

(1976) 05 DEL CK 0006

Delhi High Court

Case No: Regular First Appeal No. 136 of 1967 and Civil Miscellaneous Appeal No. 117 and 118 of 1976

Union of India

APPELLANT

Vs

Kundan (Deceased)

RESPONDENT

Date of Decision: May 28, 1976

Citation: AIR 1977 Delhi 38 : (1977) 13 DLT 289 : (1976) 2 ILR Delhi 427

Hon'ble Judges: T.V.R. Tatachari, J; A.B. Rohtagi, J

Bench: Division Bench

Advocate: C.K. Mahajan and Rishikesh, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) On June 15, 1967, the Union of India filed an appeal in this court against the order of the Additional District Judge Delhi dated March 4, 1967, whereby he had enhanced compensation by a sum of Rs. 4230 awarded in favor of one Kundan by the Land Acquisition Collector.

(2) In the appeal of the Union of India the sole respondent was Kundan. He died on July 27, 1971 leaving behind two sons, and a daughter.

(3) The appellant Union of India did not take steps to bring the legal representatives of the deceased respondent on record of the appeal. The appeal abated.

(4) On July 22, 1972. one of the sons of the deceased respondent namely, Surat Singh made an application under Order 22 Rule 4(3). Code of Civil Procedure, praying that the appeal of the Union of India had abated and the same be, Therefore, dismissed with costs. This application was put up before the Registrar. On August 9, .1972, he ordered that notice of the application should go to the Union of India. It appears that Surat Singh did not pay process-fee and notice could not issue. On September 6, 1972, the counsel for Surat Singh stated before the Registrar that he did not want to press his application as it was for the Union of India to take

steps for setting aside the abatement. The Registrar dismissed the application on September 6, 1972.

(5) Nothing happened till December 19, 1975. As the Union of India did not take steps to set aside the abatement the office fixed the appeal before the court for orders on abatement. The appeal appeared in the list of December 19, 1975. Mr. Harish Chandra standing Government counsel appeared. He was apprised of the fact. of death of the respondent on July 27, 1971. At counsel's request the appeal was adjourned to February 6, 1976.

(6) On January 23, 1976. the appellant made two applications. One (C.M. 117 of 1976) was under Order 22, rule 4 and 9 and Section 151, Code of Civil Procedure, for bringing the two sons and daughter of Kundan deceased on the record. The other (C.M. 118 of 1976) was u/s 5 of the Limitation Act for condensation of delay. By this order we propose to decide these two applications..

(7) The question for decision is whether abatement should be set aside and the legal representatives be allowed to be brought on the record after a delay of four years or so.

(8) To return to the facts. Kundan, the sole respondent died on July 27, 1971. His son Surat Singh made an application on July 22. 1972 which was dismissed as withdrawn on September 6, 1972. The case was fixed before the court on December 19, 1975, for orders on abatement. Mr. Harish Chandra appeared. He sought an adjournment.

(9) The land acquisition collector has made three affidavits, two dated January 23, 1976 and the third dated May 12, 1976, in support of the applications. In these affidavits delay has been sought to be explained. It has been said that the Union of India did not come to know of the death of Kundan till December 19, 1975 when Mr. Harish Chandra informed the Ministry of Law on telephone about what had happened in court on that day. Mr. Harish Chandra was not the counsel in the appeal. Mr. C. K. Mahajan was the counsel engaged by the Union of India in the appeal. Mr. Mahajan's name did not appear in the list. Mr. Harish Chandra's name was shown in the list. Mr. Harish Chandra appeared in court on December 19, 1975. He was told that Kundan had died as far back as July 27, 1971. He informed the Ministry of Law on that very day on telephone, as is stated in the affidavit .

(10) The Ministry of Law. Litigation (HC) Section, wrote a letter to the Government pleader conducting the case on December 19, 1975 which was received by Mr. Mahajan on Jan. 5, 1976 on his return from winter-break. The counsel inspected the court file on January 6, 1976 and came to know that the sole respondent had died and his son Surat Singh had moved an application on July 22. 1972. which was dismissed on September 6. 1972 as withdrawn.

(11) The Land Acquisition Collector in his affidavit dated May 12 1976, says : "The counsel sent a note dated January 7, 1976 to the Land Acquisition Department

through the Ministry of Law. Litigation (HC) Section which was received by the Land Acquisition Collector on January 19, 1976, asking them to verify the date of death as well as to furnish the particulars of the legal representatives if any."

(12) We will not stop here to comment. It is enough to say that the handling of the case by the Government does not show dispatch after the receipt of the counsel's note of January 7, 1976, because it took 12 days before the information reached the Land Acquisition Department.

(13) What follows is decisive of the case. Now the affidavit goes on to say: "The appellant department was also informed by the Ministry of Law, Litigation (HC) Section vide letter dated 27-12-75 of the proceedings in court on 19-12-75, which was received by them on 3-1-76. The letter was received by the Litigation. Clerk. on 5-1-76. He put up the file before the L.A.C. on 14-1-76 who ordered the Naib Tehsildar (Litigation) to contact the counsel on the same date. The file was sent to the Naib Tehsildar (Litigation) on 15-1-76. He marked it to the Kgo. on 16-1-76. As the High Court was closed on 17-1-76 and 18-1-76 .being Saturday and Sunday) the Kgo. from the department contacted she counsel on 19-1-76 and he was informed that the sole respondent had died. The official was asked to ascertain and verify the date of death of the respondent and furnish the particulars of the L.R.'s."

