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In the Andhra Pradesh High Court

Case No : CRP No. 4388 of 2002

Kotte Jagannadha Rao — APPELLANT

Vs

Revenue Divisional Officer — RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:
Land Acquisition Act, 1894 — Section 18

Citation : (2004) 1 ALD 554

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The petitioner-claimant, Kotte Jagannadha Rao filed the present civil revision petition aggrieved by the order made by the Senior Civil Judge, Machilipatnam, in I.A.No. 200 of 2001 in L.A.O.P. No. 157 of 1995, dated 9-10-2001.

2. The Revenue Divisional Officer, Bandar-Land Acquisition Officer, Bandar, Krishna District, is the respondent-Referring Officer.

3. Sri O. Manohar Reddy, the learned Counsel representing the revision petitioner-claimant had submitted that the impugned order, holding that the extent of land acquired by the Government in a land acquisition proceeding will not fall within the purview of reference u/s 18 of the Land Acquisition Act, hereinafter referred in short as ''the Act'', cannot be sustained. The learned Counsel had drawn the attention of this Court to paragraph-2 of the objections filed by the petitioner-claimant before the Revenue Divisional Officer-Land Acquisition Officer, Bandar, wherein specific objection was taken stating that the compensation has to be determined and paid for an extent of 0.33 cents. The learned Counsel also had drawn the attention of this Court to Sections 18 and 19

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of the Act and also placed strong reliance on a decision of the Division Bench of this Court made in A.S. No. 563 of 1974, dated 16-2-1977 between G. Seshavataram v. Special Tahsildar (L.A.), Vijayawada1977 ALT 1 (NRC).

4. Per contra, the learned Government Pleader for Appeals had contended that the reasons, in detail, had been recorded by the learned Senior Civil Judge, Machilipatnam, while making the impugned order and hence, except deciding the quantum of compensation the other objection relating to the extent cannot be called, in question, to be decided by way of the reference.

5. Heard both the Counsel and also perused the material available on record.

6. It may be appropriate at this stage to have a look at the impugned order, which had been challenged in the present Civil Revision Petition and the said order reads as hereunder:

"Heard both sides. The reference was made by the Land Acquisition Officer u/s 18 of the Land Acquisition Act on the application presented by the claimants for fixation of the market value as the claimants raised objection with regard to the amount of compensation as fixed by the Land Acquisition Officer is too less. The version of the petitioner at this stage is as to that the reference is made by the Land Acquisition Officer to the Court u/s 18 for fixation of market value and as well as for the ascertainment of the extent of the land said to have been acquired by the Land Acquisition Officer in his award. Admittedly, the plea of the Government is that the extent of the area acquired by the claimants is to the extent of 20 cents but whereas the version of the claimants is that the extent of the area acquired by the Land Acquisition Officer is to 33 cents. This Court also appointed a Learned Commissioner to ascertain with regard to the exact extent of the land property acquired by the Government. Admittedly, when and where the reference is made by the Collector to the Court either u/s 18 or u/s 19 of the Land Acquisition Act, the Court at the first instance of the Collector cannot go into the question of true area of land acquired. Since the reference is made by Revenue Divisional Officer in R.C.C.A. 1743/91, dated 8-2-1995 u/s 18(1) of the Land Acquisition Act for enhancement of the compensation contending as to that the reasons for arriving at the rate allowed are narrated in the award proceedings. Admittedly, the reference was made by the Land Acquisition Officer only for ascertaining with regard to the market value fixed by the Collector is adequate or not. The very purview and purpose of the reference is confined to Section 18. At this stage, even if the Commissioner appointed by this Court, who expressed difficulty for due execution of the warrant filed report. This Court cannot go beyond its scope to face any such orders with regard to the area of the land acquired by the Government. The learned Counsel for the petitioner in I.A. relied upon AIR 1964 Andhra Pradesh..... wherein the Lordships are pleased to discuss with regard to similar case wherein the Lordships were pleased to discuss as hereunder: "The application must pray for reference to the Court in respect of all or anyone of the matters mentioned in Section 18, namely whether the objections relate to measurement of land, the amount of compensation the

