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Harbans Singh, J.

Having given my best consideration to the question, I am of the view that the present litigation is barred by *res judicata* and, consequently, I accept this appeal, set aside the judgment and the decree of the Courts below and dismiss the suit of the plaintiffs. In the peculiar circumstances of the case, there will be no order as to costs.

R.S.

APPELLATE CIVIL

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

PHUMAN AND OTHERS,—*Appellants.*

versus

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

First Appeal From Order No. 92 of 1961.

1963

March, 19th.

Code of Civil Procedure (Act V of 1908)—Order 22—Whether applies to proceedings under S. 18 of Land Acquisition Act—Land Acquisition Act (I of 1894)—Ss. 20, 21, 23 and 26—Whether inconsistent with the provisions of Order 22 C P. Code—Ss. 18 and 30—References under—Respective scope of—Limitation Act (IX of 1908)—Article applicable to an application for bringing on record legal representatives of a deceased party in a reference under S. 18 of Land Acquisition Act—Whether Article 176 or 181.

Held, that section 53 of the Land Acquisition Act, 1894 has made the provisions of the entire Code of Civil Procedure applicable to all proceedings before the Court under that Act unless they are inconsistent with anything contained in the Act. It follows, therefore, that the provisions of Order 22, rule 3 would apply, unless it could be shown that they were inconsistent with anything contained in the Act. There is no specific provision in this Act, which says that the principles of abatement would not apply to the proceedings before the Court under the Act. There is no force in the argument that under the provisions of sections 20, 21, 23 and 26 of the Act, the Court was bound to

give an award and, as such, the provisions of Order 22 of the Code could not be applied to these proceedings. Under section 21 of the Act, the scope of the enquiry has been restricted to a consideration of the interests of the persons affected by the objections filed under section 18 of the Act against the award given by the Collector. The objectors are not satisfied with the award given by the Collector and they object either to the measurement of the land; or the amount of the compensation, or the persons to whom it is payable, or the apportionment of the compensation amongst the persons interest. Therefore, by virtue of the provisions of section 18 of the Act, they apply to the Collector for making a reference to the Court for the determination of their objections. It is, therefore, incumbent on them or their legal representative to pursue their claims as provided under the Act. The reference will be answered and the award would be given by the Court after they lead evidence in support of their objections and their cases are heard. For this purpose, certain procedure has been prescribed under the Act. Section 53 of the Act makes the provisions of the Code applicable to these proceedings. It means that the procedure laid down in the Code has to be observed by the Court while deciding these objections. Order 22 of the Code clearly lays down that the legal representatives of the deceased must be brought on record within the time limited by law. In case it is done, the result would be that the reference would abate. In such a contingency, it cannot be argued that, when a reference has abated, it must be answered by the Court. Under these circumstances, it cannot be said that the provisions of Order 22 of the Code are inconsistent with those of sections 20, 21, 23 and 26 of the Act.

Held that there is a clear distinction between a reference made under section 18 and a reference under section 30 of the Act. The one under section 18 is made on an application by a party concerned, when the award has already been made by the Collector and he is not satisfied with the same. On the other hand, the reference under section 30 is made by the Collector of his own motion, because he experiences some difficulty in determining the disputes as to the apportionment of the compensation and leaves such matters to be decided by the Court. It is, therefore, clear that under section 30, the award with respect to the disputes raised has not been given by the Collector and, as such, it cannot be

said that any party has a grievance agaist the same. But under section 18 of the Act, the award has already been given by the Collector and the party filing an application under this section has a definite grievance against it. Even if it be assumed that a reference under section 30 does not abate, it cannot be said on that analogy that a reference under section 18 also does not abate.

Held that for the purpose of the Indian Limitation Act, a reference under section 18 of the Land Acquisition Act is treated as a suit and the applicant is to be regarded as a plaintiff and the Government as defendant. The proper article of the Limitation Act applicable to an application for bringing on record the legal representatives of the applicant in such a reference is Article 176 and not Article 181 and the application should be made within 90 days of the date of the death of the party.

Case referred by Hon'ble Mr. Justice Mahajan on 17th January, 1962 to a larger Bench for decision of important question of law involved in the case and finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mahajan and Hon'ble Mr. Justice Pandit on 5th March, 1963.

First Appeal from the order of Shri Joginder Singh, Additional Senior Sub-Judge, Nangal, dated the 2nd February, 1961, enhancing the compensation by 75 per cent of the value of the land involved in them.

Application under Section 18 of the Land Acquisition Act, I of 1894 in respect of an award relating to lands in village Benewal, tehsil Una, for referring the matter for the determination of the Civil Court.

