
(1994) 02 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No. 1042 of 1975.

Deep Chand and Others

APPELLANT

Vs

Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2), 26, 30, 4(1), 54
Land Acquisition Act, 1894 — Section 49(1)

Citation : AIR 1994 SC 1901 : (1994) JLJ 635 : (1994) 3 JT 319 : (1994) 108
PLR 197 : (1994) 2 SCALE 325 : (1994) 4 SCC 99 : (1994) 1 SCR 530

Hon'ble Judges : N. Venkatachala, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : P.S. Poti, S. K. Gambhir and Vivek Gambhir, for the Appellant; B.Y. Kulkarni, S. K. Agnihotri and A.G. Ratnaparkhi, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramaswamy and N. Venkatachala, JJ.—This appeal by special leave arises from the order of the Division Bench of Madhya Pradesh High Court dated July 30, 1974 in which it was held that an order passed by the Civil Court on reference u/s 49(1) of the Land Acquisition Act 1 of 1894 (for short 'the Act') is not a decree and, therefore, an appeal would not lie therefrom u/s 96 of CPC.

2. The facts lie in a short compass. Notification u/s 4(1) and declaration u/s 6, of the Act were published in the State Gazette acquiring land measuring 2 acres 46 cents (approximately) on Biaora village in Rajgarh District. The appellant had objected u/s 49(1) of the Act to the acquisition, contending that the entire land including his factory and office building should be acquired, without which the Act should not be put in operation. Thereon, reference u/s 49(1) was made to the Civil Court which by order dated April 29, 1969 held that the land proposed to be acquired did not form an integral part of appellants factory and office buildings and answered the reference accordingly. The appellants carried the matter in appeal to the High Court. In the High Court, when an objection was raised on

behalf of the State, that the order of the Civil Court is not a decree and as such it is not appealable obviously u/s 96 of CPC., if upheld the objection and dismissed the appeal as not maintainable.

3. The question, therefore, is whether the decision of the Civil Court on reference u/s 49(1) of the Act is a decree. It is not in doubt that the order of the Civil Court on a reference u/s 49(1) is not an award within the meaning of Sub-section (2) of Section 26. Therefore, an appeal u/s 54 of the Act would not lie. The only question is whether it is a decree within the meaning of Section 2(2) of CPC. so as make it appealable u/s 96 of CPC.

4. The contention of Sri P.S. Poti, learned senior counsel for the appellant is that Section 49(1) of the Act confers a substantive right on a party to object to acquisition on only a part of any house, manufactory or other building. On such objection being raised, when a reference u/s 49(1) second proviso was made to civil court, which it would decide a dispute in its ordinary civil jurisdiction. It is an adjudication of the right of the owner, who objects to the continuance of the proceeding under the Act in relation to part of his house, manufactory or other building. It has all the trappings or characteristics of a final adjudication between the appellant and the Land Acquisition Officer and that, therefore, it is a decree within the meaning of Section 2(2) of CPC. What is provided for u/s 49(b) is the right of the owner to ask for acquisition of the whole property if it is not proposed for acquisition; and where the question whether the property left out of acquisition is part of their property, has to be adjudicated by Court, it is an adjudication on an issue relating to the question whether the property is a part of the building or not. When it is finally decided, it becomes conclusive between the parties and binds them. Therefore, it has all the trappings or characteristics of a decree. He contended that apart from Section 49(1) reference, similar right arises under Sections 18 and 30 of the Act. In support thereof, he placed reliance Sarat Chandra Ghose Vs. The Secretary of State for India, and Kali Prasad and Others Vs. Government of Bihar, . When the same decisions have been cited, the Division Bench dissented from the ratio in those cases holding that:

To hold a decision by a Court u/s 49(1) of the Act amounts to a 'decree' would be to slur over the requirements of a 'decree' as defined in Section 2(2) CPC.

The learned Judges sought support for their view from the decision in T.S. Krishnamoorthi Ayyar Vs. Special Deputy Collector of Land Acquisition, ; Mahesh Missir and Others Vs. Province of Bengal, and Sarat Chandra Ghose Vs. The Secretary of State for India, .

