
(1962) 06 GAU CK 0006
In the Gauhati High Court
Case No : First Appeal No. 36 of 1957

Ka Sylvia Dohling

APPELLANT

Vs

U Nodro and Another

RESPONDENT

Date of Decision : 22-06-1962

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 26(1), 26(2), 3, 54

Citation : AIR 1962 Guw 143

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : J.C. Medhi and N.M. Lahiri, for the Appellant; S.M. Lahiri and J.P. Bhattacharjee, for the Respondent

Judgement

G. Mehrotra, C.J.—This is an appeal against an order dated the 18th April 1957, passed by the Assistant to the Deputy Commissioner, Shillong in land acquisition proceedings. About seventy-five acres of land at Umpling (Mylliem State) in Shillong was sought to be acquired by the Government. Respondent U Nodro claimed compensation in respect of the acquired land. An objection was filed by the Appellant Ka Sylvia Dohling. She claimed the entire compensation on the ground that she was the owner of the land. The Deputy Commissioner who is the Collector, gave an award in favour of the Respondent U Nodro. An application was made to the Collector u/s 18 of the Land Acquisition Act by the present Appellant Ka Sylvia Dohling for reference to the civil court. The Deputy Commissioner by his order dated the 30th September 1955, referred the matter to the Court of the Deputy Commissioner, United Khasi-Jaintia Hills District, Shillong, which was the principal civil court of original jurisdiction in the district, u/s 18 of the Land Acquisition Act. The matter came up before the Assistant to the Deputy Commissioner on the 23rd December 1955. The matter was adjourned from time to time as the Assistant to the Deputy Commissioner Sri K. Bardoloi was not empowered to take up the matter. On the 30th July 1956, in the order sheet he passed the following order:

I have since been invested with requisite powers. Petition filed by the applicant for an adjournment. Fix 20th August 1956, for hearing." Thereafter the case was heard on several dates. Both the Appellant and the Respondent produced their respective evidence and on the 18th April 1957, the Assistant to the Deputy Commissioner rejected the Appellant's claim and held that the Respondent was entitled to get the compensation. It is against this order that the present appeal has been filed u/s 54 of the Land Acquisition Act.

2. Section 54 provides for an appeal against an award. Sub-section (1) of Section 26 provides that every award under the Act will be in writing signed by the Judge and Sub-section (2) of Section 26 provides that every such award shall be deemed to be a decree. The appeal thus lies to this Court against the award.

3. The first point taken by the Appellant is that the reference itself was incompetent. The area of the land acquired is outside the Shillong municipality and it is neither covered by the area of Shillong which is known as the British Area, nor the administered area. The land forms part of the State of United Khasi-Jaintia Hills and as such the principal civil court of original jurisdiction will be the District Council Court. The reference to the Deputy Commissioner was thus incompetent.

Secondly it is urged that even if the area was within the Administered Area of Shillong, as the Deputy Commissioner was the principal civil court of original jurisdiction, the case had to be disposed of by the Deputy Commissioner himself and the Assistant to the Deputy Commissioner had no power to entertain the reference.

The appeal u/s 54 lies against an award and this Court in appeal can go into the correctness or otherwise of the award. Whether the reference itself was competent or not is not a matter which can be decided in this appeal. If the Assistant to the Deputy Commissioner was not competent to give the award, there will be no award in the eye of law and no appeal would lie u/s 54. It is thus difficult to accept the contention of the Appellant that the validity or otherwise of the reference can be examined by this Court. Apart from this contention, no point was ever taken before the Assistant to the Deputy Commissioner that he was not competent to decide the reference. If the point had been raised the court below would have considered the question as to whether this land is situate within the Administered Area of Shillong or outside that area.

It is not disputed that by a regulation of 1951 the provisions of the Land Acquisition Act have been made applicable to this area. Section 3(d) defines the court as meaning a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act. It is the principal civil court of original jurisdiction or any other judicial officer specially empowered by the Government who can take up such a reference.

If the point had been raised the court below would have investigated this matter and there would have been materials before us to decide whether the Assistant to the Deputy Commissioner was or was not empowered by the appropriate Government to hear such references. If this point had been raised, as we have pointed out, the court below would have gone into the question as to whether the area is within the Administered Area of Shillong or outside it. On that finding depended the question as to which will be the principal civil court of original jurisdiction. In the absence of the point being raised it cannot even be argued that there is a patent lack of jurisdiction which this Court may decide u/s 54. The Appellant herself submitted to the jurisdiction of the court below, examined witnesses and it is not open to her now to raise the question of want of jurisdiction on the part of the court below to dispose of the reference.

