can not be found to be faulty in any manner. Therefore, I affirm the market value of the acquired land as determined by the lower court. However, for clarity sake it is specified here that besides this market value, the claimant will also be entitled to all the benefits granted by sections 23-1A, 23(2) and 28 of the Act, as these stand after the enforcement of Act No. 68/1984. With the abovenoted observations, the objections are dismissed but with no order as to costs.

---

R.N.R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

SARWAN SINGH,—Appellant.

versus

LABH SINGH AND ANOTHER,—Respondents.

Civil Misc. No. 6551-C II of 1988 in L.P.A. No. 1458 of 1988.

December 20, 1988.

*Limitation Act (XXXVI of 1963)—S. 5—Delay in filing Letters Patent Appeal—Main judgment in connected case—Time spent in obtaining certified copy of judgment in main case—Such time—Whether to be excluded for the purposes of limitation.*

*Held*, that in all such cases a combined calculation excluding the time taken for each of the certified copies will have to be made for purposes of finding the limitation. The law also does not require that all the applications for supply of certified copies shall be made at the same time. It could be made separately and at different times. Only relevant factor is that the time taken for supply of certified copy alone will be excluded. The appeal in this case was filed on 8th December, 1988 and if the calculation is made with reference to the time spent in obtaining the copy of the main order in C.O.C.P. No. 43 of 1987, then the appeal is within limitation and we are of the view that applying late for the supply of certified copy of short order in C.O.C.P. No. 163 of 1987 is of no consequence. In this view of the matter, the appeal was in time. The law requires that when an appeal is to be filed, a certified copy of the judgment is to be filed with it and if the certified copy is annexed with the appeal, the time taken for supplying the certified copy will have to be excluded in calculating the period of limitation.

The arguments of the learned counsel that from date the copy was supplied by the respondents to the appellant the time for filing of the appeal began to run and not filing the appeal in time amounts to negligence is devoid of any merit.

(Paras 1, 2)

*Application under section 5 of the Limitation Act praying that under the circumstances of the case, the delay, if any, in filing the appeal may kindly be condoned.*

Dated the 20th December, 1988.

R. S. Mongia, Senior Advocate, for the applicant—appellant.

J. S. Sathi, Advocate, Rajiv Atam Ram, Advocate, for the respondents.

#### JUDGMENT

(1) This is an application for excusing the delay in filing of the letters Patent appeal against the order in C.O.C.P. No. 163 of 1987. C.O.C.P. No. 163 of 1987 was considered alongwith three other Contempt Petitions Nos, 43, 48 and 203 of 1987. The main judgment was delivered in C.O.C.P. No. 43 of 1987 on 10th October, 1988. In the other three petitions, a short order was made to the effect "same order as in C.O.C.P. No. 43 of 1987". A copy of the order in C.O.C.P. No. 43 of 1987 was applied for on 11th October, 1988 and was delivered on 11th November, 1988. Therefore, the limitation had not started against the order till 11th November, 1988. It began to start on 12th November, 1988. Thirty days from that would have expired on 11th December, 1988. In the meantime, the appellant filed an application for the supply of the copy of the order in C.O.C.P. No. 163 of 1987 on 3rd December, 1988. That would have arrested the running of limitation on 3rd December, 1988. This was for the reason that an appeal against the order in C.O.C.P. No. 163 of 1987 could not be filed without a certified copy of the judgment in C.O.C.P. No. 43 of 1987. Therefore, the time taken for the supply of the copy of the order in C.O.C.P. No. 43 of 1987 is also for the supply of the copy of the order in C.O.C.P. No. 163 of 1987 will have to be excluded in calculating the time in filing the appeal. In all such cases a combined calculation excluding the time taken for each of the certified copies will have to be made for purposes of finding the limitation. The law also does not require that all the applications for supply of certified copies shall be made at the same time. It could be made separately and at different times. Only relevant factor is that the

Sarwan Singh v. Labh Singh and another (V. Ramaswami, J.)

---

time taken for supply of certified copy alone will be excluded as calculated above. The appeal in this case was filed on 8th December 1988 and if the calculation is made with reference to the time spent in obtaining the copy of the main order in C.O.C.P. No. 43 of 1987, then the appeal is within limitation and we are of the view that applying late for the supply of certified copy of short order in C.O.C.P. No. 163 of 1987 is of no consequence. In this view of the matter, the appeal against the order in C.O.C.P. No. 163 of 1987 was in time.

(2) It was contended, however, by the learned counsel for the respondents that the respondents sent certified copy of the judgment dated 10th October, 1988 to the appellant for compliance and that was received by them on 14th October, 1988, and, therefore, they could have filed an appeal immediately without waiting for the expiry of the period of limitation and that amounts to gross negligence on the part of the appellant. It may be for the purpose of finding the knowledge of the appellant of the impugned order, the receipt of the same is a relevant factor and the appellant could be said to have been aware of the order on 14th October, 1988. But as the copy of the order supplied to the appellant on 14th October, 1988 could not be used for filing an appeal, that is not relevant for finding the limitation. This requires that when an appeal is to be filed, a certified copy of the judgment is to be filed with it and if the certified copy is annexed with the appeal, the time taken for supplying the certified copy will have to be excluded in calculating the period of limitation. The arguments of the learned counsel that from date the copy was supplied by the respondents to the appellant the time for filing of the appeal began to run and not filing the appeal in time amounts to negligence is devoid of any merit.

(3) It was next contended by the learned counsel that the copy of the order was also sent by the High Court to the appellant and that was also received well in advance and without waiting for a copy of the judgment they could have filed an appeal. This is again a matter in which it could be said that the appellant got knowledge of the order and for the reasons mentioned earlier, this ground has no substance.

(4) It was then contended by the learned counsel that application for supply of copy of the order in C.O.C.P. No. 163 of 1987 was filed on 3rd December, 1988, long after the period of limitation and, therefore, there are no grounds for excluding the delay. As already stated, the main judgment was given in C.O.C.P. No. 43 of 1987 and

for the appeal filed against C.O.C.P. No. 163 of 1987, the main judgment was a necessary document and, therefore, when the appeal is filed with a certified copy of the judgment in the main case the time taken for supply of the certified copy of the main judgment will have to be excluded in calculating the period of limitation and if that is excluded the appeal filed against the order in C.O.C.P. No. 163 of 1987 is to be treated as in time. Therefore, all the three objections raised by the learned counsel are devoid of merit and this application is ordered with costs. Counsel fee Rs. 500.

S.C.K.

### FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJ.

HARCHAND SINGH,—Petitioner.

*versus*

PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ Petition No. 3503 of 1986

March 15, 1989.

*Punjab Gram Panchayat Act (IV of 1952)—Ss. 95, 102(4) and (6)—Delegated authority—Appellate jurisdiction—Order of Joint Director/Divisional Deputy Director, Rural Development and Panchayats passed in exercise of delegated authority of Director, Panchayats—Whether such order passed by the delegatee of the Director can be appealed against before the Joint Secretary who is also ex-officio Director Panchayats.*

*Held*, that there is no bar or illegality if the appeal against the order passed by a delegatee of Director's power is heard by the Director himself exercising powers of the Joint Secretary to the Government when acting as such and not as Director. The individual who exercises the delegated powers of the Director should not happen to be the Director himself by then to exercise the delegated powers of the State Government while hearing the appeal.

(Paras 9 and 10).

*Petition under Articles 226/227 of the Constitution of India praying that the following reliefs may kindly be granted:—*

- (a) records of the case be called for and after perusal of the same a writ of certiorari be issued, quashing the impugned orders Annexures-'P/7' and 'P/9'.