

MADHYA PRADESH HIGH COURT

Abdul Karim

Vs.

State of M.P

Letters Patent Appeal No. 5 of 1963, decided on 7.1.1964., from, judgment of Shiv Dayal, J., in Misc. (First) Appeal No. 54 of 1962
(P.V. Dixit, C.J. and N.M. Golvalker, J.)

07.01.1963 07.01.1964

JUDGMENT

Dixit, C. J.

1. This is a Letters Patent appeal from a decision of Shiv Dayal, J. in an appeal arising out of reference proceedings under Section 18 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act), initiated at the instance of one Abdul Hakim whose land had been acquired along with certain lands belonging to other persons. After the making of the reference by the Collector of Bilaspur and during its pendency Abdul Hakim died on 26th July 1960. On 22nd February 1961 his sons, Abdul Karim and Abdul Majid, applied for being brought on record. This application was dismissed by the Additional District Judge, Bilaspur, holding that it was barred by time and the application not having been filed within 90 days of the date of death of Abdul Hakim as required by Article 176 of the Limitation Act, the proceedings abated. Abdul Karim and Abdul Majid then filed another application on 12th March 1962 for setting aside the abatement of the proceedings together with an application under Section 5 of the Limitation Act for condonation of the delay in the filing of the application for setting aside the abatement. This application was also dismissed by the learned Additional District Judge on the ground of limitation. By his decision the learned Single Judge upheld the order of the Additional District Judge, Bilaspur, refusing to set aside the abatement. It is against this decision that the present appeal is directed.

2. The learned Single Judge took the view that by virtue of Section 53 of the Act the provisions of the Code of Civil Procedure applied to reference proceedings under Section 18; that as in the Act there was no provision excluding the-applicability of

Order 22 to proceedings under Section 18, that Order would also apply; that as the Code of Civil Procedure was made applicable to proceedings under Section 18 the claimant for compensation must be deemed to be a plaintiff; and that, therefore, an application for bringing the legal representatives of a deceased claimant on record in proceedings under Section 18 would be governed by Article 176 of the Limitation Act and the limitation for setting aside an abatement would also be governed by Article 171. On this view and finding that the applications made by Abdul Karim and Abdul Majid were barred by time and there was no sufficient ground for condoning the delay and for setting aside the abatement, the learned Single Judge dismissed the appeal preferred by Abdul Karim and Abdul Majid against the order of the Additional District Judge, Bilaspur, refusing to set aside the abatement.

3. It was argued by Shri Sen, learned counsel appearing for the appellants, that a reference under Section 18 of the Act could not abate in law, or end in its dismissal, and once a reference was made, decision with regard to each of the referred matters had to be given by the Court to which the reference was made that section 53 of the Act made the provisions of the Code of Civil Procedure applicable only in so far as they were not inconsistent with "anything contained in the Act;" that having regard to the nature of the proceedings under Section 18 it would be utterly inconsistent to apply to those proceedings O. 22; and that for the purpose of the Limitation Act proceedings under Section 18 of the Act were not proceedings in a suit and a claimant for compensation was not a plaintiff within the meaning of Article 176 of the Limitation Act. It was said that the refusal of the learned Additional District Judge to make any award under section 18 in regard to the land belonging to the deceased Abdul Hakim had resulted in a denial of compensation to his heirs.

4. The sole question that arises for determination in this appeal is whether when a reference is made under Section 18 at the instance of a person interested, who has not accepted the award made by the Land Acquisition Officer, it can abate subsequently if the person interested dies and his legal representatives do not apply for being brought on record. Put briefly, the question to consider is whether Order 22 of the Code of Civil Procedure and Articles 171 and 176 of the Limitation Act apply to proceedings under Section 18 of the Act. Now, there can be no doubt that Order 22 in terms applies only to suits and appeals, the trial and hearing of which are regulated by the Code of Civil Procedure. The word "suit" has not been defined in the Code of Civil Procedure. But, as has been held by the Privy Council in *Hansraj v. Dehra Dun M.E.T. Co.*,² the

word "suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint. The Privy Council case no doubt related to the meaning of the word "suit" as used in the Limitation Act. But that definition is very much in point here as the question whether a suit has or has not abated under Order 22, Rule 4, must be decided with reference to the fact whether an application for bringing on record the legal representatives of the deceased plaintiff was or was not made within the time prescribed by Article 176 of the Limitation Act. It is thus clear that for the purpose of Order 22 a "suit" must be taken as one meaning a suit instituted by the presentation of a plaint, as laid down in the Explanation to Section 3 of the Limitation Act.

