

SUPREME COURT OF INDIA

Illa Roy Chowdhury

Vs.

Shyamali Das

C.A.No.3638 of 2008

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

16.05.2008

JUDGMENT

S.B. Sinha, J.

Leave granted.

1. This petition is directed against a judgment and order dated 20th December, 2006 passed by the High Court of Calcutta in Writ Petition No. 27264 of 2006.

By reason of the said order the High Court directed the respondent Nos. 1 and 2 as also the other concerned respondents, added therein to dispose of the First Respondent's application for reference in terms of Sections 30 and 31 of the *Land Acquisition Act, 1894* (hereinafter referred to as 'the Act').

2. The matter relates to a property acquired under the said Act. A reference was made by the Collector in terms of the provisions thereof. First Respondent intended to be impleaded as the party therein. The same was rejected.

3. Contesting parties herein claimed themselves to be the heirs and legal representatives of Rani Rashmoni. We need not state the facts of the matter in detail as the same has been noticed by a Bench of this Court in *Shyamali Das v. Illa Chowdhry*¹.

“One of the questions which arose for consideration therein was as to whether the First Respondent, in terms of an observation made by another learned Single of the High Court, had filed an application for reference under Sections 30 and 31 of the said Act. It was noticed therein that such an application had not been filed. It was furthermore observed:-

"21. It is one thing to say that a proceeding under Sections 30 and 31 of the Act was maintainable at the instance of the appellant. She was given an opportunity to file the same by the Calcutta High Court in terms of its order dated 22-9-2000. She did not

avail the said opportunity. Having not availed the opportunity, in our opinion, she was not entitled to be impleaded as a party."

4. We would notice some of the orders passed by the Courts in the earlier rounds of litigation.

5. From the order dated 26th September, 2005 passed in C.O. No.3447 of 2005 by a learned Single Judge of the High Court it appears that a question arose as to whether such an application had been filed or not.

The said order reads as under:-

"Put up the matter on Friday (30.9.2005) under the heading 'For Orders' before Listed Motion in the supplementary list.

Mr. Subroto Mukhopadhyay, Ld. Advocate appears for the opposite party no.3. Mr. Mukhopadhyay is requested to obtain instruction from his client as to whether the opposite parties no. 1 and 2 have filed any application under sections 30 and 33 of the Land Acquisition Act.

Smt. Shyamali Das, the opposite party No.1 appears in person. She informs this Court that on the next date the opposite party no.2, which is her son, shall also appear in person.

The requiring authority, viz. West Bengal Housing Board may hand over the cheque to the Collector and the Collected is directed to retain the cheque for the present."

6. In Writ Petition No. 19298 of 2000- filed by the First Respondent a learned Single Judge of the High Court while disposing of the same by his order dated 22nd September, 2000 directed :-

"This Court sitting in writ jurisdiction cannot determine the entitlement to the compensation awarded. Therefore, if the petitioner is aggrieved, it is open to her to apply before the Collector for reference under Section 30 read with Section 31 of the Land Acquisition Act if she is so advised. Section 30 does not postulate any time-limit and as such it can be made at any point of time and if such application is made, the Collector may decide the same and pass appropriate order on the said application in accordance with law. I (sic) necessary, by making reference under the provision of Section 30 and may also resort to Section 31 if he is so advised according to his own wisdom and discretion after having examined the dispute raised that there are prima facie disputes existing which required to be examined. In such circumstances, the Collector is not entitled to adjudicate the dispute which is the subject-matter of adjudication by a court; it is only to say that there is no prima facie case raising any dispute and if prima facie case exists then he has to make the reference under Section 30 read with Section 31. This decision is to be taken before further disbursement is

made. The Collector will also hear the other no appear (sic) the respondents whom the petitioner will serve a copy of this order along with a copy of the writ petition within a period of one week from date; in default, this order will stand recalled."

7. In the aforementioned premise, the contesting respondents herein filed a writ petition before the Calcutta High Court which was registered as Writ Petition No.27264 of 2006 resulting in passing of the impugned judgment.

8. Mr. Bijan Kumar Ghosh, learned counsel appearing on behalf of the appellant submits that the impugned judgment cannot be sustained as it was found by this Court that no such application had been filed.

9. Mr. Chinomy A. Kaladkhar, learned counsel appearing on behalf of respondents 1 to 3, on the other hand, contends that filing of such an application is not disputed and in that view of the matter the High Court cannot be said to have committed any error in passing the impugned judgment.

