

(1997) 02 KAR CK 0026

In the Karnataka High Court

Case No : MFA. 2372 of 1994 and other Connected appeals

Assistant Commissioner, and Land Acquisition Officer

APPELLANT

Vs

M. Rudramuni Swamy

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 27
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 50 (2), 54

Citation : (1997) ILR (Kar) 1291 : (1997) 3 KarLJ 48

Hon'ble Judges : P. Krishna Moorthy, J;C.N. Aswathanarayana Rao, J

Bench : Division Bench

Advocate : Mahesh, Addl. G.A, for the Appellant; B.G. Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Moorthy, J.—These Appeals arise out of a common Judgment against the common Awards passed in land acquisition References. Common evidence was adduced in the cases and they were disposed of by a common Judgment.

2. Altogether, 50 Acres and 42 cents of land were acquired by the State for the benefit of the Agricultural Produce Marketing Committee, Bellary, which is hereinafter referred to as the Beneficiary. Section 4(1) Notification in these cases were on 17.11.1977. The Land Acquisition Officer, by his Award dated 7.8.1982, fixed the compensation at Rs. 5,000/- per acre. The possession of the lands were taken on 21.5.1982. Dissatisfied with the Award, various owners of the lands applied for reference to the Court. On a reference being made, the Court enhanced the land value to Rs. 85,000/- per acre.

3. Against the Awards, Appeals are filed by the State in M.F.A. Nos. 2373, 2372, 2377 and 2702/94. M.F.As.Nos. 3881, 3882 and 3883/95 are filed by the Agricultural Produce Marketing Committee, for whose benefit, acquisitions were made. No Notices were issued to them by the Land Acquisition Court.

4. One of the above case, viz., M.F.A.No. 2373/94 is against the Judgment in LA.C.No. 29/85 filed by the State. M.F.A. No. 3883/95 is against the same Judgment filed by the Beneficiary.

5. In all the four Appeals filed by the State, the Beneficiary had filed applications for impleading them as parties to the Appeal. They came up for orders on 22.5.1995 and the impleading applications were allowed and the beneficiary was impleaded as Respondents and the Court further directed amendment of the cause title.

6. M.F.A.No. 2373/94 came up for Admission, under Order 41 Rule 11 of the Code of Civil Procedure, on 28.3.1995. It was adjourned to 30.3.1995. On that day, the impleading applications were also posted for orders, by mistake, along with the Appeal. Learned Counsel for the beneficiary could not be present on that day and accordingly, the Court dismissed the applications for impleading on the ground that the Learned Counsel was not present, though in fact, they had been allowed earlier on 20.2.1995. Thereafter, the Learned Government Pleader, on behalf of the appellants-State was heard by a Division Bench of this Court and by a Judgment dated 30.3.1995, to which one of us (Justice C.N. Aswathanarayana Rao) was a party, dismissed the Appeal stating that no grounds are made out to interfere with the award made by the Court u/s 18 of the Land Acquisition Act, enhancing the compensation and giving all the benefits due under the Land Acquisition Act, as amended in 1984. Accordingly, the Appeal was dismissed at the Admission stage. Thereafter, the second respondent, viz., the Beneficiary filed I.A.III for recalling the order dated 30.3.1995 and also I.A.IV for re-hearing the Appeal.

8. Those applications and the rest of the Appeals filed against the common Judgment passed by the Land Acquisition Court were heard by us together. We shall first consider the applications I.A.III and I.A.IV. filed in M.F.A.No. 2373/94 for recalling the order dated 30.3.1995 and for re-hearing the Appeal. In those applications, in the affidavit filed by the Advocate, it is stated that, though the impleading applications were allowed by the Court on 22.11.1995, those applications were posted for orders on 30.3.1995. It is submitted that the beneficiary - the respondent, was not heard in the matter which has resulted in directly affecting the interest of the beneficiary in the matter of payment of enhanced compensation. It is also stated that the learned Advocate appearing for the beneficiary, was away at Delhi to attend two matters before the Supreme Court which were fixed for hearing on 29th and 30th of March, 1995. Though the junior Advocate was instructed to make appropriate representation in the Appeal, when the case was reached, the Learned Counsel was engaged in another Court and accordingly, she could not come and make a representation before the Court when the Appeal was called for hearing. It is on these grounds, that the beneficiary has sought for recalling the order dated 30.3.1995 for re-hearing the appeal.

