S.Amarjit Singh Kalra(Dead),Ram ... vs Smt. Pramod Gupta (Dead) By L.Rs. & Ors., ... on 17 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 2588, 2003 (3) SCC 272, 2003 AIR SCW 2799, 2003 (2) ALL CJ 1356, 2003 (1) SLT 267, 2002 (9) SCALE 577, 2003 (4) SRJ 323, 2003 ALL CJ 2 1356, (2003) 1 ANDH LT 636, (2003) 1 LANDLR 660, (2002) 9 SCALE 577, (2003) 1 SUPREME 262, (2003) 2 ICC 32, (2003) 2 CIVLJ 14, (2003) 1 CURCC 80, (2003) 102 DLT 345, (2003) 66 DRJ 723, (2003) 2 RAJ LW 222, (2003) 2 ANDHLD 1, (2003) 4 BOM CR 446

Author: D. Raju

Bench: Chief Justice, M.B. Shah, Doraiswamy Raju, S.N. Variava, D.M. Dharmadhikari

```
           CASE NO.:
Appeal (civil)  1027-1028 of 1992
Appeal (civil)  1029-1030 of 1992
Appeal (civil)  8465-8466 of 2002

PETITIONER:
S. Amarjit Singh Kalra (dead) by L.Rs. & Ors., Smt. Ram Piari (dead) by L.Rs. & Ors., Sa

RESPONDENT:
Smt. Pramod Gupta (dead) by L.Rs. & Ors., Smt. Gulab Sundri Bapna (dead) by L.Rs. & Ors.

DATE OF JUDGMENT: 17/12/2002

BENCH:
CJI,M.B. Shah, Doraiswamy Raju, S.N. Variava & D.M. Dharmadhikari.

JUDGMENT:
```

J U D G M E N T D. RAJU, J.

Special leave granted in S.L.P. [C) Nos.11914-11915 of 1991.

On 14.8.2002, this Court allowed the applications filed in C.A.Nos.1029- 1030 of 1992 and Civil Appeals arising out of S.L.P. (C) Nos.11914-11915 of 1991 for substitution and condonation of delay in filing the applications for substitution in respect of some of the respondents, who died during the pendency of these appeals. In the light of the above, all other applications filed for substitution and condonation of delay of one or the other parties in the above matters by the respective counsel for the appellants are also allowed. After the hearing was completed and orders have been reserved, it appears that the heirs of one Late Sultan Singh alias Ishwar Singh claiming to be interested in the

compensation but admittedly was not a party (the late Sultan Singh himself) either before the Reference Court or the High Court, have filed applications to be impleaded as necessary parties. Since, the predecessor-in-interest of the applicants was himself not a part at any stage of the proceedings before the Courts below, we see no justification to entertain their claim for coming on record at this stage of the proceedings. These unnumbered applications filed by Col. Mohinder Singh Malik and three others are, therefore, rejected. Having regard to the orders passed already, and the fact that the necessary legal representatives of all parties, who died during the pendency of the matters in this Court, have come on record, the benefit of the same will enure to the appellants in C.A.Nos.1027-1028 of 1992. The fact that the applications filed therein, earlier were not pressed and disposed of as such, will not come in the way of those appeals also being heard on merits and disposed of in accordance with law, along with the other appeals.

An extent of about 5500 bighas of land described as `gain mumkin Pahar' (uncultivable mountainous area) situated at Masudpur Village within the Union Territory of Delhi was acquired by the Government for planned development of Delhi. Notifications were issued (1) on 24.10.1961 for acquisition of 720 bighas and 4 biswas out of 4307 bighas and 18 biswas under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act'). It may be stated at this stage itself that an extent of 390 bighas of land notified on 24.10.1961 and acquired by passing the award in Award No.1944 does not form the subject matter of these proceedings. Declarations under Section 6 of the Act were issued on 6.8.1966. In the course of the Award enquiry claims were filed before the Land Acquisition Collector by three categories of claimants as hereunder: -

(i) Claims by the Union of India and Gaon Sabha that the lands acquired stood vested with the Gaon Sabha they being `waste land' under Section 7 of the Delhi Land Reforms Act, 1954. This claim proceeded on the basis that not only it was `waste land' but also the Bhumidari Certificate issued in favour of Smt. Gulab Sundari was invalid and nonest in law.

(ii) The other class of claims were from the Proprietors/Co-owners, on the basis that the acquired land was not `land' as defined under Section 3(13) of the Delhi Land Reforms Act, since they were being used for non-agricultural purposes and therefore, they neither could be said to be `waste land' nor could be held to have vested in the Gaon Sabha, for either of them to claim any title to the lands in question and, therefore, they continued to be proprietors of the soil and as such entitled to the compensation for themselves; and

(iii) Yet another claim was from Smt. Gulab Sundari and her transferees of portions of the rights over the land on the ground that she was the Bhumidar of the land measuring about 4307 bighas and 18 biswas and those lands were part of her Bhumidari holding out which she also claimed to have transferred rights in an extent of 3500 bighas of undivided holding in favour of the other private respondents/claimants.

By another Notification dated 23.1.1965 under Section 4 of the Act, an extent of 3224 bighas and 24 biswas out of the total extent of 4307 bighas and 18 biswas was notified for acquisition, followed by the issue of a Declaration under Section 6. In respect of these acquired lands also, the above three categories of claims came to be made. It may also be stated that the individual claims made by persons other than the Union of India and Gaon Sabha were in respect of specified shares, though over the total extent involved.

Award No.2040 dated 1.12.1967 came to be passed in respect of lands covered by the Notification dated 24.10.1961 measuring about 720 bighas and 4 biswas. Since competing claims, though in respect of only their respective shares were made by them to the exclusion of others as far as their shares are concerned, the Land Acquisition Collector while awarding a compensation of Rs.5,79,932.10, made a reference under Sections 30 and 31(2) of the Act for apportionment of the same to the Court of District Judge. Likewise, in respect of lands acquired under Notification dated 23.1.1965 measuring about 3224 bighas and 2 biswas, Award No.2225 dated 26.3.1969 came to be passed for a sum of Rs.22,27,867.69 and a similar reference under Sections 30 and 31(2) also came to be made, having regard to the disputed nature of competing claims. Smt. Gulab Sundari, claiming exclusive Bhumidar rights in respect of the entire area, moved applications under Order 1 Rule 10, CPC, for getting impleaded to the proceedings on the plea that she had not sold any part of her rights to any one, that she had been defrauded to sign those documents, which are not valid or binding on her and she alone was entitled to the entire compensation as Bhumidar to the exclusion of all including those who sought to assert claims as Vendees from her. The Gaon Sabha of the Village also filed applications claiming the entire compensation on the ground that the land as per the entries in the Jamabandi vested in the Gaon Sabha as per the provisions of Delhi Land Reforms Act. All such claims, made by different class and category of claimants, came to be combined and consolidated and taken up for consideration. The learned Additional District Judge (Shri P.L. Sinlga), who tried the references together, on a consideration of the materials placed on record, held as follows: -

> (a) The lands in question were `land' within the meaning of Section 3(13) of the Land Reforms Act;
>
> (b) The Bhumidari Certificate/Declaration granted in favour of Smt. Gulab Sundari was valid, legal and within jurisdiction and the transfers made by her in favour of some of the other respondents are also valid;
>
> (c) The Owners/Proprietors were legally barred from challenging or disputing the Bhumidari Certificate issued in favour of Smt. Gulab Sundari;
>
> (d) Since the Proprietors were not `Khudkhast' of the land in question, their proprietary/ownership rights stood abolished under the Land Reforms Act;
>
> (e) That the Bhumidari Certificate issued in favour of Smt. Gulab Sundari stood immune from challenge in view of Section 4 of the Delhi Land Reforms (Amendment) Act I of 1996, which Act having also been placed in the Ninth Schedule to the

Constitution of India;

(f) The rights and claims made by the Proprietors were also barred by limitation;

(g) The lands were not `waste land' and, therefore, did not vest in them as claimed by the Union of India and the Gaon Sabha and, therefore, they have no rights or interest in the lands in question;

and

(h) The claims of Union of India and Gaon Sabha are also barred by res judicata. Consequently, the compensation was awarded to the Bhumidar and the transferees from Bhumidar, to the exclusion of the Proprietors, Gaon Sabha and the Union of India.

