

(1955) 10 PAT CK 0012
In the Patna High Court
Case No : Civil Revision No. 889 of 1955

Lila Mahton

APPELLANT

Vs

Sheo Govind Singh

RESPONDENT

Date of Decision : 13-10-1955

Acts Referred:

Land Acquisition Act, 1894 — Section 18(1), 20, 21, 3

Citation : AIR 1956 Patna 108

Hon'ble Judges : Raj Kishore Prasad, J; Rai, J

Bench : Division Bench

Advocate : Mundrika Prasad Sinha and Ramnandan Singh, for the Appellant;
Harinandan Singh, S.K.P. Sinha and Bindabasini Prasad Sinha, for the Respondent

Judgement

Raj Kishore Prasad, J.—This application, on behalf of the petitioner, arises out of Land Acquisition Reference No. 136 of 1955, pending before Mr. Anant Singh, District Judge at Patna, against his order dated 29-6-55, by which he has disallowed- the petitioner from adducing evidence to substantiate his claim as "shikmidar" in the land under reference.

2. The facts may be shortly stated thus: Municipal survey plot No. 1403 having an area of 3.674 acres in mauza Kazipur, tauzi No. 138 in the district of Patna, was the subject-matter of a land acquisition proceeding, which was registered as Land Acquisition case No. 11/8 of 1952-53, before the Collector of Patna, Notices u/s 9, Land Acquisition Act were served, and in pursuance of such a notice the petitioner on 29-10-1954 filed an objection claiming, in the prayer portion, that he should be given compensation for the trees and well standing on the land, but in para 1 of the petition he also mentioned that he was in cultivating possession of the land for the last 60 or 65 years on payment of rent.

On 5-11-1954 the Collector made his award u/s 11 of the Act. in which he mentioned three persons, namely, Sheogobind Prasad Singh, the opposite party Lila Mahton, the petitioner and another person who was a mortgagee, as being interested in the land, the compensation of which he assessed at Rs. 79,909/9/0.

In the award Lila Mahton was described as "shikmidar".

On 15-12-1954 Lila Mahton filed another petition before the Collector repeating his claim that he was in cultivating possession of the land for the last 60 or 65 years on payment of rent, and he also said that he was a "shikmidar" of the land. On 23-12-54 the opposite party filed an application u/s 18 of the Act for reference to the Court, because, in para 5 of this petition he mentioned, he was surprised to find that the name of one Lila Mahto appears as "shikmidar" in the award as one of the persons interested in the compensation awarded to him, who denied the "shikmi" right of Lila Mahto, and, therefore, he said that the award was unacceptable, and asked for a reference to the Court.

On 12-1-1955 notice u/s 12(2) was served on the petitioner. On 15-2-1955 the Collector made a reference purporting to act u/s 30 to the District Judge. It appears that the first reference was made by the Collector was on 15-4-55 which was numbered as Land Acquisition Reference No. 119 of 1955 in which the persons mentioned, as interested in the land, were only the two persons before this Court.

He made a second reference on 29-4-55, which was numbered as Land Acquisition Reference No. 136 of 1955. in which the persons interested in the land were mentioned to be three persons, two of whom are the parties before this Court. Subsequently, a third reference was made by the Collector on 12-5-55, which was numbered as Land Acquisition Reference No. 370 of 1955, in which also the persons interested in the land mentioned were the same two persons, who are before us, and who were mentioned in the first reference.

Along with this third reference the petition filed by Lila Mahto on 15-12-54 was sent to the Court of the District Judge. The learned District Judge took UD Land Acquisition Case No. 136 of 1955 on 29-6-55, and on that day the advocate appearing for Lila Mahto, the petitioner, wanted time to adduce evidence in support of his claim as "shikmidar".

A preliminary objection was taken on behalf of Sheogovind Prasad Singh, the opposite party, that Lila Mahton, having not put forth any claim in his objection filed on 29-10-54, in pursuance of the notice u/s 9 of the Act, on the ground of being a "shikmidar", to any portion of the land under reference, before the Land Acquisition Officer, he should not be allowed to adduce evidence on this point.

Before the learned District Judge a certified copy of the petition filed by Lila Mahto on 29-10-54 was filed by the opposite party in "support of his aforesaid objection. The learned District Judge, on the basis of that petition thought that Lila Mahto had given up his claim, if any, to the value of the land, and therefore he thought that he should not be allowed to adduce evidence to substantiate his claim as "shikmidar" in respect of the land in dispute.