5. The question, therefore, is whether the decision by the Civil Court on a reference u/s 49(1), second proviso of the Act is a decree within the meaning of Section 2(2) of CPC. There can be no doubt that where a legal right of a party to a dispute, has to be adjudicated by courts of ordinary civil jurisdiction ordinary rules of civil procedure become applicable, and an appeal lies, if not otherwise provided for by such rules, that is to say, notwithstanding that the legal right

claimed arises under a special statute which does not in terms confer right of appeal an appeal lies. Decree means a formal expression of an adjudication which the court conclusively and finally determines the rights of the parties with regard to all or any of the matters in controversy in the suit. We need not decide whether a reference u/s 49(1) is a suit. However, the immediate question that arises is whether the objection raised for acquisition on the premise that the property proposed for acquisition is a part only of the house, manufactory or building is decided, does it amount to an adjudication. In Black's Law Dictionary (Sixth Edition) at page 42 "adjudication" is defined as:

Adjudication - the legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in a court proceedings; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved.

Section 49 of the Act reads thus:

"49. Acquisition of part of house or building :(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired.

xxx xxx xxx Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) xxx xxx xxx(3) xxx xxx xxx

A reading of the above section shows that a right is been given to the owner of the land to object to the putting of the Act into force when only a part of any house, manufactory or other building is being is sought to be acquired and call upon the State to acquire whole of such house, manufactory or building. Therefore, what has been given is a right to object only to acquisition of part of the building, etc. without acquiring the whole of the house, manufactory building. In determining the question whether the land proposed to be taken was reasonably required for the full and unimpaired use of the house, manufactory or building left out of acquisition all that the Court has to examine is whether the objection is sustainable requiring the whole of the property, including the house, manufactory or other building, should be acquired or portion of the property proposed for acquisition, should be left out of acquisition for full and unimpaired use of the house, manufactory or building, of the property proposed for

acquisition. It is one of determination of the convenient use and enjoyment of the unacquired portion of the land or a building, manufactory or the other house. If the answer is in favour of the land owner, the only choice left to the Government is either to acquire the whole property or drop the proposed acquisition; It brings about no other consequence. In other words the law says that acquire the whole property or to leave it. But for the acquisition the owner is entitled to use the property in any manner he intends to make use or enjoy it. Obviously the decision by the Civil Court only hinges upon the convenient or unimpaired use and enjoyment of the house, manufactory or building with the residue of the land left over after acquiring the other property. In that behalf it cannot be said to be an adjudication of any dispute or a right finally settling any claim between the parties. The analogy which Shri P.S. Poti seeks from the adjudication u/s 30 of the Act is no assistance. The title to receive compensation would be in issue u/s 30 and such a decision attains finality and binds the parties. The decision therein is conclusive between the parties unless it is varied or reversed by any competent court on appeal. Under those circumstances, the courts have held that it is a decree u/s 2(2) of CPC. So, that analogy is inapplicable to the determination u/s 49(1) of the Act in which no rights of the parties to adjudication are involved. The facts in *Sarat Chandra Ghose Vs. The Secretary of State for India*, though squarely covers the facts in this case, the learned judges appears to have proceeded on the premise that after the amendment of Sections 26 and 54, it made a world of difference and that therefore determination u/s 49(1) of the Act is decree. We are unable to appreciate the reasoning therein. Section 26(2) specifies that an award is a decree and appealable u/s 54. The order u/s 49(1) is not an award. So the assumption of the Court is erroneous. Similar is the view expressed by Patna High Court which followed the ratio in *Narayanaswami's* case without any further discussion or reasoning. Under these circumstances, we cannot uphold the view expressed by the Madras and Patna High Courts.

6. Therefore, we hold that the determination u/s 49(1) of the Act is not a decree within the meaning of Section 2(2) CPC. and that therefore, an appeal u/s 96 CPC. does not lie. The appeal is accordingly dismissed, but in the circumstances, without costs.