

(2017) 03 KL CK 0034
In the High Court Of Kerala
Case No : AS. No. 517 of 2000

Kerala State Housing Board Trivandrum

APPELLANT

Vs

R. Omana

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Land Acquisition Act, 1894 — Section 11(1), Section 18(1), Section 4(1), Section 9(2)

Citation : (2017) 2 ILRKerala 106 : (2017) 2 KerLJ 139 : (2017) 1 KLT 954

Hon'ble Judges : Mr. V. Chitambaresh and Mr. Sathish Ninan, JJ.

Bench : Division Bench

Advocate : K. Narayanan and Denny Devassy (By Order) SC KSHB, for the Appellant; Smt. Annamma Abraham, P.S. Ramesh Kumar, Advocates, for the Respondent Nos. 1 to 6; Government Pleader, for the Respondent No. 7; Sri. S.B. Premachandra Prabhu, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Chitambaresh, J.—Is there any bar for the civil court to entertain a suit for compensation by the claimants for lands lost in excess of that acquired under the provisions of the Land Acquisition Act, 1894 ["the Act" for short] ? The issue may crop up under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 also and hence this detailed consideration.

2. Lands belonging to the plaintiffs and defendants 3 and 4 were acquired by the first defendant State on the requisitioning of the second defendant Kerala State Housing Board ["the Board" for short] . Award No.5 dated 28.9.1986 and Award No.1 dated 18.6.1992 were passed in respect of 5.06 Ares and 35.06 Ares totalling to 40.12 Ares which gave rise to L.A.R.Nos.478/87, 205/86 and 206/86. L.A.R.Nos.478/87 and 205/86 were for enhancement of compensation under Section 18 of the Act whereas LAR.No.206/86 was under Section 31(2) of the Act for apportionment of compensation. The judgment in L.A.R.No.205/86 was the

subject matter of L.A.A.No.565/1994 by the State and L.A.A.No.580/1994 by the claimants where under the value of lands was enhanced. L.A.R.No.206/86 was disposed of recording a compromise in respect of 35.06 Ares however granting liberty to the parties to institute a suit for compensation in respect of the lands not covered by the reference. It is how the suit has been filed by the plaintiffs claiming compensation on behalf of defendants 3 and 4 also against defendants 1 and 2 for the lands taken possession of in excess by 2.80 Ares.

3. The court below has decreed the suit for realisation of money awarding compensation for the 2.80 Ares of land taken possession of in excess to the tune of Rs. 3,53,220/- with interest thereon. The Board has come up in appeal contending inter alia that the suit itself is barred in as much as the claimants have to work out their remedy within the four corners of the Act. The claimants not having succeeded in the reference under Section 18 of the Act are precluded from instituting a suit invoking Section 9 of the Code of Civil Procedure, 1908. The Board pointed out that an Advocate Commissioner was not deputed in the suit to prove the extent of encroachment and that the report and plan in the land acquisition references are of no avail. The Board lastly contended that the court below has erred in granting solatium and interest as if it is a land acquisition reference in computing compensation for the alleged loss.

4. We heard M/s. K. Narayanan and Denny Devassy, Advocates on behalf of the appellant and Mr. S.B. Premachandra Prabhu, Advocate as amicus curiae.

5. Let us first advert to the relevant provisions in the Act as regards the measurement and identification of the land proposed to be acquired thereunder in regard to which the compensation is payable. Section 4(2) of the Act empowers any officer authorised by the Government to set out the boundaries of the land proposed to be taken and mark the boundaries thereof. Section 8 of the Act enables the Collector to cause the land to be marked out (if not already done under Section 4 of the Act) and measured for the purpose of making a plan thereof. Section 9(2) of the Act obliges the Collector to give public notice stating the particulars of the land so needed in order to facilitate the persons interested to raise objections including its measurement. Section 11(1) of the Act mandates the Collector to conduct an enquiry into the objections as regards the measurement, value and interests and to make an Award specifying the details. Section 18(1) of the Act permits the claimants to require the matter to be referred by the Collector for the determination of the court even if the objection pertains to the measurement. Thus the Act is a complete code in itself to raise an objection as regards the measurement of the land proposed to be taken and the determination of its extent and boundaries.

6. The above is precisely why the Supreme Court has in more than one occasion held that the jurisdiction of the Civil Court is impliedly barred in respect of matters required to be determined under the Act. It was held in *State of Mizoram v. Biakchhawna* [(1995) 1 SCC 156] as follows:-

"7. Under Section 11 of the Act the Collector after making an Award is enjoined to tender payment after giving notice of making the award and on receiving the notice any person interested present at the time of making the award or on receipt of the notice, is not only entitled to receive the compensation under Sections 18 and 31 of the Act under protest but also is entitled to make an application in writing requiring the Collector to refer the matter and the Collector is enjoined under Section 18 of the Act to make a reference of the objection made by the claimant as an interested person, objecting to either (a) the measurement of the land, (b) for the amount of compensation, or (c) the person to whom it is payable or the compensation among the interested person. The application should be made within the prescribed period mentioned in sub-section (2) of Section 18 of the Act.

8. Thus, the scheme of the Act envisages that on making application under Section 18, making a reference under Section 18 of the Act in the manner prescribed under Section 19 to the Court is mandatory and is sine qua non for the court to proceed "thereupon" since it gets jurisdiction to issue a notice to the persons enumerated hereinbefore specifying the day to appear before it. The Court then is enjoined to determine compensation in the manner prescribed in Part III of the Act. On such determination, it shall pass a decree and the award under Section 26 and in the form and manner specified therein. The Award is a decree and the statement of grounds a judgment under sub-section (2) of Section 26 of the Act for the purpose of appeal under Section 54. Since this is a special procedure provided in the Act, by necessary implication, the Civil Court under Section 9 of the Civil Procedure Code 1908 has been prohibited to take cognizance of the objections arising under the Act for determination of the compensation for the land acquired under the Act."

