

(1998) 07 KAR CK 0027

In the Karnataka High Court

Case No : Civil Revision Petition No. 2982 of 1994

D.N. Ramakrishnappa

APPELLANT

Vs

The Special Land Acquisition Officer and Assistant
Commissioner, Doddaballapur Sub-Division, Bangalore
District, Bangalore

RESPONDENT

Date of Decision : 01-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, 115
Land Acquisition Act, 1894 — Section 18, 53

Citation : (1998) 5 KarLJ 268

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri G.R. Laxmipathy Reddy, for the Appellant; Sri M.H. Ibrahim,
Government Pleader, for the Respondent

Judgement

1. Heard the learned Counsel for the petitioner Sri G.R. Laxmipathy Reddy and the learned Government Pleader Sri M.H. Ibrahim.

2. The revision is confined to the short point. The question in this revision is whether it was open to the learned Civil Judge to decide the matter on merits when the parties were not present or to have dismissed it for default. In the present case, land acquisition reference was made u/s 18 of the Land Acquisition Act. On 1-7-1994 as it appeared from the order-sheet that when the case was listed, the parties to the case namely the present revisionist was absent. The learned Civil Judge passed the order as if he has passed the order on merits.

"There are no grounds made out to interfere with the award passed by the Land Acquisition Officer. There is no evidence to hold that the claimant is entitled for enhanced compensation. Hence, reference rejected".

It may be mentioned here that in the earlier part of the order, it has been mentioned that.--

"Learned Counsels are absent. No representation".

So after hearing the Assistant Government Pleader, the Court passed the order. The claimant has come up in revision before this Court. Learned Government Pleader has been asked to take the notice and to assist the Court in final disposal of the matter as the case is on a very short point and it should not be delayed.

3. Learned Counsel for the claimant-revisionist submitted that the learned Civil Judge acted illegally and without jurisdiction in dismissing the case on merits particularly when the claimant was not present. He submitted that the position of the claimant in the reference was that of a plaintiff and position of the Land Acquisition Officer was that of defendant. Learned Counsel contended that the CPC has been made applicable to these proceedings u/s 53 of the Land Acquisition Act. He further submitted that Order 9 of the Code read with Order 17 clearly reveals that if at the time when the case is called-up and any of the party failed to appear, then the Court may proceed to pass the order in any one of the modes prescribed under Order 9 and it cannot dismiss the case on merits. Learned Counsel submitted that Order 9 provides that if the plaintiff is absent, the suit can be dismissed for default and if the defendant is absent, it may pass an ex parte decree, but it may not amount to a final decision on merits. He submitted that in the present case, the authority could not decide the case on merits observing that there is no ground in the claimant's reference or claimant's case. He could have only dismissed it for default and in that case, it would have been open to the petitioner to apply for restoration. Learned Government Pleader contended that applicant's Counsel did not appear nor did the claimant when the case was called-up. But they did not produce any evidence. There was no way out except to pass the order impugned. Therefore, there is no illegality or jurisdictional error. Learned Government Pleader further submitted that the jurisdiction of this Court u/s 115 is confined to jurisdictional error and as there is no jurisdictional error, revision can be dismissed.

4. I have applied my mind to the contentions advanced by the learned Counsel for the parties. Section 53 of the Land Acquisition Act reads as under:

"Save insofar as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall apply to all proceedings before the Court under this Act".

In view of this provision namely Section 53 of the Land Acquisition Act, 1894, provisions of the CPC are applicable to the proceedings under the Land Acquisition Act before the Civil Court except those cases where provision to the contrary is contained in the Land Acquisition Act. Order 17 and Order 9 prescribe the mode of exercise of jurisdiction by the Court in the case of absence of any of the parties when the case is called-up. No doubt, in the present case, the case was posted for evidence. The applicant was not present. What had to be done is provided under Order 17, Rule 2 that when the party is absent, order may be passed under Order 9. It means, in such circumstances, it was not open to the

learned Civil Judge to pass an order on merits. He could have dismissed the reference or rejected the reference for default and thereafter law would have taken its own course and it is also one of the well-settled principles of law. When I so opine, I find support for my view from the decision of their Lordships of Supreme Court in the case of Prakash Chander Manchanda and Another Vs. Janki Manchanda, . That page 44 of the report (AIR) in para 5 of the judgment, their Lordships, after referring to Order 17, Rules 2 and 3 of the Code observe and lay down as under:

"It is clear that in cases where a party is absent only course is as mentioned in Order 17(3)(b) to proceed under Rule 2. It is therefore clear that in absence of the defendant, the Court had no option but to proceed under Rule 2. Similarly the language of Rule 2 as now stands also clearly lays down that if any one of the parties fails to appear, the Court has to proceed to dispose of the suit in one of the modes directed under Order 9. The explanation to Rule 2 gives a discretion to the Court to proceed under Rule 3 even if a party is absent but that discretion is limited only in cases where a party which is absent has led some evidence or has examined substantial part of their evidence. It is therefore clear that if on a fixed date, one of the parties remains absent and for that party no evidence has been examined upto date the Court has no option but to proceed to dispose of the matter in accordance with Order 17, Rule 2 in any one of the modes prescribed under Order 9, CPC".

5. Thus per se the order of dismissal of the reference on merits, in my opinion, is the result of exercise of jurisdiction not vested in the Court or the Court acting illegally in passing the order i.e., in breach of provision of Order 17, Rule 2 read with Order 11 of the CPC which has a tendency to cause irreparable injury to the claimant whose property has been acquired and who has agitated the question of quantum of compensation. In this view of the matter, in my opinion, as there was in no way open to the Court to pass order on merits, but at most to have dismissed the reference for default or to adjourn it. The order impugned cannot be said to be one within jurisdiction, instead it is an order passed in exercise of jurisdiction illegally as it is one of the well-settled principles of law that when a specific mode of exercise of power is provided in specific circumstance, then jurisdiction has to be exercised in that mode and not otherwise.

Thus considered, the order impugned being one suffering from jurisdictional error is liable to be interfered with. The revision is hereby disposed of finally. It is hereby allowed. The order dated 1-7-1994 is set aside. I may observe if the reference had been dismissed for default, it might have been restored and thereafter the case would have been decided within this period of four years. Really it has resulted in delaying the whole proceedings. The revision having been allowed, the authority is directed to hear the matter on merits. Let the revisionist appear before the Court on 18-8-1998 along with the certified copy of the order. Costs made easy. Copy of this order may be supplied to the parties on making the application and paying charges, at the earliest by or before August

14, 1998.

Sri M.H. Ibrahim, learned Government Pleader, is permitted to file his memo of appearance.