It is against this order that the petitioner has moved this Court in revision. I may mention here that it is not necessary to refer to the orders passed subsequent to

this date, because when the petitioner has moved against the first order, other subsequent orders will automatically stand vacated, if we find that this order cannot be sustained.

3. After perusing the application and the order under revision we did not consider it necessary to hear the petitioner, and, therefore, we called upon the opposite party to show cause against the Rule.

4. Mr. Harinandan Singh, appearing for the opposite party in opposing the Rule, contended that the District Judge had taken the correct view in determining the matter in dispute on the basis of the first petition, which was filed by Lila Mahto on 29-10-54, and, therefore, when no such specific mention of the word "shikmidar" appeared in the first objection of Lila Mahto and no such claim was made before the Collector for compensation on that account for the land the District Judge had correctly disallowed evidence to be adduced on that point. In my opinion, there is no substance in the contention of Mr. Singh.

5. In order to decide Mr. Singh's objection, it is necessary to know the scheme of the Act When an award is made u/s 11, and when the amount of compensation has been settled u/s 11, such an award u/s 12(1) shall be final, and conclusive evidence as between the Collector and the persons interested, of the true area, and value of the land, and the apportionment of the compensation money among the persons interested.

If any dispute arises as to the apportionment of the same, or any part thereof, or as to the persons to whom the same, or any part thereof, is payable, the collector refers such dispute for the decision of the Court u/s 30 of the Act. Section 18 provides that 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 on certain grounds.

The Court referred to in Section 18(1), as defined in Section 3(d). means a principal civil Court of original jurisdiction, unless the local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specific local limits to perform the functions of Court. Section 18(1) clearly specifies four different grounds of objections, viz., (1) to the measurement of the land; (2) to the amount of compensation; (3) to the persona to whom it is payable; and (4) to the apportionment.

When a party makes such an application before the Collector asking the matter to be referred to the Court, on one or more of the grounds mentioned above, the Collector makes a reference to the Court u/s 18 of the Act. The Collector can also "suo motu", without any application by any person, make a reference u/s 30 of the Act, if the dispute is only regarding the apportionment of the compensation, or the persons to whom it is payable.

The scope of Section 18 is much wider than that of Section 30 because the objections contemplated by Section 30 are also included in Section 18. When

once the award u/s 11 as to the amount has become final u/s 12, all questions as to the fixing of compensation are then at the end. The duty of the Collector in case of dispute as to the relative rights of the persons, together entitled to the money, is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be.

6. In the present case, the Collector after depositing the compensation money in Court as required by Section 31(2), made a reference u/s 30 of the Act, because he thought that there was a dispute as to apportionment of the compensation and as to the persons to whom the same or any part thereof was payable. So far as this particular dispute is concerned, there is no difference, whether the reference is treated as one u/s 18, or u/s 30.

Even if the reference be deemed to have been made u/s 18, as was contended by Mr. Singh, it is obvious that the dispute which was raised by the parties was in regard to "shikmi" right, which was claimed by Lila Mahto, and, denied by the opposite party and, therefore the collector rightly treated the "shikmi" claim of Lila Mahto to be the dispute between the parties and referred that matter to the Court.

In making a reference u/s 30, or u/s 18, the Collector has to state u/s 19(1) for the information of the Court in writing certain matters for which Forms 18 and 19 under Rule 113 of Executive Instructions of the Board of Revenue have been prescribed. In a reference u/s 18 Form 18, and in a reference u/s 30 Form 19, have to be used.

In the present case, as the Collector purported to make the reference u/s 30, he used Form 19. In column 4 of this Form 19 "names and addresses of the persons interested in the land and the nature of their respective interests, and in column 6 "particulars of the dispute", have to be mentioned by the Collector.

In the present case, it would appear that in each of the three references, which arose out of one and the same case, the Collector mentioned under column 4 that the nature of the interest claimed by Lila Mahto was that of a "shikmidar", and in column 6 also it is mentioned that Lila Mahto claimed "shikmi" interest in the land, and therefore, he was referring this dispute for decision to the Court u/s 30 of the Act.

From these references it is absolutely clear that the dispute which was referred to the Court included the dispute regarding the existence or non-existence of the "shikmi" right of Lila Mahto in the land. The opposite party's objection was manifestly only to Lila Mahto having "shikmi" right in the land and entitled to the compensation money as "shikmidar", and was correctly so described by the Collector in making the reference.

