
(1999) 08 OHC CK 0007
In the Orissa High Court
Case No : Civil Revision No. 87 of 1998

Chandramani Mishra

APPELLANT

Vs

Land Acquisition Collector, U.I. Project

RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 151
Land Acquisition Act, 1894 — Section 18

Citation : (2000) 89 CLT 236 : (1999) 2 OLR 288

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Milan Kanungo, L. Kanungo, S. Das and D. Pradhan, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—This revision application is directed against the order dated 27.2.1998 passed by the Civil Judge (Senior Division), Dharamgarh, in M.J.C. No. 66 of 1997 dismissing the petitioner's application under Order 9, Rule 9 of the Code of Civil Procedure, 1908 (in short "the C.P.C") read with Section 151 thereof praying for setting aside the order dated 24.4.1992 confirming the award of the Land Acquisition Collector in L.A. Case No. 13/87.

2. The brief facts leading to the present revision application are that the land of the petitioner was acquired for public purpose, i.e., for construction of Upper Indravati Project at Kusumkhunti in the district of Kalahandi and accordingly compensation was awarded and the petitioner also received the same with objection, the same being that the compensation was grossly low and not sustainable in the eye of law. The said objection was referred u/s 18 of the Land Acquisition Act to the Civil Judge (Senior Division). Bhawanipatna, which was registered as M.J.C. No. 19/43 of 1990/91. The petitioner engaged a counsel at Bhawanipatna to conduct his case as due to his old age and ill-health it was not possible on his part to attend the Court on each date. The further case of the

petitioner is that the concerned advocate did not inform him about the day-to-day development of the case and only on 22.8.1997 he came to know from his neighbour Dwaraka Prasad Jain, who was also an awardee in respect of the lands involved in M.J.C. Nos. 14/94 and 16/94 arising out of the same notification, that said Jain had already received the award in his cases. Thereafter the petitioner enquired about the matter from his advocate and on 26.8.1997 ascertained that his case had been transferred to the Court of the Civil Judge (Senior Division), Dharamgarh. Thereafter the petitioner enquired and came to know that the M.J.C. had already been disposed of on 20.4.1992 in the absence of the petitioner by confirming the award passed by the L.A. Collector. The further case of the petitioner is that though he had engaged an advocate at Bhawanipatna, the said advocate never informed him regarding the transfer of the case from Bhawanipatna to Dharamgarh and having no fault on his part, the case was set ex parte as the advocate did not attend the case at Dharamgarh. Thereafter the petitioner filed an application under Order 9, Rule 9 of the , C.P.C. read with Section 151 thereof taking all the above grounds but the 1 trial Court did not accept the petitioner's contention and came to the conclusion that the petitioner had utterly failed to prove the required "sufficient cause" and hence the M.J.C. was dismissed.

3. The learned trial Court further held that if the petitioner had engaged one Misra as an advocate, he should have examined the said advocate in the present proceeding under Order 9, Rule 9, C.P.C. The learned trial Court further came to the conclusion that the averments made by the petitioner was false because of the reason that if the petitioner came to know the fact of award from D.P. Jain, he should have taken all care to examine him as a witness.

4. I have gone through the records of the Courts below and I find therefrom that the petitioner had filed an application u/s 18 of the Land Acquisition Act bearing a certificate of the advocate on 27.2.1989 before the Land Acquisition Officer. The Zone Officer, L.A., Upper Indravati Project. Kusumakhunli, forwarded the same to the Government Pleader. Bhawanipatna, on 14.12.1989 proposing for a reference enclosing the original application and vakalatnama. This aspect though on record has not been considered by the trial Court while coming to the conclusion that there was no support from the record that the petitioner had engaged an advocate. The petitioner had been examined as P.W. 1 and stated in his evidence that upon getting information from D.P. Jain on 22.8.1997 regarding the fate of his cases, he enquired about his case on 25.8.1997 only from his advocate at Bhawanipatna and he could ascertain that his case had been transferred to Dharamgarh. Thereafter from Dharamgarh he could ascertain that his case had already been dismissed. Though the petitioner had been examined as P.W. 1 and was subjected to cross-examination by the counsel for the State, nothing had come out therefrom rebutting the statement of the petitioner on oath. The only suggestion that was given was to the effect whether the default was intentional and whether the M.J.C. was filed to harass the opposite party. Virtually the statement of the petitioner remained unshattered.

Learned Court below has lost sight of this aspect and rejected the application under Order 9, Rule 9, C.P.C. That apart, this is the case of a man who has lost his land and has been pitted against the might of the State. This Court in *Bhagwandas Bajoria v. E.I.D. Parry Ltd.* (1976) 42 CLT 1061 held :

"..... in order to do justice in a suitable cause an ex parte decree can be set aside or a suit dismissed ex parte can be restored for hearing by invoking the powers u/s 151. CPC even though the requirement of sufficient cause" as provided under Rules 9 and 13 of Order 9, CPC is not complied with....."

That apart the apex Court in *State of Haryana Vs. Chandra Mani and others*, held :

"The expression "sufficient cause" is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of the Justice - that being the life purpose for the existence of the institution of Courts.....

..... When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred....."

A party does not gain by remaining ex parte in a proceeding where his interest is likely to be affected by ex parte adjudication. The suggestion that the default was intentional hardly stands to reason. It is to be further noted here that a land acquisition reference cannot be dismissed for non-appearance of claimant under Order 9, Rule 8. C.P.C. Consequently, an application under Order 9, Rule 9. C.P.C. is not maintainable. The order of dismissal for default being impermissible, such an order can be recalled u/s 151. C.P.C. This position was elaborately dealt with by Hon"ble A. Pasayat, J. (as His Lordship then was) way back in 1991. (See *Jogi Sahu and Another Vs. Collector, Cuttack*, . The view was affirmed by a Division Bench of this Court in *Shyam Simar Mantri v. Land Acquisition Collector, Cuttack* 1992 (II) OLR 352. In the instant case, the reference was dismissed for non-appearance which is impermissible. That aspect cannot be also lost sight of.

5. Considering the nature of the case and looking into the legal position, facts and circumstances, as highlighted above, the ex parte dismissal cannot be maintained. Petitioner is to get an opportunity to place his case. M.J.C. No. 19/43 of 1990/91 is resorted to file.

6. The Civil Revision is accordingly allowed. There shall be no order as to costs.