

(1991) 06 KL CK 0017
In the High Court Of Kerala
Case No : C.M.A. No. 3 of 1991

Joseph

APPELLANT

Vs

The Government of Kerala

RESPONDENT

Date of Decision : 19-06-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 151
Land Acquisition Act, 1894 — Section 18

Citation : (1991) 2 KLJ 142

Hon'ble Judges : K.S. Paripoornan, J;B.M. Thulasidas, J

Bench : Division Bench

Advocate : T.A. Ramadas and A.K. Alex, for the Appellant; T.M. Poulouse, Government Pleader, for the Respondent

Judgement

Paripoornan, J.—Identical questions arise for consideration in these two cases. The appeals are preferred against the orders passed by the Subordinate Judge, Sulthan Bathery, dated 30th June 1990 in I.A. No. 436/90 in L.A.R. No. 208/85 and in I.A. No. 488/90 in I.A.R. No. 279/85. The Appellants are claimants in the references made under the Land Acquisition Act. On the day when the references came up for hearing before the Sub Court, the Appellants (claimants/Petitioners) were absent. On the basis of the available evidence on record, the court below passed, an award rejecting the claim for enhancement of compensation pleaded by the Appellants. The award passed by the Land Acquisition Officer was upheld. Thereafter, the Appellants filed petitions under Order 9, Rule 9 read with Section 151 of the CPC to restore the reference applications to file treating the dismissal as one for default. By orders passed on the same day, the learned Subordinate Judge held that the Court has passed an award on the basis of the available evidence on record in the absence of the Appellants/claimants and the cases were not dismissed for default as wrongly alleged by the Appellants. Stating that when a reference is made to the Civil Court, under the, Land Acquisition Act, the reference has to be answered irrespective of the presence or absence of the applicant, the learned Subordinate Judge held that since the court had passed an

award in the Cases, the applications filed on the basis that they were dismissed for default, are not maintainable. The Petitioners in the court below (the claimants) have come up in appeals.

2. The same Counsel appeared for the Appellants, in both the cases. We heard Counsel. It was argued that the court below should have held that in substance the award passed by it is an order passed on default and so the provisions of Order 9, Rule 9 read with Section 151 CPC will apply. The Appellants having shown sufficient cause for non-appearance, the reference applications should have been restored to file. We see no force in this plea. When a reference is made to the Court under, Section 18 of the Land Acquisition Act, it is the duty of the Court to determine the amount of compensation payable for the land acquired. The Court cannot refuse to determine, the amount of compensation even where the claimant remains absent or fails to adduce evidence. The court is bound to pass an award. It cannot dismiss the applications for default. Consequently, an award passed by the court is not an order under Order 9, Rule 9 CPC. The court below was justified in holding that the petitions filed under Order 9, Rule 9 read with Section 151 CPC are not maintainable. The propositions stated above are discernible from the decision of a learned Single Judge of this Court in *Krishna Pillai v. State of Kerala* 1988 (2) KLT 898 and the judgment of a learned Single Judge of the Karnataka High Court (Govinda Bhat, C.J.) in *M.S. Ramaiah v. Spl. Land Acquisition Officer* AIR 1974 Kar 122. We concur with the reasoning and conclusion of the court below that the petitions filed before it are not maintainable and that they were rightly dismissed.

3. The appeals are without merit. "They are dismissed in limine.