

(2015) 02 AHC CK 0108

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 69020 of 2014

Gurudwara Committee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227, 311(1)
General Clauses Act, 1897 — Section 3(15)
Land Acquisition Act, 1894 — Section 5, 5-A
National Highways Act, 1956 — Section 3-H (3), 3-H (4), 3-H(3), 3-H(4)

Citation : (2015) 3 ADJ 545 : (2015) 3 ADJ 23 : (2015) 3 ALJ 74 : (2015) 110 ALR 78 : (2015) 2 AWC 1972

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : B. Dayal, Niraj Agrawal and Vishnu Sahai, for the Appellant; Ishan Shishu and Ramesh Chandra Agrahari, Advocates for the Respondent

Judgement

B. Amit Sthalekar, J.—The petitioner in this writ petition is seeking quashing of the order dated 21.9.2012 passed by the Prescribed Authority under the National Highways Act, 1956 (hereinafter referred to as the Act, 1956) under Section 3-H (4) and the order dated 5.12.2014 passed by the Additional Judge, Kanpur Nagar. Briefly stated the case of the petitioner is that he is the owner of two plots, namely, plot No. 48 measuring 53.55 sqm. and another plot No. 49 measuring 136.50 sqm. situated in Village Safipur, Kanpur Nagar which he purchased from one Kallu by means of a registered sale-deed dated 6.11.1952. The said two plots were acquired for widening of the National Highway No. 25. The compensation for the two plots was determined at Rs. 42,89,237/-. There being several claimants a notice was issued to the President of the Guru Singh Sabha Harjender Nagar, President Gurudwara Committee, Chakeri, Aerodrome, Kanpur Nagar, Niyantrak Pradhikari, Principal Harjender Nagar Inter College and the Manager, Khalsa Vidyalaya Sabha Harjender Nagar. No notice is stated to have been issued to the petitioner and the petitioner remained in the dark about

the proceedings. On 21.9.2012 the impugned order was passed by the Authority under Section 3-H (4) of the Act, 1956 making a reference to the District Judge, Kanpur Nagar. When the petitioner came to know about this, he filed a claim petition on 18.1.2013 with a prayer for a declaration that he was a person entitled to receive the compensation amount. Alongwith the claim petition the petitioner is stated to have filed the Khatauni 1360 Fasli of village Safipur, Tehsil and District Kanpur Nagar in respect of Khata No. 12 and also the copy of the registered sale-deed dated 6.11.1952. He also filed a copy of the registered sale-deed which was executed in favour of the Khalsa Degree College by the petitioner on 25.9.2006. The reference was heard by the Additional District Judge, Court No. 24, Kanpur Nagar alongwith the claim petition of the petitioner. The petitioner's claim petition was rejected on the ground that his name was not mentioned as one of the claimants in the reference order and as such his case could not be considered. An allegation has also been made by the petitioner of collusion between the claimant Harjendar Nagar Inter College, Harjendar Nagar, Kanpur Nagar and Guru Singh Sabha, Harjendar Nagar, Kanpur Nagar and it is also stated that an application was filed by the Manager, Harjendar Nagar Inter College, Harjendar Nagar, Kanpur Nagar who gave up his claim and prayed that the amount be awarded in favour of the Gurudwara, Guru Singh Sabha, Harjendar Nagar, Kanpur Nagar and in pursuance of the said collusive compromise the impugned order dated 5.12.2014 was passed directing that the amount of compensation be paid to the Gurudwara, Guru Singh Sabha, Harjendar Nagar, Kanpur Nagar.

2. The case of the petitioner, further, is that according to the competent authority notice was issued to the petitioner (as stated in paragraph 14 of the writ petition) and the name of the petitioner was also mutated in the revenue records in pursuance of the sale-deed dated 6.11.1952 and therefore making a reference only in respect of two organization, namely Harjendar Nagar Inter College, Harjendar Nagar, Kanpur Nagar and Guru Singh Sabha, Harjendar Nagar, Kanpur Nagar was illegal and without jurisdiction. It is also stated that the sale-deed was in the name of Gurudwara Committee, Chakeri, Aerodrome, Kanpur Nagar and the claim of Gurudwara Committee was also mutated in the revenue records and therefore the dispute at the most could only be between the petitioner and the Khalsa Girls Degree College in whose favour a lease-deed was executed by the petitioner on 25.9.2006.

3. The case of the petitioner further is that under the provisions of Section 3-H (3) of the Act, 1956 the competent authority was required to first determine the persons who in its opinion are entitled to receive the amount payable to each of them and only if a dispute arises then he may refer the same under Section 3-H (4) of the Act, 1956 to the decision of the principal Civil Court of original jurisdiction within whose limits the land in question is situated.

Section 3-H (3) and Section 3-H(4) of the Act, 1956 read as under:

"3H. Deposit and payment of amount--(1).....

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated."

