
(1969) 08 BOM CK 0006

In the Bombay High Court

Case No : O.C.J. Land Acquisition Reference No. 98 of 1966

Louis Pascal Duming John

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 18-08-1969

Acts Referred:

Administrator Generals Act, 1913 — Section 32
Land Acquisition Act, 1894 — Section 18

Citation : (1970) 72 BOMLR 703

Hon'ble Judges : Mody, J

Bench : Single Bench

Judgement

Mody, J.—This is a Reference u/s 18 of the Land Acquisition Act for the ascertainment of the correct amount of compensation payable in respect of the acquisition of the lands in this Reference. One Louis Pascal Duming John, hereinafter referred to as "Louis", was the owner of the lands. On 7th January, 1964 an Award was made determining the compensation payable for this acquisition. On 24th January, 1964 possession was taken of the lands. On 4th February, 1964 Louis, being dissatisfied with the amount determined in the Award, made an application for a Reference u/s 18. The S.L.A.O. therefore made this Reference on 1st December, 1966. On 16th December, 1966 Louis died intestate, leaving him surviving twelve persons, being his widow, five sons and six daughters, as his only heirs and legal representatives. On the application of the said twelve persons an Order was made on 19th July, 1968 that the said twelve persons be brought on the record of this Reference in the place and stead of and as the heirs and legal representatives of the deceased Louis. In pursuance of that order, this Reference was duly amended on 26th July, 1968 and the said twelve persons were brought on the record as the only heirs and legal representatives of the deceased Louis. These twelve persons are the present claimants.

2. On the evidence of Gregory Paul John, I am satisfied that Louis died intestate, that he died an Indian Christian and that the twelve claimants are his only heirs

and legal representatives.

3. Only two points arise for determination. Both are u/s 214 of the Indian Succession Act. The first point is whether as a result of its decision in this Reference the Court will pass a mere "Award" or it will pass a "decree". The second point is whether the amount of the additional compensation which may be determined as a result of this Reference as payable to the claimants would be a "debt", or, in other words, whether the S.L.A.O. is a debtor in respect of that additional amount of compensation of the estate of Louis and he could be ordered to pay that amount to the claimants as persons claiming on succession to be entitled to the effects of the deceased Louis.

4. Section 214, in so far as it is material, reads as under :-

214. (1) No Court shall-

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or,

(b) ...except on the production, by the person so claiming, of -

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, at,

(ii) a certificate granted u/s 81 of section 32 of the Administrator-General's Act, 1913, and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or,

(iv) a certificate granted under the Succession Certificate Act, 1889, or

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May 1889, having the debt specified therein.

(2)

5. It is by reason of the use of the words "decree" and "debt" in Section 214 that the-above two points have been raised.

6. I will first deal with the point as to whether what the Court has to pass in a Reference u/s 18 which appears under Part III of the Land Acquisition Act, is an "award" or a "decree".

7. Mr. Gandhi contended that all throughout in Part III of the Land Acquisition Act the word used in numerous sections is "Award". He referred to the words "Award" and "awarded" as appearing in Sections 23(1), 25(1),(2)and(3), 26 (1)and(2) and 27. He also referred to the use of that word "Award" in Section 54 which is, of course, not in Part III. He then pointed out the provisions of Section 26 which reads as under:-

26. (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of Sub-section (1) of section 23 and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, Clause (2), and section 2, Clause (9), respectively, of the Code of Civil Procedure, 1908.

He contended that Sub-section (1) makes it clear that what the Court has to make is an Award. He then contended that Sub-section (2) only thereafter creates a fiction by providing that such an Award shall be deemed to be a decree. He contended that the very fact that such a deeming fiction had to be created shows that but for the creation of such fiction the Award would not be a decree. He contended that what is to be made under Sub-section (1) is an Award, that it continues to be an Award till its making is duly completed and that it is only after the Award is Completed that the deeming fiction under Sub-section (2) starts to apply and the Award is to be deemed to be a decree. He contended that therefore what the Court has to make under Part III is an Award and not a Decree and therefore the provisions of Section 214 cannot apply because Section 214 applies only when the Court has to pass a decree.

