

Rajmani

Vs

Collector, Raipur

Civil Appeal No. 1885 of 1981

(K. Ramaswamy, G. B. Pattanaik JJ)

25.07.1996

ORDER

1. This appeal by special leave arises from the order passes by the learned Single Judge of the Madhya Pradesh High Court on 29-6-1979 in CR No. 439 of 1977. The admitted facts are the lands of the appellant came to be acquired for a public purpose. The Land Acquisition Officer made his award dated 15-11-1973 awarding compensation @ Rs. 1000 per acre. Dissatisfied therewith, the respondent made an application on 29-4-1974 for reference under Section 18. In furtherance thereof, a reference came to be filed in the Court of the Additional District Judge, Raipur. The District Judge found the statement as required under Section 19 of the Land Acquisition Act, 1894 (for short "the Act"). On 1-7-1975, he directed issuance of notice to the appellant. It came to be adjourned from time to time for service on the appellant. Ultimately, on 2-2-1976 in the proceedings of the court the notice was stated to have been served on the appellant but no date thereon was put nor was it signed by the witnesses. Accordingly, by proceedings dated 10-2-1976 the reference court passed order, after setting him ex parte dismissing the reference for default and nil award. As against the order the appellant filed an application under Order 9 Rule 13 CPC. The Civil Judge allowed the application and set aside the order against which the State went in revision. The learned Single Judge in the impugned order has held that the application for restoration does not lie. The only remedy open to the appellant was to file an appeal under Section 54 of the Act to the High Court. Thus this appeal by special leave.

2. The question is whether the view taken by the High Court is correct in law ? It is contended by Shri Sahu, learned counsel for the appellant, that the appellant had not been served with the notice. As a consequence, when he came to know of the award made by the reference court confirming the award of the Land Acquisition Officer within three days, he filed an application under Order 9 Rule 13 CPC to set aside the ex parte order and restoration of the case so as to get an opportunity of being heard. The Additional District Judge rightly set aside the order. The view of the High Court was not correct in law. Shri Agnihotri, learned counsel appearing for the State, contended that the order of the reference court is not correct in law. It was not an award of the court. In other words, every award is not a decree and, therefore, the provisions of the CPC do not apply to the given set of facts. The appellant is not a defendant. Therefore, Order 9 Rule 13 does not apply since reference court is not a civil court. Section 151 also does not apply. Therefore, the view taken by the High Court is correct in law. In support thereof, he places strong reliance on the judgments of this Court in Deep Chand v. Land Acquisition Officer [(1994) 4 SCC 99] and State of Mizoram v. Biakchhawna [(1995) 1 SCC 156].

3. With a view to appreciate the respective contentions, it is necessary to read the relevant provisions of the Act. Section 53 of the Act envisages that "(S)ave insofar as they may be

inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act. "It would thus be clear that so long as there is no inconsistency between the provisions of the Act and the CPC, all the provisions contained in CPC shall apply to the proceedings under the Act. 'Court' has been defined in Section 3(d) of the Act to mean "a principal civil court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of judicial officer within any specified local limits to perform the functions of the Court under this Act". When reference was made under Section 18, it should be to the principal civil court of original jurisdiction or special judicial officer within any specified local limits to perform the functions of the Court. Section 19 envisages that upon an application made under Section 18 in the manner prescribed thereunder, the Collector should make reference to the court with all the information in writing, as indicated in sub-section (1) of Section 19. The said statement shall be attached with a schedule giving the particulars of the notices served upon and of the statements in writing made or delivered by the parties interested therein respectively. On receipt thereof, Section 20 enjoins the court the service of the notice with a mandatory language. The court shall thereupon, cause notice served upon the persons named in the reference including the Land Acquisition Officer/Collector, as indicated in clauses (a) to (c) of Section 20 giving and specifying the day on which the court will proceed to determine the objection and direct the parties to appear before the court on that day. In other words, it is the mandatory duty of the court to have the notices served on the persons, viz., the applicant or all persons interested in the objection filed before the Land Acquisition Collector, except if any of them gives consent when produced to receive payment of the compensation awarded and in case of objection relating to the area or the amount of land acquired or the amount of the compensation upon the Collector/Land Acquisition Officer. Upon the receipt and after service of the notice, section 22 envisages that every proceedings shall take place in the open court and all persons entitled to practice in any civil court in a State shall be entitled to appear, plead and act in such proceedings. It would thus be clear that upon an application made under Section 18 of the Act the Land Acquisition Officer/Collector, when he receives the application within the limitation prescribed under the Act, is enjoined to make a reference, as above mentioned in section 19. Upon receipt of those applications, the court should cause the notices/notice served on the applicants, as well as all interested persons and Land Acquisition Officer/Collector. The notice required to be served as is envisaged in Order 5 of the CPC and the manner of service has been indicated thereunder. Therefore, it should be the duty of the court to have the notice served. It is seen that the notice was not properly served on the applicant. It would appear that notice was served on the father of the appellant, Brij Mohan Lal who is now found to have died on 20-12-1973, i.e., much before the date of the alleged service. It would, therefore, be clear that the service of notice has not been duly effected on the appellant. As a consequence, he did not have any occasion to appear before the court.

