

(1980) 12 KL CK 0019
In the High Court Of Kerala
Case No : L.A.A. No. 13 of 1978

Kochan Nadar Rayappan Nadar

APPELLANT

Vs

Podiyan Nadar and Others

RESPONDENT

Date of Decision : 03-12-1980

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 32

Citation : AIR 1981 Ker 41 : (1981) 1 ILR (Ker) 497

Hon'ble Judges : P.C. Balakrishna Menon, J

Bench : Single Bench

Advocate : P. Krishnamoorthy, for the Appellant;

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—The appeal is against the judgment of the Subordinate Judge, Trivandrum in L. A. R. No. 251 of 1972. The reference is u/s 32 of the Kerala Land Acquisition Act for the purpose of apportionment of compensation deposited in Court. The acquisition was in respect of 5.54 acres of land. The Land Acquisition Officer deposited the compensation Rs. 4,340.56 Ps. in court because of the dispute among various claimants " and referred the question of dispute to be decided by the civil court u/s 32 of the Land Acquisition Act. The court below without deciding the reference has directed the parties to establish their title to the acquired land In other appropriate proceedings with a further direction for deposit of the compensation amount in the Indian Bank, Trivandrum as fixed deposit for a period of two years. It is against this that the 17th claimant has preferred this appeal.

2. The B-diary in the case shows that the case was not even posted for trial. Notice to all the parties had not been served even on the date of disposal of the reference by the lower court. The B-diary shows that the case was adjourned to 20-12-1976 for return of acknowledgment of notice issued to claimants 35 and 41, for obtaining correct names and addresses of the legal representatives of the 12th claimant, to get the correct name and address of the 15th claimant and for

notice to the 19th claimant. It is seen that a letter was sent to the Land Acquisition Officer on 6-12-1976 to get the above details. There is an endorsement dated 7-12-1976 that notice had been issued. The entry dated 20-12-1976, shows that claimants 19, 35 and 41 were not present, and the case was adjourned to 29-1-1977 awaiting reply from the Land Acquisition Officer. The next entry dated 29-1-1977 is that no reply is received from the Land Acquisition Officer and the case is posted for disposal on 31-1-1977. On 31-1-1977 the case is disposed of directing the parties to establish their title to the acquired property in other appropriate proceedings; and the compensation amount is directed to be deposited in the Indian Bank, Trivandrum as Fixed Deposit for a period of two years.

3. A Division Bench of this Court in *Chandan Vydier v. Chakkutty Vydier* 1969 KLR 691 has held as follows:

"11. A reference under the Land Acquisition Act regarding any dispute as to the persons to whom the compensation is payable is really in the nature of an interpleader suit. The proceeding is a combination of as many suits as there are claims and each claimant is both plaintiff and defendant. The proper procedure in such cases, we should think, is for the court to call upon each claimant to file a statement of his claim -- this statement would be his plaint. In answer to the claim thus made, the defendants namely, the contesting claimants should be given the opportunity of filing statements. These would be their written statements. Then issues should be settled and the trial proceeded with in the ordinary manner."

The same view was expressed by a Full Bench of this Court in *Thevaril Ranee Sidhan and Another Vs. The Special Tahsildar for Land Acquisition and Others*, . After referring to the decisions in AIR 1922 PC 80 and 1969 KLR 691, the Full Bench at paragraphs 9 and 10 of its judgment has laid down the law as follows:

"9.Shortly, once the dispute is before court u/s 32, a person lawfully entitled to compensation or part thereof is entitled to establish his right as against any person as in a suit. The court will, in deciding the dispute be guided, governed and regulated by the provisions of the Code of Civil Procedure, 1908 (Section 59 of the Act says so), and in our view, by the provisions of the Evidence Act, 1872. Here it is necessary to advert to one rule of evidence contained in the Act itself. We refer to Section 31 of the Act whereby an award of apportionment by the Collector based on agreement of persons interested and specifying the particulars of such apportionment is made conclusive evidence of the correctness of apportionment, as between such persons, viz., persons who have agreed to the apportionment. But for this limitation there is nothing in the Act which will preclude a person lawfully entitled to compensation amount, or part thereof from claiming and establishing, that he as the real person interested is entitled to the same. Failure on his part to claim the compensation or part thereof, or his failure to dispute the claim advanced by others, or, even an admission that another is entitled to the compensation amount, in proceedings

before the Collector, cannot in our view, preclude him from advancing his claim and establishing the same, at any subsequent stage, before the Collector or before the Court. So long as the rule of conclusive evidence stated in Section 31 of the Act is not in his way. His conduct, failure to claim or to dispute another's claim, or the admission, as the case may be, can, if established, be a relevant fact under the ordinary rules of evidence in assessing the merits of his claim, but he is under those rules of evidence also entitled to explain away these facts, and to establish his title to compensation or part thereof.

10. We would like to caution that the principles stated above will have application only to the subject-matter of enquiry before the court on a reference u/s 32 of the Act. The subject-matter of enquiry will depend upon the scope of reference u/s 32. The court can so far as the subject-matter of the enquiry is concerned, exercise all powers vested in it under the Code of Civil Procedure, 1908, and decide all questions arising in relation to it applying the ordinary rules of evidence, but subject to the rule of conclusive evidence, stated in Section 31 of the Act. For example, if the reference is only as to part of the compensation amount and as to the persons to whom the same is payable, the court can decide only the questions arising in relation to that part of the compensation amount. In respect of that much compensation amount, which should necessarily be in deposit in court, the proceedings will be in the nature of an interpleader suit to which the principles above discussed would be applicable. This is clear from the use of the words "such dispute" in Section 32 of the Act. These words refer to a dispute "as to the apportionment of the amount of compensation or any part thereof, or as to the persons to whom the amount of compensation or any part thereof is payable", and mean a dispute as to the apportionment of the whole of the compensation amount or the persons to whom the same is payable, or, as the case may be, a dispute as to the apportionment of any part of the amount of compensation or as to the persons to whom any part thereof is payable."

4. It is thus clear that the civil court on reference of a dispute u/s 32 of the Land Acquisition Act is, in law, bound to decide the dispute on the evidence adduced by the parties in support of their respective claim to title to the property acquired. In the present case, as adverted to above, the case was not even ready for trial as notice to all the claimants was not served, there was no posting for trial and the case even before it was ready for trial was posted for disposal on 31-1-1977. The letter addressed to the Land Acquisition Officer referred to in the B-diary can only be for the correct address of the parties to the reference who were not served with notice even on 29-1-1977, on which date the case was posted for disposal on 31-1-1977. I need hardly say that when a case is properly brought up before a court it is the duty of the court to decide the case in accordance with law. A reference case u/s 32 of the Land Acquisition Act is in the nature of a suit in which each claimant is the plaintiff in respect of his claim as well as the defendant in respect of the rival claims against him. The court below by referring the parties to a separate suit has abdicated its Jurisdiction to decide the reference under the Land Acquisition Act. The result is, I set aside the

judgment and decree of the court below and direct that court to dispose of the reference in accordance with law and in the light of the observations and directions contained in this judgment. The appeal is accordingly allowed. I make no order as to costs.

The parties will appear before the lower court on 15-1-1981.