

LETTERS PATENT APPEAL

BEFORE D. K. MAHAJAN AND BAL RAJ TULI, JJ.

DULA SINGH,—Appellant

versus

THE UNION OF INDIA AND OTHERS —Respondents.

Letters Patent Appeal No. 619 of 1968

December 1, 1970.

Constitution of India (1950)—Article 226—Writ petitions involving civil rights of citizens—Trial of—Procedure to be followed—Code of Civil Procedure (V of 1908)—How far applicable—Provisions of Order 22, Rules 3 and 4, Code of Civil Procedure and Article 120, Limitation Act (XXXVI of 1963)—Whether applicable to writ proceedings—Proper article of Limitation Act applicable indicated.

Held, that no doubt the writ petitions, in which civil rights of the citizens are involved, are civil proceedings and the procedure prescribed in the Code of Civil Procedure, in so far as it can be made applicable, can be followed in the trial of these petitions but the penalising provisions of Order 22, Rules 3 and 4 of the Code of Civil Procedure and Article 120 of the Limitation Act cannot be applied. It is only the procedure provided in the Code that is to be followed; but it does not mean that the petitioner in a writ petition becomes the plaintiff in a suit or the respondent to a writ petition becomes the defendant to the suit. Article 120 of the Limitation Act, 1963, relates to any application made under the Code of Civil Procedure to have the legal representatives of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party. It is not possible to read in Article 120 petitioner or applicant in place of defendant to a suit. Equitable considerations are out of place in construing the provisions of a statute of limitation and the strict grammatical meaning of the words is the only safe guide. A Court ought not to put such an interpretation upon a statute of limitation by implication and inference as may have a penalising effect unless the Court is forced to do so by irresistible force of the language used. The provisions of the Limitation Act cannot be extended by analogy or principle. In any case, Article 120 of the Limitation Act, 1963, does not apply to an application made in a writ petition for bringing the legal representatives of a deceased petitioner or respondent on record. The Article that will be applicable is Article 137 under which the period of limitation is three years from the date when the right to apply accrues.

(Paras 4 and 5)

Appeal under Clause 10 of the Letters Patent Appeal against the Judgment of Hon'ble Mr. Justice Prem Chand Jain, dated 28th October, 1968, passed in Civil Writ No. 217 of 1962.

H. S. GUJRAL AND MISS BHOPINDER GUJRAL, ADVOCATES, for the appellant.

J. N. KAUSHAL, SENIOR ADVOCATE, WITH Y. P. GANDHI AND ASHOK BHAN,
ADVOCATES, for the respondents.

JUDGMENT.

The judgment of this Court was delivered by :—

B. R. TULI, J.—(1) Dula Singh appellant is a displaced person from West Pakistan. He held a verified claim in respect of which he was entitled to a sum of Rs. 2,400 by way of compensation. In lieu of that compensation House No. B-XII-803 situated at Ludhiana was transferred to him in preference to Lakhmi Chand who was an occupant of a portion of the said house but the compensation amount due to him was Rs. 1,700 and thus less than that of the appellant. Applying Rule 30 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 to the case the appellant was held to have better title to the transfer of the house by order, dated March 10, 1959. The appeal of Lakhmi Chand was dismissed by the Assistant Settlement Commissioner, on October 22, 1959 and against that Order no further revision was filed with the result that the transfer order made in favour of the appellant became final. Thereafter Darbara Singh, father of the said Lakhmi Chand, filed a revision against the order of the Assistant Settlement Commissioner, dated October 22, 1959 but the same was dismissed *in limine* by the Chief Settlement Commissioner on December 17, 1959. Darbara Singh then filed a review application which was allowed on July 12, 1961 and the house was directed to be transferred to him. The appellant filed a revision before the Central Government under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 which was dismissed without hearing. The appellant then filed Civil Writ No. 217 of 1962 in this Court which was dismissed by a learned Single Judge on October 28, 1968 on the ground that Darbara Singh had died during the pendency of the writ petition and an application for bringing his legal representatives on the record was made about a year after his death. The learned Single Judge held that a year's delay was an inordinate one and following the decision of Sarkaria, J. in *Bhagwan Singh and others v. Additional Director of Consolidation, Punjab, Ferozepore and another* (1), dismissed the writ petition. The present appeal under clause 10 of the Letters Patent is directed against that judgment.

