
(2004) 04 GAU CK 0026
In the Gauhati High Court
Case No : Civil Rule No. 190 of 1998

Man Mohan Das and Another	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(2), 30

Citation : (2005) 1 GLR 320 : (2005) GLT 645 Supp

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S. Deb, for the Appellant; B.N. Majumdar and A. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This writ petition under Article 226 of the Constitution of India is filed by the petitioners for directing the respondent No. 2 to make a reference u/s 30 of the Land Acquisition Act, 1984 (hereinafter referred to as "the Act") to the Land Acquisition Judge, West Tripura, Agarala (hereinafter called "the L.A. Judge") for resolving the dispute between them and the respondent No. 3 with respect to payment of compensation money of Plot Nos. 8320, 8320/13535, 8347 and 8324 of Mouja Badharghat under Khatian No. 6072.

2. I have heard Mr. S. Deb, learned senior counsel, assisted by Mr. Somik Deb, learned counsel appearing for the petitioners. Also heard Mr. B.N. Majumdar, learned counsel for the private respondent No. 3 and Mr. A. Ghosh, learned counsel for the State respondents.

3. To appreciate the rival contentions of the parties, I may briefly refer to the facts of the case as emerged from the pleadings of both the parties :-

The case of the petitioners is that the petitioner No. 1 is the owner of Plot Nos. 8347 and 8320, which were purchased by him from one Hem Chandra Sarkar by a registered Sale Deed dated 2.6.1955 while the petitioner No. 2 was the owner

of Plot Nos. 8324 and 8320/13535, which she purchased from one Parimal Shorn and Suresh Das respectively by two registered Sale Deeds dated 8.8.1962. The petitioners further state that the aforesaid four plots under Khatian No. 6072 were acquired by the Collector, Land Acquisition, West Tripura in the year 1997 for construction of Station Yard in favour of N.F. Railway vide Land Acquisition Proceeding No. 10/Sub-section/97 and that by the Award passed after 31.12.1997, the Collector awarded compensation for the said plots in favour of the respondent No. 3. It is stated by the petitioners that even though they were recorded to be in possession of the aforesaid plots in the record of rights, no notice u/s 9 of the Act were served upon them by the Collector. It is claimed by the petitioners that on 1.6.1998, they came to learn that the compensation amount was being paid to the respondent No. 3 by the Collector whereupon they submitted an application before the latter u/s 30 of the Act for referring the dispute to a Land Acquisition Judge for adjudication and also requested him not to make payment to the said respondent pending determination of their dispute by the Land Acquisition Judge. It is further stated by the petitioners that one Rasaraj Ghosh also made similar application before the Collector.

4. It is further stated by the petitioners that the Collector by the order dated 11.6.1998 made the refer to the L.A. Judge in respect of the dispute between the-petitioner No. 1 and the private respondent over the ownership of Plot No. 8347 and in respect of the dispute between the said Rasaraj Ghosh and the private respondent concerning the title over Plot No. 8320/13534 and directed that compensation be paid to the private respondent for the remaining plots. According to the petitioners, though, they through their counsel verbally requested the Collector on 12.6.1998 to furnish a copy of the order dated 11.6.1998 to them, he refused to do so. It is asserted by the petitioners that they furnished to the Collector all documents in support of their claim for compensation to show that there was real dispute between them and the said respondent over the said plots. Aggrieved by the refusal of the " Collector to refer the disputes, the petitioners are now approaching* this court by this writ petition.

5. Both the State respondents and the private respondent contested the writ petition and filed their respective counter-affidavits. Shortly stated, the case of the State respondents is that the private respondent has been recorded as the owner of the said plots in the record of rights and that the names of the petitioners were not shown to be in possession of the said plots in the record of rights in Old Khatian Nos. 2346 and 6398. It is pointed out by the State respondents that the Collector on 11.6.1998 after duly considering the application of the petitioners and after taking into account the judgments in L.A. Case No. 62/1997 and T.S. No. 8/1989 came to the conclusion that out of the total acquired plots measuring 3.72 acres, the ownership of two.plots, i.e. No. 8347 and 8320/13534 were in dispute and accordingly referred the same to the L.A. Judge for adjudication. According to the State respondents, since no dispute existed over the plots now in question, the decision of the Collector for refusing

the prayer for reference is not liable to be interfered with.

