

# SUPREME COURT OF INDIA

State of Kerala

Vs.

Sridevi

(K.T. Thomas and D.P. Mohapatra JJ.)

01.02.2000

## ORDER

**K.T. THOMAS, J.**

1. Leave granted.

2. It appears that the High Court was wrongly led into thinking that Order XXII Rule 4 of the Civil Procedure Code would squarely apply in the matter and hence a Division Bench of the High Court proceeded to consider whether there was sufficient cause for the long delay in making an application under the above Rule for substitution of the legal representatives of a deceased party. The Division Bench found that there was no proper explanation for the long delay and hence rejected the application as though it is one for impleadment of legal representatives of the deceased party. Consequently the appeal filed by the State in challenge of an award passed by a Reference Court under the Land Acquisition Act stood rejected as barred by limitation.

3. The second Additional Sub-Court, Trivandrum passed the award in the aforesaid land acquisition matter on a reference being made under Section 18 of the Act. The date of the said award of the Reference Court is 12.11.1991. It appears that the Reference Court enhanced land value from Rs. 1,05,377/-to nearly rupees 17 lakhs. The State of Kerala filed an appeal before the High Court on 20.06.1992 without noticing that the sole respondent in the award had died before filing the said appeal (legal representatives of the said sole respondent are the respondents in this appeal). On 22.5.1993 an application was filed before the High Court quoting Order 1 Rule 10 of the Civil Procedure Code for joining the name of the legal representatives of the deceased respondent. In the affidavit sworn to by an Upper Division Clerk, Collector, Trivandrum in support of the said application, it was stated that the Government came to know of the death of the sole respondent only when the notice issued by the High Court on the appeal was returned unserved stating that he was no more.

4. While considering the aforesaid application it appears that the counsel appearing for both sides in the High Court contended that Order XXII Rule 4 is the relevant provision to be invoked and the application for impleadment of the legal representatives should have been filed within 90 days after death of the respondent as per Article 120 of the Limitation Act. The entire exercise of the Division Bench of the High Court was thereafter focussed on that point and ultimately the Division Bench was disinclined to condone the delay on the assumption that the period of limitation was only 90 days to make the application for adding the names of the respondents in the appeal.

5. There was no need to invoke any of the Rules in Order XXII as there was no question of abatement since death of the sole respondent had taken place only after the judgment was delivered by the Sub-Court. The error which had crept in is that the appeal was filed against a person who was not then alive. In such a case Order 1 Rule 10 has to be invoked. There is no specified period of limitation for making an application in the aforesaid Rule and hence, if at all any application in necessary the same could be filed within three years under Article 137 of the Limitation Act. In the present case the application was filed much ahead of that time. It was filed on 22.5.1993.

6. We are satisfied that wrong person was joined in the appeal as the Government knew about the death of the respondent only when the notice was returned with the endorsement that the said person is no more. Of course learned Counsel for the respondent contented that Government had opportunity to come to know of that aspect earlier. It may be that one of the officers of the Government would have come to know of that fact. But we are not disposed to credit the Government with the knowledge of his death solely on the ground that one individual Government servant had such knowledge. When public interest is involved a bilateral attitude in the matter can be adopted.

7. We, therefore, allow this appeal and upset the impugned order. We allow the application filed by the State before the High Court on 22.5.1993 for joining the present respondents in the place of the dead person shown originally. However, we would add that State is also responsible for causing so much of misleading before the High Court. Hence the State must bear the cost of the respondent in this case. We, therefore, allow this appeal with costs of Rs. 10,000/- payable to the respondents. Standing Counsel for the State of Kerala submits that the said amount will be paid to the counsel for the respondents here within two months.