9. We are not satisfied that sufficient grounds are made out either to recall the

order dated 30.3.1995 or for re-hearing the Appeal. It is no doubt true that, initially, the application for impleading the beneficiary was allowed on 20.2.1995, though mistakenly, it was again posted for orders on 28.3.1995 and later adjourned to 30.3.1995. It is to be remembered that the Appeal was posted only for Admission, under Order 41 Rule 11 of the Code of Civil Procedure. The State was represented by the learned Government Pleader and from the order dated 30.3.1995, it is seen that the learned High Court Government Pleader was heard and there is no allegation in the Petition that he was not heard under Order 41 Rule 11 C.P.C. The Court is bound to hear only the appellant at that stage. Moreover, learned Advocate for the second respondent was not present and no representation was made on his behalf. As stated earlier, the Court has power under Order 41 Rule 11 of the CPC to dismiss the Appeal without sending notice to the Court from whose decree the Appeal is preferred and without serving notice on the respondent or his pleader. Order 41 Rule 11 only mandates for hearing the appellant or his pleader at that stage. The Appellate Court is entitled to dismiss the Appeal in limine without issuing notice to the respondent, if it is not satisfied that, there are sufficient grounds to interfere after hearing the Learned Counsel for the Appellant. Here, the Appeal was filed by the State and the Learned Government Pleader was fully heard and the Appeal was dismissed on merits on the ground that this Court do not find any ground to interfere with the Judgment of the trial Court. At this stage, there is no obligation for the Appellate Court to hear the Learned Counsel for the respondents. If it is not satisfied that any grounds exist to entertain the appeal, it can certainly dismiss the Appeal even without hearing the respondent. The fact that the beneficiary is also entitled to take part in the proceedings, by itself, is not a ground for setting aside the order dated 30.3.1995, when the appellant was fully heard and the decision was on merits. It is not as if the appeal was dismissed for default of appearance of the appellant. The appellant was fully heard. In that view of the matter, we do not find any ground to recall the order dated 30.3.1995 or to re-hear the Appeal. Accordingly, we dismiss I.A.III and IV filed in M.F.A.No. 2373/94.

10. Coming to the other Appeals, the main contention raised by the Learned Counsel for the beneficiary who is the appellant in some of the appeals, is to the effect that, no notice was issued to them by the Land Acquisition Court, for they being admittedly persons interested and that they are entitled to notice as persons interested and u/s 50(2) of the Land Acquisition Act. Learned Counsel for the beneficiary-appellant also relied on a decision of the Supreme Court in M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyveli and others, . In that decision, the Supreme Court reviewed the earlier decisions of the Court on the subject and held at page 1009 thus:

"The consistent thread that runs through all the decisions of this Court starting from Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., is that the beneficiary, i.e. local authority or company, a co-op. society registered under the relevant State law, or statutory authority is a person

interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the Court and file the appeal against the enhanced award and decree of the Civil Court u/s 26 or of the Judgment and decree u/s 54 or is entitled to file Writ Petition under Article 226 and assail its legality or correctness."

11. From the above decision, it is clear that the beneficiary who was not issued notice by the Land Acquisition Court is either entitled to file an Appeal u/s 54 of the Land Acquisition Act against the Award or is entitled to file a Writ Petition under Article 226 of the Constitution of India and assail its legality or correctness. In these cases, leave has been granted to the beneficiary and they have filed appeals against the Award of the Land Acquisition Court.