Thereupon, about 63 Proprietors joined together and filed RFA No. 309 of 1980 (arising out of the reference made in respect of Award No.2040) and RFA No.310 of 1980 (arising out of reference in respect of Award No.2225) before the Delhi High Court. Another set of 10 Proprietors seem to have filed RFA No.356 of 1980 (in respect of claims arising out of Award No.2040) and RFA No.357 of 1980 (in respect of claims arising out of Award No.2225) before the Delhi High Court. The Gaon Sabha and Union of India seem to have filed RFA No.340 of 1980 and RFA No.341 of 1980, likewise. It is stated that about 37 Proprietors, who filed claims before the Reference Court, did not pursue their claims by filing any appeals before the High Court and these persons were not parties to the proceedings before the High Court in any other capacity also.

It appears that during the pendency of these appeals, about 5 appellants in RFA No.309 of 1980 and RFA No.310 of 1980 died on different dates and there was no attempt to take any steps within time for bringing on record the legal representatives of those five deceased appellants either at the instance of the remaining appellants or the legal heirs of the deceased appellants. On 8.12.1986, the respondents herein seem to have filed applications in RFA Nos.309 of 1980 and 310 of 1980 seeking for the dismissal of those appeals, as having been abated due to failure in bringing on record the legal representatives of the five deceased appellants and also further seeking for the dismissal of RFA Nos.356 of 1980 and 357 of 1980 on the ground that they are not properly constituted and incompetent for the reason that the connected appeals RFA Nos.309 and 310 of 1980 having abated, the other appeals involving common questions of fact and law cannot be proceeded with, resulting into any conflicting, inconsistent or contradictory decrees. At that stage, on or about 2.3.1987 applications seem to have been filed by the heirs of the deceased parties themselves for bringing them on record as the legal representatives of the deceased appellants.

The three sets of appeals, numbering about six in all, were taken up for final hearing, as also those applications along with the appeals. The applications for condonation of the delay in seeking to set aside the abatement were rejected, and it is claimed that even the counsel for the appellants conceded that there was no sufficient cause for the same. The plea on behalf of the appellants before the High Court that the appeals merely partially abated qua the deceased appellants only and not in toto did not meet acceptance with the Court. On the view that in such circumstances the appeals

were incompetent and not validly constituted the entirety of the appeals RFA Nos.309 and 310 of 1980 were held to abate in toto and rejected the same. Since common and same questions were raised in the other appeals, RFA Nos.356 and 357 of 1980 were also dismissed, likewise. The appeals filed by the Gaon Sabha and Union of India were dismissed on the ground that they were barred by res judicata. Hence, the above appeals.

One of the respondents by name Bhim Singh had died on 8.10.1988, even when the appeals were pending before the High Court. One Ahsan Ullah another respondent/co-bhumidar was also said to have died even during the pendency of the Reference proceedings. Smt. Gulab Sundari, one of the respondents, died on 12.5.1995; another respondent-K.K. Kochar died on 12.10.1992 and one Mohanlal also died during the pendency of these proceedings. As noticed supra, applications for bringing on their legal representatives and connected applications were already allowed.

A brief reference to the history of the lands and the role of the parties concerned with them would be necessary to highlight the nature of the claims and the need for an effective and objective consideration and determination of the same on merits, in accordance with law. The lands in question, in which the various Proprietors in the village held distinct, separate and independent shares, were leased out on 15.11.1939 by the Proprietors under a Registered Lease Deed in favour of Delhi Pottery Works for a period of twenty years for exploiting minerals. The lands were said to be otherwise not fit or capable of any cultivation. The said lessees seem to have sublet the same on 23.5.1942 in favour of a partnership firm of Kota in Rajasthan, known as "Dewan Bahadur Seth Kesari Singh Budh Singh", for the remaining period of seventeen years from 18.4.1942 to 17.4.1959. On 10.5.1951, one Smt. Gulab Sundari claimed to have been inducted as the third partner in the sub-lessee firm and thereafter on 17.10.1951, an alleged dissolution of the partnership was said to have taken place as evidenced by a supplementary deed of dissolution said to have been executed on 27.8.1953 (unregistered) allotting the rights of the partnership firm under the Mining sub-lease dated 23.5.1942, to Smt. Gulab Sundari. Claiming to have secured a Bhumidari Certificate under the Land Reforms Act, she seems to have filed a Civil Suit No.174 of 1959 seeking for cancellation of the proceedings vesting the lands in the Gaon Sabha, on the basis that she continued to be Bhumidar. The said suit seems to have been decreed on 12.12.1966 and the appeals preferred by the Gaon Sabha and the Union of India were also said to have been dismissed, though the question as to whether the proceedings in which she claimed to have been accorded Bhumidar rights is illegal or legal was actually left open undecided and as irrelevant for the said litigation. Taking advantage of the above alone, the said Gulab Sundari seems to have got impleaded as a claimant in the proceedings before the Reference Court, for apportionment of the compensation awarded, among herself and her alienees. She also seems to have initially questioned the alienations made by her as being vitiated due to undue influence and fraud alleged to have been practised on her. But, subsequently on 27.7.1969, such alienees and Mrs. Gulab Sundari appear to have entered into a compromise and the same was also said to have been filed before the Reference Court on 31.7.1969, resulting in those persons also making their claims before the Court. On 17.10.1969, Gulab Sundari seems to have filed a fresh claim statement claiming 3/16th share of the compensation leaving the remaining 13/16th share in favour of those sixteen persons.

It may be stated that the Additional District Judge, Delhi, decided the references on 20.5.1980 and the appeals before the High Court were filed against the said decision. During the pendency of the appeals before the High Court, the following appellants in RFA Nos.309 and 310 of 1980 were said to have died, as noticed below: -

S.No. Name of the appellant & rank date of death

1. Shri Mukhtiar Singh (A. No.19) 24.06.1982

2. Shri Chandgi Ram (A. No.31) 01.04.1981

3. Shri Amichand (A. No.55) 21.02.1984

4. Shri Chhelu (A. No.56) 28.04.1983

5. Shri Balbir (A. No.57) 14.11.1985 Applications for impleading their legal representatives were said to have been filed on 2.3.1987. These applications were rejected as belated and that no sufficient cause has been shown for condonation of the delay. The plea of partial abatement, if at all, of appeals qua only those deceased appellants was not accepted by the High Court and on the view that the decree was joint based upon common right and interest, the appeals were rejected in toto, as noticed supra.