4. The question then is whether the application would be under Order 9 Rule 9 or Order 9 Rule 13 or Section 151(2)? It is settled law that the statement under Section 19 in terms of the objection under Section 18 of the Act is not treated as a plaint. Upon service of the notice on the claimant or interested person, he is treated to be a plaintiff and Land Acquisition Collector to be a defendant for the purpose of conducting the proceedings as envisaged under Section 22 of the Act. They are entitled to be represented by counsel. On receipt of the application, it is the duty of the claimant and burden is always upon him, who seeks higher compensation to adduce evidence and prove in the Court that the compensation awarded by the Collector was inadequate and that the acquired lands were possessed of higher value for award of the compensation to be just and adequate compensation. The Land Acquisition Officer is to rebut the evidence adduced by the

claimant/interested person. The burden is always on the claimant. Ultimately, it is the duty and power of the court to determine just and adequate compensation on relevant facts and law sitting in the armchair of a prudent purchaser in an open market. If the notice is not served on the claimant, he is deprived of his valuable opportunity. If the award in such circumstances came to be passed after setting aside the claimant ex parte, though an appeal would lie under Section 54 of the Act against such an award, alternative remedy is also available. The appellate court may not be in a position to decide the correctness of the award except again to fall back upon the question whether notice was properly served on the claimant and whether his remaining ex parte is correct in law. That question could equally be gone into on an application filed by the claimant either under Order 9 Rule 9 CPC or under Order 9 Rule 13 or Section 151 CPC. We are of the view that the appropriate provisions that would be applicable to the claimant would be Order 9 Rule 9 read with Section 151 CPC. Therefore, he has rightly filed an application though under Order 9 Rule 13 but it could be treated as one under Order 9 Rule 9 read with Section 151 CPC. Section 26(2) of the Act declares that the award is a decree obviously as defined in Section 2(3) CPC and the grounds in support thereof is a judgment under Section 2(9) CPC. The appeal under Section 54 would be dealt with under Order 41 CPC.

5. The ratio of Deep Chand case [(1994) 4 SCC 99] has no application to facts of this case. In that case the question was whether an order passed by the Collector under Section 49(1) of the Act is an award and whether it is appealable? It was held to be neither a decree nor an award and whether it is appealable? It was held to be neither a decree nor an award as no adjudication was involved in the order passed under Section 49(1) and, therefore, no appeal would lie under Section 96 of the Civil Procedure Code or Section 54 of the Act. Equally, the ratio of Biakhawna case [(1995) 1 SCC 156] has no application to the facts of the case. Therein, without seeking reference under Section 18 and the procedure to be followed under Section 18 to 20 and 31, civil suit came to be filed for determination of the compensation for the acquired land. It was held that civil suit was not maintainable in view of the inconsistency found in the Act, viz., determination of the compensation on reference and an appeal thereunder to the civil court under Section 54. Thus, the above two decisions are of little assistance to the State. The ratio of State of Maharashtra v. Maharau Srawan Hatkar [(1995) 3 SCC 316] also has no application to the facts in this case. Therein, after the decree and award passed under Section 26 became final an application under Sections 152 and 151 CPC came to be filed, after the coming into force of the Amendment Act 68 of 1984, to amend the decree and to grant additional amounts, as enjoined under Section 23(2), 28 and 23(1-A) of the Act. Therein, it was held that after the decree becomes final, unless the decree is duly amended in accordance with law, the civil court has no jurisdiction to amend the decree and pass additional amount under the Amendment Act.

6. Accordingly, we hold that an application under Order 9 Rule 9 read with Section 151 CPC is the proper remedy and procedure. The Additional District Judge has rightly entertained the application, setting aside the ex parte order.

7. The appeal is accordingly allowed. The order of the High Court stands set aside and that of the civil court stands restored. No Costs.