

(2001) 09 JH CK 0063
In the Jharkhand High Court
Case No : CWJC No. 548 of 2000

Dhananjay Mahato and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 100, 104(1), 105, 110
Land Acquisition Act, 1894 — Section 30, 54

Citation : (2001) 09 JH CK 0063

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : K.P. Mitra, for the Appellant; K.K. Singh, JC to AAG, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard Mr. K.R Mitra, learned counsel for the petitioners and Mr. K.K. Singh. JC to AAG. Since a pure question of law with regard to jurisdictional error of the Court has been raised by the petitioners, the writ application is disposed of with the consent to" the counsels for the parties at the admission stage.

2. In this writ application, petitioners have challenged the judgment and decree passed by the Addl. District Judge. Seraikella in Land Acquisition Title Appeal No. 48/95 is a nullity, being wholly without Jurisdiction and further prayed for permitting the petitioners to file fresh appeal before the appropriate forum u/s 54 of the Land Acquisition Act. 1894.

3. Petitioners" case is that the land in question was acquired for Swarnarekha Dam Project of Chandil under the provisions of the Land Acquisition Act and the collector, under the land acquisition proceeding, awarded compensation in the name of Sri Bhagwati Prasad Jalan respondent No. 6. It is contended that the petitioners, on coming to know about the fraudulent act of respondent No. 6 in getting the said award prepared in his name on false representation of fact, filed

a petition on 4.10.1986 before the Special Land Acquisition Officer for cancelling the award. The Special Land Acquisition Officer referred the said objection to the Civil Court u/s 30 of the Act. The said objection was registered as L.A. Case No. 4 (3)/88. In the said proceeding respondent No. 6 appeared and filed show-cause and after hearing the parties the learned Land Acquisition Officer, by order dated 20.11.1995 confirmed the award. Against the said award the petitioner preferred appeal before the District Judge. Singhbhum which was registered as Title Appeal No. 48/95. The said appeal was heard by the Addl. District Judge, Seraikella who dismissed the appeal and affirmed the award.

4. Mr. Mitra, learned counsel for the petitioners assailed the impugned judgment and award passed by the Addl. District Judge as being illegal and wholly without jurisdiction. Learned counsel submitted that Section 54 of the Act being mandatory provision, the appellate court has committed serious errors of jurisdiction in entertaining the appeal filed by the petitioner. Learned counsel further submitted that besides errors of jurisdiction the lower appellate court has also committed error of law and the finding recorded by it is based on no evidence.

5. Admittedly, the claim of the petitioners was referred by the collector u/s 30 of the Act to the Court of Land Acquisition Judge. Seraikella and the said reference case was numbered as L.A. case No. 4(3)/88. The Sub-Judge-I at Seraikella after hearing the parties by judgment dated 20.11.1995 confirmed the award and answered the reference against the petitioner. Against the aforesaid judgment and award petitioners preferred appeal before the District Judge. Singhbhum West, Chaibasa. A copy of memo of appeal has been annexed as Annexure-4 to the writ application, From perusal of the aforesaid memo, it appears that the appeal was purported to have been filed u/s 54 of the Land Acquisition Act and the value of the appeal was shown as Rs. 27. 726-66 paise. The appeal was finally heard by Addl. District Judge, Seraikella who without going into the question of jurisdiction dismissed the appeal by passing a reasoned judgment. A question therefore arises for consideration is as to whether the District Judge had jurisdiction to entertain and hear the appeal u/s 54 of the said Act. For better appreciation Section 54 of the Act is quoted here in below :

"54. Appeal in proceedings before Court.--Subject to the provisions of the Code of Civil Procedures. 1908 (5 of 1908), applicable to appeals from original decrees, and 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 and from any decree of the High Court passed on such appeal as aforesaid and appeal shall be lie to (the Supreme Court) subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908 and in Order XLV thereof

6. From bare reading of the aforesaid provisions it is manifest that an appeal shall always lie in the High Court only from the judgment of reference court notwithstanding anything contained contrary to any enactment for the time being

in force and irrespective of the value of the claim or of the fact whether appeal is from the Land Acquisition Judge, or District Judge or Sub-ordinate Court. The provisions further provides that such appeal shall lie to the High Court subject to the provisions of Code of Civil Procedure, 1908.

7. It is well settled that the judgment and order passed by reference court under Sections 18 or 30 of the Act and the award prepared therein is a decree within the meaning of Section 2(2) of CPC. The word "subject to the provisions of CPC" as used in Section 54 of the Act would mean that such appeal shall be governed by Section 96 and other provisions of the Code of Civil Procedure. Provisions of Sections 96, 100, 104(1), 105 read with order 43 Rule 1 of the Code shows that an appeal lies only as against a decree or an order passed under the rules from which an appeal is expressly allowed by Order 43 Rule 1. No appeal can lie "against mere finding for the simple reason that the Code does not provide for any such appeal. It is therefore, clear that the only forum for appeal provided u/s 54 of the Act is the High Court notwithstanding anything contained contrary to any enactment for the time being in force. The appeal preferred by the petitioners before the District Judge ought not to have been entertained for the simple reasons that the District Judge has no jurisdiction to entertain and decide an appeal arising out of judgment and award passed by reference court. In my considered opinion therefore, the judgment and decree passed by the District Judge having lack of inherent jurisdiction is a nullity. A decree to be called a nullity is to be under-stood in the sense that it is ultra vires the powers of the court passing the decree and not merely voidable decree. In this connection reference may be made to the decision of the Apex Court in the case of Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs., .

8. In view of the conclusion arrived at by me, the judgment and decree passed by the Addl. District Judge, Seraikella be declared as a nullity. A question therefore arises as to what relief the petitioners is entitled to get from this court. As noticed above, the only appellate forum provided under the Act against the judgment and award of the reference court is the High Court. In such a situation appropriate direction may be issued to the Addl. District Judge, Seraikella to return the plaint to the petitioners to enable them to file the said memo of appeal in this court after making necessary correction in the cause title of the memo of appeal.

9. This writ application is therefore allowed and the judgment and decree passed by the Addl. District Judge, Seraikella in Title Appeal. No. 48/95 is declared as a nullity and without jurisdiction. The Addl. District Judge, Seraikella is directed to return the memo of appeal to the petitioners to enable them to file appeal in this court after making necessary correction in the cause title of the memo of appeal. The petitioners shall appear before the court below and get the memo of appeal returned within two weeks from today and accordingly file the same in this court within a week thereafter.

10. Writ application allowed