4. At the outset a preliminary objection was raised by Sri Anoop Trivedi, learned counsel appearing on behalf of the Caveator alongwith Ramesh Chandra Agrahari that since the petitioner had challenged the order dated 5.12.2014 passed by the Additional District Judge, Kanpur Nagar, therefore, the writ petition is not maintainable and the only remedy available to the petitioner is by way of a revision under Section 115 of the Civil Procedure Code.

5. In support of his submission reliance has been placed upon a judgment of the Supreme Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, (2003) 1 ACC 33 : (2003) ACJ 505 : AIR 2003 SC 1561 : (2003) 6 JT 126 : (2003) 1 SCALE 739 : (2003) 3 SCC 524 : (2003) 1 SCR 567 , wherein it has been held that where the statutory right to file an appeal has been provided for it is not open to the High Court to entertain the petition under Article 227 of the Constitution of India. Even if where remedy by way of appeal has not been provided against the order and judgment of the District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where the remedy for filing a revision before the High Court under Section 115 of the Civil Procedure Code has been expressly barred by a State Enactment only in such a case a petition under Article 227 of the Constitution of India would lie and not under Article 226 of the Constitution of India. Paragraph 6 of the judgment reads as follows:

"[6] The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, (2002) ACJ 1950 : AIR 2002 SC 3350 : (2003) 95 CLT 157 : (2002) 112 CompCas 257 : (2002) 7 JT 251 : (2002) 3 PLR 621 : (2002) 6 SCALE 569 : (2002) 7 SCC 456 : (2002) 2 SCR 456 Supp). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has

not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 C.P.C., in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court under Section 115 C.P.C., no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution."

6. Sri Vishnu Sahai, learned counsel for the petitioner on the other hand submitted that the provisions of 3-H(3) of the Act, 1956 were mandatory and before a reference could be made to the principal Civil Court having original jurisdiction, the competent authority under Section 3-H(3) of the Act was required to determine the persons who in its opinion are entitled to receive the amount payable to each of them and only if dispute arises as to the apportionment of the amount payable to each of the claimants a reference was required to be made under Section 3-H(4) to the principal Civil Court having original jurisdiction within whose jurisdiction the land is situated.

7. The submission of Sri Vishnu Sahai further is that if the initial order dated 21.9.2012 is itself bad making the reference to the principal Civil Court and the same is quashed the subsequent order of the Additional District Judge 5.12.2014 would automatically become honest and stand quashed and therefore the writ petition was maintainable so far as the order dated 21.9.2012 was concerned. In any case the said order could not be quashed in revisional proceedings and therefore the writ petition was maintainable. He has referred to certain decisions.

8. Reference has been made to the judgment in *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*, AIR 1976 SC 2095 : (1976) 3 SCC 719 : (1977) 1 SCR 71 : (1976) 8 UJ 706 . This was a case where land belonging to the appellants had been acquired by the Corporation under compulsory acquisition. The appellants had recorded for a personal hearing with regard to their objections but the same was denied to them. After the acquisition was confirmed the appellants preferred an appeal to the City Civil Court at Ahmedabad. The Civil Court rejected the claim of the appellants and appellants thereafter took the matter to the High Court of Gujarat under Article 227 of the Constitution of India. The High Court refused to interfere holding that Section 5 of the Land Acquisition Act was duly complied with. Hence the SLP. In the S.L.P. the Supreme Court held that hearing objection under

Section 5-A of the Land Acquisition Act to be given by the Commissioner under the Bombay Act cannot be replaced by a kind of appeal hearing by the City Civil Judge. The Bombay Act assigned the duty of hearing objections to the Commissioner who alone can hear them and not the City Civil Judge even assuming that all the objections could be entertained by him in appeal. From these observations it is sought to be submitted by the learned counsel that since the petitioners had not been heard by the competent authority under Section 3-H(3) this Court could interfere with the order of reference made under Section 3-H(4). In my opinion the jurisdiction which is exercised by the principal Civil Court having original jurisdiction is not an appellate jurisdiction and the reference made under Section 3-H(4) is not by way of appeal and if the Act, 1956 does not provide for any further appeal against the order of the principal Civil Court passed under Section 3-H(4) the remedy before the aggrieved party would only be by way of revision.

9. Reference was then made to the case in *Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another*, AIR 1977 SC 747 : (1977) 1 LLJ 262 : (1977) 2 SCC 457 : (1977) 2 SCR 282 . This was the case disciplinary proceedings against the respondents-Conductors of the Road Transport Department in the State of Hyderabad. Disciplinary action was taken against the respondents herein in certain cash and ticket irregularities and they were dismissed from service by the Divisional Controller of the Mysore Government Road Transport Department in December, 1960. The dismissal order was affirmed by the General Manager of the Mysore Government, Road Transport Department. They filed suits for declaration of their order of dismissal from service as illegal. The suits were decreed in favour of the respondents on the ground of contravention of Article 311(1) of the Constitution of India.

