

(19)
02.09.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 3571 of 2019

**Sudhindra Mullick since deceased
represented by Sri Kamlesh Mallick**

-versus-

The State of West Bengal & ors.

Mr. Kushal Chatterjee,

Mr. Iftekar Munshi,

... for the petitioner.

Mr. Anirban Roy, Ld. G.P.

Mr. Raja Saha,

Mr. Biswabrata Basu Mullick, ... for the State.

Leave is granted to the learned advocate for the petitioner to correct the cause title of the revisional application.

The predecessor-in-interest of the petitioner Sudhindra Mullick, aggrieved by an award passed in the LA Case No. 34/76/11/48 of 1982 applied before the Collector for reference to the Court under Section 8 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the Act II of 1948, in short).

The said reference was registered before the 11th Court of learned Additional District Judge, Alipore, District : 24 Parganas (South) being LRA Case No. 72 of 1996.

The said Sudhindra Mullick died during the pendency of the said reference leaving behind him surviving his son, the petitioner herein, who applied for his substitution in the said reference case.

The reference Court by the order dated July 16, 2019 has dismissed the said application holding that for the failure of bringing the heirs and legal representatives of the deceased claimant on record within the prescribed period of limitation the entire reference has abated.

The petitioner has challenged the said order in the present application under Article 227 of the Constitution of India.

Mr. Kushal Chatterjee, learned counsel appearing on behalf of the petitioner, submits that the award was made under the Act II of 1948 and the reference thereof is since under Section 8 of the said Act, the Code of Civil Procedure has no manner of application in conducting the said reference inasmuch as by virtue of Section 53 of the Land Acquisition Act, 1894 (Act I of 1894, in short) the provisions of the Code has been made applicable in the proceedings under the Act I of 1894 but there is no such provision in Act II of 1948. The reference Court therefore is in error in recording abatement of the said reference for not

bringing the petitioner on record within the time prescribed under Order XXII Rule 4 of the Code.

He further submits that heirs of one of the deceased claimants are already on record, therefore, the reference Court is not justified in declaring abatement of the entire reference case for not bringing the heirs and legal representative of the other deceased claimants i.e. Sudhindra Mullick.

Mr. Anirban Roy, learned Government Pleader appearing on behalf of the State, the opposite party nos. 1 and 2 herein submits that by dint of sub-section (2) of Section 8 of the Act II of 1948, the provision of Sections 18 to 22 of the Act I of 1894 has made applicable in a case of reference to Court and by necessary implication Section 53 of the Act I of 1894 is also applicable in such a case of reference, consequently Order XXII of the Code is also applicable in a case on reference, according to him and the learned Trial Judge has rightly refused to substitute the petitioner in the said reference case being abated.

Having heard the learned counsel for the parties and on perusal of the record it appears that one of the claimants in the reference case Sudhindra Mullick died and on his death his only son, namely, Sri Kamlesh Mallick, the petitioner herein, applied for bringing him

on record of the said reference case in place and instead of the said deceased claimant.

By virtue of Section 53 of Act I of 1894 the Code has been made applicable in all proceedings under the Act I of 1894 save insofar as they may be inconsistent with anything with the said Act.

There is no such provision in Act II of 1948 in case of a reference to the Court but a specific provision, Section 8A of the Act II of 1948 by which the provisions of Code have been made applicable in all appeals arising out of an award of a Court on a reference.

The scheme of the Act, therefore, is clear that so far the proceedings of a reference to a Court under Section 8 of the Act II of 1948 the provisions of Code is not applicable but in an appeal from the award passed in such reference the said provisions are applicable.

Sub-section (2) of Section 8 of Act II of 1948 speaks about application of some provisions of the Act I of 1894 in a case on reference but the corollary of the said provision cannot be stretched to include the application of the provisions of the Code in a reference to Court under Section 8 of Act II of 1948.

That apart the reference Court was clearly in error in declaring the entire reference abated when

admittedly one of the heirs of the claimants is already on record.

The order impugned for the aforesaid reasons is set aside. L.R.A. Case No. 72 of 1996 is restored to its original file and number.

The petitioner applied before the reference Court for bringing him on record in place and instead of the deceased claimant at a belated stage, therefore, his said application although is allowed but subject to payment of cost of Rs. 5000/- to be paid by the State-opposite parties within three weeks from date and upon payment of said costs the petitioner shall take appropriate steps for amending the cause title of the reference application.

CO 3571 of 2019 is thus disposed of without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)