A. L. BAHRI, ADVOCATE, for the Appellants.

K. L. KAPUR, ADVOCATE, for the Respondents.

JUDGMENT

Pandit, J.

PANDIT, J.—This order will dispose of seven First Appeals from Orders Nos. 92, 93, 98, 99, 100, 101 and 102 of 1961, since common questions of fact and law are involved therein.

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All these appeals arise out of the orders of the Additional Senior Subordinate Judge, Nangal, passed in applications made under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). It appears that certain lands had been acquired by the State Government for the construction of the Fertilizer-cum-Heavy Water Factory at Nangal Township in Hoshiarpur District. Compensation had been awarded by the Collector. Being dissatisfied with his award, applications under section 18 of the Act had been made by the owners for referring the matter to the Court for the enhancement of the compensation. The learned Judge ordered that the references in question had abated, because the persons whose lands had been acquired had died during the pendency of the references and their legal representatives had not been brought on the record within 90 days as provided for in Order 22, rule 3 of the Code of Civil Procedure (hereinafter referred to as the Code). Two of these cases (F.A.Os. Nos. 92 and 93 of 1961) were, in the first instance, placed before Mahajan, J. The learned Judge was of the opinion that an important question of law, namely, whether the provisions under Order 22 of the Code apply to proceedings under section 18 of the Act or not and the applications made under this Order were within time, was involved in these cases. This question being of general importance, he referred the cases to a Division Bench. The other five appeals came up for hearing before Gurdev Singh, J., and since similar points were involved therein, he directed that those cases be also heard along with F.A.O. 92 of 1961. That is why all these appeals have been placed before us.

The first question for decision is whether the provisions of Order 22, rule 3 of the Code apply to these cases. The argument of the learned counsel for the appellants was that these provisions applied only to

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suits and not to references under section 18 of the Act. He also contended that the provisions contained in Order 22 of the Code were inconsistent with the provisions of section 20, 21, 23 and 26 of the Act, under which, after a valid reference had been made to the Court, it was its duty to give an award and, therefore, no question of abatement arose in such cases.

Section 53 of the Act is as follows:—

> "Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act."

According to it, the provisions of the Code would apply to all the proceedings before the Court under this Act. It is pertinent to mention that, amongst others, the provisions of the Code as to death, marriage and bankruptcy or insolvency of parties, which are the same as given in Order 22 of the Code, were specially made applicable under section 36 of the old Act, which section has now been replaced by section 53 of the present Act, under which the provisions of the entire Code have been applied to all the proceedings before the Court. This means that the scope of the present section has been enlarged by the application of the provisions of the entire Code to these proceedings. It follows, therefore, that the provisions of Order 22, rule 3 would apply, unless it could be shown that they were inconsistent with anything contained in the Act. There is no specific provision in this Act, which says that the principles of abatement would not apply to the proceedings before the Court under the Act. The argument of the learned counsel is that under the provisions of sections 20, 21, 23 and 26 of the Act, the Court was bound to give an award and

as such, the provisions of Order 22 of the Code could not be applied to these proceedings. There is no force in this submission, because under section 21 of the Act, the scope of the enquiry has been restricted to a consideration of the interests of the persons affected by the objections filed under section 18 of the Act against the award given by the Collector. The objectors are not satisfied with the award given by the Collector and they object either to the measurement of the land, or the amount of the compensation, or the persons to whom it is payable, or the apportionment of the compensation amongst the persons interested. Therefore, by virtue of the provisions of section 18 of the Act, they apply to the Collector for making a reference to the Court for the determination of their objections. It is, therefore, incumbent on them or their legal representatives to pursue their claims as provided under the Act. The reference will be answered and the award would be given by the Court after they lead evidence in support of their objections and their cases are heard. For this purpose, certain procedure has been prescribed under the Act. Section 53 of the Act makes the provision of the Code applicable to these proceedings. It means that the procedure laid down in the Code has to be observed by the Court while deciding these objections. Order 22 of the Code clearly lays down that the legal representatives of the deceased must be brought on the record within the time limited by law. In case, it is not done so, the result would be that the reference would abate. In such a contingency, it cannot be argued that, when a reference has abated, it must be answered by the Court. Under these circumstances, it cannot be said that the provisions of Order 22 of the Code are inconsistent with those of sections 20, 21, 23 and 26 of the Act. The result would be that the award given by the Collector would stand and the parties would be bound by the same.

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It was next argued that under the provisions of section 30 of the Act, when the amount of compensation had been settled under section 11 of the Act, and if any dispute arose as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof was payable, the Collector might refer such a dispute to the decision of the Court. If during the pendency of this reference, a party died and his legal representatives were not brought on the record within limitation, the reference, according to the learned counsel, did not abate. That being so, a reference under section 18 also could not abate.

