
(1960) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 51 of 1957

Land Acquisition Officer, Guntur

APPELLANT

Vs

Patibandla Mallikamba and Others

RESPONDENT

Date of Decision : 27-06-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 18(1)

Citation : AIR 1961 AP 387

Hon'ble Judges : Sanjiva Row Nayudu, J

Bench : Single Bench

Advocate : Government Pleader, for the Appellant; R. Rajeswara Rao and Narasimha Sarma, for the Respondent

Final Decision : Allowed

Judgement

Sanjiva Row Nayudu, J.—This Revision is directed against the judgment and order of the Subordinate Judge, Guntur dated 5th March, 1956, and made in O. P. No. 98/52 on the file of the said Court.

2. The O. P. in question was filed directly in the Subordinate Judge's Court, Guntur by the 1st respondent herein u/s 18(1) of the Land Acquisition Act (I of 1894) and u/s 151, Civil Procedure Code. The facts out of which this revision has arisen may be briefly stated: An extent of one acre of land in Section No. 169 in the village of Koritepadu was acquired by the Land Acquisition Officer (Petitioner herein) who made an award on 24-5-1952 in favour of respondents 2 and 3.

The first respondent herein claiming to be interested in the land, had apparently applied u/s 18 of the Land Acquisition Act (hereinafter referred to as the Act) to the Land Acquisition Officer requesting him to make a reference to the Civil Court having jurisdiction. The Acquisition Officer having apparently not been satisfied that the request of the first respondent had any merits in it or that he was in any manner interested in the property acquired by him, did not make a reference u/s 18(1) of the Land Acquisition Act.

Accordingly, the first respondent filed the present O. P. No. 98/52 directly in the Court of the Subordinate Judge, Guntur, praying to set aside the award made by the Land Acquisition Officer, to declare the first respondent as the person entitled to receive the compensation amount in respect of the property acquired, and to direct the payment of the compensation amount to the first respondent

3. Objection was taken to the maintainability of the petition on the ground that the Land Acquisition Act did not contemplate the filing of a petition of the kind now sought to be filed by the first respondent and that the petition was not therefore maintainable in law, that the first respondent was neither a pattadar nor an enjoyer of the lands in question and that she had no interest whatsoever in the lands acquired, that the respondents 2 and 3 were the title holders and persons in enjoyment of the property and that the compensation was rightly paid to them and that therefore the Award is not liable to be set aside or interfered with in any manner.

4. The learned Subordinate Judge omitted to examine whether he had jurisdiction to entertain an Original Petition of the kind presented to him u/s 18(1) of the Land Acquisition Act and holding that the petitioner before him (the 1st respondent herein) was a person interested within the meaning of Section 18(1) of the Act and therefore had locus standi to file the petition, and that therefore it was open to the learned Subordinate Judge to direct the Collector to make an appropriate reference to the proper Court u/s 18(1) of the Act, made an order setting aside the award and directing the Collector, Guntur to make a proper reference of the case to the appropriate Court.

5. The simple point that arises for consideration in this Case is whether the proceedings commenced by the first respondent in O. P. No. 98 of 1952 were maintainable; and whether the relief could be granted to him in that O. P. by the Court below.

6. The Land Acquisition Act is a Special enactment making provision for the acquisition of property for public purposes by the Collector having jurisdiction and also for determining the amount of compensation to be paid on account of such land acquisition. Being a special enactment dealing with a particular subject, any relief claimed in respect of the subject matter of the Act must be found within the four corners of the enactment as a general rule. The relevant provision relating to making of a reference by the Collector is to be found in Section 18(1) of the Act which is in the following terms:-

"18 (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested." Sub-section (2) of the above section provides that the application shall state the grounds on which objection to the award is taken, provided that every such

application shall be made --

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever shall first expire."

In this Case, the first respondent apparently filed her objection before the Collector on or about 27-6-1952 but the Collector did not make the reference in question. Hence the first respondent filed the O. P. No. 98 of 1952 in the Subordinate Judge's Court, Guntur.

7. The point for consideration is whether it is open to the first respondent in this case to have directly made an application u/s 18(1) of the Act. A perusal of the various sections in the Act makes it abundantly clear that there is no provision in the Act authorising an aggrieved party to directly approach the principal civil court of original jurisdiction under the provisions of the Land Acquisition Act. It is true that there is also no provision in the Act which compels the Land Acquisition Officer to make a reference u/s 18(1) of the Act to the Civil Court.

When a person interested applies to him to make a reference all that the employment of the expression "require" in Section 18(1) seems to imply is to make it an obligation on the part of the Collector to make the reference. In determining the scope of this obligation, it is obviously necessary to consider as to who can so "require" the Collector to make the reference. The section says "any person interested" can require the Collector to make the reference. A "person interested" is defined in Section 3 (b) of the Act in the following terms;-

"The expression "person interested" includes all persons claiming an. interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

Giving a liberal interpretation to this expression all that is required for the application therefore is that the person concerned should make a claim to be interested. Whether he is in fact interested or not. whether ultimately he is found to be interested in the land or not, do not require to be considered. In that view, there is no doubt that the present first respondent claiming as she does to be interested in the property and in the compensation amount payable, is a person competent to apply u/s 18(1) of the Act, requiring the Collector to make a reference.

