

(1995) 02 PAT CK 0020

In the Patna High Court

Case No : Miscellaneous Appeal No's. 116 and 117 of 1981

Maliram Parsurampuriah and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8, Order 9 Rule 9
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1996 Patna 148

Hon'ble Judges : Ashish N. Trivedi, J

Bench : Single Bench

Advocate : Pawan Kumar, Raj Kishore Prasad, Anil Choudhary, Chiranjiv Ranjan and Anita Roy Choudhary, for the Appellant;

Final Decision : Allowed

Judgement

Ashish N. Trivedi, J.—Since similar questions of facts and law are involved in these two miscellaneous case, they are being decided by this common judgment.

2. Reference u/s 18 of the Land Acquisition Act made by the District Land Acquisition Officer, Sitamarhi to the Court was registered as Misc. Case No. 4/18 of 1979 and was pending in the Court Sub-Judge, sitamarhi. On 2-2-1979 the appellant was absent and the Trial Court passed the following order dismissing the reference for default :--

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g- Mh- ih- fIUgk A

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3. On 21-2-1979 the appellant filed an application under Order 9, Rule 9, C.P.C. for restoration of the reference for the reasons stated therein.

4. The Trial Court by the impugned order dated 24-2-1981 rejected the appellant's application under Order 9, Rule 9, C.P.C. and refused to restore the reference to its original number on the ground that the provisions contained under Order 9, Rule 9, C.P.C. are not applicable to a reference u/s 18 of the Land Acquisition Act. The Trial Court has referred to three decisions of this Court in coming to the conclusion that the provisions of Order 9 of the code are not attracted since the provisions are inconsistent with the provisions of the Land Acquisition Act. The Trial Court further observed that in view of the decisions of this Court, the Court where a reference is pending has to pass final order on the reference even if the objector at whose instance the reference has been made is absent and so when an order is passed in absence of the objector it will be deemed that the order has been passed on the reference and the reference has been disposed of against the objector and the award prepared have been made a rule of the Court.

5. I have heard learned counsel for the appellants. Despite service no one has appeared on behalf of the Respondent to contest the appeal.

6. CPC is made applicable to the proceedings under the Act by Section 53 of the Land Acquisition Act to the extent indicated therein. Section 53 of the Act is reproduced hereinunder : --

"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the (Code of Civil Procedure, 1908 (5 of 1908) shall apply to all proceedings before the Court under this Act."

7. From perusal of the order of the Trial Court reproduced hereinabove, it would be evident that the Trial Court had dismissed the reference for non-prosecution on account of the absence of the appellant before the Court on the date on which the case was called out and there was no adjudication of adequacy of the compensation.

8. The power which was exercised by the Trial Court in dismissing the reference in default is not conferred by any of the provisions of the Land Acquisition Act. Obviously this power could be exercised by the Trial Court only under Order 9, Rule 8 of the Code and having done so, the Trial Court could not refuse the leave to the appellant to invoke its power under Rule 9 of Order 9 of the Code for setting aside the order of dismissal on the ground that the provisions are not applicable or are inconsistent with the provisions contained in the Land Acquisition Act. The provisions contained in Rule 8 of Order 9 or Rule 9 of Order 9 of the Code are in no manner inconsistent with the provisions contained in the Land Acquisition Act.

9. Learned counsel appearing for the appellant in support of his submission that the application made by the appellant under Order 9, Rule 9, C.P.C. for setting aside the order of dismissal dated 2-2-1979 is maintainable relied upon the following decisions.

10. In *Ram Piari and Others Vs. The Union of India*, it was held that the Land Acquisition Act itself does not prescribe the procedure applicable to the proceedings before the Court while hearing reference application and since Section 53 of the Act makes the provisions of the Code applicable to these proceedings, therefore, the procedure laid down in the Code has to be followed by the Court in deciding a reference application and when the claimant committed default in appearing in reference proceedings, application can be dismissed for default and the provisions of Order 9 of the Code would be attracted.

11. The next decision relied upon by the learned counsel appearing for the appellant is *Smt. Pullamma v. The Additional Special Land Acquisition Officer, Bangalore* AIR 1977 Kar 9 where it was held that:--

"There is no provision in the Act directly dealing with the situation where a party to the reference absents, not(sic) there is any provision which prevents the Court to pass an order of dismissal of the reference for non-(prosecution. Thus being no bar express or implied in the Act to the applicability of any particular provision of the CPC and the provisions of the CPC in general being made applicable by the provisions of Section 53 of the Act and Section 141 of the Code of Civil Procedure, it cannot be said that the application for the setting aside of the order of dismissal of the reference in default is not maintainable."