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persons to whom, it is payable and the apportionment of the amount amongst the persons interested." The Lordships further discussed in the same judgment as hereunder: "It becomes manifestly clear that to enable the Collector to make a reference there must be in the first instance an application in writing requesting for a reference by the party who is interested in such a reference. The application must pray for reference to the Court in respect of all or anyone of the matters mentioned in Section 18, namely, whether the objections relate to measurement of land, the amount of compensation, the persons to whom it is payable and the apportionment of the amount amongst the persons interested. The last thing which the section requires is that the application has to be made within the period of limitation specified in the proviso to the section. Admittedly the purview of the present O.P. is taken on file on the reference made by the Land Acquisition Officer u/s 18 in which only requisition of the Land Acquisition Officer to ascertain with regard to the market value fixed by the Land Acquisition Officer is sufficient. Also, the said reference is made only for the said reason for arriving at the rate allowed or narrated in the award proceedings. This Court, at this stage cannot go beyond its scope even if there is such an application from the claimants to that extent for ascertaining with regard to the extent of land acquired by the Government. As so, even if the Commissioner have duly executed warrant of commission and file his report contending as to that the extent of the land acquired by the Government is 33 cents. It is of nowhere useful to this Court for arriving into with regard to the extent of land acquired by the Government. As the purview of the reference is not for ascertaining with regard to the extent of land acquired by the Government the learned Commissioner who was appointed by this Court is directed to return the warrant of commission either executed or unexecuted on or before 16-10-2001."

7. Section 18 of the Act dealing with the reference to the Court reads as under:

"18. Reference to Court :--(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be 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.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that ever such application shall be made--

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector''s award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector''s award, whichever period shall first expire."

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8. Section 19 of the Act dealing with the Collector''s statement to the Court reads as hereundcr:

"19. Collector''s statement to the Court :--

(1) In making the reference, the Collector shall stale for the information of the Court, in wilting under his hand,--

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded u/s 11,

(cc) the amount paid or deposited under Sub-section (3-A) of Section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively."

9. The words "whether his objection be 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" in Section 18 of the Act assume importance. It is clear that, if an objection is taken relating to the measurement of the land, definitely this question also can be a question of reference and hence, the view expressed by the learned Judge that this cannot be a question of reference at all, cannot be sustained. In fact, in the objections filed by the revision petitioner-claimant before the respondent, at paragraph-2 it was specifically stated "The actual site in which a road was formed in Ac.0.33 cents out of Ac.0.63 cents. Therefore, the compensation has to be determined and paid to me for Ac. 0.33 cents. If any doubt arises in respect of the extent of site belonging to me in which the road in question is formed, the Revenue Divisional Officer may be pleased to get measured before the compensation is fixed" In view of the specific objection, the finding recorded by the learned Senior Civil Judge in the impugned order that this question cannot be gone into, definitely cannot be sustained, especially in the light of the clear language of Section 18 of the Act.

10. In Peace Memorial Association, Anantapur by its Secy. P. Lakshminarayana Reddy Vs. Collector, Anantapur and Another, , it was held as hereunder:

"To enable the Collector to make a reference there must be in the first instance an application in writing requesting for a reference by the party who is interested in such a reference. The application must pray for reference to the Court in

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respect of all or anyone of the matters mentioned in Section 18, namely, whether the objections relate to measurement of land, the amount of compensation, the persons to whom it is payable and the apportionment of the amount amongst the persons interested. The last thing which the section requires is that the application has to be made within the period of limitation specified in the proviso to the section.

These factors are conditions precedent to the exercise of jurisdiction by the Civil Court to whom reference is to be made. No importance will be attached to the form but to the substance of the application made."

11. In Seshavataram''s case (supra), the Division Bench of this Court held, that where the claimant has raised an objection to the area acquired and affected by the acquisition proceedings, Court has jurisdiction to go into such question, if the claimant had raised it in a petition u/s 18 of the Act and the jurisdiction is to determine the objections and the jurisdiction is not restricted to what is referred by the Land Acquisition Officer.

12. It is pertinent to note that the revision petitioner-claimant had raised a specific objection. Despite the same, the learned Judge, in the impugned order had recorded that the said question cannot be gone into. In view of the same, the order impugned definitely suffers from legal infirmity and the same is liable to be set aside.

13. Accordingly, the order dated 9-10-2001 passed in IA No. 200 of 2001 in L.A.O.P. No. 157 of 1995 is hereby set aside with a further direction to the learned Senior Civil Judge, Machilipatnam to further proceed with the matter is accordance with law, in this regard.

14. Accordingly, the civil revision petition is hereby allowed. No order as to costs.

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