6. The private respondent also denies in her counter-affidavit that the petitioners are the owners of the said plots or that their names were shown in Khatian No. 6072. The private respondent further denies that the L.A. Judge in Misc. (L.A.) Case No. 134/1979 recognised the ownership of the petitioner No. 1 over plot Nos. 8324 and 8320/13535. It is asserted by the private respondent that 13 kanies of land were purchased by her from one Smt. Surya Mukhi Dutta by registered sale deed dated 11.7.1950 and that the said plots are parts and parcels of the said purchased lands. It is also stated by her that she has been in possession of the said lands since its purchase by making cultivation and growing pineapples, etc. thereon. She also asserts that during the last settlement operation, the aforesaid lands were recorded in the names of Chitta ranjan Choudhury and Satya Ranjan Das and that the petitioners got their names entered in the record of rights in collusion with the settlement staff. Thereupon, she filed an objection before the settlement authority for necessary correction of the record of rights by impleading the petitioners as opposite parties. The Revenue Officer by the order dated 24.4.1968 in Dispute No. 46/1968 ordered that the said land would be recorded in her name as Korfadar and also held that the petitioners were forcible possessors.

7. It is also the case of the private respondent that aggrieved by the order dated 24.4.1968, she approached the competent authority u/s 45 of the TLR & LR Act, 1969 for modifying the said order. By the order dated 9.4.1975, the Assistant Settlement and Survey Officer in Case No. 21/1976 directed that the name of the private respondent be recorded in Khatian No. 6072 as Jotedar of the said lands along with Plot Nos. 8346, 8348 and 8320/13534 with an area of 3.77 acres and that the names of the petitioners be deleted therefrom. The private respondent also pointed out that the petitioners instituted Title Suit No. 8/1989 before the learned Sadar Munsiff, Agartala against her for perpetual injunction in respect of the said lands and that by the judgment dated 20.7.1993, the learned Munsiff dismissed the suit holding that the petitioners have no right and interest over the said lands. Aggrieved by the said judgment, the petitioners preferred Title Appeal no. 47/ 1993 before the learned Additional District Judge, Court No. 3, West Tripura, which is still pending for disposal. Since the petitioners have no semblance of right to or interest in the said lands, there is no infirmity in the decision of the Collector/Land Acquisition which warrants the interference of this court.

8. On going through the pleadings of both the parties, the question which arises for determination in this writ petition is whether the Collector/Land Acquisition is right in refusing to refer the dispute raised by the petitioner before the Land Acquisition Judge for adjudication.

9. Under the Land Acquisition Act, there are two provisions for referring a dispute by the Collector to a Court for adjudication. Sections 18 and 30 of the Act are such provisions which may be reproduced as under :-

"18. Reference to Court. - (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.

(2) 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 period shall first expire.

30. Dispute as to apportionment. - When the amount of compensation has been settled u/s 11, 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 may refer such dispute to the decision of the Court."

10. The ambit of the two provisions and the question whether the two provisions overlap were considered by the Apex Court in *Sharda Devi Vs. State of Bihar and Another*, Holding that the two provisions operate independently and do not overlap, the Apex Court clarifies that the difference between the references under the two provisions lies in respect of locus, disputes referable, nature of power and limitation. According to the Apex Court, under the scheme of the Act, the remedy of reference u/s 18 is available only to a "persons interested" referred to in proviso (a) and (b) to Section 18(2) of the Act. Since the petitioners admittedly did not appear before the Collector either in person or through a representative nor did they receive notice from the Collector u/s 12(2), they are not obviously persons interested for the purpose of making a reference u/s 18 of the Act. That being the position, the only remedy available to the petitioners is to file an application before the Collector u/s 30 for referring the dispute(s) raised by them to a Land Acquisition Judge. The next question for decision is in relation to the nature of dispute which can be referred for the adjudication of the Court. To my mind, such dispute has to be real and a substantial dispute and not imagined or made-up dispute. It may be noted that compensation is not payable to all and sundry who comes forward to make such claim. For instance, trespassers or encroacher are held not entitled to compensation. In other words, just by putting forward an objection, it cannot be said that there is a dispute requiring a reference u/s 30. After all, the possibility of some disgruntled elements or busy-bees or interlopers without bona fide cause coming forward to take advantage of this provision to defeat or frustrate or

delay the payment of compensation to a genuine land owner cannot be ruled out.

11. Even though the term "dispute" is nowhere defined in the Act, the Apex Court in Sharda Devi case (supra) in the context of explaining the difference between the scope of reference under Sections 18 and 30 of the Act gives some illustration of such disputes. This is what the Apex Court has held in para 25 :-

".....The third difference is by reference to the nature of power. u/s 18 of the Act the Collector does not have-power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion- in the matter, whether the dispute has any merit or not is to be left for the determination of the Court. u/s 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on - are such illustrative factors which may enter into the consideration of the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination u/s 30 of the Act. In case the Collector refuses to make a reference u/s 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit....."

