

(1989) 03 OHC CK 0040

In the Orissa High Court

Case No : Civil Revision No. 782 of 1988

Deputy Director, Aviation Research Centre

APPELLANT

Vs

Sambhunath Das and Another

RESPONDENT

Date of Decision : 02-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(10), 47
Land Acquisition Act, 1894 — Section 18, 3, 4

Citation : (1989) 68 CLT 592

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : Central Govt, for the Appellant; Bidyadhar Misra, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—This revision is directed against an order passed by the Subordinate Judge, First Court, Cuttack in Misc. Case No. 289 of 1988 u/s 47 of the CPC (in short "the Code")-arising out of an Execution Case No. 152 of 1987. The facts relevant for the purpose of this revision may be stated as follows:

The State of Orissa acquired some land under a notification u/s 4 of the Land Acquisition Act sometime in the year 1964. The Land Acquisition Collector determined and awarded compensation for the said land. The present opp. party No. 1 claiming to be the owner of the land initiated a proceeding u/s 18 of the Land Acquisition Act claiming higher compensation. The Subordinate Judge enhanced the compensation against which the Land Acquisition Collector, Cuttack filed First Appeal No. 259 of 1984 before this Court. This Court by judgment dated 11-9-1987 partially allowed the appeal fixing the market value of the land acquired at Rs. 15,000/- per acre, besides solatium and interest which are payable in accordance with the provision of the Land Acquisition Act. During the pendency of the aforesaid appeal the present Petitioner got himself impleaded in the appeal on its own motion. The opp. party No. I, in whose favour the award was passed by the Land Acquisition Collector and was the Respondent in the First

Appeal filed Execution. Case No. 152 of 1987 in the Court of Subordinate Judge, First Court, Cuttack impleading the Land Acquisition Collector, Cuttack as judgment-debtor No. 1 and the present Petitioner as judgment-debtor No. 2. The total claim in the Execution case is Rs. 7.21.329/-. The present Petitioner filed an application purporting to be one u/s 47 of the CPC in the said Execution Case challenging the executability of the decree as against the judgment-debtor No. 2. Apart from other objections as to the legality and computation of the compensation claimed, the present" Petitioner contended that for the land acquired, the compensation awarded has to be paid by, the State of Orissa and not by the Aviation Research Centre for whose benefit the land was acquired. The Subordinate Judge, who considered the application u/s 47 of the Code held that the Execution Case is maintainable as against the judgment-debtor No. 2 who was impleaded as a party in the first appeal, which according to the learned Court means that he is a party, to the proceeding u/s 18 of the Land Acquisition, Act and is, therefore, a judgment-debtor within the meaning of Section 2 Sub-Section 10 of the Code. It is against this order the present revision has been filed.

2. The learned Counsel appealing for the present Petitioner has urged that the implection of the Petitioner as a party in the first appeal was on the basis that the Petitioner was an interested person within the meaning of Section 3(b) of the Land acquisition Act for the purpose of safeguarding its own interest as the compensation to be, fixed by the Court would, ultimately be payable by the Petitioner for the reason that the land was acquired for its, benefit. He, therefore, contends that the implection of a party, in the proceeding does not ipso facto make him a judgment-debtor, He also points put that neither the judgment nor the decree passed by the appellate Court indicates that the present Petitioner has any liability to pay the Compensation to the present opp. party No. 1. It is for that reason it has been urged that the present Petitioner is not a judgment-debtor and the Execution case as against him for realisation of the compensation awarded for the land is not maintainable.

3. The learned Counsel appearing for the opp. parties has argued that the present Petitioner is a person interested within the meaning of Section 3(b) of Land Acquisition Act and, therefore, his liability to pay the compensation is co-extensive with that of the State of Orissa, both of whom were parties in the appeal.

4. Reliance has been placed and decision reported in Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., wherein their Lordships have held that the definition of "person interested" given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. According to their Lordships the expression "person interested" occurring in Section 18 of the Act must be construed so as to include a body, Local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. The aforesaid decision is of

no assistance so far as the point under consideration is concerned. Section 18 is a provision under which any person interested who has not accepted the award may by written application to the Land Acquisition Collector, require that matter to be referred-by the Collector for determination of the Court, whether his objection be to the measurement of the lands the amount of the compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested. Thus the person for whose benefit the land was acquired may be competent to make an application under the aforesaid Section for reference to the Court for determination of any of the matters enumerated therein. Neither Section 18 nor any other provision of the Land Acquisition Act makes the person for whose benefit the land has been acquired liable to pay the compensation to the owner of the land. In the appeal preferred by the Land Acquisition Collector against the award passed by the Court in the reference u/s 18 of the Act neither of the parties had urged that it is the present Petitioner, who had been impleaded as a party is liable to pay the compensation awarded in the case nor any such direction has been made by this Court in the judgment and decree passed by it. The decree does not describe the present Petitioner as the judgment-debtor. It is another matter as to whether the State. Government would realise or get reimbursed the amount of compensation paid by it to the owner of the land from the person for whose benefit the land was acquired, but that does not create a liability against the present Petitioner in favour of the present opp. party No. 1 so as to be enforced in the Execution Case. I am, therefore, of the view that the Execution proceeding as against the present Petitioner is not maintainable.

5. In the result, I would set aside the impugned order and allow this revision but without any Cost.

Revision allowed.