(1) A.I.R. 1968 P. & H. 360.

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(2) The learned counsel for the appellant has urged that the provisions of Order 22 of the Code of Civil Procedure do not apply to writ proceedings and in support of his submission he relies on the judgment of Shamsher Bahadur, J., in *Shri Kirpal Singh v. The Deputy Custodian-General and others* (2). The judgment of the learned Judge was confirmed in appeal by a Division Bench in *Shri Ajit Singh v. The Deputy Custodian and others* (3). The same view was taken by another Division Bench of this Court in *Chaudhry Jai Ram Dass and others v. Gurcharan Singh and others* (4). The matter was examined by me in *Pali Ram v. The Additional Director, Consolidation of Holdings, Hissar and others* (5), wherein I held that—

“The writ petition does not abate because of the death of the respondent on the ground that his legal representatives were not brought on record within the time prescribed in the Limitation Act. The legal representatives of a deceased petitioner or a deceased respondent can be brought on the record under Order 1, Rule 10, Code of Civil Procedure.”

While coming to that conclusion I had relied on the judgment of Shamsher Bahadur, J., in *Kirpal Singh's case* (2) (supra) and on the judgment of Narula, J., in *K. L. Bhansali v. Chief Controller of Imports and Exports* (6), wherein the learned Judge had held that “the law of abatement did not apply to the petitions under Article 226 of the Constitution.”

(3) Shri Jagan Nath Kaushal, Senior Advocate, who appears for respondents 3 to 7, the legal representatives of Darbara Singh, strongly urges (i) that the writ proceedings are civil proceedings, (ii) that by virtue of section 141 of the Code of Civil Procedure the provisions of that Code apply to such proceedings and (iii) in Article 120 in the Schedule to the Indian Limitation Act, 1963, the word plaintiff should be held to include the writ petitioner and the word defendant should be held to include the respondent to the writ petition. On these three grounds he submits that the

(2) C.W. No. 325 of 1956 decided on 21st April, 1961.

(3) L.P.A. No. 133 of 1961 decided on 10th August, 1961.

(4) L.P.A. No. 429 of 1959 decided on 6th March, 1963.

(5) 1969 P.L.J. 516.

(6) 1967 P.L.R. (Delhi Section) 19.

period of limitation for filing an application for bringing on record the legal representatives of a deceased respondent to a writ petition is 90 days as has been prescribed in Article 120 of the Limitation Act.

(4) There is no doubt that the writ petitions, in which civil rights of the citizens are involved, are civil proceedings and the procedure prescribed in the Code of Civil Procedure, in so far as it can be made applicable, can be followed in the trial of these petitions but the penalising provisions of Order 22, Rules 3 and 4 of the Code of Civil Procedure and Article 120 of the Limitation Act cannot be applied. It is only the procedure provided in the Code that is to be followed, but it does not mean that the petitioner in a writ petition becomes the plaintiff in a suit or the defendant to a writ petition becomes the defendant to the suit. Article 120 of the Limitation Act relates to any application made under the Code of Civil Procedure (1908) to have the legal representatives of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party. While enacting this Article the legislature knew that apart from suits and appeals there are other proceedings taken in civil Courts on applications and petitions. The Third Division of the Schedule to the Limitation Act deals with the periods of limitation prescribed for various kinds of applications. It is, therefore, not possible to read in Article 120 petitioner or applicant in place of plaintiff and respondent to a writ petition in place of defendant to a suit. The well-known principal of interpretation of statutes of limitation is that these statutes, like all others, ought to receive such a construction as the language in its plain meaning imports. Equitable considerations are out of place in construing the provisions of a statute of limitation and the strict grammatical meaning of the words is the only safe guide. A Court ought not to put such an interpretation upon a statute of limitation by implication and inference as may have a penalising effect unless the Court is forced to do so by irresistible force of the language used. The provisions of the Act cannot be extended by analogy or principle.