4. On merits it has been admitted by the present Appellant that the land was sold by her mother Ka Beronica in 1931 for valuable consideration to Hardeodas Agarwalla whose son has been produced and he has stated that he in his turn sold the property to the Respondent. Possession was given to Hardeodas Agarwalla.

5. Two points were urged by the present Appellant in support of the contention that the sale in favour of Hardeodas was a nullity and no title passed to Hardeodas at all. Firstly it is urged that under the law prevalent in the Khasi State no transfer could be made of the land to a non-Khasi unless the Deputy Commissioner's permission was granted. As in the present case the Respondent has not proved any permission of the Deputy Commissioner for the sale of the land to Hardeodas, the transfer was void. It is secondly urged that the Appellant has been paying land rent to the landlord and as such she never gave up her right to the property. The property was sold admittedly by Appellant's mother in 1931 for valuable consideration to Hardeodas. The sale deed has been produced and has been duly admitted and proved. The case of the Appellant was that after the sale deed the land was again purchased by her on return of the sale consideration.

The court below in our opinion has rightly held that there is no evidence to prove the repurchase of the land by her from Hardeodas. As to the invalidity of the sale deed the argument of the Appellant was that the sale deed was void. No law was shown to the court below which will go to show that such a sale will be void ab initio. Reliance was placed on the order passed by the Assistant Political Officer, Khasi States dated the 8th May 1941 to show that this transaction was not recognised. It was urged that this order is conclusive between the parties. The Deputy Commissioner rightly remarked that this is not an order passed by any court. It is only an order passed by the Assistant Political Officer which could not take away the title of Hardeodas. This order does not show that there was any law or any order of the Government having the force of law, which made such a transfer void ab initio.

6. It was very strongly contended by Dr. Medhi that it is not open to the

Municipal Court to declare any order passed by an officer of an independent State mere executive order as at the time when this order was passed the Khasi State was an independent State. As we have pointed out the only argument advanced by the Appellant was that the order passed by the Assistant Political Officer was an order of court which was binding on the parties and the court below in our opinion was perfectly right in remarking that this was not an order of a court but an executive order passed by the Assistant Political Officer. Whether that order will have the force of law by itself was never attempted to be argued by the Appellant before the Assistant to the Deputy Commissioner, Nor any other order of the Government having the force of law was produced before the court below which would go to show that the law prevalent in that State was that such a transfer will be void ab initio. It may be that in order that the land may not go to non-tribals the Government may have issued certain instructions that such transfers would not be recognised, but that would not make a transfer void ab initio, and particularly when the land now is claimed by a tribal, this also thus will not interfere with the principle that the land should be retained by the tribals.

The land was transferred by Ka Synti as the representative of the clan to Ka Baronica Dohling mother of the Appellant in 1923, Ka Baronica sold it to Hardeodas in 1931 and Hardeodas afterwards sold it to the Respondent. A fresh patta was issued in 1948 by Ka Diang Kharkongor the then representative of the clan in favour of the Respondent and Anr. patta was executed in favour of the Respondent by the same representative of the clan in the year 1954. A portion of this land which was sold to the Respondent by Hardeodas was acquired by the Military and compensation was paid to him. After the acquisition of a portion of the land by the Military a fresh patta was executed of the remaining land in favour of the Respondent in the year 1954.

7. Much reliance has been placed on the receipt dated the 29th February 1948 marked Ext. 3 and the receipt marked Ext. 4 dated 06-03-49 given by Ka Sainti Kharkongor showing that she had received Rs. 4 from Ka Doreen Das as the rent of the land to show that the rent had always been paid by the Appellant. These receipts were signed by Ka Sainti Kharkongor. Admittedly Ka Sainti Kharkongor did not own the property after 1938 and in 1949 she had ceased to be the representative of the clan. Any receipt, therefore, by her will not show either the genuine payment of the rent by the Appellant or possession of the Appellant. As against this a number of receipts have been filed by the Respondent showing the payment of the rent to the proper representative of the clan. In our opinion therefore, this appeal has no force and it is rejected with costs.

S.K. Datta, J.

8. I agree.