

(1998) 08 KAR CK 0074

In the Karnataka High Court

Case No : Civil Revision Petition No. 718 of 1994

B.S. Ramaswamy

APPELLANT

Vs

Land Acquisition Officer, Sagar

RESPONDENT

Date of Decision : 14-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 152, 153, 53
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 18, 23, 23 (1-A), 4, 4 (1)

Citation : (1999) 2 KarLJ 239

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Mohan Shantangoudar, for the Appellant; Sri M.H. Ibrahim, High Court Government Pleader, for the Respondent

Judgement

1. Heard Sri Mohan Shantangoudar, learned Counsel for the petitioner and Sri M.H. Ibrahim, learned Counsel for the respondents.

2. This revision arises from the judgment and order dated 22-12-1993 passed by the learned Civil Judge, Sagar, dismissing the revision petitioner's application for amendment of the judgment and decree by giving the additional benefit.

3. The facts of the case in brief are that, notification u/s 4 of the Land Acquisition Act in this case was issued on 23-7-1979 acquiring the petitioner's land. The Land Acquisition Officer gave his award on 7-8-1985. An application for reference u/s 18 was made and the matter was referred to the Civil Court u/s 18 of the Land Acquisition Act. The learned Civil Judge, Sagar, passed an award u/s 18 read with Section 23 on 17-3-1992. As per the original award, the petitioner has not been given the benefit of the provisions of Section 23(1-A). The petitioner filed an application for the modification of the judgment and award for the petitioner being given an additional amount at the rate of 12% of the compensation amount. He prayed for amendment of the judgment and award. The learned Civil Judge opined that in this case, the possession of the land had

been taken from the revision petitioner prior to issuance of notification u/s 4(1) of the Act. That as possession has been taken earlier to the issuance of notification u/s 4(1) of the Land Acquisition Act, by the Land Acquisition Officer and the petitioner had been dispossessed from the land prior to issuance of notification u/s 4(1), hence, there is no question of awarding any additional benefit of 12% under sub-section (1-A) of Section 23. The application for review was also rejected on this ground that the reference Court in its judgment vide para 7 discussed the matter at very length. The Court below observed that the petitioner did not file the revision petition against the award of the reference Court and the petitioner is trying to get the decree and award amended by filing the application under Sections 151, 152 and 153 of the CPC which cannot be allowed. Feeling aggrieved from the judgment and award of the learned Civil Judge, Sagar, dated 22-12-1993, the present revision petitioner has filed this petition u/s 115 of the CPC.

4. It has been contended by the learned Counsel for the petitioner that there was an error apparent on the face of the record in the judgment of the reference Court when it did not award 12% additional amount as is provided u/s 23(1-A). Learned Counsel contended that the view of the learned Civil Judge that the benefit of Section 23(1-A) could not be given to the petitioner and he cannot be awarded the amount calculated at the rate of 12% p.a. on the ground that possession of the land had been taken over from the petitioner earlier to the publication of notification u/s 4 of the Land Acquisition Act. Learned Counsel for the petitioner placed certain decisions of their Lordships of the Supreme Court holding that even if possession has been taken away earlier to the date of notification u/s 4, the claimant would be entitled to the benefit of Section 23(1-A) and he is entitled to get the amount. Learned Counsel contended that in view of settled principles of law as laid down by their Lordships of the Supreme Court, the approach of the Civil Court or reference Court suffers from the error apparent on the face of record and as such, it was a fit case for the Court to have reviewed its order on that point under Order 47, Section 1 of the CPC in every case and should have allowed the application and awarded the amount calculated at the rate of 12% p.a. on the market value of the property for the period from the date of publication of notification u/s 4 upto the date of award at least. Learned Counsel for the applicant, therefore, contended that the order passed by the learned Civil Judge suffers from jurisdictional error covered by clause (b) of Section 115.

5. These contentions of the learned Counsel for the petitioner have been hotly contested by Sri M.H. Ibrahim, learned Government Pleader. Sri M.H. Ibrahim contended that the provisions of Sections 151, 152 and 153 were not applicable to such matters as held by the Supreme Court as well as by this Court as well. He contended that the application when it was made u/s 151 was delayed one, as the award was given in this case on 17-3-1992 and application under Sections 151, 152 and 153 was made on 12-8-1993. Learned Government Counsel contended that even if it could be taken that the application was under Order 47,

Rule 1 of the Code, the application had been barred by limitation as period of limitation for filing review application under Order 47 is 30 days. Learned Counsel contended that, as such, if the application had been treated as the application under Order 47, then such an application was definitely barred by limitation and therefore, the application was not maintainable and the Court below had no jurisdiction to review its order and therefore rightly rejected the application.

