

(2016) 01 OHC CK 0021
In the Orissa High Court
Case No : W.P.(C) No. 16457 of 2015

Mandhar Naik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(4), Section 30, Section 31, Section 31(2),
Section 4(1), Section 54

Citation : (2016) 01 OHC CK 0021

Hon'ble Judges : P.K. Mohanty and S.K. Sahoo, JJ.

Bench : Division Bench

Advocate : Upendra Kumar Samal, C.D. Sahu, S.P. Patra and S. Naik, for the Appellant; Bishnu Prasad Pradhan, Addl. Govt. Advocate, for the Respondent

Final Decision : Disposed off

Judgement

S.K. Sahoo, J.—1. The petitioner Mandhar Naik has challenged the impugned order dated 01.08.2015 passed by the Land Acquisition Officer, Sundargarh in L.A. Misc. Case No. 03 of 2015 in rejecting the prayer made by the petitioner for withholding the payment of compensation for land acquisition in respect of Khata No. 128 of Abankela village till disposal of C.M.A. No. 01 of 2010 pending in the Court of learned District Judge, Sundargarh. The petitioner has made a further prayer as to why the matter shall not be referred to the Civil Court under section 30 of the Land Acquisition Act, 1894.

2. It is the case of the petitioner that he is the owner of the suit land appertaining to Hal Khata No. 128, Hal Plot Nos. 927/1575 and 928/1576, area Ac. 0.36 dec. and Ac. 0.75 dec. respectively of Mouza- Abankela, P.S.-Bhasma, Dist-Sundargarh. The petitioner filed Title Suit No. 26 of 2002 in the Court of learned Civil Judge (Sr. Division), Sundargarh for partition and allotment of 50% share in his favour in respect of the suit land covered under Khata No. 128. The suit was dismissed vide judgment and order dated 8.4.2005. The petitioner

preferred an appeal in the Court of learned District Judge, Sundargarh which was registered as RFA No. 61 of 2005 challenging the judgment and order dated 8.4.2005 passed by the learned Civil Judge (Sr. Division), Sundargarh. The appeal was also dismissed for default on 5.9.2009 and an application for re-admission of appeal under Order 41 Rule 19 of CPC was filed before the learned District Judge, Sundargarh and the same was registered as C.M.A. No. 1 of 2010 which according to the petitioner is subjudice in the said Court.

It is the further case of the petitioner that during the pendency of C.M.A. No. 1 of 2010, the Land Acquisition Officer, Sundargarh issued notification dated 28.12.2011 under section 4(1) read with section 17(4) of Land Acquisition Act, 1894 for acquisition of the suit land under Khata No. 128 and Plot Nos. 927/1575 and 928/1576 for construction of bridge over river IB. It is his further case that since RFA No. 61 of 2005 was pending in the Court of learned District Judge, Sundargarh, he filed an application before the Land Acquisition Officer not to pass any award in respect of the acquired land and not to disburse the award to the parties till disposal of the appeal. As the land Acquisition Officer did not entertain the application filed by the petitioner, the petitioner approached this Court in W.P.(C) No. 16492 of 2013 with a prayer to prohibit the Land Acquisition Officer from passing any award and not to disburse the award to the parties till disposal of the appeal which was pending before the learned District Judge, Sundargarh. The said writ application was disposed of with the following directions on 05.12.2013:--

"This petition seeks direction to the Land Acquisition Officer-Opposite party No. 3 not to pass any award till disposal of the appeal pending before the District Judge, Sundargarh.

Without expressing any opinion on merits, we dispose of the writ petition with an observation that if the petitioner makes an application before the District Judge, Sundargarh within two weeks from today, the same shall be disposed of by the District Judge, Sundargarh in accordance with law within two weeks thereafter."

It is the further case of the petitioner that he filed an application under section 30 of the Land Acquisition Act, 1894 with a prayer to refer the matter to the Civil Court as C.M.A. No. 01 of 2010 is pending in the Court of learned District Judge, Sundargarh for disposal. It is the case of the writ petitioner that since the petitioner had submitted documents showing the pendency of C.M.A. No. 1 of 2010 in the Court of learned District Judge, Sundargarh, it was illegal and improper on the part of the Land Acquisition Officer, Sundargarh to direct payment of compensation in respect of Khata No. 128 of village Abankela as per award register already prepared.

3. Learned counsel for the petitioner Mr. Upendra Kumar Samal contended that when the petitioner has claimed the right, title and interest in respect of Khata No. 128 and the matter is subjudice in the Court of learned District Judge, Sundargarh in C.M.A. No. 1 of 2010 and an application was filed under section 30

of the Land Acquisition Act, 1894 to refer the matter to the Civil Court, the Land Acquisition Officer had no other option except to refer the matter to the Court and therefore the impugned order dated 1.8.2015 in directing the payment of compensation as per the award register already prepared is illegal and without jurisdiction.