5. It is obvious enough that reference proceedings under Section 18 are not suit proceedings. An application for reference under section 18 is not made by the person interested to the Court but to the Collector asking him to make a reference to the Court. The reference is made not by the party but by the Collector albeit at the instance of the party. If the reference proceedings had been suit proceedings, then there would have been no necessity of inserting in the Act Section 53 laying down that

"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act."

So also there would have been no need to create the fiction embodied in Section 26(2) that an award made under Section 18 shall be deemed to be a decree within the meaning of Section 2, clause (2) of the Code of Civil Procedure. If the proceedings under Section 18 of the Act had been proceedings in a suit, then the Code of Civil Procedure would have applied automatically and the award under that provision would have been even without the aid of fiction a decree within the meaning of Section 2(2) of the Code of Civil Procedure. It is noteworthy that Section 53 of the Act has not the effect of making "all proceedings before the Court under the Act suit proceedings". All that it does is to apply to the proceedings before the Court under the Act the provisions of the Code of Civil Procedure unless any of the provisions is "inconsistent with anything contained in the Act". It is one thing to say that the Code of Civil Procedure will apply to the proceedings under the Act and very much another to say that they are suit proceedings and consequently the Code of Civil Procedure will apply to them. Section 53 cannot be read as creating a fiction for deeming "proceedings

before the Court under the Act" as proceedings in any suit. It is thus plain that Order 22 of the Code of Civil Procedure cannot be applied to proceedings under Section 53 of the Act taking those proceedings as suit proceedings in reality or fictionally under the Code of Civil Procedure. Its applicability to proceedings under Section 18 of the Act can only be by virtue of Section 53 and subject to the limitation contained in that Section. The limitation is that the provision of the Code of Civil Procedure intended to be applied must not be inconsistent with anything contained in the Act. For the purpose of inconsistency it is not necessary that there should be an express provision to the contrary in the Act itself. It would be enough if the applicability of a provision of the Code of Civil Procedure to any proceedings before the Court under the Act would be incompatible with the nature of the proceedings.

6. The decision, therefore, of the question whether Order 22 can be applied to proceedings under Section 18 of the Act must depend on the construction and proper understanding of the proceedings under Section 18 and of the scope of the proceedings. In this connection, the first material provision to notice is Section 12 which says of an award made by the Land Acquisition Officer that

"such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive, evidence, as between the Collector and the persons interested....."

The finality of the award is destroyed when a reference under Section 18 is made. Once there is a proper reference under Section 18 before the Court, the final order made by the Court on the reference is the award, no matter whether by the decision of the Court the claimant has been given an additional amount of compensation or given no additional amount or whether the Acquisition Officer's award is upheld or not upheld for some other reason. As has been said in *Assistant Development Officer v. Tayaballi*,² the acquiring officer's award is strictly speaking not an award at all but an offer. If his award is not accepted and the matter is taken to Court by way of a reference under Section 18, then the final award is the one made by the Court. Once a reference is made, the Court is required under Section 20 of the Act to give notice of the hearing of the objections to the award made by the Land Acquisition Officer, inter alia, to the person at whose instance the reference has been made and to all persons interested in the objection, except to those who have consented to receive the payment of compensation awarded without any protest. Sections 21, 22 and 23 deal with the