6. I have applied my mind to the contentions made by the learned Counsel for the parties.

7. Revisional jurisdiction of this Court u/s 115 is confined to jurisdictional error coming under either of the clause (a), (b) or (c) of Section 115 and further condition that if the order impugned is allowed to stand it is likely to cause injustice or irreparable loss to the person aggrieved who has come up for revision. Powers u/s 115 are supervisory and Section 115 may be said to be complementary to Article 227 of the Constitution. If the order impugned suffers from jurisdictional error is likely to cause injustice etc., then only it may be interfered with. But, if the order impugned is not shown to suffer from any of the errors as specified u/s 115 of the CPC (vide clauses (a), (b), (c) thereof) nor there is any likelihood of any injustice being caused, this Court may refuse to exercise its powers u/s 115 of the CPC as well as under Article 227 of the Constitution.

8. Section 151 of the CPC is only declaratory of inherent powers that vests in the Civil Court. The Civil Court when dealing with cases referred to u/s 18, it exercises its powers as a Civil Court. By virtue of Section 53 of Land Acquisition Act, the provisions of the CPC have been made applicable to all proceedings before the Court i.e., before the Civil Court dealing with reference. Section 53 reads as under:

"53. CPC to apply to proceeding before Court.--Save insofar as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under this Act".

9. A reading of this section per se reveals that excluding the case of inconsistency of provisions of CPC with that of Land Acquisition Act as per Section 53 of the CPC, all the provisions of the CPC have been made applicable to proceedings under the Land Acquisition Act before the Court i.e., the reference Court exercising u/s 18. That unless the provisions contained in CPC are shown to be inconsistent with the provisions of Land Acquisition Act, the provisions of CPC will apply in the matter of proceedings before the Court or in the matter of references pending before it or passed by it or by the High Court entertaining the appeal. Section 151 of the CPC is declaratory of the powers inherent in the Courts of justice to pass suitable order in order to do justice which is necessary for the ends of justice or which is necessary to prevent the abuse of the process of the Court. Section 151 says,

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court".

Thus, this section is declaratory of the powers which inhere in every Court to pass orders which are necessary for the ends of justice or which may be necessary to prevent the abuse of the process of the Court and it declares that nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court. Unless there would have been any provision in the Land Acquisition Act depriving the Courts of inherent powers, it cannot be said that Section 151 of the Code which is only declaratory power shall not be applicable or shall not apply nor can it be said that the Civil Courts or High Courts will have no inherent powers when dealing with the land acquisition matters either as Court of reference or appeal u/s 54 of the Land Acquisition Act. The award is given by the Civil Court after determination of the dispute in reference. It is also one of the trite principles of law that it is not only the power, but it is the duty of the Courts to see with care that no man is subjected to suffer because of the mistake of the Court itself. It appears that this intention is even made clear when the power of review has been conferred where error is apparent. In the case of *Jaiberkam and Others v Kedar Nath Marwari and Others*, wherein their Lordships of the Privy Council have observed:

"Nor indeed does this duty or jurisdiction arise merely u/s 144. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved. As was said by Cairns, L.C. in *Rodger v The Comptoir D' Escompte De Paris* (2);

"One of the first and highest duties of all the Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression "the act of the Court", is used, it does not mean merely the act of the primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case" .

10. These principles have to be kept in view by the Court no doubt in discharge of their duties. It has also to be taken note of that justice --social, economic and political, has to be imparted even to the common man. Constitution promises and assures justice being available to all. It is also one of the principles enshrined in the Constitution that no person should be deprived of justice and recourse to justice merely because of economic or other disability. Expression "other disability" may include illiteracy and social backwardness. In this case, the award no doubt was made by the Land Acquisition Authority on 7-8-1985. The award was given by the Civil Court on 17-3-1992. The application had been moved u/s 151 in 1993. No question of limitation was raised before the learned Civil Judge. Learned Civil Judge rejected the application and held that the benefit of Section 23(I-A) could not be available as possession has already been taken though award had been made by the Land Acquisition Officer on 7-8-1985 i.e.,

after coming into force of the Amendment Act whereunder Section 23(1-A) had been added namely the Land Acquisition Amendment Act No. 68 of 1984. Act No. 68 of 1984 did come into operation from 24-9-1984. The question had been considered even by the Supreme Court dealing with such a situation in very many cases, and in the case of Union of India v. Swaran Singh and Others, (1996) 5 SCC 501, it has been laid down that,

"It is settled law that if the proceedings are pending before the reference Court as on that date, the claimants would be entitled to the enhanced solatium and interest".