The proceedings, since had their origin under the Land Acquisition Act, 1894, it is appropriate to notice the nature and purport of the same for a better appreciation of the nature of cause of action. After a firm decision has been taken to acquire the land by issuing a Declaration under Section 6 of the Act, the Land Acquisition Collector, empowered for the purpose, proceed to conduct an enquiry to pass an Award as to (i) the true area of the land covered by the Award; (ii) the total compensation to be allowed for the land and (iii) the apportionment of that compensation among all the persons interested in the land, whether they have appeared before him or not. This Award, in law, is considered to be a mere offer made by the Government to the claimants whose property is acquired. If the same is accepted without protest, the right to compensation will not survive any longer, but if it is not accepted or accepted under protest and a reference is sought under Section 18, the right to receive compensation survive and kept live for being prosecuted before the Civil Court, to which a reference will be made, when sought in terms of Section 18. Against the Award that may be passed by the Reference Court, the parties thereto can pursue their remedies for determination of a proper amount of compensation before the High Court and this Court, as well. So much, about the determination of the compensation. Where several persons are interested in the compensation and if such persons agree in the apportionment of the compensation, the apportionment will be specified in the Award itself by the Land Acquisition Collector and the same shall be conclusive evidence of the correctness of the apportionment. But, when the amount of compensation has been settled under Section 11, if any dispute arise as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, Section 30 envisages the Collector to refer such dispute to the decision of the Court. Section 31 stipulates that on making an Award under

Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the Award, unless prevented by one or the other of the contingencies envisaged therein, viz., if they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector is obligated to deposit the amount of the compensation in the Court to which a reference under Section 18 would normally be submitted. Thus, before further proceeding to take possession, if not already taken as envisaged under Section 17, the Collector has to pay or deposit the amount awarded, in the manner noticed above, and the parties then will be at liberty to litigate in the ordinary way to determine what their rights and title to the property and the compensation may be.

Therefore, it becomes necessary for the Reference Court dealing with a reference made to it under Sections 30 and 31(2) and the Appellate Court dealing with appeals arising out of such decision rendered by the Reference Court, to decide as to who among the claimants, or whether anyone of them at all are entitled to receive the compensation or any portion of it and if so, in what proportion or that any other than those already before the Court is entitled to the same. So far as the cases on hand are concerned, having regard to the ramification of the Land Reforms Act on the legality, propriety and the tenability of the various claims, it becomes obligatory to consider each of such claims distinctly. The rejection of any one cannot by itself be a justification for sustaining the claim of the other and if none of the private claimants are found to be legally entitled to the same, the Government or for that matter the Local Authority concerned may even be the residual beneficiary, entitled to it. The consideration, therefore, cannot be confined to the claimants before Court but the Court is obliged to find out who really would be entitled to the same, whether a party before it or not. The Reference Court does not seem to have been alive to its onerous responsibilities in these cases and the High Court having rejected the appeals as having abated had no occasion to advert to the question as to whether the adjudication by the Reference Court was in keeping with the requirements of its obligations and the ultimate decision was in conformity with law. This aspect is noticed only to highlight the serious nature of the various issues involved but omitted to be properly and effectively decided and not to express any opinion on any such claims or questions.

Dr. K.S. Sidhu, learned senior counsel appearing for some of the appellants, vehemently contended that the High Court ought not to have dismissed the appeals in toto merely because about five of the appellants died and the belated attempt to bring on record their legal representatives did not fructify and even in the absence of those legal representatives the claims of the other 58 surviving appellants in RFA Nos. 309 and 310 of 1980 ought to have been dealt with and disposed of in accordance with law on merits, since each one of them were seeking relief on the basis of his own independent cause of action, grievance, right to claim relief arising out of his distinct and specified share in the lands acquired under the Act, as recorded in the Jamabandi. Reliance has been placed upon the decision of this court reported in Harihar Prasad Singh & others vs. Balmiki Prasad Singh & others [1975(2) SCR 932], and the decisions on which the respondents sought to place strong reliance were sought to be distinguished on the basis of the nature of claims involved in those cases. Argued the learned counsel further that merely because the Reference Court before whom separate claims, individually were made in respect of their own distinct and independent shares, has chosen to combine and consolidate all such claims for consideration in common does not have the effect of rendering the

decree passed therein to be "one and indivisible" and that therefore grave injustice has been meted out to the appellants in dismissing the appeals in entirety without adjudicating on the merits of the respective claims due to the abatement caused in respect of the five appellants who died and whose legal representatives could not be brought on record, in time. For the same reasons, according to the learned counsel, the death of some of the parties to the proceedings during the pendency of the appeals in this court would not attract the application of the principle justifying dismissal of the appeals in toto even in respect of others.

Sarvashri P.P. Juneja and Saharya while adopting generally the submissions of the senior counsel on behalf of the other appellants, also contended that the provisions of Order 22 strike a discordant note with the specific mandate contained in Section 11(1)(iii) and Section 30/31 of the Land Acquisition Act, 1894 which obligates an adjudication on the right as well as the proportion in which the compensation is to be awarded according to his share or entitlement to a person interested, whether or not such person appeared before the authority concerned, and therefore, the rejection of the appeals and that too in toto, cannot be justified in law. All the learned counsel, appearing for all the appellants have highlighted the merits of the case and the necessity to determine the claims on merits in the teeth of the alleged nebulous and insufficient basis of the claim of the so called Bhumidar and her transferees, particularly when according to the appellants there was no effective adjudication of the same and more so when in the earlier proceedings such an issue was specifically left open. We do not propose to advert to them in greater details, in as much as the High Court has not gone into them and, if at all, the judgment of the High Court calls for interference, the matters have to be relegated back to the High Court for deciding the same on merits.

Sarvashri K. Parasaran, Senior Advocate, supported and supplemented by T.R. Andhyarujina, K. Ramamoorthy, L.R. Gupta, were heard on behalf of the respondents, claiming the entire compensation as Bhumidar's. While justifying the conclusions arrived at by the High Court, it was strenuously contended that the disputes centred around one lump sum of compensation to be shared and divided among the sharers, in respect of an undivided and common land, that the competing claims were at the instance of one class on the basis that they are Proprietors and the other on the basis that they are entitled to Bhumidari rights and consequently, having regard to the unity of possession of the land and the fact that the litigation is on the same nature of title, the decree passed would be a joint and indivisible one, either way and to which the principle laid down in The State of Punjab vs. Nathu Ram (1962 (2) SCR 636), subsequently followed and applied in several other cases, squarely applied and no exception could be taken to the judgment rendered by the High Court. It was also urged that once the provisions of the Code of Civil Procedure 1908, applied the other things inevitably followed and the doctrine of representation also did not apply to the case on hand. Even dehors the question of abatement under Order 22 Rules 3 & 9, the appeals, according to the respondents, were rightly rejected as not duly and properly constituted, failing which there was every possibility of any such decision on merits resulting in contradictory decrees in the same cause or subject matter.

