

(1969) 08 OHC CK 0040
In the Orissa High Court
Case No : A.H.O. No. 4 of 1965

Amrik Singh

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Land Acquisition (Orissa Amendment) Act, 1948 — Section 2
Land Acquisition Act, 1894 — Section 11, 18, 18(2), 19, 23
Specific Relief Act, 1877 — Section 45

Citation : (1970) 36 CLT 546

Hon'ble Judges : S. Acharya, J;B.K. Patra, J

Bench : Division Bench

Advocate : S. Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—This is an appeal by leave from the judgment of Mr. Justice G.K. Misra in Misc. Appeal No. 20 of 1963.

2. Plot No. 449 with an area of 0.30 cents with a house standing thereupon, was acquired under the Land Acquisition Act for the construction of the Marshalling Yard of the South Eastern Railway at village Bandomunda. As no compensation was awarded to the Appellant u/s 11 of the Land Acquisition Act (hereinafter referred to as the Act), he preferred an application u/s 18 of the Act and a reference u/s 19 of the Act was made by the Special officer, Land Acquisition and Reclamation, Rourkela, to the Special Judicial officer, Rourkela, who by his decision dated 26-12-1962 in Case No. 8 of 1962 rejected the Appellant's claim as per the reference, holding that the Collector had rightly refused to award any compensation to the Appellant. Against the said decision of the Special Judicial officer the Appellant preferred Misc. Appeal No. 20 of 1963 in this Court, and Mr. Justice Misra hearing the appeal in the Single Bench confirmed the said decision.

3. It was urged by Mr. Misra, the learned Counsel for the Appellant, that neither the Special Judicial officer nor the learned/Single Judge of this Court decided the matter regarding compensation for the land measuring 150" x 105" in plot No. 499, while rejecting the Appellant's claim for compensation for the house standing on the said plot of land. On this, it was urged that compensation for the above land being an interlinked matter in the said reference, the said matter should have been decided and compensation for the same should have been awarded to the Appellant. Mr. Misra, while making the above submission, fairly conceded that in this appeal he would not agitate the finding of fact arrived at by the learned Single Judge confirming the award of the Special Judicial officer referring compensation for the house in question. But he contended that he was competent to agitate the matter regarding compensation for the above mentioned land, in view of the absence of any finding on that matter in the aforesaid decision.

4. In this appeal we are therefore concerned only with the question whether the matter regarding compensation for the above mentioned land should have been and can now be taken up for consideration and decided on the facts of this case. The reference made by the Special officer, Land Acquisition and Reclamation, Rourkela, u/s 18 of Act 1 of 1894, was only with regard to the house on plot No. 449(P), as is apparent from Cols. 3, 4, 7 and 8 of his reference in Form 36 filed on 19-7-1962. In Col. 4 along with the name and address of the Appellant it is stated that "He claims compensation of the house on plot No. 449(P) on the ground that he had constructed the same before the publication of the notification 4(1)". In indicating the nature of the objection taken by the Appellant it is stated in Col. 7 that "Claim for compensation for the structure on the ground of construction before publication of 4(1) notification". From all these it is quite evident that the reference was made only with regard to the Appellant's claim for compensation of the house on plot No. 449(P), and there was no statement regarding claim for compensation for any land in the said reference. When this reference was drawn up as stated above, no objection by way of writ application or a revision to the High Court was preferred by the Appellant. He kept quiet over the matter and allowed the reference to be decided by the "Court" as such. The Special Judicial officer naturally had to consider the Appellant's claim in accordance with the reference before him, having regard to the considerations laid down u/s 23 of the said Act. He derived jurisdiction from the reference and could not have travelled beyond the said reference. As the reference was confined strictly for the claim regarding compensation to the house standing on plot No. 449, the subject-matter for decision before the Special Judicial officer was only the compensation for the said house, and as such he could not have gone beyond what actually was referred to him, in order to grant compensation for the above mentioned land. The Special Judicial officer therefore was justified in giving a finding only regarding the compensation of the house in question and not the land, as claimed by the Appellant. That being so, in Misc. Appeal No. 20 of 1963 in this Court Mr. Justice Misra did not proceed to decide the Appellant's

claim for compensation for the land in question. At the outset of his judgment it was correctly stated that "The reference out of which this appeal arises does not relate to the compensation of the land on which the house stands". On the above view of the matter the Appellant cannot have any grievance against the decision of the learned Single Judge.

We however find in para 14 of the "Court's" award some discussion of certain facts regarding the Appellant's right and title to the said land, a portion of which is as follows:

As regards the sale deed Ext. 1 dated 14-11.1957, it is unregistered and the sale deed mentions that Rs. 150/- have yet to be paid to the recorded tenants from whom this vendor had purchased this site in 1954 and that sale deed was yet to be Registered. Thus the title cannot be said to have passed on to p.w. 1 perfectly, and secondly Ext. 1 being unregistered, the Appellant should at least have got his name mutated in the place of the vendor or the originally recorded tenants which was not done.

We do not propose to enter into any discussion and/or come to any conclusion on the facts discussed above.

5. On the discussions made above, we hold that the matter regarding compensation for the land, as claimed by the Appellant, was rightly not taken up for decision by the "Court" or by the learned Single Judge in the aforesaid Misc. Appeal in this Court as the cause strictly arose out of a reference only for compensation for the house in question. Thus the above contentions put forward on behalf of the Appellant are not tenable.

6. In the result therefore there being no merit in this appeal it is hereby dismissed. There would be no order as to costs.

Sd/- S. Acharya 19.8-1969

B.K. Patra. J.

7. I agree that the appeal should be dismissed.

In para (iv) of the petition dated 23rd June, 1959 filed by the Appellant before the Collector requesting him to make a reference to the Court he complained about non-payment of compensation to him not only for the disputed houses but also for the land on which the houses stand. The Collector's reference to the Court is limited only to the houses. It therefore follows that in so far as the land is concerned, the Collector refused to make a reference. Before the Constitution came into force, the person concerned in such cases had no remedy at all if the property sought to be acquired was situated outside the Presidency towns. Within the Presidency towns one could only take recourse to Section 45 of the Specific Relief Act, 1877 and approach the High Court for issue of a writ of mandamus to the Collector directing him to make a reference. A revision was not maintainable in High Court for the simple reason that the Collector exercising the

power u/s 18 of the Land Acquisition Act was not considered to be a Court within the meaning of Section 115 of the Code of Civil Procedure. This unsatisfactory state of affairs was to a great extent rectified after the Constitution came into force because the aggrieved party could then approach the High Court under Article 227 of the Constitution for the issue of a writ of mandamus. But even before the advent of the Constitution some States, realising the plight in which persons whose lands were acquired outside the Presidency towns were placed when for some reason or other the Collector refused their prayer to make a reference to the Court u/s 18 of the Land Acquisition Act, amended Section 18. By Section 2 of the Land Acquisition (Orissa Amendment) Act, 1948, a new sub-section was inserted after Section 18(2) of the Principal Act. Sub-section (3) runs thus:

Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908.

Ever since then, as far as Orissa is concerned, the aggrieved party has a right to file a revision in the High Court against an order of the Collector refusing to make a reference u/s 18. The Appellant, in this case, failed to avail himself of the remedy his, therefore, not open to him in the present proceedings to agitate the question relating to the compensation for the lands. As my learned brother has rightly pointed out, the jurisdiction of the Court is limited only to the questions referred to by the Collector.