(5) In view of these principals laid down in various authorities it is not permissible nor possible to read applicants or petitioners of a writ petition for the word "plaintiff" and respondent to a writ petition for the word 'defendant' in Article 120. The word respondent has been used in that Article as opposed to the appellant,

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that is, respondent to an appeal and it does not include respondent to an application or a petition. We are, therefore, of the view that Article 120 of the Limitation Act, in any case, does not apply to an application made in a writ petition for bringing the legal representatives of a deceased petitioner or respondent on record. The Article that will be applicable is Article 137 under which the period of limitation is three years from the date when the right to apply accrues. In the light of Article 137, it cannot be said that the appellant had moved his application for bringing the legal representatives of Darbara Singh deceased on record, out of time nor could he be held guilty of inordinate delay. Where the law of limitation allows a certain period to a litigant for making an application or for filing a suit he is within his rights to file that application or that suit on the last date of limitation permissible to him.

(6) The learned counsel for the contesting respondents, however, urges that an appeal under Clause 10 of the Letters Patent arising out of an order of a learned Single Judge on a petition under Article 226 of the Constitution will be governed by Article 120 of the Limitation and it cannot be envisaged that the same Article does not apply to a writ petition. We find no substance in this submission as it is not necessary that the same period of limitation should be provided at all stages of the trial of a matter in litigation. For a suit the limitation is three years while for the first appeal against the decree passed in that suit it is 30 days and for a second appeal from the appellate decree it is 90 days.

(7) Shri Jagan Nath Kaushal has then relied on the judgment of Calcutta High Court in *Krishnalal Sadhu and others v. State of West Bengal and others*, (7), and the Division Bench Judgment of the Gujarat High Court in *Ibrahimbhai-Karimbhai and others v. State of Gujrat* (8), which are clearly distinguishable and do not decide the point in controversy before us. The question of the applicability of Article 120 of the Limitation Act did not arise in those cases. In the Gujarat case the only question determined was that rules 1 and 2 of Order 22 of the Code of Civil Procedure were applicable to writ petition and that is only for determining whether the right to suit survives or not. The learned counsel can, therefore, derive no assistance from these two judgments.

(7) A.I.R. 1967 Cal. 275.

(8) A.I.R. 1968 Gujrat 202.

(8) The learned counsel for the appellant also argued that a question of law was referred to a Full Bench of this Court which was analogous to the question of law arising in the present writ petition, that is, whether Darbara Singh had a right to be transferred this house when he was not the allottee of that house. His case was considered by the Full Bench in *Smt. Jamna Bai and another v. Union of India and others*, (9), and it was held that a person in the position of Darbara Singh had no right to the transfer of the house. On the basis of that decision the learned counsel argues that Darbara Singh was no more a necessary party to the writ petition and even if his legal representatives were not brought on the record, the writ petition could not be dismissed. His submission is that on the basis of the Full Bench judgment the learned Single Judge had only to issue a direction to the Rehabilitation authorities to give effect to that decision. *Prima facie* there is force in the submission of the learned counsel but we do not propose to rest our decision of this appeal on this ground.

(9) For the reasons given above this appeal is accepted and the order of the learned Single Judge appealed against is set aside. The case is remitted to the learned Single Judge for decision on merit. There is no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KARNAIL SINGH DOAD ETC.—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2939 of 1970

December 2, 1970.

Punjab Agricultural Produce Markets Act (XXIII of 1961 as amended by Ordinance 7 of 1970)—Section 3—Constitution of India (1950)—Articles 14, 213 and 254—Ordinance 7 of 1970—Whether unconstitutional having been passed without obtaining instructions from the President of India—Clause 7 of the Ordinance—Whether violative of Article 14, Constitution of

(9) 1965 P.L.R. 394.