Sushil Kumar Sen

Vs

State of Bihar

Civil Appeal No. 1252 of 1970

(CJI A. N. Ray, K. K. Mathew, V. R. Krisyhna Iyer JJ)

17.03.1975

JUDGMENT

MATHEW, J.–

1. The appellant was the owner of 3.30 acres - roughly equal to 7 bighas, 17 kathas and 14 dhurs - of land. The land was acquired under the provisions of the Land Acquisition Act. The Land Acquisition Officer by his award dated October 12, 1957, gave compensation at the rate of Rs. 14 per katha for the land. The total compensation including the value of trees and other improvements came to Rs. 6,775.22 p. The appellant was dissatisfied with the award. He filed an application before the Land Acquisition Collector for referring the matter to the District Court under Section 18 of the Land Acquisition Act claiming compensation for the lands at the rate of Rs. 500 per katha. The case was referred and the Additional District Judge, Purnea by his judgment dated August 18, 1961 found that the appellant was entitled to compensation for the land acquired at the rate of Rs. 200 per katha and also made certain other modifications in the amount of compensation under the other heads. On August 22, 1961, the respondent, the State of Bihar, filed an application for review, under Order 47, Rule 1 of the Civil Procedure Code, of the judgment dated August 18, 1961 on the basis of discovery of new and important evidence as regards the market value of the land which was not available to it in spite of the exercise of due diligence. The learned Additional District Judge allowed the application for review and passed fresh judgment on September 26, 1961 reducing the compensation for land from Rs. 200 to Rs. 75 per katha. Thereafter the respondent filed Appeal No. 81 of 1962 in the High Court of Patna. The Memorandum of Appeal stated that the appeal was being preferred against the decrees dated August 18, 1961/September 26, 1961, but the grounds taken in the Memorandum of Appeal as well as the court fee paid would show that the appeal was only against the decree dated September 26, 1961 awarding compensation at the rate of Rs. 75 per katha and not against the decree dated August 18, 1961 awarding compensation at the rate of Rs.200 per katha. The appellant filed a cross appeal challenging the maintainability of the review petition filed by the respondent before the Additional District Judge as also the order passed thereon by him allowing the petition and vacating the decree dated August 18, 1961. The appeal and the cross appeal were disposed of by the judgment of the High Court dated February 16, 1968. The High Court found that the Additional District Judge went wrong in entertaining the review and vacating the judgment and decree dated August 18, 1961 but, nevertheless, it considered the appeal filed by the respondent on merits and dismissed the appeal and cross appeal thereby maintaining the compensation awarded for the land at the rate of Rs. 75 per katha by the judgment and decree dated September 26, 1961 of the Additional District Judge. This appeal, on the basis of a certificate, is directed against the decree of the High Court.

2. It is well settled that the effect of allowing an application for review of a decree is to vacate the

decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is anew decree superseding the original one (see Nibaran Chandra Sikdar v. Abdul Hakim (AIR 1928 Cal 418), Kanhaiya Lal v. Baldeo Prasad (ILR (1906) 28 All 240), Brijbasi Lal v. Salig Ram (ILR (1912) 34 All 282) and Pyari Mohan Kundu v. Kalu Khan (ILR (1917) 44 Cal 1011 : 41 IC 497).

3. The respondent did not file any appeal from the decree dated August 18, 1961 awarding compensation for the land acquired at the rate of Rs. 200 per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated August 18, 1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated September 26, 1961 passed after review, So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on August 18, 1961, awarding compensation for the land at the rate of Rs. 200 per katha, that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again.

4. The High Court should have allowed the cross appeal; and dismissed the appeal, which was, and could only be against the decree passed on September 26, 1961, after the review. We therefore set aside the judgment and decree passed by the High Court and allow the appeal. The effect of this judgment would be to restore the decree passed by the Additional District Judge on August 18, 1961. We make no order as to costs.

KRISHNA IYER, J. (concurring) –

I concur regretfully with the result reached by the infallible logic of the was set out by my learned brother Mathew, J. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

6. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justiciae where the tragic sequel otherwise would be wholly inequitable. In the present case, almost every step a reasonable litigant could take was taken by the State to challenge the extraordinary increase in the rate of compensation awarded by the civil court. And, by hindsight, one finds that the very success, in the party. Maybe, Government might have successfully attacked the increase awarded in appeal, producing the additional evidence there. But maybes have no place in the merciless consequence of vital procedural flaws. Parliament, I hope, will consider the wisdom of making the Judge the ultimate guardian of justice by a comprehensive, though guardedly worded, provision where the hindrance to rightful relief relates to infirmities, even serious, sounding in procedural law. Justice is the goal of jurisprudence - processual, as much as substantive. While this appeal has to be allowed, for reasons set out impeccably by my learned brother, I must sound a pessimistic note that it is too puritanical for a legal system to sacrifice the end product of equity and good conscience at the altar of processual punctiliousness and it is not too radical to avert a breakdown of obvious justice by bending sharply, if need be, the prescriptions of procedure. The wages of procedural sin should never be the death of rights.

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