(1996) 12 AP CK 0017

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2951 of 1992

Chaliki Seethayamma APPELLANT

Vs

Land Acquisition Officer and Spl. Tahsildar (LA) RESPONDENT

Date of Decision : 31-12-1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (1997) 3 ALT 105

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : K. Subrahmanyam, for the Appellant; Govt. Pleader, for the Respondent

Judgement

A. Hanumanthu, J.—This Revision Petition is directed against the Order and Decretal Order dated 1-7-1992 passed in I.A. No. 2546 of 1991 in O.P. No. 93 of 1981 by the Principal Subordinate Judge, Kakinada, in East Godavari District, refusing to amend the Decree and the Award passed in O.P. No. 93 of 1981.

2. The facts, in brief, resulting in filing of this Revision Petition are as follows:-

The respondent-Land Acquisition Officer acquired an extent of Ac.3.00 in S. No. 531/4 situated in Bheemavaram, Samalkota village for providing site for summer storage reservoir. The said land belonged to the revision petitioner. The respondent by his Award No. 2/79 dated 16-1-1979 fixed the compensation at Rs. 15,000/- per acre. At the instance of the petitioner, a reference u/s 18 of the Land Acquisition Act was made to the Subordinate Judge, Kakinada. The said reference was numbered as O.P. No. 93 of 1981. After enquiry, the learned Principal Subordinate Judge by his Award dated 20-11-1984 enhanced the compensation amount to Rs. 18,000/- per acre and also awarded solatium at 15% and interest at 4% per annum on the enhanced compensation from 15-12-1978, the date on which the acquired land was taken possession, till the date of payment. On 3-6-1991 the petitioner filed LA. No. 2546 of 1991 u/s 152 read with Section 151 of the CPC for amendment of the decree and to incorporate 30% instead of 15% solatium and 9% instead of 4% interest for the first year from the date of taking possession of the land and subsequently at 15% till the date of payment on the ground that while O.P. No. 93 of 1981 was pending the provisions of Land Acquisition Act have been amended and that the amended provisions came into force with effect from 24-9-1984. The petitioner sought for amendment of paras 2 and 3 of the Decree as follows:-

"Para 2:- A sum of Rs. 9,000/- towards enhanced compensation for the acquired land and do also pay a sum of Rs. 2,700/- towards solatium at 30% thereon.

Para 3:- With interest at 9% from 5-12-78 to 5-12-79 and 15% interest till the date of payment."

The Land Acquisition Officer resisted the petition by filing a counter stating that the application for amendment of Decree is not maintainable as the Award has become final. The learned Subordinate Judge observed that the benefits of the Amending Act 68 of 1984 can be extended even for the Awards passed after 24-9-1984, but dismissed the petition stating that there is no clerical or arithmetical mistake or error arising out of any slip or omission while preparing the Decree. Assailing the said order, the petitioner has come up with this Revision Petition.

3. Heard the learned Counsel for the revision petitioner and the Government Pleader for Land Acquisition and perused the lower Court records.

4. The petitioner is seeking amendment of the decree u/s 152 C.P.C., which reads as under:-

"Section 152 CPC:- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

The Supreme Court has in Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, , a case arising under Orissa Sales Tax Rules, observed that arithmetical mistake is a mistake of calculation while a clerical mistake is of writing or typing, that an accidental slip or error is an error due to a careless mistake or omission unintentionally made and that such mistakes should be apparent on the face of the record and it should not depend for its discovery on elaborate arguments on questions of law and facts. In Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag, the Supreme Court held in para 11 thus:-

"It is true that under Order 20, Rule 3 of the Code once a judgment is signed by the Judge it cannot be altered or added to but the rule expressly provides that a correction can be made u/s 152. The Rule does not also affect the Court''s inherent power u/s 151. u/s 152, clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either on its own motion or on an application by any of the parties. It is thus manifest that errors arising from an accidental slip can be corrected subsequently not only in a decree drawn up by a ministerial officer of the Court but even in a judgment pronounced and signed by the Court."

