
(1997) 07 AP CK 0027

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3417 of 1991

Kuntumalla Rangappa and Others

APPELLANT

Vs

Special Deputy Collector, (LA)

RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 8, Order 9 Rule 9, 141

Land Acquisition Act, 1894 — Section 18, 20, 26, 53

Citation : (1997) 5 ALT 129 : (1997) 3 APLJ 36

Hon'ble Judges : Lingaraja Rath, J;J. Chelameswar, J

Bench : Division Bench

Advocate : K.V. Subrahmanya Narusu, for the Appellant; Govt. Pleader for Land Acquisition, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—These revisions are before us on a reference by the learned single Judge on the question as to whether the provisions of Order 9 of the CPC (for short the "Code") are applicable to the reference made to the Civil Court in proceedings u/s 18 of the Land Acquisition Act (for short the "Act").

2. Bereft of the details, the facts are that the lands of all the petitioners were acquired under the Land Acquisition Act and as against the awards passed by the Land Acquisition Collector reference applications were made to the Court. However since the reference applications were not pursued by the petitioners, they were dismissed for non-prosecution. Applications for restoration of the reference applications, styled as being under Order 9 Rule 13 of the Code, were filed after lapse of 13 years, 6 months and 20 days. The learned Subordinate Judge, Proddatur dismissed the applications for the laches of delay, as against which these Civil Revision Petitions were preferred before the learned single Judge. A submission was advanced on behalf of the petitioners that the learned Subordinate Judge has no jurisdiction to dismiss the reference applications for

non-prosecution and that he was to have answered the reference applications in some manner. It was argued that Order 9 Rule 8 of the Code had no application to such reference proceedings. Reliance was placed by the petitioners on a decision of a learned single Judge of this Court in *K. Malliah v. Land Acquisition Officer*, 1986 (2) APLJ 344 = 1986 (2) ALT 30 (NRC). The move was contested by the Government Pleader for Land Acquisition contending Order 9 Rule 8 of the Code to be applicable. Learned single Judge on a discussion on the subject and referring to various decisions took the view of the decision in *K. Malliah v. Land Acquisition Officer*, 1986 (2) APLJ 344 = 1986 (2) ALT 30 (NRC) requiring a reconsideration and has referred the matter to the Division Bench of this Court.

3. In view of the stand taken by both the parties, we put it to the Government Pleader for Land Acquisition at the commencement of the case that if it was the concession on his part that Order 9 Rule 8 of the Code authorised the Subordinate Judge to dismiss the reference applications for non-prosecution, obviously the application under Order 9 Rule 9 of the Code would lie to set aside the order passed under Order 9 Rule 8 of the Code. The fact that the applications were styled as being under Order 9 Rule 13 of the Code was obviously a mistake but as the application for restoration, if such application lies, was to have made under Order 9 Rule 9 of the Code, the Court would be right to treat the applications as having been made under Order 9 Rule 9 of the Code only. The learned Government Pleader fairly concedes before us that in view of Section 53 of the Act, Order 9 Rule 8 of the Code is applicable also to reference proceedings and hence the applications could be dismissed for non-appearance of the petitioners and also concedes that because of such fact, applications under Order 9 Rule 9 of the Code would also lie to set aside the dismissal orders. It is however his contention that even though the applications for restoration may be maintainable, yet on merits there could be no bona fide reason for the petitioners to approach the Court after the delay of 13 years, 6 months and 20 days.

4. Section 53 of the Act may be extracted usefully:

"53. CPC to apply to proceedings before Court:- Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under this Act."

In view of such categorical provisions of the Act, Order 9, Rules 8 and 9 of the Code are applicable to all proceedings under the Land Acquisition Act. The proceedings u/s 18 of the Act is undoubtedly a proceeding under the Act and hence there can be not an iota of doubt that both the provisions of Order 9, Rules 8 and 9 of the Code are applicable. The matter is also made more clear from Section 141 of the Code which makes the provisions of the Code applicable to all proceedings in any Court of civil jurisdiction. Obviously, the Court of the Subordinate Judge, in dealing with an application u/s 18 of the Act, functions as a Court of civil jurisdiction and hence the provisions must be applicable to the proceedings u/s 18 of the Act. The learned single Judge in referring the matter to the Division Bench rightly referred to the citations before him: Alihusain

Abbahbai and Others Vs. Collector, Panch Mahats, , Smt. Katori Devi and Others Vs. The Collector, Aligarh, , Pullamma v. Additional Special Land Acquisition Officer, AIR 1997 Karn. 9 (D.B.), Ramo and Another Vs. The Collector Land Acquisition Urban Estate and Others, : N. S. Ramaiah v. Special Land Acquisition Officer, AIR 1974 Karn. 122 and Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar, . In making the references the learned Judge took notice of the fact that the earlier decision in Ramaiah v. Special Land Acquisition Officer (6 supra) has been overruled by a latter Division Bench i.e., Pullamma v. Additional Special Land Acquisition Officer (4 supra). The learned single Judge in K. Malliah v. Land Acquisition Officer (1 supra) relied upon the decision of N. S. Ramaiah v. Special Land Acquisition Officer (6 supra).

