

(1964) 03 KL CK 0024
In the High Court Of Kerala
Case No : C.M.A. No. 157 of 1962

Kesava Pillai

APPELLANT

Vs

Uzhuthiraru and Others

RESPONDENT

Date of Decision : 13-03-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 22, 25, 27

Citation : (1964) KLJ 907

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker, P.G. Parameswara Panicker, for the Appellant; K.A. Mohamed (Government Pleader) For 2nd Respondent, K. N. Narayanan Nair G. Raghava Panicker N. Sudhakaran and T.P. Mathai For 3rd Respondent, for the Respondent

Judgement

T.K. Joseph J:

1. This Civil Miscellaneous Appeal is directed against an order dated 16th March 1962 of the Subordinate Judge of Meenachil in L.A.R. No. 2 of 1960. A plot of land, 13 cents in extent, in survey No. 234/1 of Vellavoor Village was acquired by the State under the Travancore Land Acquisition Act, XI of 1089. The appellant and the first respondent were rival claimants for compensation. The Land Acquisition Officer made an award on 3rd February 1956 fixing compensation at Rs. 409--8--0 and solatium. The question of apportionment was left for decision by the District Court. The appellant claimed enhanced compensation, and he applied for reference on 28th February 1956. The Subordinate Judge of Meenachil held that there was no award u/s 11, or reference u/s 18 of the Act as the question of apportionment of compensation was not decided by the Land Acquisition Officer and that the reference was one u/s 27 of the Act (corresponding to Section 30 of the Indian Land Acquisition Act). Accordingly, he decided the question of apportionment and sent back the papers to the Land Acquisition Officer for passing an award. This Civil Miscellaneous Appeal is

against this order.

2. The first question for decision is whether an appeal lies from this order. An appeal lies only u/s 38, which provides:

Subject to the provisions of the CPC applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the District Court in any proceedings under this Regulation.

Section 25 provides:

25 (1) Every award made by the Court shall be in writing, signed by the Judge and shall specify the amount awarded under Clause (1) of sub-section (1) of section 22 and also the amounts (if any) respectively awarded under each of the other Clauses of the same subsection, together with the grounds of awarding each of the said amounts.

(2) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(3) If the sum which, in the opinion of the Court, the Division Peishkar ought to have awarded as compensation is in excess of the sum which the Division Peishkar did award as compensation, the award of the Court may direct that the Government shall pay interest on such excess at the rate of six per centum per annum from the date on which the Division Peishkar took possession of the land to the date of payment of such excess in Court.

It is clear from the order under appeal that it is not an award u/s 25. "

3. A similar case under the Travancore Land Acquisition Act was decided by the High Court of Travancore-Cochin in *State of Travancore-Cochin v Kumaranallore Devaswom* ILR 1955 T.C. 368. The facts were exactly similar, and the District Judge sent back the case to the Land Acquisition Officer for passing a proper award u/s 11. It was held that the reference made by the Land Acquisition Officer was on his own initiative u/s 27 and that it was only when a reference was made u/s 18 that the Court got jurisdiction to go into the question of adequacy of compensation. It was further held that the Land Acquisition Officer in making an award had to decide (1) the area of the land, (2) the compensation allowed for the land and (3) the apportionment of the compensation and that it was only in cases in which all the three points had been decided that the award could be deemed a final one u/s 11. The High Court also held that in the case of a reference u/s 18, the District Court had no jurisdiction to remand the case to the Land Acquisition Officer, but that in the case of a reference u/s 27, the answer necessarily had to be communicated to the Land Acquisition Officer to enable him to make a final award. This decision is based on an earlier decision to the Travancore High Court in *Sirkar v Narayanan Nambudripad* 35 T.L.R. 211. I am in complete agreement with the view taken in the cases referred to above, and it is therefore unnecessary to discuss the point further. It follows that there

is no award from which an appeal lies. After a proper award is made afresh u/s 11, it is open for the appellant to move for a reference and he can file an appeal from the decision of the civil court in such a reference. It may be that the opinion recorded on the question of apportionment has to be incorporated in the award to be passed hereafter; but I make it clear that the appellant will then get an opportunity to bring the matter to this court in appeal.