

ORISSA HIGH COURT

Jogi Sahu

Vs

Collector

Civil Revision No.916 of 1990

(A.Pasayat,J.)

14.05.1991

ORDER

A.Pasayat,J.

1. Mistaken advice by lawyers have sometimes resulted in disastrous consequences, and the case at hand is one classic example.

2. Certain lands owned by the petitioners were acquired for expansion of the Central Rice Research Institute in Cuttack pursuant to a notification published in the official gazette by the State of Orissa on 2-9-1971. The Collector, Cuttack passed award quantifying the entitlement of the petitioners at the rate of Rs. 7,500/- per acre. The award made by the Collector was not accepted and on a dispute being raised the matter was referred to the learned Subordinate Judge, Cuttack. Due to non-appearance of the petitioners on 10-4-1975, the matter was disposed of by the reference Court with the following order :

"Order P. files hazira. Petitioners take no steps. Hence the award of L.A. Collector is confirmed. Misc. Case is dismissed."

Therefore, a series of petitions were filed for restoration, some under Order 9, Rule 9, Civil Procedure Code, 1908 (in short 'CPC') and some under Section 151, Civil Procedure Code. Finally, impugned order dated 11-9-1990 was passed holding that the applications were not maintainable. The learned Subordinate Judge referred to the chequered career of the case and hold that misc. case No. 24 of 1988 which was under the consideration was not to be entertained.

3. The primary question that has been urged for resolution is that the order passed by the reference Court was contrary to law and therefore, on mere technicalities a party should not be deprived of his entitlement. It is pleaded that due to mistaken legal advice, inappropriate steps were taken bona fide. Such a plea is countered by the learned counsel for the State on the ground that laches and negligent conduct of the petitioners is apparent and there is no scope for interference at this stage; the order passed by the reference Court was also appealable and the petitioners having not availed that remedy should not be permitted to agitate the correctness of

the award in the present proceeding.

4. For resolution of the dispute the primary question is whether the order passed by the reference Court on 10-4-1975 was in accordance with law. In other words, whether the reference Court was legally justified in disposing of the matter in the manner done. When a claimant does not accept the award of the Collector, on an application under Section 18 of the Land Acquisition Act, 1894 (in short 'the Act', being filed the Collector makes a reference to the reference Court. On the reference being made, the claimant does not become plaintiff or petitioner before the Court. As provided under Section 20 of the Act, the Court has to serve notice on the claimant on whose application reference has been made under Section 18 of the Act. After the notice, the Court is required to make an award in terms of Section 26(1) of the Act and this award is deemed to be a decree under Section 26(2). It is, therefore, impermissible to dismiss a case for default. The dismissal for default is not in terms of Order 9, Rule 8, Civil Procedure Code since the land acquisition reference cannot be dismissed for non-appearance of the claimant under Order 9, Rule 8, Civil Procedure Code and Section 53 of the Act shall not operate to this case. This view has been consistently taken by several High Courts. (See *Abdul Karim v. State of Madhya Pradesh through the Collector, Bilaspur*¹, *B. Munda v. D. Oraon*², and *S.S. Sahai v. State*³, This Court had also occasion to consider the question and a similar view was expressed. (see *Gopal Charan Sahu v. Collector, Cuttack*⁴). In that case it was also held that the provisions of Order 9, Rule 8, Civil Procedure Code were not applicable. It was held that an application for restoration under Order 9, Rule 9, Civil Procedure Code is not maintainable; but the impugned order can be set aside by invoking the inherent powers of the Court under Section 151, Civil Procedure Code. Therefore, the reference Court was justified in rejecting the applications which were filed under Order 9, Rule 9, Civil Procedure Code but the petitions under Section 151, Civil Procedure Code were maintainable. Such a petition was maintainable as held by this Court in Gopal Charan Sahu' case (supra). The view expressed in Gopal Charan Sahu' case (supra) was followed in *Nabaratna Khamari v. State of Orissa*⁵. A person whose land was being acquired is entitled to compensation therefor, and this entitlement should not be denied except on very compelling reasons. To deprive a person from his due entitlement on a technical plea would be a negation of the rule of law. Considering the fact that the claimants whose lands were acquired for the self-same purpose were awarded much higher amount than what was awarded on the basis of the original award by the Collector, Cuttack, I feel, the petitioners should not be deprived. Therefore, in the peculiar circumstances of the case I hold that the matter should go back to the stage it stood on 19-4-1975. The Land Acquisition Misc. Case No. 146 of 1974 is restored to the stage where it stood on 10-4-1975. The reference Court shall now proceed with the case and dispose of the same in accordance with law. To avoid unnecessary delay the parties are directed to appear before the reference Court on 19-6-1991.

5. It, however, appears that delay in disposal of the Land Acquisition Misc. Case is partially due to the action of the petitioners. It would, therefore, be not proper to grant any interest to them during the period from 10-4-1975 till today. While computing the compensation, the reference Court shall exclude the interest payable to the claimants-petitioners for this period. The claimants, however, shall be entitled to their other statutory entitlements, and interest for such other periods as available to them in law.

The Civil Revision is disposed of with the aforesaid direction. No costs.

Order accordingly.

Cases Referred.

¹ AIR 1964 Mad Pra 171

² AIR 1970 Pat 209

³ AIR 1974 Pat 176

⁴ 1976 (1) CWR 1

⁵ 60 (1985) CLT 234