On behalf of the respondents, it was also pointed out that the serious lapses and absence of sufficient cause, as conceded by the counsel for the appellants before the High Court itself, for the delay in bringing on record the legal representatives of the deceased 5 appellants of the same village,

despite the knowledge of their death, justified their rejection and no challenge could be made of it, at this stage. It was also urged that even these appeals before this Court also have abated on account of the death of Smt. Gulab Sundari (R-27), Shri K.K. Kochar (R-12) and Bhim Singh (R-23), since the applications to bring on record their legal representatives were dismissed as "not having been pressed" by the order dated 22.11.2001 passed by the Constitution Bench. The applications now moved for revival of those applications are said to be of no merit and that the bar under Order 23 Rule 1(4) and Order 22 Rule 9(1) CPC read with Section 141 CPC was also attracted besides the bar of limitation. Reliance has been placed in this regard on the decisions reported in Saguja Transport Service vs. State Transport Appellate Tribunal, M.P. Gwarlior & Ors. [1987(1) SCC 5] and Renen Roy vs. Prakash Mitra [1998(9) SCC 689].

Strong reliance has also been placed on the decision of the Constitution Bench of this Court reported in Ram Sarup vs. Munshi & Ors. [1964(3) SCR 858], in support of the stand that where a decree is a joint one and a part of the decree has become final by reason of abatement the entire appeal must be held to be abated. The further plea on behalf of the respondents was the impleadment of the legal representatives in the other batch of appeals cannot be of any assistance to deem their impleadment in the cases where no steps have been taken or where steps have been attempted but not resulted in any actual order to so implead them and that the appellants cannot approbate and reprobate to take different or opposite stands. The abatement being automatic takes effect ipso facto and no separate order was required therefor, according to the respondents. The orders passed in I.A. No.29-30/1988 on 22.3.1999, deleting respondent Nos.5 to 7, 18, 22 (vii) and 26 were said to render these appeals defective on account of non-joinder/absence of the necessary parties. The non-filing of appeals by 37 Proprietors out of 110, or non-joinder of those parties to the proceedings, was also claimed to render the appeals by only the others, incompetent and not properly or validly constituted and reliance was also sought to be placed in this regard on the decision reported in Kanakrathanammal vs. V.S. Loganctha Muddier & another [1964(6) SCR 1] and Jahar Roy (dead through LRs) & another vs. Premji Bhimji Mansata & another [1978(1) SCR 770] and for that very reason these appeals are also said to be incompetent and liable to be dismissed.

A reference to the case law on which strong reliance was placed by either side becomes essential, before adverting to the relevance and applicability or otherwise of the principles laid down therein to the points arising for consideration in these appeals. The earliest of the series, which came to be noticed, followed and distinguished in several subsequent decisions is the one in Nathu Ram's case (supra). The relevant facts necessary to appreciate the principle laid down therein are, that the Punjab Government acquired on lease certain parcels of land belonging to Labhu Ram and Nathu Ram for military purposes under the Defence of India Act, 1939. The brothers refused to accept the compensation offered and applied for reference to an Arbitrator who passed an award ordering the payment of an amount higher than what was offered by the collector and further directed the payment of certain amount on account of Income Tax which would be paid on the compensation received. An appeal was filed by the State Government before the High Court and during the pendency of the appeal, Labhu Ram, one of the respondents, died. The High Court, while holding the appeal to have abated as against Labhu Ram, further held its effect to be the dismissal of the appeal against Nathu Ram also. The cross-objections also were dismissed. On a certificate being granted, the matter came up on appeal before this Court. This court while adverting to order 22

Rule 4, CPC, observed that the code does not provide for the abatement of the appeal against the other respondents, though courts at times have held that in certain circumstances, the appeals against the co-respondents would also abate, as a result of the abatement of the appeal against the deceased respondent. Indicating that it would be incorrect to state that the appeal abated in such circumstances, this court observed that the appeal in certain circumstances even against the respondent other than the deceased, would be rendered not possible to be proceeded with further and therefore the court would refuse to deal with the appeal further and dismiss it. This Court, proceeding further observed as follows:

> "The question whether a Court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the Court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed.
>
> There has been no divergence between the courts about the court's proceeding with the appeal between the respondents other than the deceased respondent, when the decree in appeal was not a joint decree in favour of all the respondents. The abatement of the appeal against the deceased respondent, in such a case, would make the decree in his favour alone final, and this can, in no circumstances, have a repercussion, on the decision of the controversy between the appellant and the other decree-holders or on the execution of the ultimate decree between them. (Emphasis supplied) The difficulty arises always when there is a joint decree. Here again, the consensus of opinion is that if the decree is joint and indivisible, the appeal against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the deceased respondent. Different views exist in the case of joint decrees in favour of respondents whose rights in the subject matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will have the result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate court. We do not consider this view correct. The specification of shares or of interest of the deceased

> respondent does not affect the nature of the decree and the capacity of the joint decree holder to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decreed in his favour. The abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also, as a necessary corollary, that the appellate Court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondents, the appellate court cannot determine anything between the appellant and the legal representatives, which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the court will do is one to which exception can or cannot be taken."

This Court, noticed the peculiar facts in that case to come to the conclusion that the decree was joint in nature, in favour of both brothers and that in the absence of one of the joint decree-holders due to his death and omission to bring on record the legal representatives, the State cannot get rid of the joint decree and therefore the State appeal against Nathu Ram alone cannot be proceeded with. The salient features noticed therein which weighed with this Court are that the lease of the land was joint, the claim was joint, based on the allegation that the land belonged to them jointly, that the award and joint decree was on that basis and since a claim put forward by the State before the Arbitrator itself that the joint application should be treated as separate applications and separate awards should be passed relating to their respective shares was rejected by the Arbitrator who in his discretion decided and passed a joint Award and the frame of the appeal, with particular reference to the nature of the decree challenged. In rejecting the plea of the State that the legal representative of Labhu Ram would be entitled to be paid separately the share of Labhu Ram only, this Court held that such calculations were foreign to the appeal which only concerned with the correct amount of compensation payable with respect to the land taken over, as awarded by the Arbitrator-the exercise being one and the same, and that there cannot be different assessments of the amount of compensation for the same parcel of land and, therefore, the said question cannot be decided merely on the basis of separate shares.

It is not necessary to consider individually all the decisions rendered by Benches of two and three learned judges, brought to our notice, wherein uniformly this Court has held (a) In case of "Joint and indivisible decree", "Joint and inseverable or inseparable decree", the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal and require to be dismissed in toto, as otherwise inconsistent or contradictory decrees would result and proper reliefs could not be granted, conflicting with the one which had already become final with respect to the same subject matter vis--vis the others; (b) the question as to whether the Court can deal with an appeal after it abates against one or the other would depend upon the facts of each case and no exhaustive statement or analysis could be made about all such circumstances wherein it would or would not be possible to proceed with the appeal, despite abatement, partially; (c) existence of a joint right as distinguished from tenancy in common alone is not the criteria but the joint character of the decree, dehors the relationship of the parties inter se and the frame of the appeal, will take colour from the nature of the decree challenged; (d) where the dispute between two

groups of parties centred around claims or based on grounds common relating to the respective groups litigating as distinct groups or bodies the issue involved for consideration in such class of cases would be one and indivisible; and (e) when the issues involved in more than one appeals dealt with as group or batch of appeals, which are common and identical in all such cases, abatement of one or the other of the connected appeals due to the death of one or more of the parties and failure to bring on record the legal representatives of the deceased parties, would result in the abatement of all appeals.