scope of the enquiry before the Court and the determination of the amount of compensation. Section 24 enumerates the matters which the Court shall not take into consideration in determining the compensation. The next Section contains rules as to amount of compensation. Finally, Section 26 requires the presiding Judge to make an award specifying the amount awarded under clause first of Section 23(1) and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. It is thus clear that once a reference is made under Section 18, the Court has to render an award under Section 26. The reference proceedings cannot be dismissed for any reason. So to do would be to refuse to award compensation for land compulsorily acquired under the Act and for which, the Act requires that compensation has got to be awarded. It is no doubt true that in proceedings under Section 18 the burden of proving that the award made by the Land Acquisition Officer is inadequate or erroneous is on the party objecting to the award and at whose instance the reference has been made. If he succeeds in showing prima facie that the award is inadequate, then the Government must support the award by producing evidence. If, on the other hand, he fails to appear in the Court or to produce any evidence, the award made by the Land Acquisition Officer will stand. But the Court then has to make the award made by the Land Acquisition Officer as its own award under Section 26. If, then, as we think, once a reference under section 18 is made, the Court has to make an award, no matter whether the person at whose instance the reference has been made appears or fails to appear before the Court or fails to produce evidence in support of his objection, it is clear that there cannot be any dismissal or abatement of a reference proceeding. It follows, therefore, that the application of Order 22 of the Code of Civil Procedure is altogether inconsistent with the very nature and scope of the proceedings under section 18.

7. The question as to the procedure to be followed when a person at whose instance the reference has been made dies during its pendency does not present any difficulty. Section 20 requires that a notice of the proceedings must be given to the "applicant", that is to say, the person who moved for the reference, and to persons interested in the objection except to those who have accepted the compensation without protest. If the person who moved for the reference dies and no one comes forward to represent him in the Court, then it is clearly the duty of the Government to supply to the Court the names and addresses of the legal representatives of the deceased claimant to enable the Court to issue fresh notices to them under Section 20. In the present case, there

was no difficulty about tracing the legal representatives of Abdul Hakim and issuing notices to them. They themselves had come forward as his legal representatives and made an application for being brought on record as Abdul Hakim's legal representatives. The learned Additional District Judge should have, therefore, Brought Abdul Karim and Abdul Majid on record as the legal representatives of Abdul Hakim and given them an opportunity of leading evidence in support of the objection made by Abdul Hakim to the award given by the Land Acquisition Officer. He was clearly in error in applying Order 22 of the Code of Civil Procedure and Articles 171 and 176 of the Limitation Act. If, as we have said above, the proceedings under Section 18 are not suit proceedings, and in the very nature of those proceedings Order 22 cannot be applied to them, then clearly neither Article 171 nor Article 176 can be invoked. It must be remembered that Article 176 of the Limitation Act applies to suits and appeals arising out of a suit. It has no applicability to other proceedings. If Order 22 can properly be applied to proceedings which are not suit proceedings, then the relevant article of limitation would be the residuary Article 181 and not Article 176 of the Limitation Act.

8. In our judgment, Order 22 of the Code of Civil Procedure cannot be applied to proceedings under Section 18 of the Act. If the person at whose instance the reference has been made dies during its pendency, then the Court must issue fresh notices to his heirs as required by Section 20. The legal representatives of the deceased would clearly be 'persons interested in the objection' lodged by the deceased against the award made by the Land Acquisition Officer. Our attention has not been drawn to any reported case dealing with the applicability of Order 22 to proceedings under section 18 and we ourselves have not been able to lay our hands on any such case. We are aware of the decision of the Calcutta High Court in *Behary Lal Sur v. Nanda Lal Goswami*,³ where it was held that section 103 of the Code of Civil Procedure, 1882, applied to a reference under Section 30 of the Act and thus a reference dismissed for default of appearance could be restored on sufficient cause being shown. In that case, the question whether reference proceedings under Section 18 or 30 could at all be dismissed for default of appearance of the party at whose instance they had been made was not considered. The Calcutta High Court relied on the decision of the Allahabad High Court in *Kishan Chand v. Jagannath Prasad*,⁴ But the case the learned Judges of the Allahabad High Court considered was of addition of a party to proceedings under Section 30. Having regard to the terms of Section 53 the question of the applicability of the provision of the Code must be determined bearing in mind the qualification

whether the applicability of the provision would or would not be inconsistent with anything contained in the Act itself, and a decision given with reference to the applicability of a particular provision of the Code can hardly be any guide while considering the question of the applicability of another provision of the Code to reference proceedings.

