

(1988) 10 KL CK 0011
In the High Court Of Kerala
Case No : C. M. A, 93 of 1984

Krishna Pillai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-10-1988

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 20, 21, 22, 25, 28
Land Acquisition Act, 1894 — Section 25

Citation : (1989) 1 KLJ 58

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

Bench : Single Bench

Advocate : P. George William, for the Appellant; E. Thankappari Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.T. Thomas. J.

1. This appeal is against an order refusing to restore a Land Acquisition Reference which was dismissed for default. Pursuant to an Award passed by a Land Acquisition Officer for the land acquired for public purpose, the appellant who is the land owner filed an application under Sec. 20 of the Kerala Land Acquisition Act (for short "the Act") requiring the said officer to refer the matter to the civil court for determination of the land value. The sub court to which the reference was made issued notice to the appellant. He appeared and filed a written statement in which he set out his claim for enhancing land value, A commission was issued at the instance of the appellant and the Commissioner filed a report after inspecting the land which was acquired. On 3-10-1983 learned Sub Judge dismissed the reference for default, as the appellant was absent on that day. Subsequently on 26-10-1983 the present application was filed for restoration of the reference. That was dismissed by the impugned order. The only question to be considered in this appeal is whether the sub court has jurisdiction to dismiss for default a reference made under Sec. 21 of the Act.

Learned Government Pleader contended that inasmuch as the provisions of the CPC (for short "the Code") are made applicable to the proceedings before the court a dismissal for default is permissible. No doubt, Sec. 59 of the Act says "save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the court under this Act". It is clear that the provisions of the Code can be applied only when there is no provision in the Act which is inconsistent therewith.

2. A reference is made to the civil court "for the determination of the court" of the question which either relates to the measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation and the person interested. In making the reference, the Land Acquisition Officer shall state in writing for the information of the Court those matters specified in sec. 21 of the Act. On such reference being made the court shall issue notice to be served on the person who applied for reference and also on other persons interested in the objection. Sec. 22 says that the notice shall specify the day on which "the court will proceed to determine the objection". Sec. 25 says that in determining the amount of compensation to be awarded for the land, the court shall take into consideration the matters enumerated there under. Sec. 28(1) says that every award shall be in writing signed by the Judge and shall specify the amount awarded under clause first of sub-section (1) of section 25 and also the amounts, if any, respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

3. The provisions referred to above show that the court has to pass an award when there is a reference under Sec. 21 of the Act. If a court dismisses the reference for default, there will be no award and the reference will remain unanswered. Such a situation is not consistent with the provisions of the Act. It may be, when the person interested does not adduce evidence the court may pass the award on the basis of the materials available on record. Even if no evidence is adduced, court has to pass an order either maintaining the amount specified in the award passed by the Land Acquisition Officer, or enhancing it on account of some valid reasons. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, the Supreme Court pointed out that the award passed by a Land Acquisition officer is to be treated by the court only as an offer made by the officer to the land owner and it is for the court to determine the market value of the property afresh on the basis of the materials produced. Absence of the person interested in the land will not divest the court of its jurisdiction to pass the award envisaged in Sec. 28 of the Act. If the court dismisses a reference for default, it tantamounts to refusal to answer the reference which is not warranted by the provisions of the Act. So the position is this: When there is a reference to the civil court, such reference has to be answered irrespective of the presence or absence of the person interested.

In the result, the appeal is allowed and the impugned order is set aside. The

application for restoration of the reference will stand allowed.