
(1970) 08 OHC CK 0009
In the Orissa High Court
Case No : First Appeal No. 96 of 1964

Land Acquisition Officer	Vs	APPELLANT
Mst. Rahin Rai		RESPONDENT

Date of Decision : 24-08-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24(1), 9
Land Acquisition Act, 1894 — Section 19, 3

Citation : (1970) 36 CLT 1063

Hon'ble Judges : G.K. Misra, C.J; R.N. Misra, J; B.K. Patra, J

Bench : Full Bench

Advocate : Advocate General, for the Appellant; B.K. Behura and U.N. Rath, for the Respondent

Judgement

G.K. Misra, C.J.—The disputed land consists of 1.75 acres in plots Nos. 517/32 and 527/1 in village Mundagan in the district of

Kalahandi. The Forest Department took possession of the land In 1954 for construction of quarters. The notification u/s 4(1) of the Land

Acquisition Act (hereinafter to be referred to as the Act) was made on 25-3-60. The respondent claimed compensation at Rs. 5,56, 485.00. The

Land Acquisition Collector (hereinafter to be referred to as the Collector) gave an award on 5-9-1961 for Rs. 2,328.75 nP. The respondent had

knowledge of the award on 15-8-62 and did not accept it. By a written application to the Collector u/s 18, she requested that the objection should

be referred for determination to the Court. The Collector made a reference to the District Judge, Bolangir-Kalahandi (hereinafter to be referred to

as the District Judge) on 23-5-63 u/s 19 of the Act. The District Judge entertained the reference on 6-7-63. On the 19th July, '63 the District

Judge transferred the case to the Subordinate Judge, Bolangir, who, after taking evidence disposed of the reference and passed the Award on 24-

7-1964 holding that the respondent was entitled to get a total compensation of Rs. 1,33,903.10 P. Against this award, the Collector filed the appeal.

In the memorandum of appeal, the challenge was both as regards the quantum of compensation and the jurisdiction of the Subordinate Judge of

Bolangir to dispose of the reference. The first appeal was heard by a Bench of this Court consisting of A. Misra and Acharya JJ. The Bench was

of opinion that 31 (1965) CLT 375 (State of Orissa v. Ajoy Kumar Padhee) was wrongly decided. Their Lordships accordingly formulated the

following questions of law and directed that the matter be placed before the Chief Justice to constitute a Full Bench to decide the same:--

(i) Whether on the facts and circumstances of this case, the District Judge had powers to transfer such a matter to be heard by the Subordinate

Judge;

(ii) Whether a special judicial officer appointed to perform the functions of a Court under the said Act, continued to be a Court subordinate to the

District Court so as to be amenable to his general powers of transfer and withdrawal u/s 24, Civil Procedure Code.

(iii) Whether, after a special Judicial Officer is appointed under Clause (d) of Section 3 of the Land Acquisition Act 1894, to perform the functions

of the Court under that Act, within the specified local limit, the Principal Civil Court of original jurisdiction continued to coexist and can exercise the

power of a Court under the Act, for the same specified area; and

(iv) in view of the two abovementioned notifications dated 30-10-62, whether the Subordinate Judge of Bolangir continued to be Principal

Subordinate Judge for the Kalahandi district, so as to have jurisdiction to hear the reference in question.

This is how the appeal was heard by this Full Bench.

2. The learned Advocate-General contended that the proper court to entertain the reference u/s 19 of the Act was the Subordinate Judge of

Kalahandi sitting at Bhawanipatna and not the District Judge or the Subordinate Judge of Bolangir, and the impugned Award passed by the

Subordinate Judge of Bolangir is without jurisdiction and therefore void, and so

also the transfer of the reference made by the District Judge to the Subordinate Judge of Bolangir.

The appeal has not been argued on merits.

3. The following questions arise for determination:--

(i) Did the District Judge have jurisdiction to entertain the reference u/s 19 ?

(ii) If not, which was the proper court to entertain the reference?

(iii) If the District Judge was not competent to entertain the reference, was the order of transfer made by him from his own file to that of the

Subordinate Judge, Bolangir, valid?

(iv) Is the decision of a court competent to decide a reference, without jurisdiction and void, merely because the reference was transferred to it by

the District Judge having no jurisdiction to entertain it?