7. The scope of the enquiry before the Court, in the present case, the District Judge, is by Section 21 to be "restricted to a consideration of the interests of the

persons affected by the objection", By Section 20 the function of the Court upon a reference being made is "to determine the objection", and only persons "interested in the objection" are to be summoned before it.

There is, therefore, no doubt that the jurisdiction of the Court under, this Act is a special one and is strictly limited by the terms of these two sections. It only arises when a specific objection has been taken to the Collector's award and it is confined to a consideration of that objection. Once, therefore, it is ascertained that the only objection taken is "as to the title to receive the compensation", that alone is the "matter" referred, and the Court has no power to determine, or consider anything beyond it (see AIR 1930 64 (Privy Council) ; and AIR 1939 133 (Privy Council) .

8. The scope of the enquiry before the Court is thus limited to the consideration of only the matter, referred by the Collector u/s 18(1), or Section 30, restricted to a consideration of the interests of the persons affected by the objection.

9. Mr. Singh's contention is that Sections 20 and 21 make it clear that the Court has to determine the "objection", and, therefore, in order to find out what the "objection" is, the Court can go behind the reference, and take into consideration materials which were placed before the Collector before the award was made by him u/s 11, and on the basis of those materials, in the shape of objection petitions of the parties, or the like, come to his own conclusion about the nature of the "objection" of the parties, before the Collector, even though the Collector in his reference has mentioned otherwise.

I am afraid I cannot accept this contention as a correct interpretation of the scope of the enquiry before the Court. Under the scheme of the Act itself, the Collector is the agent, or mouthpiece of the Government. When he makes the reference to the Court, he makes it on behalf of the Government.

The "Court" does not sit on appeal over the Collector; and the Land Acquisition Act does not give any authority to the "Court", either in express terms, or by implication, to go behind the reference, and to see whether Collector acted rightly or wrongly. Proceedings are instituted on reference by the Collector.

They are not initiated by a plaint, and are not in the strict sense of the word a suit at all. Still less do such proceedings seem to be a suit to set aside an award. Proceedings under Part III of the Act, under which Sections 18 to 28 occur, are not by way of appeal, and what is contemplated is a new enquiry by the Court. The following propositions of law are now well established:

- (i) the Court hearing a reference made u/s 18, or Section 30 of the Act is a Court of special jurisdiction;
- (ii) that Court acquires jurisdiction only on a reference being made by the Collector;
- (iii) that the jurisdiction so acquired by the Court extends over the matter

referred to it by the Collector u/s 18, or Section 30 and to no other matters;

(iv) that within the sphere of its jurisdiction it must follow the provisions of the Civil Procedure Code, unless any one of those provisions is inconsistent with the provisions of the Land Acquisition Act Section 53 (see *Satyanarain Singh v. Kamakshya Naraih Singh*", Civil Revn. No. 1094 of 1954 decided by this Bench on 27-9-1955 (C)).

10. The District Judge, therefore, had no jurisdiction to go behind the reference made by the Collector u/s 30 in the present case. Proceedings resulting in an award before the Collector are administrative, and not Judicial, and the Collector, acting under the Land Acquisition Act, is not a Court subordinate either to the District Judge, or even to the High Court.

The Court of the Land Acquisition Judge. who is called under the Act "Court", is a Court of special jurisdiction, the powers and duties of which are defined by the Statute, and it cannot legitimately be invited to exercise powers so as to assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it.

The Court acting under the Act has no jurisdiction to look into proceedings anterior to the reference before the Collector, however erroneously he may have acted in law or in fact, or both, in making the reference. The District Judge, therefore, had no jurisdiction to go behind the reference, and say that the dispute between the parties was not about "shikmi" right of Lila Mahto, as mentioned by the Collector in his reference, and, thereby to modify the scope of the reference of the dispute to the Court for its decision by the Collector.

In doing so, the Court will be doing something which it is prohibited from doing by Sections 20 and 21 of the Act. In order to find out what the objection between the parties was, the District Judge had to look to the reference alone, particularly to column 6 of Form 19, in which the Particulars of the dispute were mentioned by the Collector u/s 19 in making the reference u/s 30.

The "objection" mentioned in Sections 20 and 21, means the "objection" made u/s 18(1) or the "dispute" which arises u/s 30, and which is referred to the Court for its decision. It is not open to the Court, in such a case, to start an enquiry anew, to find out what the "objection" before the Collector was initially, to see if the Collector had correctly mentioned the particulars of the dispute in his reference. This is beyond the Jurisdiction of the Court to do. Mr. Singh's "contention must, therefore; be overruled.