There is no force in this contention as well. There is a clear distinction between a reference made under section 18 and a reference under section 30 of the Act. The one under section 18 is made on an application by a party concerned, when the award has already been made by the Collector and he is not satisfied with the same. On the other hand, the reference under section 30 is made by the Collector of his own motion, because he experiences some difficulty in determining the disputes as to the apportionment of the compensation and leaves such matters to be decided by the Court. It is, therefore, clear that under section 30, the award with respect to the disputes raised has not been given by the Collector and, as such, it cannot be said that any party has a grievance against the same. But under section 18 of the Act, the award has already been given by the Collector and the party filing an application under this se tion has a definite grievance against the same. Therefore, even assuming for the sake of argument, that there is no abatement in a reference under section 30, this analogy being inapplicable, cannot be taken advantage of by the learned counsel for the appellant in support of his contention.

The next argument raised was that even if the provisions of the Code applies to the proceedings before the Court under this Act, the provisions of Order 22, necessarily were not applicable to them. In this connection, reliance was placed on *Janardhan Vithal* v. *Anant Mahadev and others* (1), and *Noor Ahmed and others* v. *Chhattowal Gurmukhdas and others* (2).

In *Janardhan Vithal's case*, it was held that in case of an application to sue in *forma pauperis* no suit was instituted until the application was granted and, as such, the provisions regarding abatement were not applicable to the same. In *Noor Ahmed and others' case*, it was observed that the provisions of Order 22 of the Code were not applicable to an application for leave to appeal to Privy Council. In the first place, none of these cases relates to the proceedings under the Land Acquisition Act. Secondly, in these cases it was held that no suit or appeal was pending at the time when a party died, while the proceedings in the instant cases are in the nature of a suit, as has been discussed by me in the later part of my judgment. There is. thus no force in this contention.

Learned counsel then submitted that the references made under section 113 read with Order 46 of the Code did not abate and, consequently, principles of abatement would not apply to references under section 18 of the Act as well.

A reference under section 18 of the Act cannot be equated with a reference under section 113 of the Code, because the latter has to be made by the Courts below under certain specified circumstances enumerated in that section. Therefore, even assuming for the sake of argument that a reference under the Code

(1) I.L.R. 7 Bom. 377.
(2) A.I.R. 1934 Sind 36.

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does not abate, it would have no relevancy for deciding as to whether a reference under section 18 of the Act would abate or not. It may be mentioned that, while arguing this point, learned counsel for the appellants relied on two decisions, namely, (1) *Commissioner of Income Tax, etc.* v. *I. D. Varshani* (3), and (2) *Maharajadhiraja of Darbhanga* v. *Commissioner of Income Tax* (4), for showing that the principles of abatement did not apply to the references. Both these cases, however, deal with references to the High Court under section 66(1) of the Indian Income-tax Act and there is no provision in the Income-Tax Act applying the principles of abatement as mentioned in the Code to that Act. These cases can, therefore, be of no assistance to the appellants.

It was then contended that even if the provisions of Order 22, rule 3 of the Code applied to references under section 18 of the Act, the limitation for filing the applications for bringing the legal representatives of the deceased-applicant on the record would be governed by Article 181 of the Indian Limitation Act wherein the period of three years was prescribed, and not Article 176, where such an application had to be made within 90 days. The argument was that Article 176 applied only when the legal representatives of a deceased-plaintiff or of a deceased-appellant had to be made a party. In the present case, the applicants could neither be called the plaintiffs nor appellants and, therefore, the residuary Article 181 dealing with the applications for which no period of limitation was provided elsewhere, would be applicable. Learned counsel submitted that the application under section 18 of the Act could not be equated

(3) A.I.R. 1953 All. 414.
(4) A.I.R. 1930 Pat. 81.

with a suit and the applicant could not be called a plaintiff. Wherever the Legislature wanted that an application under a particular Act be treated as a 'suit', it had specifically mentioned so. In this connection, he referred to the provisions of the Displaced Persons (Debts Adjustment) Act, 1951, where in section 53 it was mentioned that every application made under that Act should be deemed to be a 'suit' for the purposes of the Indian Limitation Act. This was despite the fact that the provisions of the Code had been made applicable under section 25 of that Act.