10. Mr. Tara Chandra Sharma, learned counsel appearing on behalf of the State of West Bengal, however, brought to our notice that although such an application had, in fact, been filed, but, in view of the non-compliance of the order passed by the learned Single Judge, no order could be passed thereupon.

11. Before this Court in the aforesaid appeal a contention was raised that no such application was filed. It was in the aforementioned situation the abovesaid observations were made.

12. A review application was filed thereagainst which, by reason of the order dated 14th December, 2006 was dismissed (although allegedly the said fact was also brought to the notice of this Court), stating:-

"We have gone through the review petition and the relevant documents. In our opinion no case for review is made out. The review petition is accordingly dismissed."

It, therefore, appears that this Court had, inter alia, proceeded on the basis that no such application had been filed. First Respondent, however, in her affidavit stated that such an application had been filed. Respondent Nos. 4 to 7 herein, however, in their counter-affidavit stated as under:-

"16. Thereafter Smt. Shyamali Das, Respondent no.1 submitted an application to the District Magistrate, South 24-Parganas on 8.8.2001 stated to be the Application under section 30 read with section 31 of the Land Acquisition Act, 1894 without any document of ownership of the said land. No where in the said Application she mentioned Plot No.1028 of Mouja Rajapur to be her own against which award was declared. Even she had not submitted any proof of service of writ petition and

copy of order dated 22.9.2000 to other non- appearing respondents as per order dated 22.9.2000 of Hon'ble Single Judge of the High Court at Calcutta.

17. After receiving the Application dated 8.8.2001 of Smt. Shyamali Das - Respondent No.1, she was once again asked by Special Land Acquisition Officer, South 24-Paraganas vide Memo No. W.P. No. 19298(W)/2000 L.A. 1957 dated 23.8.2001 to submit the Land Schedule i.e. name of Mauja, Plot No., Khatian No., Area of the plots with details of acquisition alongwith documents in respect of title within 15 days from the date of receipt of the said letter so that Hon'ble Court's order can be complied with. This letter was received by Smt. Shyamali Das - Respondent No.1 on 24.8.2001 under her own signature.

18. As Smt. Shyamali Das - Respodnent no.1 had not submitted any document in support of her claim in her application dated 8.8.2001 as asked for vide eltter dated 23.8.2001 abovementioend by the Special Land Acquisition Officer, South-24 Parganas, no further action could be taken on her application by the Collector, South 24-Parganas, Alipore.

19. On the other hand, as per order dated 22.9.2000 of Hon'ble Single Judge of the High Court at Calcutta dated 22.9.2000, she could not produce any proof of service of copy of W.P. No. 19298 (W) of 2000 and copy of order dated 22.9.2000 to other non-appearing respondents within 7 days from the date of order i.e. 22.9.2000. Therefore, the order dated 22.9.2000 stood automatically recalled, as directed in the said order."

13. We will, therefore, proceed on the assumption that such an application indeed had been filed, and the contention made before us in the earlier round of litigation was wrong.

14. The question, however, which arises for consideration is what would be the effect of the order of the Calcutta High Court allowing the First Respondent to file an appropriate application before the Collector for reference in terms of Sections 30 and 31 of the Act which was a conditional order. It was found as of fact that the conditions precedents therefor were not satisfied.

“The consequence laid down in the said order, therefore, ensued, in terms whereof it stood recalled. If that be so, the order of the High Court directing to dispose of the application being innocuous was not required to be given effect to. If a conditional order was passed, with a view to derive a benefit thereunder, it was obligatory on the part of the respondent to satisfy the condition precedent therefor. If the condition precedent has not been satisfied, the question of taking advantage thereof would not arise.”

15. In this case, as noticed hereinbefore an attempt on the part of the First Respondent to get herself impleaded as party in the Reference Petition did not fructify. The said order attained finality. It does not appear that the said respondent was not sure as to whether such an application had been filed or not. In the judgment of this Court, it will be a bare repetition to

say, that a concession has been recorded. We need not go into the effect of such a concession as it now transpires that the same was wrongly made.

16. We would not have, therefore, interfered with the impugned judgment despite the concession made before us but keeping in view the statement made by the State of West Bengal, we are of the opinion that no fruitful purpose would be served in allowing the matter to proceed pursuant to the observations made by the learned Single Judge.

17. For the reasons abovesaid, the impugned judgment is set aside. This appeal is allowed. In the facts and circumstances of the case, there shall be no order as to costs.

¹(2006) 12 SCC 300