

(1973) 09 PAT CK 0012

In the Patna High Court

Case No : Letters Patent Appeal No. 1 of 1968

G.M.H.E. School and Another

APPELLANT

Vs

Loknath Sahay

RESPONDENT

Date of Decision : 14-09-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 49

Citation : AIR 1974 Patna 120

Hon'ble Judges : N.L. Untwalia, C.J.; S.K. Jha, J

Bench : Division Bench

Advocate : Lakshman Sharan Sinha, for the Appellant; Jyoti Narayan, for the Respondent

Final Decision : Allowed

Judgement

1. A land acquisition proceeding was started by the Collector of Gaya under the Land Acquisition Act, 1894 (hereinafter called the "Act") for the purposes of G. M. H. E. School, Jehana-bad. Out of the total lands sought to be acquired, certain plots appertaining to various khatahs belonged to the respondent Loknath Sahay. The area of the lands, which were the subject-matter of acquisition and "which belonged to him, was 2.28 acres. His objection in the land acquisition proceeding was that the lands formed part and parcel of his buildings, and, if the portions proposed to be acquired were taken out, that would impair the use of the houses, as they were reasonably required for them. In this regard a dispute cropped up and a Question arose as to whether the lands proposed to be acquired under the Act did or did not form part of the houses within the meaning of Section 49(1) of the Act. Hence, the Collector made a reference u/s 49(1) to the District Judge of Gaya to determine the question aforesaid. The reference eventually came to be heard by the Additional District Judge, Second Court, Gaya. The learned Additional District Judge felt persuaded to go into the question of the validity of the land acquisition proceeding as it was attacked in argument on behalf of Loknath Sahay. Rightly or wrongly, he took the view that there was

non-compliance with the mandatory requirement of certain provisions of the Act and hence the land acquisition proceeding was ultra vires. On the main question, which was the subject-matter of reference before him, he held that the lands sought to be acquired were being used for agricultural purposes and, if acquired, they would not impair the use, of the existing buildings. Having held so, he further added that, if the owner of the lands wanted that the whole lands should be acquired, the Government had either to acquire the whole or give up the part. But, since the entire declarations made under the Act had been found to be ultra vires, there was no proceeding at all and no land could be acquired under the same.

2. It ought to have been stated that the reference was contested on behalf of the school only, and not by the State of Bihar. The school came up in a miscellaneous first appeal to this Court u/s 54 of the Act, being Miscellaneous Appeal No. 285 of 1954. In that appeal, the State of Bihar, through the Collector, was impleaded as respondent No. 2. The appeal was dismissed by a learned Single Judge of this Court on the 20th July, 1967. The learned Single Judge took the view that the question as to whether the land acquisition proceeding was ultra vires or not could be gone into in a reference made u/s 49 of the Act, and, since, in his opinion, the proceeding was ultra vires, he maintained the order of the lower Court in that regard. Since the judgment and Order of the learned Single Judge was against the State of Bihar also, the school and the State both have preferred this Letters Patent Appeal in which Loknath Sahay was impleaded as the sole respondent,

3. Mr. Lakshman Sharan Sinha, appearing for the appellants, submitted that the scope of any reference made under the Act, whether it is u/s 18, 30 or 49, is a limited one. The question of validity of the land acquisition proceeding cannot be raised in any case. As a matter of fact, it was not raised by the owner of the lands in his petition before the Collector. For the first time it was raised before the reference Court at the time of argument. On merits, the State and the school did not get adequate opportunity to show that the decision as to the proceeding being ultra vires was erroneous in law. We have not thought it necessary to examine the correctness of all the submissions made on behalf of the appellants, as, in our opinion, this appeal has got to succeed on the ground that, in a reference made u/s 49 of the Act, the question of the validity of the land acquisition proceeding could not be gone into.

4. It is well settled that the land acquisition Court gets jurisdiction over any matter in relation to the land acquisition proceeding when a valid reference is made to it. It is concerned with the matters under reference and which could validly be referred to it for determination. The whole of the land acquisition proceeding does not become the subject-matter of consideration or adjudication in a reference made under the Act. Cases have taken the view that the land acquisition Court can go into the validity of the reference, e. g., if a reference has been made by the Collector u/s 18 on an application filed before him beyond the

period of limitation provided therein, the land acquisition Court can hold such a reference to be invalid on the ground of limitation and refuse to answer it. But, no case could be cited before us, probably, there could be none, taking the view that in any reference under the Act the question of the validity of the land acquisition proceeding itself can be gone into on any ground whatsoever. If the land acquisition proceeding is ultra vires and invalid, it is plain that the remedy which is available to the owner of the land is to file an application under Article 226 of the Constitution of India in the High Court, or, if the proceeding is completely without jurisdiction, to file a suit to challenge it. But the scope of enquiry made under the Act must be confined within the four corners of the section under which the reference has been made.

5. In AIR 1930 64 (Privy Council) , Sir George Lowndes, delivering the judgment on behalf of the Board, pointed out at page 65:--

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

In State of Bihar and Another Vs. Kundan Singh and Another, , Gajendragadkar, J., (as he then was) repelled the argument of Mr. Iyengar that, in dealing with a reference proceeding u/s 18(1) of the Act, the Court can also consider the pleas raised by the owner of the property u/s 49 of the Act, by saying--

"It does appear that the owner of property under acquisition may claim additional compensation on the ground that the portion of the property acquired so materially affects the value of the utility of his other property not acquired as to justify a claim for additional compensation u/s 23. and if such a claim is made, it would legitimately form the subject-matter of an enquiry in a reference u/s 18(1), but if the owner of the property wants to claim that the whole of his property should be acquired and in that connection relies on the provisions of Section 49, that cannot be introduced in an enquiry u/s 18, such a claim must form the subject-matter of different proceedings taken by the owner u/s 49 itself."

The learned Judge emphasised the point further in paragraph 13 thus:

"It is true that in cases of dispute, this matter also goes to the same Court for its decision on a reference by the Collector; but though the Court is the same, the proceedings taken are different and separate and must be adopted as such. A claim u/s 49 which can be properly tried by the Court on a reference made to it by the Collector under the second proviso to Section 49(1), cannot be mixed up with a claim which can be made in reference proceedings sent to the Court u/s 18 by the Collector."

6. For the reasons stated above, we allow this appeal, set aside the judgment and order of the learned Single Judge passed in Miscellaneous Appeal No. 285 of 1964 and hold that the order of the learned Additional District Judge in the reference u/s 49 of the Act, in so far as he held that the land acquisition proceeding was ultra vires, was without jurisdiction. The judgment, in so far as he decided the question which ought to have been decided in a reference u/s 49, was valid. The observation of the learned Additional District Judge that even in regard to the agricultural lands the whole of the lands had to be acquired does not seem to be warranted. There will be no order as to costs.