K. Kankarathnamma and Others

Vs

State of Andhra Pradesh and Others

Civil Appeal No. 325 of 1962

(K. Subha Rao, J. R. Mudholkar JJ)

23.01.1964

JUDGMENT

MUDHOLKAR J. –

This is an appeal against the judgment of the High Court of Andhra Pradesh by which it reduced the amount of compensation awarded to the appellants by the Subordinate Judge, Vijayawada in respect of certain lands belonging to them which were acquired by the State.

The lands in question are survey Nos. 281/2, 339/1 to 8 and 338/1 to 3 which are situate at a short distance from the town of Vijayawada and lie alongside the Vijayawada-Eluru Road. The Land Acquisition Officer had fixed Rs. 3,500 per acre for the first two of these survey Nos. and Rs. 4,000 per acre for the third survey number. The learned Subordinate Judge granted a uniform rata of Rs. 10,000 per acre for the lands comprised in all the survey numbers. There were some disputes with regard to the entitlement to the compensation for survey No. 339/1 to 3 and the Land Acquisition Officer, therefore, made a reference to the Court for the apportionment of the compensation amount among the various claimants. Six of the appellants did not accept the award of the Land Acquisition Officer and made applications in writing to him within the time allowed by law for referring the matter for determination of the court. It is common ground that no reference was made by the Land Acquisition Officer in pursuance of these applications. When the matter came up before the Court it proceeded on the footing that the reference made to it by the Land Acquisition Officer was not merely limited to the apportionment of compensation but was also with respect to the amount of compensation. No objection was, however, raised on behalf of the State that in the absence of any reference upon the applications of six of the appellants the Court was incompetent to deal with that matter. When the matter went up before the High Court by way of an appeal from the judgment of the Subordinate Judge, the Government pleader raised the question that in the absence of a reference on the question of quantum of compensation by the Land Acquisition Officer, the Court had no jurisdiction to consider that matter at all. The High Court, though it ultimately reversed the finding of the court as to the amount of compensation, unfortunately allowed the plea to be raised before it but ultimately upon a consideration of certain decisions, negatived it. We say unfortunately because this is not a kind of plea which the State ought at all to have taken. Quite clearly applications objecting to the rates at which compensation was allowed were taken in time by persons interested in the lands which were under acquisition and it was no fault of theirs that a reference was not made by the Land Acquisition Officer. Indeed, whenever applications are made under s. 18 of the Land Acquisition Act, it is the duty of the Land Acquisition Officer to make a reference unless there is a valid ground for rejecting the applications such as for instance that the applications were barred by time. Where an officer of the State is remiss in the performance of his duties in fairness the State ought not to take advantage of this fact. We are further of the opinion that the High Court, after the

plea had been raised, would have been well-advised to adjourn the matter for enabling the appellants before us, who were respondents in the High Court, to take appropriate steps for compelling the Land Acquisition Officer to make a reference.

All the same since the point was permitted to be urged before it by the High Court and has been raised before us on behalf of the State it is necessary to decide it. On behalf of the appellants it was contended before the High Court that by reason of the failure of the State to raise the plea before the Subordinate Judge as to the absence of a reference the State must be deemed to have waived the point. The High Court accepted this argument upon the view that this was not a case of inherent lack of jurisdiction and that the defect in the procedure was such as could be waived. In our opinion the view of the High Court is not correct. Section 12(1) of the Land Acquisition Act provides that after an award is filed in the Collector's office it shall, except as provided in the Act, be final and conclusive evidence as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among the persons interested. The only manner in which the finality of the award can be called into question is by resort to the provisions of s. 18 of the Land Acquisition Act, sub-section (1) of which reads thus :

> "Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

The proviso to sub-s. (2) prescribes the time within which an application under sub-s. (1) is to be made. Section 19 provides for the making of a reference by the Collector and specifies the matters which are to be comprised in that reference. Thus the matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contentions of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under s. 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in Nusserwanjee Pestonjee & Ors. v. Meer Mynoodeen Khan Wullud Meer Sudroodeen Khan Bahadoor (6 M.I.A. 134 at 155) wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if the are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference in so far as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence.