The next question to consider is what are the remedies, if any, open to the person interested who makes an application to the Collector u/s 18(1) of the Act but who receives no satisfaction and the Collector fails to make the reference. If the person interested feels aggrieved on account of the Collector either refusing

or omitting to make a reference u/s 18(1), it would appear that he has no remedy under the provisions of the Act as there is no section in the Act which, for example, provides that on an application made to the Collector u/s 18(1) and on the Collector failing or refusing to make the reference, it would be open to the party aggrieved to approach a Court by an application directing the Collector to make reference.

In the absence of any such provision there is no relief that the Court could give to the aggrieved party as contemplated by the Act. This is indeed a lacuna in the Act which requires to be set right by suitable amendments to the Act by the Parliament. In the state of the law therefore the present O: P. which is sought to be filed u/s 18(1) of the Act is misconceived, inasmuch as Section 18(1) does not authorise or permit or provide for a person aggrieved, to make an application directly to the Civil Court under that section.

In fact, it is extremely doubtful whether this Court, in exercise of its revisional powers u/s 115 C. P. C. could interfere with the award or give a direction that a reference u/s 18(1) of the Act be made inasmuch as the Land Acquisition Officer is not a Court and in any event, he certainly is not a Court subordinate to this Court having regard to the language of Section 115 C. P. C. and also having regard to the decision in *Abdul Sattar Sahib Vs. The Special Deputy Collector, Vizagapatam Harbour Acquisition and Others*, in which it was held as follows;-

"In *Ezra v. Secretary of State*, ILR 32 Gal 605 (PC) the Privy Council has decided that the Collector exercising functions under the Land Acquisition Act down to the point when he gives what is called his award, is acting only in an advisory capacity and is not exercising any judicial function at all; but in these later cases, which I have referred to, it is pointed out and I think correctly pointed out, that when he acts under part HI of which Section 18 forms part, he is acting in a different Capacity, because he has there to decide certain things; he has to send the case to the District Court if certain provisions in that section have been complied with, one of which is the question of time; that is to say, he has to decide whether the application is barred or not! and in doing so, in my judgment he acts judicially.

But the further question arises whether he acts as a Court. I think it is quite possible for persons to be given judicial functions or functions which they have to exercise judicially without their being made Courts properly so called, and I think a very clear instance is the case of registration authorities who have to decide whether or not they will accept registration of certain documents; and it has been held by a Full Bench of this Court in *Krishnammal v. Krishna Iyengar*, 23 Mad LJ 50 that in respect of a refusal of registration by a registration officer no revision petition lies to this Court because he is not a Court at all. I doubt if the Collector sits in a Court.

Further, the question arises assuming that the Collector is a Court is he a court subordinate to the High Court within the meaning of Section 115 of the Code of

Civil Procedure? In my judgment he is not. There is no power of appeal from his decision to any one either to the District Court or to this Court. There is nothing in the Act to show that he is, in the true sense of the word in any way Subordinate to the High Court."

It was accordingly held in that case that the High Court had no power u/s 115 C. P. C. or u/s 107 of the Government of India Act to revise the order of the Collector acting under the provisions of the Land Acquisition Act refusing to refer to the Court an application u/s 18 of the same act by a person interested, requiring him to refer the matter for the determination of the Court. This decision is a clear authority for the position that the present O.P. preferred to the Subordinate Judge's Court, Guntur, was not maintainable.

8. It is seen from the order of the learned Subordinate Judge that the reliefs grafted by him purported to be the reliefs which could only be given under the said Act, on a proper reference having been made by the Collector to the Court u/s 18(1) of the Act.

9. Mr. Narasimha Sarma for the 1st respondent contends that the Civil Court's jurisdiction is paramount, that Section 9, C.P.C. presumes such jurisdiction unless the contrary is shown and that therefore the jurisdiction of the Civil Court cannot be said to have been barred. It is unnecessary to consider this question which would be germane if a properly constituted suit has been brought namely whether such a suit would lie under the general law when a special enactment governing the subject provides for a special procedure to be followed and creates a special forum and a right of appeal under the said Act. It would be entirely a different matter had the extraordinary jurisdiction of this Court under Article 226 of the Constitution been Invoked for obtaining a Writ of Mandamus compelling the Land Acquisition Officer to perform a Statutory duty which according to the first respondent is enjoined on him by reason of Section 18(1) of the Act.

10. In the circumstances, the remedy by filing an O. P. under the Land Acquisition Act before the Subordinate Judge's Court was clearly misconceived; the learned Subordinate Judge has no jurisdiction whatsoever to decide the points arising in the O. P. and that therefore the proceedings of the learned Subordinate Judge must be quashed, in exercise of the revisional powers of this Court u/s 115 C. P. C. Accordingly the C. R. P is allowed. But in the entire circumstances of the case, I make no order as to Costs in this Revision Petition.