(v) Was 31 (1965) CLT 375 wrongly decided?

4. Clause (d) of Section 3 of the Act, runs thus:--

3. In this Act, unless there is some thing repugnant in the subject or context--
x x x

(d) the expression "'Court'" means a principal Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby

empowered to do) a special judicial officer within any specified local limits to perform, the functions of the Court under this Act.

It would thus appear that if the appropriate Government has not appointed a special judicial officer to perform the functions of the "'Court'" under

the Act, then the principal Civil Court of original jurisdiction would function as the Court for the purposes of the Act. In "any district, the District

Judge is the principal civil court of original jurisdiction. u/s 9 of the Bengal, Agra and Assam Civil Courts Act. 1887 (Act 12 of 1887--hereinafter

to be referred to as the Civil Courts Act), the District Judge shall have administrative control over all the civil courts under this Act within the local

limits of his jurisdiction, subject to the superintendence of a High Court. The Law Department issued notification No. 7655-III-93/60 Judl., dated

14-11-61 to the following effect:--

In exercise of the powers conferred by Clause (d) of Section 3 of the Land Acquisition Act, 1894 (Act 1 of 1894) the State Government do

hereby appoint all principal Subordinate Judges within the local limits of their respective jurisdiction, to perform the functions of the Court under the said Act.

Before the issue of this notification, the District Judge had jurisdiction to entertain the reference, but not subsequent thereto. The reference was received in 1963 when the District Judges had no jurisdiction to function as the Court under the Act. The entertainment of the reference by the District Judge on 6-7-1963 was, therefore, without jurisdiction, and the District Judge had no authority to deal with it in any manner.

5. The next question is which was the proper court to entertain the reference? In this connection, the effect of the following two notifications issued by the Law Department on 30-10-1962, is to be considered:--

The 30th October, 1962.

No. 7019-II-I-14/63 J -- In exercise of the powers conferred by Sub-section (1) of Section 13 of the Bengal, Agra and Assam Civil Courts Act

1887 (12 of 1887), and in supersession of all existing notifications on the subject, the State Government do hereby direct that, with effect from 1st

November, 1962 the local limits of the jurisdiction of the Court of the Subordinate Judge of Bolangir Patna shall be conterminous with the limits of

the districts of Bolangir and Kalahandi as reconstituted under the notification of the Government of Orissa in the Revenue Department No. 32269-

R dated the 11th July, 1962.

By order of the Governor

S. K. Mohapatra,

Joint Secretary to Govt.

The 30th October, 1962.

No. 7024-II J-14/62-J.-- In exercise of the powers conferred by Sub-section (1) of Section 13 and Sub-section (1) of Section 14 of the Bengal,

Agra and Assam Civil Courts Act, 1887 (12 of 1887) and in supersession of all previous notifications on the subject, the State Government do

hereby declare that with effect from 1st November, 1962 the district of Kalahandi as reconstituted under the notification of the Government of

Orissa in the Revenue Department, No. 32269-R dated the 11th July, 1962, shall be constituted into a Sub-Judgeship and direct that the

Subordinate Judge of Kalahandi shall hold court at Bhawanipatna,

By order of the Governor

G.K. Mohapatra

Joint Secretary to Govt.

The first Notification No. 7019 is earlier in point of time. By this notification, the local limits of the jurisdiction of the Subordinate Judge of

Bolangirpatna were conterminous with the limits of the districts of Bolangir and Kalahandi The notification was issued u/s 13(1) of the Civil Courts

Act, which lays down that the State Government may, by notification in the official Gazette fix and alter the local limits of the jurisdiction of any civil

court under that Act. In this notification there was no reference to Section 14(1) of the Civil Courts Act, whereby the State Government may, by

notification in the official gazette, fix or alter the place or places at which any Civil Court under that Act is to be held. Thus, under Notification No.

7019, the place of sitting of the Subordinate Judge, Bolangir, in respect of Kalahandi district, was not fixed at Bhawanipatna, the headquarters of

Kalahandi District

Notification No. 7024 was in supersession of all previous notifications on the subject. Accordingly, it was in supersession of Notification No. 7019

issued earlier on the very same day. By this notification, the district of Kalahandi was constituted into a separate sub-judgeship and the place of

sitting of the Subordinate Judge, Kalahandi, was declared to be Bhawanipatna, u/s 14(1) of the Civil Courts Act.