Strong reliance has been placed for the respondents on the decision of a Constitution Bench of this Court reported in Ram Swarup vs. Munshi & Ors. [1963(3) SCR 858]. That was a case wherein the owner of certain agricultural lands in Punjab sold the same to one of the respondents on 12.12.1957 and the son of the vendor claiming to be entitled to a right of pre-emption instituted a suit against the purchaser relying upon Section 15(a) of the Punjab Pre-emption Act, 1913. The suit came to be decreed by the trial court and affirmed by the First Appellate Court as well as the High Court. The matter was pursued on appeal before this Court by the appellants who were five in number falling in two groups, the 1st and 2nd appellants, who are brothers, and appellants Nos. 3, 4 & 5, the other. During the pendency of the said appeal the 1st appellant died on 18.5.1960 leaving a widow, four daughters and a son, as his heirs. No application was made to bring on record those legal representatives but the appellant preferred to proceed with the appeal on behalf of the remaining four appellants. The respondents raised a plea to dismiss the appeal, in entirety, as incompetent without the legal representatives of the 1st appellant on record. This was met by the counsel for the appellants, contending that since the interest of the deceased was distinct and separate from that of the others whatever might be the position as to the share of the deceased and partial abatement due to his death, the same would not affect the continuance of the appeal by the surviving appellants as regards their share in the property. In rejecting the plea on behalf of the surviving appellants, this Court held as hereunder:

> "An English translation of the deed of sale has now been produced before us and a perusal of it indicates that the submission made on behalf of the appellants is not sustainable. The consideration for the sale is a sum of Rs.22,750/- and the conveyance recites that Mehar Singh and the second appellant had paid one half amounting to Rs.11,375/- while the other three appellants had paid the other half. It is therefore not a case of a sale of any separated item of property in favour of the deceased-appellant but of one entire set of properties to be enjoyed by two sets of vendees in equal shares. It is clear law that there can be no partial pre-emption because pre-emption is the substitution of the pre-emptor in place of the vendee and if the decree in favour of the pre-emptor in respect of the share of the deceased Mehar Singh has become final it is manifest that there would be two conflicting decrees if the appeal should be allowed and a decree for pre-emption insofar as appellants 2 to 5 are concerned is interfered with. Where a decree is a joint one and a part of the decree has become final by reason of abatement, the entire appeal must be held to be abated. It is not necessary to cite authority for so obvious a position but we might refer to the decision of this court in Jhanda Singh v.

Gurmukh Singh (deceased)1. The result is that the appeal fails as having abated and is dismissed with costs." (Emphasis supplied) The right sought to be asserted in this case was considered to be single and joint, though on behalf of more than one. The appellants relied heavily upon the decision reported in Harihar Prasad Singh & Others vs. Balmiki Prasad Singh and Others [1975(2) SCR 932] rendered by a Bench of three learned Judges. The suit therein came to be filed by the plaintiffs claiming to succeed to the estate of one R, a Bhumihar Brahmin on the basis of a special custom of the family to which the parties belonged, though under the ordinary Hindu Law they would not be entitled to succeed to the estate of R being related to him in distant degree. The custom was sought to be substantiated by proving 52 instances of its observance. The trial court decreed the suit holding the custom to be in force on the proof of 49 such instances. The defendants filed three appeals getting themselves divided into three groups. One of the respondents in one of the three appeals, who was not arrayed as a respondent in the other appeals, died and his legal representatives were not brought on record. The High Court differed and reversed the decree on the view that none of the instances claimed were proved. The matter was taken before this Court on appeal by filing three appeals. The objection taken on behalf of the respondents was that the High Court should have dismissed the appeal on account of the fact that though when plaintiff No.29 died in 1953 his wife and son were substituted in his place on 12.8.53, when the said widow died on 1.11.67, leaving behind a son (already a party) and a daughter, the counsel sought for striking of the name of the deceased since her son was already on record and there was no need to bring any other legal representatives and the appeal can be proceeded with on that basis without impleading the daughter. When the respondents made an application stating that the appeal abated in the absence of all legal representatives of the deceased, an application came to be filed to implead the daughter also, but the same was rejected as belated and that the effect of the said order will be considered at the time of final hearing of the appeals. Finally, the other appeals were held not to abate merely because the Trial Court decree was one. This Court, while dealing with such a situation, held as follows:

"The important point to note about this litigation is that each of the reversioners is entitled to his own specific share. He could have sued for his own share and got a decree for his share. That is why five title suits Nos.53 and 61 of 1934 and 20, 29 and 41 of 1935 were filed in respect of the same estate. In the present case also the suit in the first instance was filed by the 1st and 2nd plaintiffs for their 1/12th share. Thereafter many of the other reversioners who were originally added as defendants were transposed as plaintiffs. Though the decree of the Trial Court was one, three appeals Nos.326, 332 and 333 of 1948 were filed by three sets of parties. Therefore, if one of the plaintiffs dies and his legal representatives are not brought on record the suit or the appeal might abate as far as he is concerned but not as regards the other plaintiffs or the appellants. Furthermore, the principle that applies to this case is whether the estate of the deceased appellant or respondent is represented. This is not a case where no legal representative of Manmohini was on record.

...

> As we have already pointed out, in this case each one of the plaintiffs could have filed a suit for his share of Ramdhan Singh's estate. The fact that all the reversioners joined together as plaintiffs and filed one suit does not mean that if for one reason or other the suit of one of them fails or abates the suit of the others fails or abates. The decree is in substance the combination of several decrees in favour of several plaintiffs. If in an appeal against the decree one of the plaintiffs is not added as a respondent, it only means that the decree in his favour cannot be set aside or modified even if the appeal succeeds against other plaintiffs in respect of their interest. There would in that case be no conflict between the decrees as the decree is a combination of many decrees. In other words the result of the failure to add Nirsu Prasad Singh as a respondent in F.A. 332 and F.A. 333 would be that the decree granted in his favour by the Subordinate Judge would stand but not the decrees granted in favour of the other plaintiffs. They can be reversed in those appeals. There was no such difficulty in F.A. 326 and in that appeal the decree granted in favour of Nirshu Prasad Prasad Singh as well as in favour of other plaintiffs could have been reversed. This is not a case where a party who is aggrieved by a decree fails to file an appeal within the time allowed by law and should not, therefore, be granted relief under O.41, R.33."

(Emphasis supplied) In Indian Oxygen Ltd. Vs. Ram Adhar Singh & Others : C.A. No.1444/1966 dated 24.9.1968, a Bench of three learned Judges of this Court had also an occasion to deal with the relevant principles relating to abatement of proceedings. That was a case wherein five workmen employed as watch and ward staff of the appellant-company raised a dispute that though they were entitled to be provided with the staff quarters located inside the factory premises, since the company imposed an unreasonable condition that the quarters would be only for the personal use of the workers and that even their families would not be permitted to reside with them therein, the company is liable to pay Rs.15/- per month towards quarter allowance, inasmuch as none of them could live in the quarters. The matter was referred to the Industrial Tribunal and the claim was allowed by the Tribunal with a direction to pay Rs.10/- per month as quarter allowance. Aggrieved, an appeal was filed before this Court by obtaining special leave. Pending appeal in this Court, the 1st respondent died but the company failed to bring his heirs and legal representatives on record and, therefore, the appeal abated against the 1st respondent. The respondents contended that the appeal having abated as against the deceased 1st respondent, the appeal against the other surviving respondents must also be held to have abated, and dismissed as such. Reliance was placed in support of the said claim on the decision in Nathu Ram's case (supra) and Krishan Singh & Others Vs. Nidhan Singh & Others : CA No.563 of 1962 dated 14.12.64. While rejecting the said claim, it was observed as hereunder:

> "Though it may, with some stretch of language, be contended that the alleged right under which allowance was claimed was a right common to the workmen engaged in Watch & Ward department, the statement of claim filed on behalf of the five workmen itself claimed allowance as from the date of appointment of each of them

> which would not necessarily be the same. The claim also was for a separate allowance for each of them and not for an amount jointly claimed by them all. It would seem that in the light of such a separate claim for each of the five workmen the dispute referred to the Tribunal was worded as follows:
>
> "Should the employers be required to pay House Allowance to the workmen, named in the Annexure? If so, from which date and with what other details?"