8. Now, as pointed out by the Advocate General, what Sub-section (2) of Section 26 provides is that the Award under Part III is to be deemed to be a decree. It is a fiction without any restriction as to the time when it would commence to apply. In other words, there is no justification for interpreting Sub-section (2) so as to mean that the Award is not to be deemed to be a decree at all times and that it is to be deemed to be a decree only after it is made and not when it is to be made. Before considering this argument one must clear certain preliminary ground. Section 18 shows that the objections which a Court would be called upon to determine under Part III would be of four classes, viz., (1) as to the measurement of the land, (2) as to the amount of the compensation, (3) as to the persons to whom it is payable, and (4) as to the apportionment of the compensation among the persons interested. There appears to be no specific provision in the Land Acquisition Act that such determination by the Court shall be by an Award. Section 23(1) uses the phrase "compensation to be awarded" and Section 25(1),(2),and(3) uses the phrase "the amount awarded". These phrases use the word "award" as a verb and as such its meaning is too general to indicate an Award only and therefore do not clearly indicate that the determination of the Court is to take the form of an Award. The opening words of Section 26(1), viz., "Every award under this Part", however, do, though not expressly, but by a necessary implication, indicate that the determination of the Court under Part III is to be in the form of an award. But Sub-section (2) of Section 26 presents another difficulty. The words "Every award under this Part shall be in writing signed by the Judge" can apply to awards relating to all the

said four classes of objections u/s 18, but the words succeeding immediately thereafter, viz., "and shall specify the amount awarded under clause first of subsection (1) of section 23 and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts", can apply only to one out of the said four classes of objections u/s 18, viz., to objections as to the amount of compensation and not to the other three classes. As it happens, this Reference which I have to decide concerns only the amount of compensation. Counsel have advanced their above arguments as if Part III was confined to this class of objections and ignored the said three classes of objections and I will confine my attention and this Judgment to cases of objections as to the amount of compensation only.

9. Now, what Sub-section (2) of Section 26 provides is that the Award is to be deemed to be a decree. On a plain grammatical reading of this provision it cannot be so construed as to restrict the fiction as commencing to apply only after the award is made. Therefore, even when the Court is making an award or is called upon to make an award, Sub-section (2) requires the award to be deemed to be a decree, that is, the Court must proceed as if it is making or is called upon to make a decree. In other words, by reason of this fiction the words "Award" and "Awarded" must be deemed to read as "decree" and "decreed" respectively. This would be the result on a plain reading of the language of Section 26. It is, therefore, not necessary to take the help of the principles laid down in the two authorities cited by the Advocate General as to what the Court should do to give full effect to a statutory fiction if the language of the statute creating it is not comprehensive enough to encompass all conceivable situations. The two authorities which he cited were *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, and *East End Dwellings Co, Ltd. v. Finsbury Borough Council* [1952] A.C. 109.

10. Mr. Gandhi had contended that the deeming fiction in Sub-section (2) of Section 26 was introduced by an amending Act, being Act XIX of 1921, and that by the same Act Section 54 also was amended. After introducing the fiction of deeming the Award to be a decree, Section 54, as amended, still continues to refer to the Award as an "Award" and not as a "Decree". He further pointed out that the distinction between an "Award" and a "Decree" was present to the mind of the Legislature as is evidenced by the fact that that which is passed by the Court to which a reference is made u/s 18 is referred to in Section 54 as the "Award", but in the same section that which is to be passed in appeal against that award has been referred to as a "Decree". So far as this contention of Mr. Gandhi is concerned, it has first to be borne in mind that at half a dozen places in Part III the word used is "Award", but the amending Act does not substitute the word "Award" by the word "Decree". The method adopted by the Legislature to change the Court's decision under Part III from an Award into a Decree is to create the fiction instead of substituting the word "Award" wherever it occurs in the main Act by the word "Decree". It is legitimate to conclude that it was for the

purpose of maintaining consistency of nomenclature that the word, even in the amended Section 54 is "Award". Because of the fiction created by Section 26, however, the word "Award" even in Section 54 must be read as "Decree". In this connection it should also be noted that if Mr. Gandhi's contention were to be accepted, and the Award, till it is made, is not a Decree, no representation contemplated u/s 214 would be necessary for passing an Award, but if an appeal is filed against the Award, what the Appellate Court would be passing would indisputably be a Decree as it is so specifically stated in Section 54 itself and being a Decree Section 214 would apply and it would, therefore, at that appellate stage be necessary for the heirs of a deceased claimant to produce representation as required by Section 214. By not deeming the Award to be a Decree at all stages it would thus lead to an anomaly.

11. In support of his contention on the first point the Advocate General urged a second ground. He contended that the word "Decree" has not been defined in the Indian Succession Act and its meaning must, therefore, be ascertained from outside that Act. He pointed out that it has been defined in Section 2(2) of the Code of Civil Procedure. He urged that judged in the light of that definition the Award to be made u/s 26(/) is, by itself and without the aid of the fiction created by Sub-section (2) of Section 26, a decree within that definition. In this connection he also referred to the definition of the word "judgment" in Section 2(9) of the CPC and urged that the grounds to be stated in the Award under Sub-section (J) of Section 26 would fall within that definition and is therefore a judgment.