Both the aforesaid notifications read together lead to the irresistible conclusion that the Subordinate Judge of Bolangir had no jurisdiction over the

district of Kalahandi. It was the Subordinate Judge of Kalahandi who had complete jurisdiction over that district and his place of sitting was fixed

at Bhawanipatna.

5A. By virtue of Notification No. 7655 dated 14-11-61, the Subordinate Judge of Kalahandi, sitting at Bhawanipatna, who is the principal

Subordinate Judge there was conferred the powers of a Court by Section 3(d) of the Act. The Subordinate Judge Kalahandi was therefore the

proper court to entertain the reference made by the Collector u/s 19 of the Act.

6. We would now examine whether 31 (1965) CLT 375 was correctly decided.

The judgment in that case does not indicate the date on which the reference was received by the District Judge, Sambalpur, from the Collector. But it would appear from the printed paper-book in First Appeal

No. 62 of 1962 that the reference was made to the District Judge on 14-1-1961. Notification No. 7655 appointing all the principal Subordinate

Judges within the local limits of their respective jurisdiction to perform the functions of the "court" under the Act, was issued on 14-11-1961.

Therefore, the District Judge, Sambalpur, who was the principal Civil Court of original jurisdiction on 14-1-1961 was competent to receive and

dispose of the reference. Thus, by 14-11-61 the reference was pending in a court of competent jurisdiction. The District Judge, Sambalpur, was

however competent to transfer the case, on or after 14-11-61 to the Subordinate Judge, Sambalpur who was conferred powers by Section 3(d)

of the Act. 31 (1965) CLT 375 was therefore correctly decided on its own facts.

The present case is distinguishable as the District Judge at the time of the receipt of the reference lacked initial jurisdiction to dispose it of.

7. In the order of reference, the learned Judges have observed:--

Such a special Judicial Officer, invested with special powers, functions as a persona designata and not as a Court subordinate to the District Court.

They were accordingly of opinion that the District Judge had no power of transfer in respect of a reference under the Land Acquisition Act.

This view is not correct.

8. Section 24(1)(b)(ii) of the Civil Procedure Code, so far as material to this case, runs thus:--

24(1). On the application of any of the parties and after notice to the parties and after hearing such of them as are desired to be heard, or of its

own motion without such notice, the High Court or the District Court may at any stage--

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

* * *

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.

In 31 (1965) CLT 375, the District Judge, Sambalpur, had the initial jurisdiction to dispose of the reference. He could accordingly transfer the same u/s 24(1)(b)(ii), Civil Procedure Code, to the Subordinate Judge, Sambalpur, provided the Subordinate Judge, Sambalpur was otherwise competent to try and dispose of the same and was a Court subordinate to the District Judge. There is no dispute that on 6-12-61 the date on which the reference was transferred to the Subordinate Judge, Sambalpur, the latter was competent to try and dispose of the same. According to the view taken by the referring Bench, however, the Subordinate Judge, Sambalpur would not be a "Court" subordinate to the District Judge, Sambalpur while hearing the reference under the Act. This was on the footing that the Subordinate Judge was a special Judicial Officer appointed to act as a "court" under the Act by virtue of the notification Issued by the State Government in exercise of the powers conferred by Clause (d) of Section 3, that he was merely a persona designata and did not function as a Subordinate Judge. It may be stated here that the appointment of the principal Subordinate Judge, to act as a Court u/s 3(d) of the Act, might have been made either by name or by virtue of his office. Section 15 of the General Clauses Act, 1897 lays down that where by any Central Act or Regulation a power to appoint any person to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of that Act, may be made either by name or by virtue of office. In the notification dated 14-11-61 the appointment was expressly made by virtue of office. u/s 3(d) only a Judicial Officer can be appointed as a "Court." Thus all the principal Subordinate Judges within their respective local jurisdiction were appointed to function as Court by virtue of their office.

9. In The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, , their Lordships held that "persona designata are persons selected to act in their private capacity and not in their capacity as Judges" and that a persona designata is "a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character". In this view of the matter, the principal Subordinate Judges within the local limits of their respective jurisdiction who were appointed to perform the functions of a "Court" u/s 3(d) were not persona

designata. They were appointed to act as Court only in their capacity as Subordinate Judges.