12. It is clear from the above decision of the Supreme Court that the beneficiary has got a right of Appeal and they can challenge the award passed by the Land Acquisition Court. By that right, given to the beneficiary to file an Appeal, it does not necessarily follow that in every case, where, notices were not issued, the High Court should automatically set-aside the decree of the Land Acquisition Court and remand the matter to the Land Acquisition Court for fresh trial after giving notice to the beneficiary. The main thrust of the argument by the Learned Counsel for the beneficiary was to that effect, with which, we are not inclined to agree. The Supreme Court has held that they have a right of appeal u/s 54 of the Land Acquisition Act or is entitled to file a Writ Petition under Article 226 of the Constitution of India and assail its legality or correctness. The right of appeal given to the beneficiary and accepted by the Supreme Court in the above decision is only to challenge the decree of the Land Acquisition Court on the materials already available. Perhaps, they may also be entitled to adduce further evidence under Order 41 Rule 27 of the CPC in support of their case that the enhancement of compensation, was not justified. The mere fact that they were not given notice by the Land Acquisition Court, does not necessarily oblige the Appellate Court in all cases, to set aside the decree of the Land Acquisition Court and remand the matter. Perhaps, in appropriate cases, if the beneficiary is able to satisfy the Appellate Court that a fresh opportunity has to be given to them, the Appellate Court may be justified in doing the same.

13. But in this case, no such circumstances exist warranting a remand to give the beneficiary a right to have a fresh trial. No fresh materials are placed before this Court even to come to a prima facie conclusion that, further enquiry is necessary by giving an opportunity to the beneficiary to adduce evidence in the matter. Apart from challenging the decree on the available materials, no fresh material is placed before us warranting a remand of the matter to the Trial Court.

14. Moreover, there is one more circumstance in this case, which would persuade us not to accede to the demand of the learned Counsel for the beneficiary for the

remand of the matter. The beneficiary, viz., The Agricultural Produce Marketing Committee was cited as a witness in that case by the claimants. Witness summons were served on them and P.W.4 one of the Officers of the Marketing Committee was examined as a witness. We are aware of the position that, being a witness, is not equivalent to being a party to the proceedings and that the right given in Sub-section 2 of Section 50 is in addition to the concept of fair and just procedure consistent with the principles of natural Justice. We are emphasising this fact only to show that the beneficiary, viz., Agricultural Produce Marketing Committee had knowledge of the proceedings. It is not as if they were completely unaware of the proceedings before the Court. If they so minded, they could have taken part in the proceedings as contemplated u/s 50(2) of the Land Acquisition Act, and they could have appeared and adduced evidence for the purpose of determining the amount of compensation, In spite of the knowledge of the proceedings, they did not utilise the same. They have also not produced any material before this Court, over and above the materials that were placed before the Land Acquisition Court. Moreover, the acquisition proceedings were started in 1977 and possession of the lands were taken on 21.5.1982. Not a single pie has been paid towards enhanced compensation till date. In that view of the matter, we do not think that this is a fit case where the Judgment of the Land Acquisition Court has to be set aside and the matter be remanded solely on the ground that no notice was given to the beneficiary.

15. Coming into the merits of the case, it has to be stated that a Division Bench of this Court has considered the matter after hearing the learned Government Pleader and by its order dated 30.3.1995, came to the conclusion that no grounds are made out to interfere with the award passed by the Land Acquisition Court in M.RA.No. 2373/94. As stated earlier, a common Judgment was passed by the Land Acquisition Court in all these cases and when once a Division Bench of this Court has confirmed the Award of the Land Acquisition Court, though, it may not be binding in the other cases, necessarily, it will operate as a precedent and it will be improper for another Bench to take a different view unless strong reasons are made out, which is not the case here. In that Judgment, this Court has found that the Award of compensation by the Land Acquisition Court is proper and no interference is called for. Following that Judgment, we dismiss all these Appeals. For the reasons stated earlier, I.As. III and IV for recalling the order dated 30.3.1995 and for re-hearing M.F.A.No. 2373/94 will also stand dismissed. In view of the dismissal of the Appeals, W.P.Nos. 39848 to 39851/95 will also stand dismissed. Parties shall bear their costs.