(14) The Patwari was deputed on January 20, 1976 to conduct enquires regarding the date of death and the name of the legal representatives. On January 21. 1976, Patwari found out the necessary information and passed it on to the counsel. The counsel drafted the application and affidavit on January 22, 1976 and the same were filed in court on January 23. 1976. This is the entire Explanation regarding the period after December 19, 1975.

(15) As regards the period intervening the date of death, i.e., July 27, 1971 and December 19, 1975, the Collector has said that during this time he had no reason to believe that the respondent had died and the fact of respondent's death came to the knowledge of the appellant only on December 19, 1975 and not before. Taking it to be so what has to be seen is whether delay after December 19. 1975, has been properly explained.

(16) From the above resume of events one thing is clear. The Land Acquisition Department received the information of the court proceedings of December 19, 1975, by a letter dated December 27, 1975 of the Ministry of Law which was received by the Collector's department on January 3- 1976. This letter reached the litigation clerk on January 5, 1976. But he put up the file before the Collector not earlier than January 14, 1976. Why this delay in putting up the file ? The matter did not brook delay. Then the Kanungo from the department contacted the counsel on January 19, 1976 and not earlier though he was asked to do so on January 16, 1976. This could not be done, the affidavit says, as the High Court was closed on January 17, 1976 and January 18, 1976 being Saturday and Sunday. But the High Court office is not

closed on Saturday.

(17) The main thing to be noticed is that admittedly the Land Acquisition Department got the information of the death of the respondent on January 3, 1976, But no action was taken till January 14, 1976 when the file was put up before the Collector. There is no satisfactory Explanation of this delay of 11 days. It has to be throughout borne in mind that from the inspection of the file the appellant had come to know that Kundan had died on July 27. 1971, and that Surat Singh was one of his sons. The death certificate of Kundan was filed with the application. With this information ready at hand why should the appellant take so much time to move the court to" setting aside the abatement ?

(18) In two recent decisions of this court this question has been considered. These are [The Union of India Vs. Rameshwar Nath and Another](#), and Union of India v. Dharam Singh, R.F.A. 67 of 1971, decided on July 14, 1972(2). To both these division bench rulings one of us (T.V.R. Tatachari CJ) was a party. It was held that each day's delay has to be explained by giving reasons therefore. On the facts of those cases the conclusion was that the Union of India had failed in proving to the court that there was sufficient cause entitling them to set aside the abatement of the appeal.

(19) In Rameshwar Nath's case the bench relied on [Union of India \(UOI\) Vs. Ram Charan and Others](#), where the Supreme Court said:

"The expression "sufficient cause" is not to be liberally construed either because the party in default was the Government or because the question arose in connection with the impleading of the legal representatives of the deceased respondent. The court should not readily accept whatever is alleged to explain away the default. The delay in making the application should not be for reasons which indicate the negligence of the party making the application in not taking certain steps which he could have and should have taken. The court has to be satisfied that there were certain valid reasons for the applicant not knowing the death within a reasonable time. "The bare statement of the applicant is not enough."

(20) In Union of India v. Ram Charan (supra) the Supreme Court has laid down certain guidelines for determining what is "sufficient cause" for the purpose of Rule 9 of Order 22. It was observed that it would be futile to lay down precisely as to what considerations would constitute sufficient cause within the meaning of the rule but that it can be said that delay should not be for reasons which indicate negligence on the part of the party in not taking the necessary steps which he could have and should have taken, and that what would be such necessary steps would depend on the facts and circumstances of the particular case.

(21) Take it for the sake of argument that the appellant had no reason to know about the death of the deceased respondent prior to December 19, 1975 as alleged by them. The question is whether after having the knowledge they took steps diligently and promptly so as to entitle them to say that there is sufficient cause for

them to exclude the period up to January 21, 1976 when they furnished the particulars to their counsel in the appeal. On the whole we are not satisfied that each day's delay has been explained particularly because there is no Explanation for the days from January 3, 1976 to January 14, 1976 which were lost in putting up the file. This is apart from the delay caused by the information to travel from the Ministry of Law to the Collector between December 19, 1975 to January 3, 1976.

(22) The counsel did his duty. He informed the Government at once, on December 19, 1975 itself. It was now for the Land Acquisition Department to take steps expeditiously. Nothing appears to have been done from January 3, 1976 to January 14, 1976. Here we cannot dismiss the matter of delay lightheartedly. Where the party is guilty of negligence his application must be dismissed [See [Rangubai Kom Shankar Jagtap Vs. Sunderabai Bhratar Sakharam Jedhe and Others](#),]. It is for the applicant to prove absence of want of care and negligence on his part.

(23) We are not oblivious of the fact that the appellant is the Union of India. But as the Supreme Court has said expression "sufficient cause" is not to be liberally construed because the party in default was the Government.

(24) Counsel for the respondents has argued that the appellant has not made any application for setting aside the abatement under Order 22 rule 9(2), Code of Civil Procedure. This, he says, is a fatal flaw. That there ought to have been a proper application for setting aside the abatement cannot be doubted. But an application for substitution may, in substance, be treated as an application to set aside the abatement (See *Bachan Ram v. Gram Panchayat*, Air 1971 P & H 243 . But that should not be done when the merits of the case are against the petitioner [see [Seshamma Vs. Yeeranki Peda Venkata Rao and Others](#), and [Janakinath Singha Ray Vs. Nirodbaran Ray and Others](#),].

(25) For these reasons we would dismiss C.Ms. 117 and 118 of 1976 but make no order as to costs. R.F.A. 136 of 1967. The appeal is dismissed as having abated. No costs.