4. The learned counsel for the opposite party No. 4 Mr. Prafulla Kumar Rath on the other hand contended that the petitioner had no right to get any share in respect of land covered under Khata No. 128 of village Abankela and by virtue of impugned order, the compensation was directed to be paid as per award register already prepared and compensation in respect of Khata Nos. 155 and 156 of village Abankela was directed to be paid as per award register in favour of the petitioner. The learned counsel vehemently opposed the maintainability of the writ petition on the ground that the impugned order is appealable under section 54 of the Land Acquisition Act and therefore when an alternative efficacious remedy is available, the writ petition should not be entertained. It is further contended by the learned counsel that the petitioner had not filed any document in the writ petition to show that he has filed any application under section 30 of the Land Acquisition Act, 1894 to refer the dispute to Civil Court. In any case, Mr. Rath relying on his written note dated 22.12.2015 drew our attention to the third proviso to Section 31(2) of the Land Acquisition Act, 1894, which protects the right of a person who has been deprived of compensation. It is the contention of the learned counsel that while approaching this Court in W.P.(C) No. 16492 of 2013, the petitioner suppressed material facts and misrepresented this Court regarding pendency of RFA No. 61 of 2005 before the learned District Judge, Sundargarh and obtained an order dated 05.12.2013. According to the learned counsel, since the petitioner has practised fraud on the Court and has not filed any application before the learned District Judge, Sundargarh in terms of the order dated 05.12.2013, he is not liable to get any relief. According to the learned counsel for the opposite party No. 4, the suit for partition filed by the petitioner in respect of Khata No. 128 has already been dismissed by the Civil Court in Civil Suit No. 26 of 2002 so also RFA No. 61 of 2005 against which C.M.A. No. 1 of 2010 is pending. It is further contended that when the compensation award has been passed in favour of the opposite party No. 4 in respect of Khata No. 128 of village Abankela and the petitioner has no right in respect of such land, therefore, the Land Acquisition Officer was justified in directing disbursement of award of compensation as per the award register already prepared.

5. Law is well settled that a Judgment, decree or Order obtained by playing fraud on the Court is a nullity and non est in the eye of law and it can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings [Ref:-- , (2007)4 Supreme Court Cases 221, (A.V. Papayya Sastry v. Govt. of A.P.)]. In case of K.D. Sharma v. Steel Authority of India reported in , (2008) 12 Supreme Court Cases 481, it is held that the party who invokes the extraordinary jurisdiction of a High Court under Article 226 of the Constitution is

supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts". It is further held that suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court. In case of *Moti Lal v. Prem Prakash* reported in , (2013) 55 Orissa Criminal Reports (SC) 881, it is held that anyone who takes recourse to method of suppression in a Court of law, is, in actuality, playing fraud with the Court and the maxim "supressio veri, expressio falsi" i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.

6. Coming to the rival submissions raised at the Bar, it appears on verification of the records of W.P.(C) No. 16492 of 2013 which was filed on 22.07.2013 that averments have been taken in paragraphs 7 and 11 of the writ petition about the pendency of RFA No. 61 of 2005 in the Court of learned District Judge, Sundargarh and prayer was made for prohibiting the Land Acquisition Officer from passing the award and not to disburse the award to the parties till disposal of the appeal which according to the petitioner was pending before the District Judge, Sundargarh. Such averments and prayer are definitely suppression of material facts and making false statement in Court which tantamount to playing fraud on the Court with deliberate intention of deception with the design of securing some relief in an unfair manner. This Court taking note of the submissions and the averments made in the writ petition regarding pendency of the appeal before the District Judge, Sundargarh passed the order dated 5.12.2013 giving an opportunity to the petitioner to make an application before the District Judge, Sundargarh. The petitioner in the written note of submission has stated that RFA No. 61 of 2005 was dismissed for default on 5.9.2009 for which an application for re-admission of the appeal under Order 41 Rule 19 of CPC was filed before the learned District Judge, Sundargarh which was registered as C.M.A. No. 1 of 2010. Thus it is very clear that even though RFA No. 61 of 2005 was dismissed for default on 5.9.2009, a false averment has been made in the writ petition vide W.P.(C) No. 16492 of 2013 which was presented before this

Court on 22.07.2013 that RFA No. 61 of 2005 was pending before the learned District Judge, Sundargarh.

7. Coming to the impugned order, we find that the Land Acquisition Officer, Sundargarh has rightly indicated that even in spite of the order dated 05.12.2013 passed in W.P.(C) No. 16492 of 2013, the petitioner failed to get any order from the learned District Judge, Sundargarh. The petitioner has made an averment in paragraph 8 of the writ petition that after the order dated 5.12.2013, the petitioner had filed an application before the learned District Judge, Sundargarh and since the appeal has been dismissed, the application filed by the petitioner could not be taken up. The copy of such application has not been filed in this writ application. This averment also appears to be not correct inasmuch as when the appeal has already been disposed of on 5.9.2009, the question of filing an application for disposal of the appeal does not arise. As it appears, the petitioner is repeatedly making false statements in Court to get some relief.

8. The contention of the learned counsel for the petitioner that an application was made under section 30 of the Land Acquisition Act, 1894 to refer the matter to the Civil Court for adjudication is also not supported by any document. No such application has been annexed to the writ petition. On perusal of the impugned order dated 1.8.2015, it indicates that a prayer was made only to withhold the payment of compensation in respect of land covered under Khata No. 128 of village Abankela till the disposal of C.M.A. No. 1 of 2010 pending before District Judge, Sundargarh.

The petitioner has lost his case before the Civil Judge (Sr. Division) Sundargarh in Title Suit No. 26 of 2003 and his appeal vide RFA No. 61 of 2005 has also been dismissed for default by the learned District Judge, Sundargarh. Though he has filed an application under Order 41 Rule 19 before the learned District Judge, Sundargarh for re-admission of the appeal vide C.M.A. No. 1 of 2010 but no order has been passed for such re-admission and therefore, in our humble opinion, the Land Acquisition Officer, Sundargarh has rightly directed for payment of compensation as per the award register already prepared. In any case, the petitioner is protected by the third proviso to Section 31(2) of the Land Acquisition Act, 1894.

9. In view of what we have discussed above, we are not inclined to entertain this writ application. However, we make it clear that such non-entertainment of this writ application will no way affect the right of the petitioner, if any, flowing from the third proviso to sub-section (2) of Section 31 of the Land Acquisition Act, 1894. Accordingly, the writ application is disposed of.

The parties are directed to bear their own costs.

P.K. Mohanty, J.

I agree.