I have already mentioned above that the entire provisions of the Code apply to the proceedings before the Court under the Act and that the provisions of Order 22 also apply to the references under section 18 of the Act. No doubt, Order 22 applies to the cases where the death of a plaintiff takes place in a suit and his legal representatives have to be brought on the record. Since the provisions of the Code have been made applicable to the references under section 18 of the Act as well, therefore, Order 22 also applies to them. In other words, the applications under section 18 of the Act are treated as 'suits' and the applicants as plaintiffs. Until this is done, the provisions of Order 22 would never apply. Moreover, section 141 of the Code clearly mentions that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. It is undisputed that these proceedings are in a Court of civil jurisdiction. It follows, therefore, that the procedure provided in the Code for suits shall be followed in dealing with the applications under section 18 of the Act. I am supported in this view of mine by the following observations of a Division Bench, consisting of Ameer Ali and Stephen, JJ., of the Calcutta High Court in *Ezra* v. *The Secretary of State and others*

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(5), which decision was later on confirmed by the Privy Council in *Ezra* v. *Secretary of State for India* (6):—

> "When a reference is made to the civil Court, the applicant is to be regarded as the plaintiff and the Government as defendant.
>
> * * * * *
> * * * * *".

This decision was followed by Division Bench of the Punjab Chief Court consisting of Rattigan and Beadon, JJ., in *Fakir Chand and others* v. *Municipal Committee, Hazro* (7), in which it was held—

> 2. "That in a reference to the Court on an objection to the amount of compensation awarded by the Collector, the Secretary of State for India is the defendant.
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> * * * * *
> * * * * * * *
>
> Consequently, the only possible respondent in an appeal against the decree of the Court was the Secretary of State and where he has not been impleaded till after the expiry of the period of limitation, and Order 41, rules 3 and 20 of the Code of Civil Procedure, do not assist the appellant."

In *the Matter of Rustamji Jijibhai and another* (8), Chandavarkar, J., observed at page 347 as under:—

> "If the written application to the Collector is tantamount to a plaint, and it cannot be treated as anything less than a plaint in a

(5) I.L.R. 30 Cal. 36 at page 89.
(6) I.L.R. 32 Cal. 605.
(7) 59 P.R. 1913.
(8) I.L.R. 30 Bom. 341.

suit what is there in Act No. 1 of 1894 (Land Acquisition Act) which takes away from an applicant the right he has according to section 53 of that Act to invoke the aid of section 147 of the Civil Procedure Code?"

Having found that the applications under section 18 of the Act are in the nature of suits and the applicants thereunder are to be treated as plaintiffs, it is clear that the limitation provided for making an application under Order 22, rule 3, would apply to these proceedings as well. It is conceded that the Article applicable for making an application under Order 22, rule 3 of the Code is Article 176 and no other Article. Therefore, the residuary Article 181 would not apply, as contended by the learned counsel for the appellants. It is true that the Limitation Act as such has not been made applicable to the proceedings before the Court under the Act, but since the provisions of the Code have been made applicable and in Order 22, rule 3, sub-rule (2), it has ben mentioned that the application under that rule has to be made within the time limited by law, therefore, the provisions of Article 176 of the Indian Limitation Act would apply. If the provisions of Order 22 of the Code are applicable to these proceedings, then the only Article applicable would be Article 176. The argument of the learned counsel that the applicant under section 18 of the Act may be equated with a plaintiff in Order 22 of the Code, but he cannot be equated with the plaintiff in Article 176 of the Indian Limitation Act is without any force, because if he is being treated as a plaintiff for the purposes of Order 22, rule 3, he must be treated as a plaintiff for the purposes of Article 176 which is the only Article applicable to the applications under this Rule, as provided in sub-rule (2) of the same. The analogy of

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the provisions in the Displaced Persons (Debts Adjustment) Act would not be apt, because the scheme of that Act shows that the point of limitation was of considerable importance in that Act and in certain cases even the period of limitation had to be extended, while in others it has to be curtailed.

Learned counsel for the appellants then contended that even if Article 176 of the Limitation Act applied, there was sufficient cause for their clients in not filing the applications for bringing the legal representatives of the deceased within time and they should be given the benefit of section 5 of the Limitation Act.

[Then His Lordship discussed the facts of each case hearing in limitation and dismissed F.A.O.s No.s 92, 93, 99, 100, 101, 102 of 1961, and partly allowed F.A.O. No. 98 of 1961.]

In the circumstances of these cases, however, I will leave the parties to bear their own costs throughout.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

M/s. SEWAK HOTEL, BHATINDA,—*Petitioner.*

versus

THE ASSESSING AUTHORITY AND ANOTHER,—*Respondents.*

Civil Writ No. 1836 of 1962

1963

March., 15th

Punjab General Sales Tax (Amendment) Act (VIII of 1962)—Ss. 1(2) and 3—Item No. 49 in Schedule B to the Principal Act omitted and omission made retrospective with