

\$~A-57

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1010/2016

NARENDRA BEHARI LAL
(NOW DECEASED THR HIS LRS) Petitioner

Through Mr.Gagan Mathur and Mr.Varun
Kumar, Advs.

versus

UNION OF INDIA & ORS Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

06.10.2016

1. By the present petition the petitioner seeks to impugn the orders dated 23.3.2016 and 6.5.2016. On 3.10.2016 notice was issued to counsel appearing for the respondent before the trial court. An Affidavit of service has been filed pointing out that they have been served. But none is present for the respondent. Earlier also an advance copy has been sent.

2. The controversy has been noted in the order dated 3.10.2016 as follows:-

1. The present dispute pertains to a petition under Sections 30-31 of the Land Acquisition Act. There are four interested persons of Interested Party No.1. Sh.Kailash Behari Lal is the person with whom they are concerned and said Sh.Kailash Behari Lal had expired on 15.03.1997. Sh.Virender Behari Lal filed an application Order 22 Rule 3 for substitution as legal heirs of Sh.Kailash Behari Lal. On the same date, Sh.Narendra Behari Lal also moved an application for being impleaded. The trial court vide order dated 06.02.2008 allowed the application of Sh.Virender Behari Lal as LR's of IP No.1.

2. In the meantime, Sh.Narender Behari Lal died on

08.10.2010. Hence, the petitioners filed the present application for substitution as legal heirs of Sh.Narender Behari Lal.

3. A perusal of the impugned order shows that the trial court has dismissed the application stating that Sh.Narender Behari Lal was not a party to the present petition nor he was in the capacity of as LR of Sh.Kailash Behari Lal, IP No.1.

4. Despite advance copy of the present petition has been served on the respondents, none is present for the respondents.

5. In the interest of justice, issue notice to the respondents on the letter head of the learned counsel for the petitioner to appear before this court, returnable for 06.10.2016.

6. *Dasti* notice be also served on the counsel appearing for the respondents before the Trial Court.

3. Late Shri Kailash Bihari Lal expired on 15.3.1997. At that stage, Shri Virender Bihari Lal had filed an application under Order 22 Rule 3 CPC for substitution of legal heirs of late Shri Kailash Behari Lal. This application was allowed by the court on 6.2.2008. Thereafter in January 2010 Shri Narender Behari Lal has moved an application under Order 1 Rule 8 of CPC read with section 17 and 18 of the Land Acquisition Act to be brought on record as one of the LRs of Late Shri Kailash Behari Lal. During pendency of this application Shri Narender Behari Lal also died on 8.10.2010. The present application is filed by the Legal Heir of Late Shri Narender Behari Lal under Order 22 Rule 4 CPC to be allowed to prosecute the application filed originally by Shri Narender Behari Lal.

4. Learned counsel for the petitioner submits that instead of granting this permission to the LRs of late Shri Narender Behari Lal, the trial court has dismissed the application without taking into account the fact that the applicant only seeks permission to prosecute the earlier application under Order 1 Rule 8 CPC filed by late Shri Narender Behari Lal. He also points

out that in February 2007 Shri Virender Behari Lal has also expired and no LR of Late Shri Virender Behari Lal has been brought on record.

5. A perusal of the impugned order dated 23.3.2016 shows that the trial court has merely noted that to implead an LR a person should be a party to the petition. Since Shri Narender Behari Lal was neither a party to the petition nor was he in the capacity of Legal Heir of late Shri Kailash Behari Lal hence the trial court dismissed the application. There is a clear error on the face of the order. The application filed by the petitioners was for permission to prosecute the application under Order 1 Rule 8 CPC filed by late Shri Narender Behari Lal.

6. In view of the above, the impugned orders are set aside. The application of the petitioner to prosecute the application filed by late Shri Narender Behari Lal under Order 1 Rule 8 CPC is allowed. The trial court is requested to consider the said application filed by late Shri Narender Lal as per law.

7. Petition stands disposed of.

8. Dasti.

JAYANT NATH, J

OCTOBER 06, 2016/n