
(1965) 12 MAD CK 0042
In the Madras High Court
Case No : C. R. P. No. 2289 of 1962

K. Dhanapalan and others

APPELLANT

Vs

The Assistant Collector, Dindigul

RESPONDENT

Date of Decision : 17-12-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 115, 18, 2
Land Acquisition Act, 1894 — Section 18, 53, 54

Citation : (1965) 12 MAD CK 0042

Hon'ble Judges : Natesan, J

Bench : Single Bench

Advocate : A.R. Krishnan for Mr. M.R. Narayanaswami, for the Appellant; T. N. C. Rangarajan for The Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Natesan, J.—This revision has been preferred against the order of the learned Subordinate Judge, Dindigul, rejecting an application for review under Or. 47, Rule 1 of the C. P. Code, by a claimant in Land Acquisition proceedings on a reference under S. 18 of the Land Acquisition Act. It is unnecessary to go into the merits of the application for review. It is stated that the statutory solatium and interest have not been provided, by some inadvertence. The learned Subordinate Judge has taken the view that as the proceeding before him was on a reference under the Land Acquisition Act, he would have no jurisdiction to review the matter even if there should be any error apparent on the face of the record. In this the learned Subordinate Judge purports to follow a decision of this Court in *Mulambath Kunhamed v. Parakat Kathiri Kutti*, 31 M. L. J. 827. The Judgment was rendered in 1916 prior to certain amendments of the Land Acquisition Act made in 1921. Even in that judgment of the two learned Judges who constituted the Bench, Ayling J. has expressed the view that a review would lie, whereas the other learned Judge, Srinivasa Aiyangar, J. is of the view that a review would not lie. The basis of the view of Srinivasa Aiyangar J. is stated thus:

The decision then of the Court under the Land Acquisition Act being an award and not a decree or order of a Civil Court in its ordinary jurisdiction, it is clear that unless the Court is specially empowered by statute, it cannot change its award on review

2. The learned Judge, Ayling J, observes thus:

In this case I have had the advantage of perusing the judgment of my learned brother and agree in the orders proposed by him. With all respect, I am by no means satisfied that the District Judge's order reviewing his award was without jurisdiction. It is not necessary to accept Mr. Menon's argument that S. 53 of the Land Acquisition Act extends even to appellate proceedings and would confer the ordinary right of appeal given by the CPC even if S. 54 were non-existent. But I see no reason why review proceedings under S. 114 C.P.C. should not be regarded as "proceedings before the Court under this Act" within the meaning of S. 53 of the Land Acquisition Act or why at Mr. Sundaram would have it, the application of S. 53 should necessarily terminate with the pronouncement of the award by the Court ?

3. Both the learned Judges agreed in their view that no interference under S. 115 C. P. C. was called for in that case and the ultimate decision was rested on that. There is therefore no authoritative decision on the position in that case. Even under the Land Acquisition Act, before its amendment in 1921. the Patna High Court in Sakti Narain Singh v. Bir Singh, 58 I. C. 516, held that there was nothing in the Land Acquisition Act, which forbade the application of Or. 47, C. P. C. to proceedings under the Act. Whatever might have been the position prior to the amendment of the Land Acquisition Act by the amendment in 1921, the difficulty felt by Srinivasa Aiyangar J. has been removed. Sub-sec. (2) of S. 26 as amended in 1921, reads thus:

Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Sec. 2, clause (2) and Sec. 2 clause (9) respectively of the C. P. Code 1908.

4. We have to read this along with S. 53 of the Act. By S. 53 of the Land Acquisition Act, 1894, it is provided,

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the C. P. Code shall apply to all proceedings before the Court under this Act.

5. Now under S. 114 C. P. Code, any person considering himself aggrieved, inter alia by a decree or order from which an appeal is allowed by the Code but from which no appeal has been preferred or by a decree or order from which no appeal is allowed by the Code, may apply for review to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit. Or. 47 contains the Rules for review. Now that under the provisions the award has to be deemed to be a decree of the Civil Court, it will attract the other

provisions of the C. P. Code. Once it is deemed to be a decree all the consequences of its being a decree unless expressly limited will follow. The provisions for review to the extent it is allowed by the Code will be applicable, as a review is not prohibited by the Land Acquisition Act. There is no limitation in the application of the Code except as to the forum of appeal on a reference under Sec. 18. In these circumstances, I hold that the decree passed by the Court on the reference under the Land Acquisition Act can if circumstances warrant be reviewed by the Court. The learned Subordinate Judge will therefore take the matter on his file and consider the application for review on merits. The revision is allowed accordingly. There will be no order as to costs.