5. No doubt, Section 53 of the Act makes the provisions of the Code applicable to all proceedings before the Court only if they are not inconsistent with anything contained in the Act. The import is that where some provision of the Code is inherently inconsistent, it would not be applicable to a proceeding under the Act, but that barring as such, all provisions of the Code are applicable. To clarify further, only when there are such provisions in the Code which are wholly incongruous to the scope and ambit of the proceedings, those would not be applicable to the proceeding. There is nothing in Order 9 Rule 8 of the Code or Order 9 Rule 9 of the Code which makes it inherently inconsistent with the disposal of a proceeding u/s 18 of the Act. Merely because in Sections 20 and 26 of the Act, provision has been made as to the service of notice and the forum in which the award is to be passed, it cannot be said that the Court is precluded to pass an order, in the event parties do not appear, to dismiss the application and that the only order must be passed in the form of award as contemplated u/s 26 of the Act. Section 26 provides that every award under that part of the Act shall be in the form of the award. That only means that when an award is to be passed, it has to be passed in that form. Similarly all that Section 20 of the Act contemplates is that notice has to be given to the parties of the day on which it would proceed to determine the objections regarding the payment of the compensation. Those questions would arise when the occasion of the payment of compensation arises. But it would be too much to hold that when such occasion is not reached and the Court finds itself in a position of absention of the parties interested in the objection, the Court to be helpless to dismiss the reference and as compulsorily called upon to decide the question of compensation in vacuum i.e., only to confirm the award as passed by the Land Acquisition Collector. Necessary outcome of such a conclusion would be that once an award has been passed by the Court confirming the award passed by the Land Acquisition Collector, the claimants would be unable to challenge the award before that forum to bring before the Court the facts of any bona fide cause for their non-appearance and the Court would equally powerless to deal with the facts brought to its notice. The scheme of the Act does not yield to such an interpretation which is contrary to the spirit of Section 53 of the Act as also violative of the basic principles of natural justice of which is inherent and imminent in all judicial

proceedings.

6. While we thus answer the reference in the affirmative and overrule the decision in *K. Malliah v. Land Acquisition Officer* (1 supra), it still remains to be considered as to whether in the facts and circumstances of the case the application of Order 9 Rule 9 of the Code justifies to be allowed.

7. The question has been thoroughly discussed by the learned Subordinate Judge. The petitioners explained the delay of 13 years, 6 months and 20 days, firstly contending that for 10 years they had not approached their Advocate to know the fate of the case and that was because that as the entire village was acquired, all the villagers including themselves, has been away from the village and that they had been migrating. The second reason advanced is that after the expiry of 10 years they met the Land Acquisition Collector and the concerned officials and were assured by them that their money would be paid for which they did not take steps to file restoration applications. Both such reasons absolutely fail to inspire any judicial response. If the petitioners were evicted from their lands it would be more reasonable to assume that they would be anxious to know the fate of their cases so that they could atleast get the compensation due to them. They had filed the cases for increase of the compensation and it is unbelievable that they forgot to track their cases for 10 years. Absolutely no evidence had been led as to which places they had been migrating and what was their period of stay at which places. It is reasonable to think that within the period of 10 years they could have taken many trips to their lawyer to ascertain the status of their case. They could also have made contacts also over telephone or atleast could write letters to him. No such steps were taken. In view of such facts, the explanation now given is not acceptable. The second reason furnished by them is equally unconvincing and self-contradictory. If for 10 years they had not been paid and they had no knowledge that the cases having been dismissed, it would have been natural for them to file restoration applications as soon as they come to know of the dismissals. Even if it is accepted for a moment that the Land Acquisition Officials were approached and they told that the money of the claimants would be paid, it can be presumed that all that was assumed to them was that only the money as was awarded by the Land Acquisition Collector would be paid and not any higher compensation. To assure any higher compensation was not within the competence of the Land Acquisition Officials. If the petitioners pursued the matter with the Land Acquisition Officials for 31/2 years, that obviously shows that they were satisfied with the award as given by the Land Acquisition Collector and had given up their claim for higher compensation. There can hence be no reason to accept the application for setting aside the dismissal and restore the reference applications.

8. The learned Judge in *K. Mallaiah v. Land Acquisition Officer* (1 supra) seems to have been persuaded by the decision in *IT. Commr., Madras v. S. Chenniappa* (7 supra) which was a case of reference under the Income Tax Act, Sales-tax Act and the Land Reforms Act. The question there would be different where soliciting

the reference itself is a judicial proceeding and a statutory forum or a Court is called upon to answer the reference mostly on a question of law. It has no doubt to answer such a reference despite the fact that parties do not appear before the reference Court which it has to go through and answer the references. The determination is of a question of law which has to be decided in the background of facts and circumstances of the case which are available on the record itself. But where the reference is such which is not upon any question of law, but needs evidence to be led for its determination, the scope of the reference is entirely different and unless the power to dismiss the matter in the absence of the parties is conceded to the Court, the resultant situation would be too anomalous and incongruous.

9. In the result, we do not find any merit in these revision petitions which are dismissed, but there shall be no order as to costs.