10. There is no dispute that Subordinate Judges are courts subordinate to the District Judge, who u/s 9 of the Civil Courts Act, shall have

administrative control over all Civil Courts under that Act, and the Court of Subordinate Judge is a Civil Court as classified u/s 3 of that Act.

11. The result of the aforesaid analysis is that a Subordinate Judge while functioning as a Court under the Act is a court subordinate to the District

Judge and the latter has jurisdiction to transfer the case to the Subordinate Judge.

31 (1965) CLT 375 was correctly decided inasmuch as the District Judge, Sambalpur, had the initial jurisdiction to entertain the reference which

was pending before him. By the time it was transferred, the relevant notification had been issued empowering the Subordinate Judge. Sambalpur,

to try and dispose of the reference. The Subordinate Judge was accordingly competent to dispose it of.

So far as the present case Is concerned no reliance can be placed on 31 (1965) CLT 375 as the District Judge lacked inherent jurisdiction to

entertain the reference. If the District Judge was not competent to entertain the reference, the order of transfer made by him was without

jurisdiction and invalid. By such transfer the Subordinate Judge cannot exercise jurisdiction not conferred on him u/s 3(d) of the Act, in regard to

the district of Kalahandi.

12. A question which Is academic arose in the course of discussion, as to what would be the position if the District Judge had transferred the

reference to the Court of the Subordinate Judge, Kalahandi, sitting at Bhowanipatna, who was competent to dispose it of. If in fact the

Subordinate Judge of Kalahandi had disposed of the reference then his decision would be within jurisdiction. In such case, the fact that the

Subordinate Judge received the reference through the District Judge would have constituted a mere irregularity and not an illegality. The learned

Advocate-General fairly conceded this position.

13. Mr. Behura further contended that it was not open to the Collector, after having himself made the reference to the District Judge, to question

the jurisdiction of the District Judge, to transfer the reference to the Subordinate

Judge, Bolangir. The contention has no substance. If the reference was made initially to a Court not having inherent jurisdiction and is disposed of by a court equally having no inherent jurisdiction, then the decision on such a reference is without jurisdiction and void. At any stage of the proceeding, lack of inherent jurisdiction, if discovered, can be questioned.

14. Even though the Subordinate Judge functioning as a Court under the Act is subordinate to the District Judge and the District Judge can exercise

the power of transfer u/s 24, Civil Procedure Code, no transfer is possible as each of the principal Subordinate Judges within his own respective

jurisdiction has been appointed u/s 3(d) of the Act to function as a Court. He being the only officer competent to dispose of the reference, the

power of transfer cannot be exercised by the District Judge within the district though the District Judge has such powers.

15. On the aforesaid analysis, the questions referred by the Division Bench are answered as follows:

(i) In the facts and circumstances of this case, the District Judge had no powers to transfer the reference to the Subordinate Judge, Bolangir.

(ii) Even after the appointment of the principal Subordinate Judges to function as a Court under the Act within the limits of their local jurisdiction,

the District Judge has got power of transfer u/s 24, Civil Procedure Code. That power cannot, however, be exercised in view of the fact that

within a particular jurisdiction there is only one such Subordinate Judge who could function as a Court under the Act.

(iii) After the issue of the notification the District Judge of Bolangir-Kalahandi had no power to function as a Court under the Act.

(iv) The Subordinate Judge of Kalahandi can alone function as a Court under the Act in respect of Kalahandi district and he alone is competent to

hear the reference in question.

16. Ordinarily, this case would go back to the referring Bench for disposing of the appeal in the light of the answers given to the questions

formulated by that Bench. In view however of our answers, we have thought it appropriate to dispose of the matter finally.

17. As we have held that the District Judge had no power to entertain the reference and the Subordinate Judge of Bolangir had no jurisdiction to

dispose of the case, the decision of the Subordinate Judge of Bolangir is set

aside. The first appeal is allowed. The reference made by the Collector be returned to him by the District Judge and the Collector would make the reference to the Subordinate Judge of Kalahandi who is competent to dispose of the same.

In the circumstances, parties to bear their own costs throughout.

B.K. Patra, J.

18. I agree.

R.N. Misra, J.

19. I agree.