12. Section 53 of the Land Acquisition Act provides :

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, shall apply to all proceedings before the Court under this Act.

There is nothing in Section 2(2) or (9) of the CPC which is inconsistent with anything contained in the Land Acquisition Act. Therefore, the definitions of "decree" and "judgment" in Sub-sections (2) and (9) respectively of Section 2 of the CPC would apply to all considerations under the Land Acquisition Act.

13. According to Section 2(2) of the CPC a "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. The provisions of Sub-section (I) of Section 26 of the Land Acquisition Act make it clear that what is referred to therein as "award" is the formal expression of an adjudication by the Court in respect of the reference made to it u/s 18. Moreover, it also, so far as the Court making the award is concerned, conclusively determines the rights of the parties with regard to the matter referred to it u/s 18 of the Land Acquisition Act. The only question, therefore, which arises is whether such a reference is a "suit" within the meaning thereof in Sub-section (2) of Section 2 of the Code of Civil Procedure. There is no

difficulty in holding that the reference is a "suit" because, as held in *Nathubhai v. Manordas* (1911) 14 Bom. L.R. 325, a suit includes all contentious proceedings. A reference u/s 18 is a contentious proceeding because the Collector who has made the Award would support it and the person interested in the land acquired would be raising an objection to it. As pointed out by the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, the expression "sue" in its plain grammatical sense connotes the enforcement of a claim or civil right by means of legal proceedings. In a reference u/s 18 what the person interested in the land acquired seeks to do is to enforce his claim in respect of the land acquired according to the principles laid down in the Land Acquisition Act. Such a reference is to be decided by a Court and the provision as to procedure contained in Part III and those of Section 58 which make the CPC applicable definitely make the reference a legal proceeding. It is, therefore, clear that an Award under Part III of the Land Acquisition Act is a "Decree" within the meaning of Section 2(2) of the CPC and therefore also within the meaning of Section 214 of the Indian Succession Act.

14. The learned Advocate General also sought to support his contention that the award is a decree by drawing my attention to the earlier Land Acquisition Act, being Act X of 1870, and the provisions of its Sections 21, 34, 36, 58 and others. He pointed out that under that Act there was no provision for passing a decree as that Act merely provided a statutory obligation on the Government to make the payment of the amount as determined on a reference. He also pointed out that the provision contained in that Act in respect of payment of the costs of the reference was different from that in respect of payment of the compensation itself. He contended that it was because of that reason that in several cases such as *Nilkanth v. Collector of Thana* ILR (1897) Bom. 802, it has been held that the award for compensation was not executable as a decree. He further contended that even under the present Land Acquisition Act of 1894 but, before its amendment in 1921, it had been held by the Privy Council in 16 CWN 1081 (Privy Council) and in several other cases before different High Courts in India that no appeal lay to the Privy Council against an order made in appeal against the Award because the latter was an award and not a decree. He advanced certain further arguments on the basis of the amended Act in this connection. It is not necessary for me to deal with these arguments in detail as I have accepted his other contentions and reached the conclusion that an award under Part III of the present Land Acquisition Act must be deemed to be a "decree" not merely after it is made, but even before it is made, i.e. when the reference which would result in an award is being heard.

15. I, therefore, hold that an award made under Part III of the Land Acquisition Act is a decree for the purposes of Section 214 of the Indian Succession Act, both by reason of the deeming fiction u/s 20(2) and by reason of the definition u/s 2(2) of the Code of Civil Procedure.

16. The second point for decision is whether the compensation to be awarded in

a reference u/s 18 of the Land Acquisition Act is a "debt" within the meaning thereof under p. 214 of the Indian Succession Act, It has been pointed out in *Varjivandas Jamnadas and Others Vs. Maganlal Chhabildas*, , that a "debt" is a sum of money which is now payable or will become payable in future by reason of a present obligation. It has been held in *Sabju Sahib v. Noordin Sahib* ILR (1898) Mad. 139, that a debt is a present obligation to pay a liquidated sum of money. These two judgments lay down affirmatively what is a "debt". There are some other judgments which negatively point out what is not a debt. In *Mt. Powri v. Shiwa Paiku* A.I.R.[1935] Nag. 2, it is stated that debt does not include any sum of money which may or may not become due or the payment of which depends upon contingencies which may or may not happen. Now this language was used because the claim which was dealt with in that judgment was a claim for damages for breach of a contract to sell moveable property. In *Moti Lal Vs. Radhey Lal and Others* also it has been held that a claim for damages for breach of a contract is not a claim for a liquidated sum and is not a debt. In AIR 1935 203 (Privy Council) ., it has been held that if the amount is not ascertained at the time of the suit, representation of a deceased person is not necessary because it does not amount to a debt.