12. The last decision relied upon by the learned counsel for the appellant is *Smt. Katori Devi v. The Collector, Aligah* AIR 1981 All 394 (sic) in which it was held that:--

"While disposing of a reference u/s 18 the District Judge functions as a Court. The provisions of the CPC have been specifically made applicable to the proceedings before the District Judge by Section 53 insofar as they are not inconsistent with anything contained in the L.A. Act. There is no provision in the Land Acquisition Act which may be inconsistent with the provisions of Order 9. Therefore, Order 9 applies to proceedings before the District Judge on a reference u/s 18. Therefore, the District Judge has power under Order 9, Rule 8 to dismiss the reference for default of appearance by the claimants. Consequently when the reference is so dismissed, application under Order 9, Rule 9 to set aside the order of dismissal would be maintainable."

13. The Trial Court in support of its conclusion that an application under Order 9, Rule 9, C.P.C. is not maintainable placed reliance of three decisions of this Court.

14. A Division Bench of this Court in *Deputy Commr. Vs. Bridhichand Banshidhar and Others*, held that :--

"Section 53 of the Act lays down that the provisions of the CPC shall, so far as they are not inconsistent with the provisions of the Act, apply to any land - acquisition proceeding before the Court. u/s 34 of the Code of Civil Procedure, it is in the descretion of the Court to refuse or allow interest for the period

subsequent to the institution of the suit, or, to the date of the decree, and where the decree is silent with respect to the payment of interest subsequent to the date of the decree the Court shall be deemed to have refused such interest. Section 54 of the Act makes the provisions of the Code applicable to appeals against any decision of the Court under the Act and any person aggrieved by the judgment and decree refusing interest can come up in appeal for getting interest u/s 28 of the Act. None of the provisions for review contained in Order 47, Rule 1 of the Code is attracted in such a case."

15. It was held by a Division Bench of this Court in *Mt. Sakalbaso Kuer Vs. Brijendra Singh and Others*, that :--

"In view of the clear provisions of Section 53 of the Land Acquisition Act, the provisions under Order 1, Rule 10, Code of Civil Procedure, are clearly attracted to a case of reference u/s 30 of the Act before the Court when the nature of the dispute under reference does not change and the person so claiming ought to have been Impleaded as a party to the proceeding u/s 30 of the Act."

16. The third decision referred to by the trial Court in the impugned order is in the case of *Bhadar Munda and Another Vs. Dhuchua Oraon*, where in it was held that: --

"A claim in a reference u/s 18 or Section 30 of the Land Acquisition Act do not get barred for failure to bring on record the Legal Representatives of a deceased claimant. The provisions under Order 22 of CPC do not apply to these proceedings notwithstanding Section 53 of the said Act which states that provisions of CPC shall apply to all proceedings under the Act. The application of Order 22 is inconsistent with the very nature and scope of the proceedings under Sections 18 and 30."

"Further, the Court under Order 1, Rule 10 has power to add a person as a party if it appears to the court to be just to do; and particularly if the court finds that the presence of such person may be necessary in order to enable it effectively and completely to adjudicate upon and settle and questions involved in the case. Application of Order 1, Rule 10 is not inconsistent to a reference u/s 30 of the Act."

17. The decisions referred above are not authorities for the proposition that Order 9 is inapplicable to the proceedings u/s 18 of the Land Acquisition Act.

18. It is evident from perusal of the order dated 2-2-1979 that there was no adjudication of the reference on merit. The reference was dismissed for default. The trial Court thus exercised jurisdiction vested in it under Order 9, Rule 8, C.P.C. and it thus could not refuse to entertain the application under Order 9, Rule 9, C.P.C. moved by the appellant.

19. In this (sic) above of the matter the impugned order dated 24-2-1981 rejecting the appellant's application under Order 9, Rule 9 C.P.C. cannot be sustained and is liable to be set aside.

20. Learned counsel appearing for the appellant stated that the reference was made in the year 1979 and the trial Court be directed to expedite the decision of the restoration application on merit. It has been stated by the learned counsel that the ministerial employees of the Civil Courts are on strike and the normal functioning of the courts has been disrupted.

21. In the result, the appeal is allowed. The impugned order dated 24-2-1981 is set aside. The trial Court shall hear and decide the appellant's application under Order 9, Rule 9, C. P.C. in accordance with law within two months from the date of presentation/ production of certified copy of this order before the trial Court. The appellant shall, within two weeks from the date the strike is called off, file a certified copy of this order before the trial Court. No order as to costs.