

(1993) 02 OHC CK 0011

In the Orissa High Court

Case No : Civil Revision No. 813 of 1991

Bisweswar Bhatia

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2)
Land Acquisition Act, 1894 — Section 18, 26(2)

Citation : (1993) 1 OLR 536

Hon'ble Judges : A.K. Padhi, J

Bench : Single Bench

Advocate : Saktidhar Das, S.K. Samantary, A.K. Choudhury and L. Samantray,
for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.K. Padhi, J.—The claimant is the petitioner. Land measuring A. O. 14 decimals in Podapada mouza was acquired by the Government belonging to the claimant for construction of National Highway No. 42. The award was passed u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and thereafter the claimant filed execution case for execution of the award passed in L. A. Misc. Case No. 5 of 1986. The Subordinate Judge rejected the execution petition as not maintainable because he was of the opinion that fixation of valuation by the Court u/s 18 of the Act being in the nature of a declaratory decree was not executable and dismissed the execution petition. This order is assailed in this Civil Revision.

2. While passing such order, as it appears, the trial Court lost sight of Section 26(2) of the Act, Section 26(a) of the Act was acted by Amending Act 15/21 to make an award by the Court a decree and the grounds of award a judgment. The effect of Section 26(2) of the Act in declaring an award to be a decree within the meaning of Section 2(2) of the C P C is that election can be taken out on the basis of the award as if it were a Civil Court decree and it is not necessary to sue

for a decree on the basis thereof. Therefore, the award passed by a Court being a decree within the meaning of Section 2(2) of the CPC is executable, in this case the executing Court's order rejecting the execution petition only on the ground that the award being in the nature of a declaratory decree is inexecutable, is not sustainable. Therefore, I set aside the order dated 28-9-1991 passed "by the Sub-Judge, Dhenkanal and remit the matter to the learned Sub-Judge to proceed in accordance with law.

3. Mr. Mohapatra, learned Additional Government Advocate submits that in the meantime the award which was sought to be executed by the claimant has been varied in First Appeal No. 66 of 1990 and, therefore, the award which was sought to be executed is no more in existence. It will be open for the counsel for the State to urge before the Court that the execution petition being on the award of the trial Court is no more executable as it has been varied by the order of High Court as is no more in existence and if such objection is raised the Court below shall give opportunity to both sides and pass orders in accordance with law.

In the result, the Civil Revision is allowed. In the circumstances of the case, there shall be no order as to costs.