

(1955) 10 KAR CK 0001

In the Karnataka High Court

Case No : Regular Appeal No's. 119 to 140 of 1952-53

Brahmeswara Devaru and Others

APPELLANT

Vs

Budrlah and Others

RESPONDENT

Date of Decision : 14-10-1955

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 31, 54

Citation : (1955) 10 KAR CK 0001

Hon'ble Judges : Venkatakamaiya, C.J; Hombe Gowda, J

Bench : Division Bench

Advocate : Asst. Advocate General, for the Appellant; S.K. Venkataranga Iyengar in RA Nos. 121, 122 and 129 and C.C. Veeranpa in RA Nos 119, 120, 122 to 127 and 130 to 140, for the Respondent

Final Decision : Dismissed

Judgement

Venkataramaiya, C.J.—These are appeals filed u/s 54, Land Acquisition Act by the Amildar, Shimoga Taluk, on behalf of three Muzral Institutions against the order of the learned Sub-Judge, Shimoga, disallowing claim of the Appellants to the compensation awarded for compulsory acquisition of lands in Mathodu village, Shimoga Taluk. The Land Acquisition Officer awarded compensation for the wet lands at Rs. 200/- per acre, for the dry lands at. Rs. 79/- per acre and directed the amounts to be paid to the Appellants.

The Appellants' claim to the amount and the adequacy of the compensation were both questioned by the persons in actual possession of the lands. They sought for and obtained a reference to the Court for determination of both these-questions. The learned Sub-Judge confirmed the award with respect to the amount payable but held that the amounts were payable to the persons In possession of the lands and not the Appellants.

The decision as regards the amount payable-is not appealed against by either party and the only question, raised in the appeal is as to who-should get it.

2. A preliminary objection is taken by the Respondent to the maintainability of the appeal in this Court on the ground that the order to the extent it affects rights of persons to obtain pay to be treated as a decree and according visions relating to appeals from decrees, should have been filed in the Court of the District Judge. If the orders are to be treated as decrees, there can be no doubt the objection has to prevail as the amounts involved are such as to render the appeals possible and necessary in the Court of the District Judge.

In support of the contention that orders which, determine rights of persons to receive the amount of compensation" are not awards from which appeals lie to this Court u/s 54 of the Act reliance is placed on - "Mt. Sabitri Thakurani v. Savi AIR 1922 PC 80 (A); - Makhan Lal and Others Vs. Secy. of State , and" - "Bagavathi Doss v. Sarangaraju Iyengar" AIR 1931 Mad 586 (C) by Shri S.K. Venkataranga Iyengar. These decisions no doubt are authorities , show that order made on reference u/s 30 of the Act settle disputes about apportionment of the money, are to be deemed as decrees and appeals against these are to be filed in the courts having jurisdiction according to the amounts involved.

The circumstances under which the reference as made in these cases make it difficult to uphold the objection on the strength of these cases. It is seen that what was sought for in the applications for reference relating to these cases was not merely the determination of the persons entitled to the amount but also the adequacy of compensation and Section 30 as well as Section 18 of the Act are both mentioned for the purpose.

Section 30 relates only to apportionment being subject to reference but Section 18 is comprehensive. Even so Sri Venkataranga Iyengar argued that "Award" mentioned in Section 54 as being (appealable to the High Court must be construed as a, Incision of matters other than apportionment and for this referred to other sections in which the word is found. The argument if correct requires that when, as in these cases, there is a composite reference to the civil court for adjudication of the amount of compensation and also the person to whom it is due. both these are, disposed of by one order, the forum for appeal against it cannot be the same if the grievance is only about the amount or if it is only about the persons to whom it is declared to be payable.

The appeal concerning the former has to be, filed always in the High Court and in the latter not necessarily there. The order therefore has to be split up and portions thereof are to be made use of for preferring separate appeals in different courts. A situation like this was considered in - "Balaram Bharamaratar v. Sham Sunder Nerendra" 23 Cal 526 (D). Where the question was whether an appeal against an order for apportionment of the amount could be filed in the Court of a District Judge. The learned Judges observed:

...If the decision of the Judge upon the question of the amount of compensation is to be called an award, there is no reason why his decision upon the question of apportionment should not also be called by the same name. Moreover It, appears

to us that by substituting Sections 53 and 54 of the present Act for Sections 36 and 39 of the old Act the Legislature has fictionally made all appeals in and Acquisition cases to lie to the High Court; and the contention of the Petitioner if given effect would lend to this anomaly that whereas an award as far as it relates to the fixing of the amount of compensation being clearly an award within the meaning of Section 26 and therefore of Section 54 can be questioned by way of appeal only before the High Court, if in addition to a dispute as to the amount of compensation there is also a dispute as to how it is to be apportioned and an order is made as to such apportionment a different court is to have jurisdiction in hearing an appeal from that part of the order.

That is an anomaly which in the absence of more clear and express language we do not think that the legislation can be credited with having intended. That being so, we must hold that; the learned District Judge was right in his view that the appeals lay not to his court but to this Court.

The case in- AIR 1942 141 (Oudh) was also one in which a similar question was raised and "the same view was expressed. Reference is made there to Section 31 which so far as is relevant reads thus:

(1) Upon making an award u/s 11 the Deputy Commissioner shall tender payment of the compensation awarded to persons interested therein entitled thereto according to the award.

(2) If they shall not consent to receive it or if there be any dispute as to the title to receive the compensation - the Deputy Commissioner shall deposit the amount of the compensation in the court to which a reference u/s 18 would be submitted.

The learned Judges observe:

when there is a reference u/s 13 the decision of the court must be an award but not when the decision is not on a reference under that section. An order on a reference u/s 30 or an order u/s 32 is therefore not an award.

The cases including that of the Privy Council are distinguished as being those in which the reference was under sections other than Section 18. Even if the District Judge is assumed to have jurisdiction to entertain the appeal, it is conceded that there is no impediment to this Court disposing of them. The preliminary objection therefore fails.

3. Turning to the merits of the case it is seen, that while the Respondents have produced receipt for payment of kadayarn, adduced evidence to show enjoyment of the lands for a number of years, there is hardly any material placed by the Appellants to support their title to the properties. The imam title deed Exhibit III relied upon is not of much help as what can be made out from it is that the village in which the lands were situated is a Devadaya inam which does not necessarily imply that all the lands in the village are also Devadaya.

This is evident from the fact that admittedly there are several lands in the same village with respect to which kandaya is payable to Government. Some of the lands at least relating to the present acquisition are of this category as is spoken to by the Respondents and their witnesses. The clerk of the Taluk Office examined on behalf of Appellants has stated that there is a register in which the amount due to the Temples from espuma of each land is niter. That is or any other account showing the amount recoverable from any holding is not produced. The cleric: further mini Its that the lands allowed to belong" to the temples are situated in many villages.

Some of the Respondents have sworn that they never paid any rent to the temples. The khatha of some lands is made out In the name of the occupants, There have been instances in which the lands were auctioned for arrears of land revenue In the absence of any document or proof that the lands were endowed for the upkeep of the temples or that there was any payment of cash or delivery In kind by the persons in possession of the- lands, it is difficult to hold that the Appellants are entitled to the amount awarded as compensation.

Assuming that they have any right it can only be that of a superior holder the nature and extent of which are left for speculation. The persons or officers responsible for safeguarding the interest? of the temples have not exhibited the care and attention necessary to satisfactorily support the claim or even indicate the basis for it, in view of this there is no option but to dismiss the appeals but without costs.