The words "from which date and with what other details" were used because the date from which allowance was claimed and would be payable, if the award went against the company, would be the respective date of appointment of each of them. The claimants were the five workmen named in the annexure to the reference i.e. the workmen then employed in the Watch & Ward department and not those who in future would be appointed by the company. It is thus clear that the claim was a separate one by each of the five workmen and not a joint claim in respect of a joint right. The award of the Tribunal also is not for one amount jointly claimed or jointly payable. The operative part of the award is in the following words:

> "I, therefore, award that a sum of Rs.10/- per mensem shall be allowed by way of House Rent Allowance to the members of Watch and Ward where the worker is not supplied a residential quarter to stay in it along with his family."

The appeal filed by the company is thus not against an award which was joint and indivisible as in the two decisions relied on by counsel, but was one in favour of each of the five workmen named in the annexure to the Reference. The allowance payable by the company under the award was not to all of them but to the workmen to whom the company refused to provide with one of the said four quarters with permission to live with his family. No allowance, therefore, would be payable under the award to the workmen to whom the company gave the quarters with permission to live with their families. It may be that the workmen, Ram Adhar Singh, having died pending this appeal and his legal representatives not having been brought on record, the appeal against him would abate and the award to the extent of the allowance payable to him would become final, and, therefore, even if the company were to succeed in this appeal, the amount paid by the company to him or to legal representatives after his death cannot be claimed back by the company. But so far as the other respondents are concerned, the award being for a distinct amount payable to each of them, there is, in our view, no question of abatement of the appeal against them on the ground that the appeal against the said Ram Adhar Singh has abated. This is not, therefore, one of those cases where by reason of the decree being a joint and indivisible decree, the Court would have to pass inconsistent orders under the same decree, one in favour of the deceased respondent and the other against the surviving respondents. The contention of Mr. Goyal, therefore, must be rejected." (Emphasis supplied) We have carefully considered the submissions of the learned counsel on either side. The consideration by the High Court seems to be too superficial on the basis of certain abstract principles without particular reference to the nature and character of the proceedings, the nature of claims and rights of parties, the statutory obligations cast on the courts dealing with a reference under Section 30/31originating from an Award under Section 11 of the Act and the source as well as origin of rights of the claimants. The Land Acquisition Collector empowered under the Act to pass

the Award was not only obliged to, among other things, determine the total compensation to be allowed for the land but also apportion the said compensation among all the persons interested in the land depending upon their respective interests proportionately, whether they have appeared or not before him. If any dispute arises as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the Land Acquisition Collector is obliged to refer such dispute to the decision of the Court. If the amount could not be disbursed at his level due to any one or the other reasons set out in Section 31, the amount has to be deposited in the Court to which normally a reference would be submitted. The claim of each one was in respect of his distinct, definite and separate share and their respective rights are not inter-dependant but independent. Among themselves there is no conflicting or overlapping interest and the grant of relief to one has no adverse impact on the other(s). The mere fact that there was no division by metes and bounds on state of ground is no reason to treat it to be a joint right-indivisible in nature to be asserted or vindicated only by all of them joining together in the same proceedings, in one capacity or the other. As a matter of fact separate claims seem to have been filed by them before the Reference Court in respect of their own respective share. Even if they have engaged a common counsel or even if they have filed one claim in respect of their specified separate share, it could not have the effect of altering the nature of their claim or the character of their right so as to make it an indivisible joint right. Though the Reference Court has decided all such claims together, having regard to the similarity or identical nature of issues arising for consideration of the claims, in substance and reality the proceedings must be considered in law to be of multifarious claims disposed of in a consolidated manner resulting in as many number of Awards of the Reference Court as there were claimants before it. There was no community of interest between them and that each one of them in vindicating their individual rights was not obliged to implead the other claimants of their shares in one common action/proceeding and the orders/judgment though passed in a consolidated manner, in law, amounts to as many orders or judgments as there were claimants and, by no reason, it can be branded to be a joint and inseverable one. Similarity of the claims cannot be a justification in law to treat them as a single and indivisible claim, for any or all purposes and such a thing cannot be legitimately done without sacrificing the substance to the form. The claim on behalf of the respondents that the compensation awarded is of a lump sum, though shares are divided, is belied by the scheme underlying Sections 11, 18, 30 and 31 of the Act, and cannot be countenanced as of any merit. Against the Award of the Reference Court in this case, it was possible and permissible in law for everyone of the appellants to file an appeal of his own separately in respect of his share without any need or obligation to implead every other of the claimants like him, as party respondent or as co-appellant, because there is no conflicting interest or claims amongst them, inter se. As such, the alleged and apprehended fear about possible inconsistent or conflicting decrees resulting therefrom if the appeals are proceeded with and disposed of on merits has no basis in law nor well founded on the facts and circumstances of these cases. Even if the appellants succeed on merits, dehors the fate of the deceased appellants, the decree passed cannot either said to become ineffective or rendered incapable of successful execution. To surmise even then a contradictory decree coming into existence, is neither logic nor reason or acceptable by Courts of Law. Otherwise, it would amount to applying the principle of vicarious liability to penalize someone for no fault of his and denial of ones own right for the mere default or refusal of the other(s) to join or contest likewise before the Court. The fact that at a given point of time all of them joined in one proceedings because one Court in the hierarchy has chosen to club or combine all their individual

and separate claims for purpose of consideration on account of the similarity of the nature of their claims or that for the sake of convenience they joined together for asserting their respective, distinct and independent claims or rights is no ground to destroy their individual right to seek remedies in respect of their respective claims. In cases of the nature, there is every possibility of one or the other among them subsequently reconciling themselves to their fate and settle with their opponents or become averse to pursue the legal battle forever so many reasons, as in the case on hand due to disinterestedness, indifference or lethargy and, therefore, the attitude, approach and resolve of one or the other should not become a disabling or disqualifying factor for others to vindicate their own individual rights without getting eclipsed or marred by the action or inaction of the others. Consequently, the fact that about 37 out of the total number of interested persons, like the appellants, were not parties before the High Court or this Court, does not, in any manner, affect or deprive the appellants to have their claims, duly and properly considered and adjudicated in accordance with law, on merits.

Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain in tact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and brining on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not inter-dependant upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well.