In the case of Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, , their Lordships of the Supreme Court had to deal with a situation like the present one. In that case also the possession of the land had been taken over in the year 1965 while notification was published in 1980. The award was given u/s 11 by the Collector on 30-9-1983. The additional amount of 12% p.a. on the market value from the date of notification till the date of award had also been awarded. The matter had finally gone to their Lordships of the Supreme Court and the order whereby the benefit of Section 23(1-A) had been given, was challenged. On appeal to Supreme Court the granting of benefit u/s 23(1-A) by the Court below was challenged. Their Lordships observed:

"On true interpretation of sub-section (1-A) of Section 23, we are of the considered view that the High Court is right in concluding that the claimants are entitled to the additional amount at the rate of 12% p.a. from 6-3-1980, the date of publication of notification till the date of award, namely, 30-9-1983".

Their Lordships further observed after considering sub-section (1-A) of Section 23 as follows:

"Therefore, we hold that the claimants would be entitled to additional amount of enhanced market value of 12% p.a. from the date of publication of notification u/s 4(1) till the date of award, since possession had already been taken before the Amending Act has come into force".

Their Lordships in this case rejected the contention in the appeal that the claimant was not entitled because possession was taken earlier to notification u/s 4. This case very clearly shows that the reference Court had committed an error by not awarding and by not giving the benefit of Section 23(1-A).

This was an error of law apparent committed by the Court below i.e., the reference Court and this clearly reveals that the approach of the reference Court was erroneous because, even though the possession was taken earlier to notification u/s 4(1), the reference Court held that benefit of Section 23(1-A) cannot be given to the claimant. Because of the mistake committed on the part of the Court below, the petitioner was going to suffer the loss. Therefore, it was the duty of the Court when it was approached u/s 151 to correct the judgment and award. It was one of the foremost and highest duty to correct the error

which was apparent. Therefore, in my opinion, there was definitely a jurisdictional error. On behalf of the respondents, some cases were cited by the learned Government Counsel to say that Section 151 do not apply. A decision of this Court was referred to, which has been given in the case of The Special Land Acquisition Officer, Hidkal Dam Project Hidkal Vs. Dodaram Ajjappa Naik (Deceased) by L.Rs, . The proposition of law that has been laid down in this case is only in the preliminary in context of Section 152, and has been laid down in paragraph 12. Therefore, this question is not material to the question in controversy in the light of the law laid down by the Supreme Court. It has to be held that the reference Court has no jurisdiction to amend the decree or to exercise jurisdiction u/s 152. So this decision relied by the Government's Counsel is primarily a decision laying down the principle that Section 152 may not apply to the order in question. Various Supreme Court cases were referred. But in those cases on their own facts disclose that there was no case of correction of arithmetical mistake in the decree. So it cannot be said to be a proposition of law declared and laid by the Supreme Court that the Civil Court was deprived of its inherent powers by any provision under the Land Acquisition Act. Inherent powers are inherent with the Court and the Court's duty-is to correct its error which is apparent. I find there was error of law apparent on record in the order of the reference Court and it was the duty of the Court to have rectified it in exercise of powers u/s 151 of the CPC. But the Court below illegally refused to exercise the jurisdiction vested in it and the order impugned no doubt if it is allowed to stand it is likely to cause failure of justice and irreparable loss to the revision petitioner.

11. In this view of the matter, revision has to be and is allowed. The order dated 22-12-1993 is set aside. The judgment and award of the Court below is corrected. The claimant-petitioner is held entitled to additional amount at the rate of 12% p.a. on the market value from the date of notification u/s 4 to the date of award. The Civil Court is directed to modify the award dated 17-3-1992 in the light of this decision.

12. Revision is allowed. Costs made easy.