
(2003) 06 AP CK 0036
In the Andhra Pradesh High Court
Case No : AS. No. 1427 of 1990

Land Acquisition Officer-cum-Tahsildar	APPELLANT
Vs	
Sharfudding and Another	RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 30, 4(1), 54

Citation : (2003) 5 ALD 143 : (2003) 5 ALT 314

Hon'ble Judges : P.S. Narayana, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Mohd. Ghulam Hussain, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The Land Acquisition Officer-cum-Tahsildar, Pargi is the appellant in this appeal preferred u/s 54 of the Land Acquisition Act, 1894 (for short "the Act") against the order and decree dated 31-10-1986 made in O.P.No. 226 of 1985 by the learned Subordinate Judge, Vikarabad.

2. That an extent of Ac.1-21 guntas of land in Survey No. 56 and Ac.1-18 guntas of land in Survey No. 114 of Syed Malkapur village were acquired for the purpose of providing house-sites to the weaker sections of the society under draft notification published in the District Gazettee on 8-6-1978. The Land Acquisition Officer fixed the market value of the acquired land at Rs. 1,500/- per acre.

3. The Land Acquisition Officer, during the course of enquiry, found that Survey Nos. 56 and 114 are classified as Kidmati Inams and the Kathedars thereof were Syed Maqdam Moinuddin and Sharfoddin; that Maqdam Moinuddin died and that his son Nizamoddin is shown as half shareholder. They are the respondents in this appeal.

4. The Land Acquisition Officer based upon the fact that the lands in question are Kidmati Inam lands refused to award compensation to the respondents-claimants

and accordingly referred the matter to the Civil Court for adjudication of the dispute u/s 30 of the Act. The same has been taken on file by the District Court in O.P. No. 115 of 1985 and later it was transferred to the Court of the Subordinate Judge for disposal and there it is numbered as O.P.No. 226 of 1985.

5. The learned Subordinate Judge held that the respondents-claimants are entitled for compensation for the acquired lands less than the amount equal to 20 times of the land revenue payable for the acquired land. The learned Judge accordingly directed that a sum of Rs. 74-40 paise is to be deducted from out of the total amount of compensation. Hence this appeal by the Land Acquisition Officer.

6. At the outset, we must state that the Land Acquisition Officer could not have preferred this appeal before this Court u/s 54 of the Act. He is not an aggrieved person so as to challenge the order of the learned Subordinate Judge rendered u/s 30 of the Act relating to apportionment of compensation. The claim, if any, is by the State and not by the Land Acquisition Officer. In the circumstances, we hold that this appeal preferred by the Land Acquisition Officer is misconceived.

7. Be that as it may, the question that arises for consideration before us as to whether the respondents-claimants are entitled for the compensation as has been fixed by the Land Acquisition Officer is not *res integra*, but squarely covered by an authoritative pronouncement of the Supreme Court in *Sharda Devi Vs. State of Bihar and Another*, . In the said decision, the Supreme Court *inter alia* held:

"The Collector acts as a representative of the State whilst holding proceedings under the Land Acquisition Act. In fact, he conducts the proceedings on behalf of the State. The award of the Collector is not the source of the right to compensation; it is the pre-existing right which is recognized by the Collector and guided by the findings arrived at in determining the objections, if any, the Collector quantifies the amount of compensation to be placed as an offer of the appropriate Government to the owner recognized by the State."

8. Adverting to the question as to whether the State can acquire its own land, the Court observed:

"We have entered into examining the scheme of the Act and exploring the difference between reference u/s 18 and the one u/s 30 of the Act as it was necessary for finding out answer to the core question staring before us. The power to acquire by the State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists, the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned. (*See Scindia Employees' Union Vs. State of Maharashtra and Others*, and *State of Maharashtra and another Vs. Sant Joginder Singh Kishan Singh and others*, The State does not acquire its own land for it is futile to

exercise the power of eminent domain for acquiring rights in the land, which already vests in the State. It would be absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. In other words, the land owned by the State on which there are no private rights or encumbrances is beyond the purview of the provisions of the Land Acquisition Act. The position of law is so clear as does not stand in need of any authority for support. Still a few decided cases in point may be referred since available."

9. The Supreme Court further held that the State is not a "person interested" as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. It is observed:

"To sum up, the State is not a "person interested" as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject-matter of acquisition by the State. The question of deciding the ownership of the State or holding of any interest by the State Government in proceedings before the Collector cannot arise in the proceedings before the Collector as defined in Section 3(c) of the Act. If it was government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the civil Court for determination either u/s 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the civil Court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings u/s 30 of the Act beginning from the reference and adjudication thereon by the civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so.

However, we would like to clarify our decision by sounding two notes of caution. Firstly, the quashing of the proceedings u/s 30 of the Land Acquisition Act would not debar the State from pursuing such other legal remedy before such other forum as may be available to the State Government and on the merits and the maintainability thereof we express no opinion herein. Secondly, the situation in law would have been entirely different if the title of the appellant would have come to an end by any event happening or change taking place after the making of the award by the Collector as was the case in *Dr. G.H. Grant Vs. State of Bihar*, . The title of *Dr. Ghosh* had come to an end by change of law referable to a date subsequent to the making of the award. In this context it was held "there is no reason why the right to claim a reference of a dispute about the person entitled to compensation may not be exercised by the person on whom the title

has devolved since the date of the award" and "there is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved."

10. In the instant case, the names of the respondents-claimants are admittedly shown as "persons interested" in the draft notification issued u/s 4(1) of the Act. They have alone claimed the compensation before the Land Acquisition Officer. There is no rival claim as such before the Land Acquisition Officer claiming any right to receive the compensation in respect of the lands in question. In the circumstances, the very reference u/s 30 of the Act by the Land Acquisition Officer is wholly without jurisdiction. Such reference ought not to have been accepted by the reference Court.

11. Be that as it may, in the instant case, the learned Subordinate Judge declared that the respondent-claimants are entitled for grant of compensation. In such view of the matter, the interest of the respondents-claimants has been well protected.

12. In the light of the judgment of the Supreme Court in Sharda Devi (supra), we dismiss this appeal. No order as to costs.

13. This order of ours shall not preclude the State from pursuing such other legal remedy before such other forum as may be available to it, and on the merits and maintainability thereof we express no opinion.