In these cases and others, such as *Nilkanth v. Collector of Thana*,⁵ In the matter of *Rustomji Jijibhai*, ILR 30 Bom 341 and *Bhandi Singh v. Ramadhin Rai*.⁶ it has also been observed that the party at whose instance the reference is made occupies the position of the plaintiff. In our opinion, the reference proceedings not being suit proceedings and the Code of Civil Procedure not being applicable proprio vigore to those proceedings, the question whether the party moving for the reference occupies the position of the plaintiff is not relevant to the question of the applicability of any provision of the Code by virtue of Section 53 of the Act. The party moving for the reference may be "more or less in the position of the plaintiff or may "occupy the position of the plaintiff or be "on the same footing as the plaintiff", none-the-less the reference proceedings cannot, because of this description of the position of the party, become suit proceedings so as to attract the Code of Civil Procedure in its entirety even without the aid of Section 53 of the Act.

9. Here, the result of the decision of the learned Single Judge as also of the Additional District Judge, Bilaspur, holding that the reference proceedings initiated by Abdul Hakim have abated has been that there is no award in respect of compensation payable to the heirs of the deceased Abdul Hakim in regard to the compulsory acquisition of Khasra Nos. 86, 87, 88, 90, 92, 93 and 96, admeasuring 2.84 acres, belonging to Abdul Hakim. The learned Additional District Judge while coming to the conclusion that the owners of certain lands which were also acquired along with that of Abdul Hakim, were entitled to claim compensation at the rate of Rs. 10,000/- per acre, made no award at all in regard to the compensation payable to the heirs of Abdul Hakim and whether they were entitled to any amount over and above Rs. 8271/11/- allowed by the Land Acquisition Officer. He did not even adopt the amount of compensation allowed by the Land Acquisition Officer to Abdul Hakim as his own. As pointed out earlier, a reference having been obtained by Abdul Hakim against the award made by the Land Acquisition Officer, that award cannot be regarded as a legal and effective award for payment of compensation to his heirs. It has to be followed by a proper award of the Court of the Additional District Judge, Bilaspur, to whom the reference was made. The Additional District Judge, Bilaspur, must therefore determine the amount of

compensation payable to the heirs of Abdul Hakim after giving them an opportunity for leading evidence to substantiate the objections made by their father to the award given by the Land Acquisition Officer, and must make an award as required by Section 26 of the Act. The fact that the Additional District Judge, Bilaspur, has by his judgment, dated 5th May 1962, already made an award in regard to certain other lands belonging to other persons which were acquired along with Abdul Hakim's Land, does not stand in the way of his making an award on the reference made at the instance of Abdul Hakim. The reason is that the holding belonging to Abdul Hakim and other persons are entirely different, though they were acquired under one and the same declaration. It has been pointed out by the Privy Council in *Prag Narain v. Collector of Agra*,⁷ that the Land Acquisition Act does not appear to contemplate that where more than one person is interested in a parcel of land there should be more than one award relating thereto; but this does not mean that the whole of the land at any one time to be acquired under the Act must necessarily be dealt with in one award, but only that any one piece of land (forming part of the whole) in which more than one person has an interest for which, he can claim compensation, ought not to be made the subject of more than one award. The present case is clearly not one in which along with Abdul Hakim there were other persons interested in the aforesaid khasra numbers compulsorily acquired. Those holdings-belonged only to Abdul Hakim and, therefore, there can be no objection to a separate award in respect of those holdings.

10. For the foregoing reasons, this appeal is allowed. The decisions of the learned Single-Judge and the Additional District Judge, Bilaspur, are set aside and the Additional District-Judge, Bilaspur, is directed to dispose of the reference made at the instance of the deceased. Abdul Hakim in the light of this Order. In the circumstances of the case, the parties shall bear their own costs of this appeal and of the appeal before the learned Single Judge.

Appeal allowed.

Cases Referred.

1. AIR 1933 PC 63
2. AIR 1933 Bom 361 at pp. 363-364
3. 11 Cal WN 430
4. ILR 25 All 133

5. ILR 22 Bom 802 (FB)

6. 10 Cal WN 991

7. AIR 1932 PC 102