10. The submission on behalf of the respondents in the case was that the original order of dismissal was without jurisdiction and void being in contravention of Article 311(1) of the Constitution of India and the order passed in Departmental Appeal by the General Manager could not cure the initial defects.

11. In my opinion the said judgment is absolutely no application to the facts of the present case as in this case there is no statutory right of appeal provided by the Act, 1956 and the jurisdiction exercised by the principal Civil Court was an original jurisdiction and not an appellate jurisdiction or by way of departmental appeal. The appeal preferred before the General Manager and the order passed by him were orders passed in exercise of quasi judicial powers and the same cannot be held to be akin to the original jurisdiction exercised by the principal Civil Court under Section 3-H(4) of the Act, 1956 nor is it an order passed under any provision of the Civil Procedure Code.

12. Reference has also been made to the judgment in *Kshitish Chandra Bose Vs. Commissioner of Ranchi*, AIR 1981 SC 707 : (1981) 1 SCALE 521 : (1981) 2 SCC 103 : (1981) 2 SCR 764 : (1981) 13 UJ 137 . That was a case where the trial Court had decreed the plaintiff's suit on the question of title and adverse

possession. The defendant filed an appeal before the Additional Judicial Commissioner, Ranchi (Chota Nagpur) which affirmed the finding of the trial Court and maintained the decree on both points. The respondent then filed a second appeal in the High Court which remanded the case to the trial Court for a decision only on the question of title. After remand the Additional Judicial Commissioner held that the municipality had approved its title to the land in dispute and dismissed the plaintiff's suit. The plaintiff then went up in appeal to the High Court which affirmed the finding of the Additional Judicial Commissioner and dismissed the appeal by judgment dated 30.9.1967 (the second judgment).

13. The submission of the learned counsel in the case was that the finding so far as the adverse possession is concerned, the same had become final as the finding of the High Court in its first judgment had not been challenged in the Supreme Court. The said judgment also, in my opinion, has no application to the facts of the present case since against the order of the trial Court the defendant had preferred an appeal before the High Court on one point, namely, that of title, therefore this Court fails to see as to how the said judgment has any application to the facts of the present case on the question of maintainability of the present writ petition under Article 226 of the Constitution.

14. The General Clauses Act, 1897, in Section 3(15), defines "District Judge" as judge of principal Civil Court of original jurisdiction but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. This means that the principal Civil Court of original jurisdiction contemplated in Section 3-H(4) of the National Highways Act, 1956 is the District Judge of the Civil Court within the limits of whose jurisdiction the land is situated.

15. It is noteworthy and not denied by the petitioner that when his case was not referred to the Court but a reference had been made by the competent authority to the principal Civil Court of original jurisdiction by the impugned order dated 21.9.2014 under Section 3-H(4) of the Act, 1956, the petitioner had filed his own claim petition on 18.1.2013 claiming that he was a person entitled to receive compensation (as averred in paragraph 9 of the writ petition). Thus the petitioner had himself submitted to the jurisdiction of the District Judge, Kanpur being the principal Civil Court having original jurisdiction in the matter and it is not that the District Judge did not have jurisdiction to entertain the reference and examine the dispute since the statutory provision of Section 3-H(4) confers such power upon the principal Civil Court having original jurisdiction.

16. Therefore considering the matter in its entirety and with regard to the facts of the case and the case law referred to hereinabove, I am of the view this writ petition under Article 226 of the Constitution of India is not maintainable and the only remedy for the petitioner is by way of a revision as held by the Supreme Court in the case of *Sadhana Lodh* (supra).

17. In *The Reliable Water Supply Service of India Vs. Union of India (UOI) and Others*, AIR 1971 SC 2083 : (1972) 4 SCC 168 : (1971) 3 UJ 215, the Supreme

Court has held that the High Court was competent to convert an appeal into a revision. Similar view has been taken by a Division Bench of the Kerala High Court in *Nafeesa v. Deputy Collector and Special Land Acquisition Officer*. This was a case under the National Highways Act, 1956 where a reference had been made by the Competent Authority under Section 3-H(4) of the Act to the principal Civil Court of original jurisdiction and the learned judges held that there is no provision in the National Highways Act which provides a right of appeal against the decision by the Court on a reference under Section 3-H(4). It was also held that the principal Civil Court of original jurisdiction is a Court subordinate to the High Court and since no appeal lies to the High Court against that decision a revision under Section 115 CPC would lie and accordingly the Kerala High Court had converted the regular first appeal into a civil revision petition under Section 115 CPC. Therefore on a conspectus of facts and law discussed above this writ petition under Article 226 of the Constitution of India is not maintainable. However, the writ petition is ordered to be converted as a Civil Revision Petition under Section 115 CPC with a further direction to the Registry of this Court to give it a regular number as a civil revision petition and thereafter list the case before the appropriate Bench having jurisdiction in the matter.

Sri Vishnu Sahai, learned counsel for the petitioner also made various submissions on the merits of the case but since this Court has no jurisdiction to enter into those questions under Article 226 of the Constitution, no reference is being made to those submissions.