



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.14 of 2021

Decided on: 15th June, 2023

State of H.P. and others

.....Petitioners

Versus

Bhoop Ram Sharma

.....Respondent

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the Appellants: Mr. Y.P.S. Dhaulta, Additional Advocate General with Ms. Seema Sharma and Mr. Sumit Sharma, Deputy Advocates General.

For the Respondent: Mr. Rajesh Kumar Sharma and Mr. Vinod Kumar Sharma, Advocates.

Jyotsna Rewal Dua, Judge

The State has assailed the order dated 26.12.2019 passed by the learned Reference Court allowing the application moved by the respondent under Section 5 of the Limitation Act for challenging the award dated 27.08.2009.

2. Award No.20/2009 was passed by the Collector, Land Acquisition on 27.08.2009. The respondent moved an application on 19.09.2018 to the Land Acquisition Officer for referring his case to the learned Reference Court for enhancement of the awarded compensation. There was a

¹ Whether reporters of print and electronic media may be allowed to see the order? Yes.

delay of 9 years and 24 days in making the application. Alongwith the application, the respondent also filed another application under Section 5 of the Limitation Act for condoning the delay. Land Acquisition Collector taking note of the decision dated 08.10.2018 rendered by the Division Bench of this Court in *CWP No.2363/2018 (Gokul Ram and others Versus The Land Acquisition Collector and another)*, wherein, it was observed that *“whether or not, a reference under Section 18 of the Act, should be entertained on merit or should it be turned down on the ground of limitation, is adjudicateable by the Reference Court, namely the Court of District Judge/Additional District Judge and such power cannot be assumed by the Land Acquisition Collector, who is merely required to refer the application to the Court of competent jurisdiction”*, referred the applications to the learned Reference Court for further necessary action.

3. The matter reached learned Reference Court. It appears that opportunities were granted to the petitioners to file reply to the application moved by the respondent under Section 5 of the Indian Limitation Act, however, the petitioners did not file reply. Learned Reference Court on 26.12.2019 allowed the application under Section 5 of the Limitation Act. In the aforesaid circumstances, the State has assailed the order dated 26.12.2019.

4. Heard learned counsel on both sides.

5. While allowing the application moved by the respondent under Section 5 of the Limitation Act, learned Reference Court has presumed that *“as per State amendment under Section 183 of the Land Acquisition Act, 1894, the fact of limitation is to be decided by the Land Acquisition Collector, but, since the matter has been preferred (sic referred) now, it seems that he has condoned the delay.”* The presumption drawn by the learned Reference Court is factually incorrect. The Land Acquisition Collector had neither expressly nor impliedly condoned the delay. In fact, while referring the matter to the learned Reference Court, Land Acquisition Collector had very specifically observed that there was 9 years and 24 days’ delay in making the reference and in view of the decision rendered by this Court in Gokul Ram’s case, supra, the delay could be adjudicated only by the Reference Court. The presumption drawn by the learned Reference Court, therefore, was not correct. The question of applicability of Section 5 of the Limitation Act to the facts of the case was also not gone into.

In view of the above, I find merit in the petition. The same is allowed. Impugned order dated 26.12.2019 passed by the learned Reference Court is set aside. The

matter is remanded to the learned Reference Court for afresh decision on the application. The petitioners are hereby granted one final opportunity of filing reply to the application before the next date of listing of the matter before the learned Reference Court. The parties, through their learned counsel, are directed to appear before the learned Reference Court on **01.07.2023**. Taking into consideration the fact that the award was passed in the year 2009, learned Reference Court shall make earnest endeavours to decide the application in question expeditiously, preferably within a period of three months.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

June 15, 2023
Mukesh

Jyotsna Rewal Dua
Judge