17. Although the meaning of the word "debt" appears to be clear enough, it does not appear to be capable of a precise or comprehensive definition. If the amount be an ascertained liquidated sum of money, it would be a claim for a debt, whether that sum of money be payable in respect of a contract or a tort or a statutory obligation. All that is necessary is that it must be payable immediately at the date of making the claim for it or at least there must be a definite obligation at that date to pay that amount in future. A difficulty would arise only in cases where that sum of money is not an ascertained or liquidated sum of money. In such cases if the quantum of the sum of money is capable of being ascertained by a mere arithmetical calculation it would be a debt, as, for example, where a person is under an obligation to repay a fixed sum of, say, Rs. 500, but with interest at a stated rate. What would be required would be only an arithmetical calculation of the interest to arrive at an ascertained sum as of a particular date. If, however, the sum is to be ascertained otherwise than by a mere arithmetical calculation, it would not be a debt. This may be illustrated by some examples. If the ascertainment of the exact sum of money can result only through a judicial or quasi-judicial proceeding, it would not be a debt. If, for example, a person claims Rs. 5,000 as a loan and the person from whom he claims it denies having received that sum, either wholly or in part, it would necessitate the exercise of a judicial or quasi-judicial function as that of a Court or an arbitrator to ascertain the exact liability, if any. But the intervention for making the same an ascertained sum need not necessarily be that of a judicial or quasi-judicial body. Such would be the case where a person agrees to sell his land at a fixed rate per sq. yd., but the exact area of the land is not known at the date of the agreement. The area not being known, it is not a question of mere arithmetical calculation. A Surveyor will have to be employed to ascertain the

area and only thereafter would the area become known and if the area so ascertained is accepted by both sides, the amount yielded by arithmetical multiplication of the area by the rate would become a debt. But it would be more profitable to take an illustration which can arise under the Land Acquisition Act itself. If in respect of land acquired an Award is made by the Collector and the owner of the land does not dispute the award, the amount of the award would become a debt. It has been so specifically held in *Ramji Sao and Others Vs. Jageshwari and Another*, . If, however, after such an award, the owner of the land objects to the amount determined by the award by the Collector and asks for a reference and a reference is made u/s 18, inasmuch as any determination in a reference u/s 18 cannot fix the amount which is less than that mentioned in the original Award, the amount of the original award will continue to remain a debt, but the additional compensation claimed in the reference will not be a debt. This would be so because the amount originally awarded by the Award is an ascertained sum of money, but the additional compensation claimed in a reference u/s 18 not only may not be granted, but, even if granted, its amount is unascertained till the Court passes an award which is to be deemed to be a decree under Part III of the Land Acquisition Act,

18. Now, in this case the amount originally awarded by the award was already paid to the original claimant before he died. What the claimants as the heirs of the original claimant Louis claim in this Reference is only the additional compensation. Till this Court makes an award under Part III of the Land Acquisition Act for such additional compensation, the amount of the additional compensation will continue to remain an unascertained sum of money. It would therefore not be a debt within the meaning of Section 214 of the Indian Succession Act. As it is not a debt, Section 214 does not come into operation. That section does not debar this Court from passing its Award which is to be deemed to be a decree against the S.L.A.O., i.e., the Government, for payment of the additional compensation to the claimants without production of a representation contemplated in Sub-section (1) of Section 214 of the Indian Succession Act. I accept the evidence of Gregory that Louis died an Indian Christian and intestate. I have, therefore, yet to consider the effect of Section 212. The provisions of Sub-section (1) of Section 212 would have required the production of Letters of Administration, but Sub-section (2) of Section 212 is an exception to that requirement. That exception applies, inter alia, in the case of Indian Christians. It was, therefore, not obligatory on the claimants as the heirs of Louis to have produced before me Letters of Administration and the absence of the production of Letters of Administration is not a bar in the way of their obtaining their claim in this Reference. As there is no such bar, I, in accordance with the agreement between the parties, order that the S.L.A.O. do, within three months from to-day, pay to the claimants the said sum of Rs. 7,723 together with interest thereon at the rate of 4 per cent, per annum from 24th January, 1964 till payment.

19. As Mr. Gandhi has lost on the question of decree but has won on the question

of debt and as there was, in fact, no real contest between the parties except on a pure point of law which does not appear to have been finally decided, I make no order as to costs.