

(2006) 08 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15710 of 2005

Mary Philip

APPELLANT

Vs

The Kerala State and Another

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Constitution of India, 1950 — Article 227

Land Acquisition Act, 1894 — Section 12(2), 2, 23, 26, 26(1)

Citation : (2006) 4 ILR (Ker) 301 : (2006) 3 KLJ 716 : (2006) 4 KLT 624

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : K.V. Sadananda Prabhu and T. Gopalakrishnan, for the Appellant;
G.S. Reghunath and V. Jayapradeep (SC, KSIDC), for the Respondent

Final Decision : Allowed

Judgement

K. Padmanabhan Nair, J.—The claimant in LAR 59 of 2002 and 64 of 2002 on the file of Subordinate Judge, Cherthala is the petitioner in this writ petition. The land owned by the petitioner was acquired for a public purpose. The Land Acquisition Officer registered L.A. Case Nos. 385 and 397 of 2000 and passed two awards on 16-9-2000. He issued notice of the awards on the petitioner. In L.A. Case 385 of 2000, the notice of award was served on the petitioner on 2-4-2001. In L.A. No. 397 of 2000, the notice was served on her on 23-4-2001. On 7-4-2001, the petitioner filed a petition before the Land Acquisition Officer complaining that the compensation awarded was inadequate and the matter may be referred to the competent court. The Land Acquisition Officer sent two reference orders to the court on 6-5-2002. On receipt of the records, the learned Sub Judge registered LAR 64 of 2002 and LAR 59 of 2002. The respondents filed statements. On the side of the petitioner AW 1 was examined and Exts. A1 to A3 proved and marked. The respondents did not adduce any oral evidence. The file of LAR 59 and 64 of 2002 were marked as Exts. R1 and R2. The court below by judgment dated 15-1-2005 held that the claim for enhancement is barred since

the claim for enhancement of compensation was made after the expiry of the statutory period from the date of the award. It was held that the court is not bound to answer the references and closed the references. Challenging the very same orders the petitioner filed two LAAs also. The registry noted that the court fee paid in both appeals were insufficient. Those matters are still pending. It is contended by the petitioner that the court below has not passed awards as contemplated under the Land Acquisition Act. In view of the contention raised by the petitioner the Bench which was hearing the appeal directed that those two LAAs need be posted after the disposal of this writ petition.

2. The learned counsel appearing for the second respondent/requisitioning authority has raised a preliminary objection. It was contended that the Land Acquisition Court dismissed the claim for enhancement and as such the orders impugned are appealable orders and the petitioner should have filed appeals u/s 54 of the Land Acquisition Act. Section 54 of the Act reads as follows:

Appeals in proceedings before Court- Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid appeal shall lie to (the Supreme Court) subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof).

3. A reading of Section 54 of the Act makes it very clear that an appeal is maintainable only against an award or from any part of the award passed by the court. Section 26 of the Act deals with form of Award. It reads as follows:

Section 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 amount.

(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 (5 of 1908).

4. It is not disputed that no awards as contemplated u/s 26 were passed in these cases. The learned Sub Judge held that there was no valid reference. It was further held that in the absence of a valid reference, the court is not bound to answer the reference. So though there is a finding that the petitioner is not entitled to enhanced compensation, that finding is consequential one to the finding that the Land Acquisition Court is not bound to answer the reference since no request for enhancement was made within the statutory period. No amount was awarded and no reason for not awarding amounts were stated. So

no award as contemplated u/s 26 was passed in LAR 59 and 64 of 2002. In the absence of an award u/s 26 of the Act the claimant cannot be compelled to file appeal u/s 54 of the Act paying court fee. It is a case in which the court below refused to exercise the jurisdiction vested in it. Such orders can be interfered in exercise of the powers conferred on this court under Article 227 of the Constitution of India. So there is no merit in the contention raised by the second respondent that the writ petition is not maintainable and the remedy available to the petitioner is to file appeals.

5. Land belonging to the petitioner was acquired for a public purpose. The Land Acquisition Officer registered two cases as LAC 385 of 2000 and LAC 397 of 2000. Section 9(3) notices were issued and received by the petitioner on 16-8-2000. She filed her objection on 16-8-2000. The award was passed on 16-9-2000. In this case that Land Acquisition Officer issued notice of award to the petitioner and the same was served on her on 2-4-2001. She filed the petition for reference on 7-4-2001.

6. The finding of the court below was that the petitioner had knowledge of passing of the award as he was present and hence the time runs from the date of passing of the award and not from the date of receipt of the notice of award. The question arising for consideration is whether the finding of the court below that the petitioner had knowledge of passing of the award is correct. It was very pertinent to note that in the objection filed by the respondents, no contention was raised to the effect that the petitioner was physically present before the Land Acquisition Officer when the awards were passed and hence she had notice of the award. The respondents had no case that though the petitioner was present at the time of passing of the award on 16-9-2000 itself she made a request for reference only on 7-4-2001 and hence that request was barred by limitation. The petitioner gave evidence as PW 1. During her cross examination question was put to her whether PW 1 was present. The answer reads as follows:

The Sub Judge refused to answer two references relying on this part of the evidence of PW 1. According to the learned Sub Judge the petitioner was physically present before the Land Acquisition Officer at the time of passing of the award. It is not possible to give such a wide meaning to the evidence of PW 1. She only said she was present. The word "....." does not mean she was physically present before the Land Acquisition Officer. Even assuming that she went to the office of the Land Acquisition Officer and present in the office that is not sufficient to reject her claim. The presence means active presence. In *Kuruvilla Chandy v. Hassan Bava Rawther* (1969 KLT 402) this court had occasion to interpret the meaning of word "appearance". This court has taken a view that the mere presence of a party in the court cannot be taken cognizance of and in fact that is non appearance. So even assuming that the petitioner went to the office of the Land Acquisition Officer on 16-9-2000 that will not amount to "present personally" as contemplated u/s 12(2) of the Land Acquisition Act. Section 12(2) reads as follows:

The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

The State must plead and prove that either the claimant himself or his representatives were present personally before the Land Acquisition Officer when the award was passed. In the objections filed by the respondents no such contention was raised. The respondents did not adduce any evidence. There is yet another aspect. Section 12(2) contemplates notice only to those persons who were not physically present. It does not contemplate a notice to those persons who are present before the Land Acquisition Officer at the time of passing the award. The materials on record show that notice of awards were issued to the petitioner and she received the same on 2-4-2001. The fact that the Land Acquisition Officer issued notice proves beyond any reasonable doubt that the Land Acquisition Officer did not note the presence of the petitioner when he passed the awards. After issuing such a notice and without raising a contention that the claimant was personally present before the Land Acquisition Officer when the awards were passed the State is not entitled to raise a contention of limitation. So the view taken by the Sub Judge that the petitioner was physically present before the Land Acquisition Officer when he passed the award in LAC 385 of 2000 and 397 of 2000 is without any factual basis and illegal. So the impugned judgments are unsustainable and liable to be set aside.

In the result, the writ petition is allowed. The order passed by the learned Sub Judge refusing to answer the reference is hereby set aside. The consequential dismissal of the LAR 59 of 2002 and LAR 64 of 2002 is also hereby set aside. The learned Sub Judge is directed to take LAR 59 of 2002 and LAR 64 of 2002 back to file and dispose of those two LARs afresh in accordance with law after affording an opportunity to both sides to adduce further evidence if so advised. Both sides shall appear before the court below on 30-10-2006.