11. If the learned District Judge had taken the trouble of looking into the reference made by the Collector and into the statements of facts submitted by the Collector u/s 19 of the Act, it would have been clear to him that what was referred to him was the objection regarding the "shikmi" right of Lila Mahto, and, as such, this was one of the questions which he was to enquire and decide after giving full opportunity to the parties to adduce evidence on that point.

It would have been then open to the parties giving evidence to show that the claim asserted by Lila Mahto was correct or not correct, but to say that Lila Mahto had abandoned her claim as "shikmidar" on the basis of the petition filed on 29-10-54 at this stage is not a correct approach. Even the petition dated 29-10-54 clearly mentions that Lila Mahto was in possession of the land for the last 60 or 65 years by payment of rent.

It is true that the word "shikmidar" is not there, but the omission of the word "Shikmidar" would not in the least destroy the legal status acquired by Lila Mahto, If his case that he was in cultivating possession of the land for 60 or 65 years on payment of rent was correct. In my opinion, therefore, the learned District Judge went beyond his jurisdiction in looking into the petition dated 28-10-54 to find out what the dispute before him was and in disallowing Lila Mahto to adduce evidence to show that his claim as a "shik-midar" of the land in question was correct.

12. There was one Land Acquisition proceeding case before the Collector, and the persons Interested in the land were only three before him, and, as such, one reference was enough, but even if he thought that two references should be made, one confining to the claim of the petitioner and the opposite party, and the other to the claim of the three persons including these two, even then two were enough, and a third reference, when sending the petition dated 15-12-54 filed by Lila Mahto to the District Judge was unnecessary.

However, when three references have been made, all of which arise between the same parties, and which are in respect of the same subject matter, and which arise out of one and the same Land Acquisition Case, they will all be heard together by the District Judge.

13. After the conclusion of the argument for the opposite party, Mr. Mundrika Prasad Sinha, appearing for the petitioner, submitted that in case this Court took the view that the order under revision should be vacated, and the case remitted to the Court below for disposal, it would be better if the three references which have been directed to be heard together, are sent to one of the Additional District Judges stationed at Patna for disposal, inasmuch as the learned District Judge has expressed his opinion on the merit of the dispute which was referred to him for his decision, and as such he may feel embarrassed by his own previous decision.

We have considered this argument, and we think that the ends of justice will be met if these references are heard by one of the Additional District Judges stationed at Patna. The only question is, is an Additional District Judge competent to hear a reference u/s 30, or Section 18, Land Acquisition Act? u/s 3(d), Land Acquisition Act the "Court" having jurisdiction under that Act is described as "the principal civil Court of original jurisdiction".

An Additional District Judge is a Judge of such principal Civil Court of original jurisdiction. An Additional District Judge, like District Judge himself, is a Judge of

such a Court and as such he would be competent to hear and dispose of references under the Land Acquisition Act which are made over to him for disposal by the District Judge, under the provisions of Section 8(2), Bengal, Agra and Assam Civil Courts Act, 1887 (see "Jogesh Chundra v. Rasik Lal", AIR 1919 Cal 133 (D) and Jagabandhu Talukdar and Others Vs. Nanda Lal Sirkar and Others, .

14. I would, therefore, direct that these three references, namely, Land Acquisition References 119, 136 and 370 of 1955, pending before the District Judge at Patna should be remitted to him with a direction that he should make over these cases to Mr. S. M. Hasan, Additional District Judge, Patna for disposal in accordance with law. The learned Additional District Judge-after receipt of the records of the three references will decide the objection regarding the existence or non-existence of the "shikmi" right of Lila Mahto in the land, and other allied and consequential questions, arising out of the references, after giving full opportunity to both the parties to adduce evidence on the disputes under references.

At that time, it would be open to the opposite party to adduce such evidence, as will be considered proper by him" to negative the "shikmi" right claimed by Lila Mahto. The order dated 29-6-55 is, therefore, set aside. This order having been set aside, the subsequent orders passed by the learned District Judge stand automatically vacated.

15. In the result, I would make the Rule absolute, and set aside the order of the learned District Judge dated 29-6-55. Subject to the directions given above, the application is accordingly allowed with costs: hearing fee Rs. 32/-.

Rai, J.

16. I agree.