5. The learned Counsel for the petitioner submits that at the time of passing the Award in O.P. No. 93 of 1981 the Amended Act 68 of 1984 had come into force, therefore the learned Subordinate Judge while passing the Award on 20-11-1984 ought to have granted the statutory benefits under the provisions of the Amended Act as it was the Law that was in force by then and the omission to award such statutory benefits is an error which can be cured by the Sub-Court in exercise of the power u/s 151 C.P.C. The learned Counsel for the petitioner further contends that there being no time limit for filing an application u/s 152 C.P.C, the petitioner''s petition filed for amendment of the Decree is not barred by time and the same is maintainable as no third party had acquired any interest in the decree.

6. The learned Government Pleader on the other hand submits that the Award passed by the Court had become final as no appeal has been preferred, that there is no arithmetical or clerical error crept in the decree, that the Decree is in conformity with the Award and, as such, the application filed u/s 152 C.P.C. is not maintainable.

7. The contentions raised by the learned Counsel for the revision petitioner are well founded. It is not disputed that the Amended Act 68 of 1984 was already in force by the date of passing of the Award in this case. Therefore, the learned Sub-Judge while passing the Award should award the Statutory benefits like interest and solatium as provided under that Act, as it is the law in force by that time. The statutory benefits provided under the Act in force form an integral part of the Decree to be passed by the Court and the Court while determining compensation under the Act has to award the same. It is well settled that an omission to award statutory interest is an error which can be cured by the Court in exercise of its power u/s 152 C.P.C. It is also well settled that for an application u/s 152 C.P.C. there is no period of limitation prescribed under the law and that unless a third party has acquired an interest in the Decree without knowing that there is no (sic. an) accidental slip or omission in it, such accidental slip or omission can be rectified u/s 152 C.P.C. In the instant case, though the petitioner is entitled for enhanced rate of interest and solatium under the Amended Act, which was in force by then, the learned Subordinate Judge granted interest and solatium as per the old law. It is purely an accidental slip or omission on the part of the Court and the same can be rectified by the Court, which passed the Decree, under its inherent powers. The petitioner is not seeking an amendment to the quantum of the enhanced compensation granted by the Court but the petitioner is seeking an amendment to the decree to include the statutory benefits under the law in force at the time of passing of the Decree. As earlier stated, the petition filed by the petitioner cannot be said to be barred by time as no time limit is prescribed for filing such an application u/s 152 C.P.C.

8. The learned Government Pleader relied on the decisions of the Supreme Court in State of Maharashtra Vs. Maharau Srawan Hatkar, and Union of India Vs. Rangila Ram (dead) by Lrs., , whereunder the Supreme Court held that an application under Sections 151 and 152 C.P.C., for an amendment of the Decree to include the additional benefits under the Amended Act 68 of 1984 is not maintainable. The said decisions have no application to the facts of this case. In those cases the Civil Court made an Award as per the law then in force, which became final and that there was no error of law on that date. The Amendment Act 68 of 1984 came into force subsequent to the passing of that Award. Hence, the Supreme Court held that the application under Sections 151 and 152 C.P.C. is not maintainable. But, in the case on hand, as earlier stated, by the time the award was passed by the learned Subordinate Judge the Amendment Act 68 of 1984 had already come into force. The learned Subordinate Judge by inadvertence failed to include the statutory benefits under that Act in the decree that was passed as per the law. It is clearly an error of law apparent on the face of the record and the same can be rectified u/s 152 C.P.C. I am also fortified, in my opinion, by the decision of a Division Bench of Orissa High Court in Jayakrishna Mangaraj Mohapatra Vs. State of Orissa and Another, , wherein the Division Bench held that the statutory interest provided u/s 28 of the Land Acquisition Act is an integral part of the decree to be passed by the Court and the Court, while determining compensation under the Act has to award the same and an omission to award statutory interest is an error which can be cured by the Court in exercise of its power u/s 152 C.P.C.

9. In the light of my above discussion, I hold that the petitioner''s application filed u/s 152 C.P.C. for amendment of the decree seeking statutory benefits under the Amendment Act 68 of 1984 is maintainable.

10. In the result, the impugned order is set aside. L.A. No. 2546 of 1991 in O.P. No. 93 of 1981 is allowed and the decree in O.P. No. 93 of 1981 is ordered to be amended as claimed in the petition. The parties are directed to bear their own costs.