In Alderson v. Palliser & Anr. ((1901) 2 K.B. 833) the Court of Appeal held that where the want of jurisdiction appears on the face of the proceedings, it cannot be waived. In Seth Badri Prasad & Ors. v. Seth Nagarmal and Ors. ((1959) Supp. (1) S.C.R. 769) this Court has held that even the bar of illegality of a transaction though not pleaded in the courts below can be allowed to be pleaded in this Court if it appears on the face of the pleading in the case. The High Court has, however, based

itself largely upon a decision of the Privy Council in Venkata Krishnayya Garu v. Secretary of State (A.I.R. 1939 P.C. 39; 60 M.L.J. 399). In that case there was in fact a reference by the Collector to the court but that reference was made by the Collector not upon the application of the person legally entitled to compensation but by a person whose claim to ownership of property had failed before the civil court but who was still a party to the land acquisition proceedings. In our opinion that decision is distinguishable on the short ground that whereas here there is no reference at all by the Collector or the Land Acquisition Officer, in that case the Collector had made a reference though in making it he had committed an error of law in that he acted upon the application of a person who had been found to have no interest in the land. Disagreeing with the High Court we, therefore, hold that the Court had no jurisdiction to determine the amount of compensation and thus go behind the order of the Land Acquisition Officer.

Upon this short ground the appeal must be dismissed. We have, however heard Mr. Bhimasankaram on merits and in our opinion there are no substantial grounds which would justify interference with the conclusions arrived by the High Court.

For determining the amount of compensation seven sale deeds were filed, Exs. A1 to A4, on behalf of the State and B1 to B3 on behalf of the appellants. A synopsis of the sale deeds has been made by the High Court in its judgment and we can do no better than to reproduce it :

#----------Sl. Exhibit Date Extent Amount Rate per ProximityNo. of land Rs. acre of the site Acs. cts. Rs. acquired----------1 A-1 15-2-46 0-40 1/2 1,750 4,240 Opposite to the suit land and abutting the main road.2. A-2 25-8-46 0-65 1/2 2,500 3,800 Some distance away from the site of the acquired land towards Eluru.3. A-3 9-10-46 1-00 4,500 4,500 Very near the acquired land the same vendee.4. A-4 9-10-46 1-00 4,500 4,500 Part of the same site, and the vendee.5. B-1 14-10-46 0-70 7,000 10,000 5 furlongs away from the suit and nearer Bezwada.6. B-2 14-2-47 1-09 Just over 5 furlongs away 12,000 12,000 towards Bezwada.7. B-3 24-1-46 0-36 1,850 5,000 It is a part and parcel of the same land that is sought to be acquired.----------##

Out of these sale deeds Exs. A1 and A2 were rejected by the High Court, A1 on the ground that it is several months earlier than the date of notification under s. 4 of the Act and Ex. A2 on the ground that the land comprised in it is some distance away from the land under acquisition and is also further away from Vijayawada than this land. The High Court similarly rejected Ex. B-2 on the ground that the transaction was entered into four months after the publication of the notification and on the further ground that it is located in the direction of Vijayawada at a distance of five furlongs from the land acquired. It has apparently rejected also Ex. B3, though the land sold thereunder is a part and parcel of the same land which is sought to be acquired. The ground appears to be that the land sold thereunder is only 36 cents in area. It has accepted Exs. A3 and A4, and on that basis awarded compensation at the rate of Rs. 4,500 per acre for all these lands. In so far as Ex. B1 as concerned the High Court has taken the view that though it bears the date of October 14, 1946 the circumstances that it was actually registered on February 13, 1947 and some of the stamp papers used were in the names of persons unconnected with the transaction shows that it has really been anti-dated so as to make it appear to be earlier in point of time than the notification.

In our opinion what the High Court has said about these three exhibits, B1, B2 and B3, seems to have considerable force. At any rate we do not think that there are any substantial grounds upon

which we can look at these transactions in a different way. If these documents go away, as also Exs. A1 and A2, we are left with only Exs. A3 and A4. Some argument was advanced before us to the effect that the lands comprised in the transactions represented by these documents have no direct access to the road and that, therefore, they could not have fetched a good price. Bearing in mind the fact that these are all agricultural lands a rate of Rs. 4,500 per acre at which they were sold cannot prima facie be regarded as inadequate. As regards access, it is sufficient to say that they are parts of the same field which about on the road, though the portions sold do not themselves about on the road. Since the lands sold under these sale deeds were part and parcel of the same field which abuts on the road those who purchased these lands would naturally obtain a right of way over the land unsold so as to have access to the road.

In the circumstances we hold that the appeal is without substance. Accordingly we dismiss it with costs.

Appeal dismissed.

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