

(1975) 04 OHC CK 0008

In the Orissa High Court

Case No : Civil Revisions No"s. 152 and 153 of 1974

Krushna Chandra Samantarai

APPELLANT

Vs

Santibala alias Santi Lata Dei

RESPONDENT

Date of Decision : 11-04-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30, 31(2)

Citation : (1975) 41 CLT 874

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : K.M. Swain, for the Appellant; P.C. Misra and D.K. Das, for the Respondent

Judgement

G.K. Misra, C.J.—Krushna Chandra Samantarai (Petitioner) claims the disputed plot No. 1391 with an area of 0. 355 acre on the strength of a lease dated 12-40-1937 executed by Bhagaban Naik as the Karta of the joint family. Santilata (Opp. Party No. 1) claims to have got 0. 242 acre on the strength of a contract dated 27-3-1960 executed by Gouranga, son of Bhagaban and a decree for specific performance of contract in Title Suit No. 34/63 against Gouranga only. Chanda Bewa (Opp. Party No. 2 claims eight annas interest in plot No. 1391. 0. 210 acre out of the disputed plot was acquired by Government for Rs. 26,538/ -. On 21-7-1969 the Land Acquisition Officer directed payment of Rs. 13. 269. 22 paise to the Petitioner who got that amount on 25-7-1969. On 1-9-1969 Santilata and Chanda asked the Land Acquisition Officer to make a reference under Sections 18 and 30 of the Land Acquisition Act (hereinafter referred to as the Act) and Misc. Case No. 50/69 was instituted before the Subordinate Judge, Cuttack. The Petitioner filed Title Suit No. 99/69 for declaration of his title to the disputed plot. Both the Title Suit and the Miscellaneous case were ordered to be heard analogously. On 9-5-1972 Santilata filed Misc. Case No. 174/72 calling upon the Petitioner to deposit the amount in Court. On 7.9-1972 the Subordinate Judge directed the Petitioner to deposit the amount" by 8.10.1972. As the Petitioner did not deposit the amount by that

date, on 19-2-1973 the Opposite Party No. 1 asked for taking action against the Petitioner. On 4-3-1974 the Subordinate Judge struck off the defence in Land Acquisition Misc. Case No. 51/69 and dismissed the plaint in T.S. No. 99/69. Civil Revision No. 152/74 arises out of T.S. No 99/69 and Civil Revision No 153/74 arises out of Misc. Case No. 51/69.

2. Section 31(2) of the Act, 1894 prescribes that if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation-in Court to which a reference u/s 18 would be submitted. Admittedly the Collector sent reference to the Subordinate Judge, Cuttack without depositing the money as required u/s 31(2) in the Court of the Subordinate Judge and paid the amount to the Petitioner on 25-7-1969. Such payment was clearly contrary to law and without authority.

3. The main question for consideration in this revision is whether the Subordinate Judge acted illegally in exercising his jurisdiction to 011 upon the Petitioner to deposit the money in his Court. Mr. Swain contends on the authority of *Mt. Gohar Sultan v. Ali Muhammad* AIR 1921 Lah. 153, *Gobinda Ranee Dasee v. Brinda Ranee Dasee* Vol. XXXV, ILR Cal. 1104, and *Abdul Sattar and Anr. v. Mt. Hamida Bibi* AIR 1950 Lah. 229, that the Subordinate Judge has got no jurisdiction to call upon the Petitioner to refund the amount for being deposited in Court. All the decisions were discussed in *Hitkarini Sabha Vs. Corporation of the City of Jabalpur*, . The Bench in that case observed thus:

We do not think that it is necessary to decide finally this question, because on the terms of Section 31 of the Land Acquisition Act it is quite dear that the Collector acted against the express provisions of Section 31(2) *ibid* in making the payment when there was a dispute as to who should receive the compensation money.

There is no doubt that Section 31(2) in terms directs the Land Acquisition Officer to deposit the money in Court and the amount should have been paid to the Petitioner.

4. The other question for consideration is whether the Subordinate Judge has jurisdiction to direct the Petitioner to deposit the money in Court. In the *Madhya Pradesh* case, reference had been made to *Rodger v. Comptoir D'Escomote De, Paris* (1871) 3 P.C. 465, and the observation of Lord Cairns was extracted. The substance of the decision in that case is that where an error is committed by the Court and on account of that error any party suffers, the Court should rectify the error and do justice between the parties as should have been initially done. It is on this theory that the Bench in that case directed deposit of money though ultimately the parties agreed that the amount would be kept in fixed deposit. This legal position fits in with the true objects of Section 31(2) of the Act with respect I am inclined to accept the proposition as laid down by *Hitkarini Babha, Jabalpur v. Corporation of the City of Jabalpur* A.I.R 1958 M.P. 339.

5. In this view of the matter, the direction of- the Subordinate Judge to the

Petitioner to deposit the money in Court was correct.

6. The next question for consideration is whether the Subordinate Judge was justified in dismissing the Title Suit and striking off the written statement in the Miscellaneous case on account of the default of the Petitioner to deposit the money and in dismissing the Title Suit, he exercised his jurisdiction illegally. The deposit of money had nothing to do with the claim of the Petitioner in the Title Suit. Civil Revision No. 152/74 must, accordingly, be allowed and the order of the Subordinate Judge, dismissing the Title Suit is vacated.

7. The position is, however, different in the miscellaneous case. The Subordinate Judge committed an error in not informing the Petitioner that if the amount would not be deposited on the due date then his written statement would be struck off. To that extent the penalty was imposed without previous information. I, accordingly, set aside the order of the Subordinate Judge dated 4-3-1974 striking off the defence. I, however, direct the Petitioner to deposit the money with interest at the rate of six per cent per annum within two months from today in the Court of the Subordinate Judge. On failure to deposit the amount, the defence of the Petitioner would be struck off in the Miscellaneous Case. Whether money is deposited or not, the Subordinate Judge will dispose of the suit and the Misc. Case on a date two months after but within four months from today.

8. In the result, the orders of the Subordinate Judge, both in the Miscellaneous Case and the Title suit, passed on 4-3-1974 are vacated. The Civil Revisions are allowed subject to the observations made above. In the circumstances, parties are to bear their own costs.