The principles laid down or the ratio of the decision in Ram Sarup's case (supra) will not apply to the case on hand. As indicated earlier, the real decision in a given case would ultimately depend very much on the facts of that particular case, the nature of the right sought to be asserted and relief sought. The suit was filed in that case by some four persons asserting a right of pre-emption claiming that they are the nearest collaterals of the Vendor and heirs according to rule of succession. The sale was found to be of one entire set of properties to be enjoyed by two sets of Vendees in equal shares. Since the position of law was held to be clear that there can be no partial pre-emption and that pre-emption is the substitution of the pre-emptor in place of the Vendee, the Court felt that two conflicting decrees were bound to result, if the appeal has to be allowed in favour of the other remaining appellants, in the teeth of the abatement of the appeal as against the deceased appellants and the decree in respect of him having become final. It is for this reason that the decree in that case was held to be a joint one and, therefore, when a part of it has become final by reason of abatement, the entire appeal was held to have abated, relying upon the decision in Jhanda Singh Vs. Gurmukh Singh & Ors. (supra). The Constitution Bench, which rendered the decision in Ram Sarup's case (supra), was neither concerned with any reconciliation of conflicting views on the point nor declare the correct position of law on this aspect, for the simple reason that the matter was before the Constitution Bench only on the question of constitutional validity of Section 15 of the Punjab Pre-emption Act, 1913, and that the appeal (C.A.No.214/1961) was dismissed as having abated in view of the earlier unreported decision dated 10.4.2002 in C.A. No.344/1956 (Jhanda Singh's case) rendered by a Bench of three learned Judges, without any further reference either to the other decisions striking a different note or undertaking any exercise, of the nature now before us in the light of a specific reference made therefor.

This Court in Jhanda Singh's case (supra) was dealing with a matter wherein one of the two sons of one Ramditta, by name Gurdas, was taken in adoption by one Mihan, the paternal uncle of his father. The other son Labhu died possessed of agricultural land of an extent of 56 kanals and 6 marlas, leaving behind his widow, who also died in 1945. The two grandsons of another paternal uncle of Ramditta (Jiwa and Gurmukh Singh) filed a suit against Gurdas before the Sub-Court for a declaration that they were in proprietary possession of an half share in the said land and in the alternative for possession of the same stating that since Gurdas was adopted by Mihan, he ceased to have any interest in the properties of his brother Labhu, in the capacity as brother, and, therefore, the plaintiffs also are entitled to an half share with Gurdas. Gurdas pleaded that his adoption was only as an appointed heir under the customary law according to which he does not lose his rights to succeed in the natural family. The suit was decreed by the Trial Court and the First Appellate Court also dismissed the appeal against the same. In the appeal before the High Court, the plea on behalf of Gurdas was upheld and the suit was dismissed. But in further appeal under LPA, the Division Bench agreed with the judgments of the Courts below and reversed the decision of the Single Judge of the High Court. Then the matter was pursued before this Court. The appeal before the High Court itself was filed by the three sons of Gurdas since he died after the decision of the First Appellate Court. After the appeal was disposed of by the Division Bench in the High Court, the first plaintiff seems to have died and in the appeal before this Court the second plaintiff and three sons of deceased first plaintiff were respondents. Pending appeal, second plaintiff/respondent died and an application was made to bring to the notice of the Court that the heirs of second plaintiff are only the sons of first plaintiff and that they are already on record. It appears that there were daughters of the

first plaintiff also to be brought on record, besides sisters' sons and daughters. The application thereafter filed was dismissed by declining to condone the delay in filing it. An application for review of the said order was also dismissed for default. But, the Review Petition, though was restored, was dismissed on the ground that there was no ground for review. Another application filed for the purpose of bringing on record the legal representatives though was listed along with the appeal, the said application was also dismissed. To a preliminary objection that since the decree under challenge was a joint one in favour of the plaintiffs, the entire appeal has abated even in respect of other respondents, the appellants claimed that since the plaintiffs and the heirs were tenants in common having separate and distinct shares in the property, there is no impediment for the appeal being proceeded with against others. Since as a result of the dismissal of the applications, the appeal abated against the 2nd plaintiff/respondent, the impact of the same on the rest of the appeal came up for consideration by this Court.

The decision in Jhanda Singh's case (supra), though of a Bench of three learned Judges, dealt with the question in the light of the decision in Nathu Ram's case (supra) and applied the ratio therein to the said case and in the process observed that "a perusal of the judgment does not disclose that the decision was based upon the existence of a joint right as distinguished from tenancy in common. The emphasis was more on the joint decree passed than on the relationship of the respondents inter se" and ultimately came to the conclusion that "Indeed, this Court definitely held that even specification of shares does not affect the nature of the decree." On that view of the matter, the Bench specifically declined to consider in detail the other line of decisions placed before them. In Nathu Ram's case (supra), the original claim as projected before the Arbitrator itself was found to be a joint one in respect of the land acquired, apparently the same being a claim for merely an enhanced compensation, unlike the present case before us where the further claim before the Land Acquisition Collector as well as the Reference Court were as to the separate and independent shares of each of their own. This is clear from the observation in Nathu Ram's case (supra) that, "Their claim was a joint claim based on the allegation that the land belonged to them jointly. The Award and the joint decree are on this basis and the Appellate Court cannot decide on the basis of the separate shares". The assumption in Jhanda Singh's case (supra) as though this Court in Nathu Ram's case, as a matter of general principle held that specification of shares does not affect the nature of the decree, cannot be considered to be the correct position emerging on a proper appreciation of the decision in Nathu Ram's case (supra). It was, at any rate, observed in this decision also that the nature and extent of abatement in a given case and the decision to be taken thereon will depend upon the facts of each case and, therefore, no exhaustive statement can be made either way and that the decision will ultimately depend upon the fact whether the decree obtained was a joint decree or a separate one. This question, in our considered view, cannot and should not also be decided merely on the format of the decree under challenge or it being one or the manner in which it was dealt with before or by the Court, which passed it. It may usefully be noticed at this stage that the decision in Harihar Prasad's case (supra) wherein the principles have been considered elaborately in the light of the overall distinguishing features from an aspect very relevant for the purpose of the cases before us, specifically adverted to the decision in Ram Swarup's case (supra) of the Constitution Bench as also the unreported decisions in Jhingan Singh's case (supra) and Kishan Singh's case (supra) and distinguished them with observations as hereunder:-

"We do not think that the decision relied upon by the appellants in Jhinghan Singh & Anr. etc. v.

Singheshwar Singh & Ors. etc. (C.A. Nos.114-122 of 1958 decided on 20.4.1965) helps the appellants. In that case Singheshwar Singh was one of the appellants in C.A. Nos.114 and 115 and respondent in the other appeals. Kaushal Kishore Prasad Singh was one of the appellants in C.A.Nos.116 and 117 and a respondent in the other appeals. Both of them died and the pending appeals abated against them. The contesting respondents took the preliminary objection that all the appeals had become defective for non-joinder of the legal representatives of Singheshwar Singh and Kaushal Kishore Prasad Singh and this objection was accepted. The decision proceeded on the basis that the plaints in the several suits raised a dispute between a body of landholders claiming Khas possession of the lands and a number of persons claiming to be occupancy tenants thereof, that in substance, the plaintiffs asked for an adjudication that the lands were bakasht and the first party defendants were not occupancy tenants and to such suits all the landholders were necessary parties. It was therefore held that as in the appeals before this Court the landholders claimed the same relief, which they sought in the trial court and in those appeals also Singheshwar Singh and Kaushal Kishore Prasad Singh, were necessary parties, in the absence of their legal representatives the appeals were not maintainable. It would be seen that the two appellants whose legal representatives were not added as parties were parties in all the four suits and in all the four appeals and the question was a common question to which all the landholders were necessary parties. As we have explained earlier that is not the position here.