(emphasis supplied)

It was again held in *Laxmi Chand and others v. Gram Panchayat, Kararia and others* [AIR 1996 SC 523] as follows:-

"3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court."

(emphasis supplied)

The implied bar of jurisdiction for the civil court to take cognizance would apply only for disputes in relation to measurement and marking of the boundaries of the land proposed to be acquired under the Act. The land proposed to be

acquired can obviously be the one for which a notification under Section 4 of the Act and a declaration under Section 9 of the Act were published as per law.

7. The implied bar of jurisdiction however does not apply in respect of lands encroached upon by the State whereby the claimants lose possession of lands otherwise than under the Act. Assume that the lands so lost possession of lie beyond the boundaries marked under Sections 4(2) and 8 of the Act in regard to which no dispute as regards measurement could have been raised before. There was therefore no scope for an Award considering also the issue of measurement or an opportunity to seek a reference by the claimants under Section 18 of the Act. A suit by the claimants is maintainable either for recovery of possession on title or for damages if the complaint is that the State has taken possession of lands not acquired under the Act. Mr. Justice M.M. Ismail of the Madras High Court has made the position clear half a century ago in *V.P.G. Murugesan Pillai v. State of Madras* [AIR 1973 Madras 112]. It was held therein as follows:-

"6. As far as the conclusion of the courts below that Section 18 of the Land Acquisition Act is a bar to the present suit is concerned, I am unable to see how Section 18 can come into the picture at all. Section 18 merely states that if a person interested is not accepting the award passed by the Land Acquisition Officer and objects to the same either with reference to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested, he will have to call upon the Land Acquisition Officer to make a reference to the Civil Court. Where the award itself specified the extent of the land only as one acre and 1609 sq. ft. and there was nothing to show that a wrong measurement was adopted, there is no question of the appellant objecting to the measurement with reference to the award and therefore, calling upon the Land Acquisition Officer to refer the matter to the court. Consequently, the appellant, on the terms of the award could not have any objection to the award and, therefore, could not have raised any objection with reference thereto. His complaint actually is that the respondent had taken possession of the land not acquired under the provisions of the Land Acquisition Act and in such a situation, Section 18 can have no application whatever. As I pointed out already, Section 18, in terms, does not apply to the present complaint of the appellant and hence his suit cannot be said to have been barred by that provision."

(emphasis supplied)

Such taking possession of lands not covered by the notification and award would not amount to acquisition under the Act as has been stated also in *B.K. Gupta v. The Lt. Governor* [AIR 1989 Calcutta 89].

8. It is only for the enforcement of a right or obligation created under the Act can the claimants be pinned down to the remedy under the Act as has been held in *Biakchhawna's* case and *Laxmi Chand's* case. The jurisdiction of the civil court is not barred if the dispute arises out of a right or liability under the general or

common law and not under the Act. We also take cue from the decision in *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others* [AIR 1975 SC 2238] wherein the implied bar of the civil court in relation to an industrial dispute was considered. It was held therein as follows:-

- (1) If the dispute is not an industrial dispute nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.
- (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
- (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
- (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

(emphasis supplied)

Added to this is the fact that liberty to institute a suit for compensation in relation to the lands lost by the claimants beyond the scope of reference has been specifically reserved in the judgment in L.A.R.No.206/86. The contention of the Board that the suit for damages for the lands taken in excess of the notification and award under the Act is not maintainable has only to be stated and rejected.

9. The court below has found on evidence that the total extent of lands now in the possession of the Board is 42.92 Ares as against 40.12 Ares covered by the Awards in L.A.C.Nos.42/86 and 15/92. The court below in so doing has relied on the plan prepared by the Taluk Surveyor examined as PW.2 as well as the report filed by the Advocate Commissioner in L.A.R.No.206/86 examined as PW.3. The finding of the court below that excess lands to the extent of 2.80 Ares has been taken possession of from the claimants is rested on evidence and calls for no interference. We also find that the suit is filed within three years from the judgment in L.A.R.No.206/86 where under the parties were given liberty to file a suit of the nature. The suit is filed on 27.2.1993 soon after the lands were taken possession of on 28.7.1992 and the relief of compensation in lieu of recovery on title cannot be said to be barred by limitation.

10. The impugned judgment was heavily criticised on the ground that a civil court could not have at any rate awarded solatium and interest as if compensation was worked out under the Act by a reference court. We agree with the criticism even though we find that a just compensation has been arrived at adopting the same yardstick as was applied in L.A.A.No.565/1994 by this Court. It may be that the right to property has ceased to be a fundamental right after

the Constitution (44th Amendment) Act, 1978 but is still a constitutional right under Article 300A of the Constitution. No person shall be deprived of the lands belonging to him except in accordance with law and compensation for the loss if any can be had by resort to the civil court. The award of Rs. 3,53,220/- as compensation for the loss of 2.80 Ares of land belonging to the plaintiffs as well as defendants 3 and 4 cannot be said to be excessive. The rate of interest awarded at the rate of 15% per annum from the date of suit till the date of decree and thereafter at the rate of 6% per annum till realisation is also not interfered with.

11. Accolades to Mr. S.B. Premachandra Prabhu, Advocate for his exposition of law laced with judicial precedents as *amicus curiae* in the case.

12. The Appeal Suit is dismissed. No costs.