
(2013) 07 OHC CK 0075
In the Orissa High Court
Case No : S.A. No. 169 of 1995

Dasarath Mohanta (dead), after him, his L.Rs Jitbahan Mohanta and Others APPELLANT

Vs

Sri Khitish Chandra Mohanta and Others RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2014) 117 CLT 160

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : S.N. Sinha, Sujata Dash and P.K. Misra, for the Appellant; Mahadev Mishra, S. Barik, Mamata Misra and N.R. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—This Second Appeal has been filed by the Appellants claiming compensation in a proceeding u/s 30 of the land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The facts involved in this case are that by a notification dated 4.12.1987, land measuring Ac. 0.52 decimals from out of plot No. 16 appertaining to khata No. 2 of village Talasibani in the district of Mayurbhanj was acquired for the purpose of Subarnarekha Major Irrigation Project. After due enquiry, the Special land Acquisition Officer, Mayurbhanj awarded a total compensation of Rs. 47,455 including value of land along with additional compensation & solatium as permissible under the Act. When the recorded tenants, i.e., one Khitish Mohanta & others & one Dasarath Mohanta advanced rival claims over the awarded amount with regard to their entitlement, a reference u/s 30 of the Act was made by the concerned Land Acquisition Officer to the Court of the Learned Subordinate Judge, Baripada (now Civil Judge (Senior Division)), which was registered as L.A. Misc. Case No. 60 of 1988. The Learned Subordinate Judge, while answering the reference on appreciating the materials produced before him, held that Khitish Mohanta, Maheswar Mohanta, Anil Mohanta & Phulamani Mohanta are jointly entitled to get the entire

compensation awarded in respect of the acquired land & the rival claim is rejected. The said Dasarath Mohanta, who was the original Appellant in this Second Appeal, preferred T.A. No. 27 of 1993 before the Learned District Judge, Mayurbhanj at Baripada. The Learned District Judge disposed of the appeal by his Judgment dated 29.4.1995 confirming the order passed by the Learned Subordinate Judge & dismissing the appeal. The said Dasarath Mohanta thereafter preferred the present Second Appeal.

2. It appears from the order sheet that on 4.12.2001, a memo was filed by the Learned Counsel for the Respondents indicating that the sole Appellant & the Respondent No. 4 have expired & thereafter applications were filed by the legal heirs of the sole deceased Appellant which were allowed by Order Dated 28.2.2002. The legal heirs of the deceased Respondent No. 4 were also brought on record on filing appropriate application. The Second Appeal has not been admitted.

3. At the out-set, a question was raised by Mr. Mahadev Mishra, Learned senior Counsel appearing for the Respondents with regard to maintainability of the appeal & the matter was heard on the question of maintainability.

4. Admittedly, the matter arises out of a reference made to the Learned Subordinate Judge u/s 30 of the Act, which reads as follows:---

30. Dispute as to apportionment-When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

5. No appeal u/s 96 of the CPC is provided against an answer given by the referral Court to a reference u/s 30 of the Act. Appeal against the orders passed under the Act is provided for u/s 54 of the Act, which reads as follows:---

[54. Appeals in proceedings before Court- Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, & notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court & from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to (the Supreme Court) subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, & in Order XLIV thereof]

6. It may be mentioned here that in the meanwhile, Section 110 of the C.P.C. has been repealed & Order XLIV refers to exemption of payment of appeal Court fees, which has nothing to do with the jurisdiction of the Appellate Court.

7. Therefore, on a bare reading of Section 54 of the Act, it is clear that against an award passed u/s 30 of the Act, an appeal lies to this Court & against the Judgment & decree of this Court, an appeal lies to the Hon"ble Supreme Court. Hence, the appeal preferred by the original Appellant before the Learned District

Judge as T.A. No. 27 of 1993 was itself not maintainable & this appeal u/s 100 C.P.C. is also not maintainable. The Second Appeal accordingly stands dismissed, as not maintainable, but in the circumstances without cost.