The decision in Kishan Singh & Ors. v. Nidhan Singh & Ors. (C.A.No.563 of 1962 decided on 14-12- 1964) and the statement of law laid down by this Court therein in the following terms :

"Mr. Bishan Narain points out that in substance, the present suit is between the landholders on the one hand and those who claimed to be occupancy tenants on the other. It is true that the plaint alleges that the occupancy rights were extinguished on the death of the last occupancy tenant Narain Singh, but that has been denied by the appellants, and in fact, round this dispute the whole controversy centers in the present suit. There is no doubt that the allegations made in the plaint clearly show that the dispute is between the landholders and the person who claim to be occupancy tenants and so, it is plain that in such a dispute the whole interest of the landholders and the whole interest of the tenants must be adequately represented. The tenancy rights, which the appellants claim, are no doubt based on the presumption under Section 5(2) of the Tenancy Act. But the relationship in respect of which the said presumption would arise is a relationship of landlord and tenant, and this relationship in the very nature of things is one and indivisible. Therefore, when a claim is made to evict the persons who allege that they are tenants the whole of the landlord's interest must be before the Court."

was cited with approval in Jhinghan Singh & Anr. etc. v. Singheshwar Singh & Ors. etc. (supra). It does not, therefore, stand on any different footing."

(Emphasis supplied) The question, therefore, as to when a proceeding before the Court becomes or rendered impossible or possible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side has been always considered to depend upon the fact as to whether the decree obtained is a joint decree or a severable one and that in case of a joint and inseverable decree if the appeal abated against one or the other, the same cannot be proceeded with further for or against the remaining parties as well. If otherwise, the decree is a joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being proceeded with among or against those remaining parties other than the deceased. As observed in Nathu Ram's case (supra) itself, the code does not itself provide for the abatement of the appeal against the other respondents even where, as against one such it has abated but it is only the Courts which have held that in certain circumstances the appeal also would abate against a co-respondent as a result of abatement against the deceased respondent. The same would be the position of an appeal vis--vis the appellants, as in the other cases. Order 22 Rule 4 also was considered not to provide for abatement of the appeal(s) against the co-respondents of the deceased respondent and it was specifically observed therein that to say that the appeals against them also abated in certain circumstances is not a correct statement. It was held that the appeals against such other respondents cannot be proceeded against and, therefore, had to be dismissed, in certain circumstances.

But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard and fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law, inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the Courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging nature of the decree, i.e., whether it is joint and inseverable or joint and severable or separable. The fact that the Reference Court has chosen to pass a decree jointly in the matters before us is and should be no ground by itself to construe the decree to be joint and inseparable. At times, as in the cases on hand, the Court for its convenience might have combined the claims for joint consideration on account of similar nature of the issues in all such cases and for that reason the parties should not be penalized, for no fault of them. Actus cuirae neminem gravabit (an act of Court shall prejudice no one) is the maxim of law, which comes into play in such situations. Number of people, more for the sake of convenience, may be counselled to join together to ventilate, all their separate but similar nature of claims and this also should not result in the claims of all such others being rejected merely because one or the other of such claims by one or more of the parties abated on account of death and consequent omission to bring on record the legal heirs of the deceased party. At times one or the other parties on either side in a litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent

of their share or proportion of rights are concerned and may drop out of contest, bringing even the proceedings to a conclusion so far as they are concerned. If all such move is allowed to boomerang adversely on the rights of the remaining parties even to contest and have their claims adjudicated on merits, it would be a travesty of administration of justice itself.

The area of differences in the catena of decisions brought to our notice is not so much with reference to the principles to be applied to different nature of decrees but only as to which of the decree(s) falls, when or under what circumstances under one or the other of the classification, i.e., joint and inseverable or joint and severable or separable. This aspect seems to have been adjudged in different cases depending upon the nature/source of rights, the cause of action, the manner they were asserted by the parties themselves and the contradictory nature of decrees impossible of execution, likely to result when considered differently. It is for this reason any standardised formula was avoided and matter left for the consideration of Courts, on the peculiar nature of the cases coming for determination. Having regard to the peculiar facts and circumstances noticed by us that the claimants appellants have each their own distinct, separate and independent rights, the principles enumerated in Harihar Prasad's case (supra) and Indian Oxygen Ltd. case (supra) squarely apply with all force. The appeals even dehors the claims of the deceased and others who have not chosen to approach the High Court or this Court, were neither rendered incapable of consideration nor impossible of according any relief or could be held difficult to enforce the decree that may be passed, in favour of the remaining appellants without suffering the vice of inconsistency. Even if it is likely to result in two different sets of judgments of varying content, purport or reason, as long as the enforcement of the decrees passed therein are not rendered impossible due to mutual contradiction in terms of self-destructive nature, there is no justification whatsoever to assume them to be inconsistent or contradictory decrees, at all. The mere fact that in a set of similar or identical nature of cases two different nature or type of decrees was necessitated is no reason to treat them to be inconsistent or contradictory decrees, so long as both can be executed and enforced without either of them being destructive of the other. Contradictory or inconsistent decrees, consequently, could be held to have resulted only in a given case when the relief granted in one cannot be enforced/realized without denying the relief in the other or totally nullifying or setting at naught the relief granted in the other, and in no other class of cases.

Even assuming that the decree appealed against or challenged before the Higher forum is joint and several but deal with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the Courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the Court can always declare the legal position in general and restrict the ultimate relief to be granted, by confining it to those before the Court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self- destructive and unworkable vis--vis the other part, which had become final. As far as possible Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, `ubi jus ibi

remedium' (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice.

In the light of the above discussion, we hold:-

(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis--vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other.

The Award/decrees, which were the subject-matter of challenge before the High Court, in these cases, viewed in the light of the above conclusions, would not render them to be a joint and inseparable decree but in substance a mere combination of several decrees depending upon the number of claimants before the Court and, therefore, joint and several or separable vis--vis the individuals or their claims concerned. Consequently, even the abatement of the appeal in the High

Court in respect of one or other of the appellants cannot by itself result in the abatement of the appeal in its entirety or render it liable to be dismissed as not duly or properly constituted or not possible to be proceeded with. The conclusions to the contrary arrived at by the High Court and liable to be and are hereby set aside. That apart, since we have also arrived at a conclusion that the rejection of the applications by the High Court was erroneous, the orders passed by the High Court in this regard also are set aside and the legal representatives of the deceased appellants before the High Court are directed to be brought on record in the appeals before the High Court.

For all the reasons stated above, we are unable to approve the decision or the manner of disposal given by the High Court in these cases, which resulted in grave injustice to the remaining appellants in denying them of their right to have an adjudication of their claims on merits. The High Court ought to have condoned the delay as prayed for, keeping in view the pendency of the main appeals on its file, adopting a liberal and reasonable approach, which would have facilitated an effective adjudication of the rights of parties on either side, avoiding summary rejection of the appeals in entirety. The judgment and decrees passed by the High Court in all these appeals are set aside and appeals are remitted to the High Court to be restored to their original files for being disposed of afresh on merits of the claims of both parties and in accordance with law. These appeals are allowed on the above terms, with no order as to costs.

The observations, if any, made in this judgment about the respective claims of parties are merely for the sake of indicating the serious and disputed nature claims between the parties necessitating an effective adjudication on merits and not to be construed as any expression of opinion on any such claims which the High Court shall be at liberty to deal with and dispose of on their own merits, after hearing both parties, in accordance with law.