From the para extracted above, it becomes crystal clear that it is not every dispute raised by some person or persons, which can be referred to a Court for adjudication. On the contrary, u/s 30, the Collector is given the discretionary power to decide as to whether the dispute raised by such applicant is a genuine dispute or not. It may be noticed that in the matter of reference u/s 18, the Collector is not given such a discretionary power. Therefore, it can now be taken to be the law that the Collector u/s 30 has the discretion to refer or not to refer a dispute for the decision of the court and the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the court are such illustrative factors which may enter into the consideration of the Collector while exercising his discretion. However, if for some reason or reasons, the Collector refuses to refer the dispute raised by some parties to a court of adjudication, the Apex Court further held therein that such parties are not remedyless but are at liberty to approach a writ court or a civil court. In the instant case, the petitioners are filing this writ petition on the refusal of the Collector to refer their dispute to the Land Acquisition Judge u/s 30 of the Act.

12. In Mrs. Ka Kriksibon Kharkongor and Another Vs. The Deputy Commissioner and Collector, Khasi Hills and Another, this Court has held that the Collector, being a functionary under the Land Acquisition Act, when his order is stained by an apparent error of law, and violation of natural justice, it is amenable to judicial review under Article 227 of the Constitution. In Surya Dev Rai Vs. Ram Chander Rai and Others, the Apex Court, after reviewing the case laws, restated

the position at para 38(5 and (6) of the judgment as below : -

"(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or in utter disregard of the provisions of law, and (ii) a grave* injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an. error which is self-evident i.e., which can be perceived or demonstrated without involving any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

It may also be reiterated that judicial review is not directed against the decision of the authority but against the decision making process. When relevant considerations have been taken note of and irrelevant aspects have been eschewed from considerations and that no relevant aspects have been ignored and the decision of the authority has nexus to the facts on record, the same cannot be attacked on merit.

13. In the instant case, on going through the records of the Collector/ Land Acquisition, which were placed before me by Mr. A. Ghosh, the learned Government Advocate, on 6.4.2004, it is seen that on 5.6.1998, the petitioner No. 1 filed before the Collector the following documents in support of his case :- (1) a copy of the judgment in L.A. Case No. 1347 1974, (ii) a copy of petition filed in L.A. Case No. 134/1974, (iii) a copy of the sale deed dated 2.6.1955, (iv) a copy of the judgment in T.S. No. 8/1989, (v) a copy of the disposition of smt. Basana Chakraborty in T.S No 8/1989 and (vi) a copy of the finally published Khatian No. 6072. The record further reveals that the Collector by the order dated 5.6.1998 rejected the application of the petitioners for referring the dispute to the Land Acquisition Judge for adjudication. The contents of the aforesaid order manifestly show that the petitioners were heard by him through their Advocate, Shri Sukhdev Roy and that all the materials/documents relied on by the petitioners were gone into" by the Collector. The Collector, in particular, referred to the judgment dated 20.7.1993 in T.S. No. 8/1989, which was decided against the petitioners and in favour of the private respondent concerning the lands presently under dispute and by which the petitioners were declared to be trespassers. This much is clear; the petitioners were the losers in all litigations fought heretofore, between them and the private respondents, either in revenue proceedings or a civil proceedings in respect of the same plots. Under the circumstances, it is difficult to hold that there is an error of law manifest in the proceeding or decision-making process of the Collector or that gross injustice is caused to the petitioners, who, as per the findings of a civil court and revenue court, are declared as trespassers. As observed earlier, it is not every dispute, which should be referred to a Land Acquisition Judge for adjudication but must

be one which involves a real and substantial dispute.

14. After carefully examining all the materials on record, I am of the considered opinion that the decision of the Collector, in holding that there is no referable dispute in the matter, cannot be said to be illegal or arbitrary or perverse. It may be that there can be two views on the issue but that is no ground for interference by this Court in a judicial review. This Court in exercise of its power of judicial review, cannot substitute its view for the view of the Collector. It must be remembered that the legislature has given the discretion to refer a dispute for adjudication by the Land Acquisition Judge only to the Collector and not to this Court. Unless the decision of the Collector is vitiated by applying the well-known and well-established principles of judicial review referred to earlier, this court in exercise of writ jurisdiction cannot interfere.

15. For the reasons and conclusions stated in the preceding paragraphs, this writ petition is devoid of merits. In the result, the writ petition is hereby dismissed. However, considering the facts and circumstances of the case, the parties are directed to bear their own costs. The interim order dated 17.6.1998 shall stand vacated.