

(1975) 07 PAT CK 0007

In the Patna High Court

Case No : Civil Revision No. 1028 of 1973

Mt. Rani Krishna Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-07-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 18, 18(2), 54

Citation : AIR 1976 Patna 221

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Hari Kishore Thakur, for the Appellant; Ram Balak Mahto and Akhileswar Prasad Singh, for the Respondent

Judgement

H.L. Agrawal, J.—This application u/s 115 of the CPC arising out of an order of the learned Subordinate Judge in a reference u/s 18 of the Land Acquisition Act, raises an interesting question of law, and perhaps of first impression.

2. The learned Single Judge while admitting the application as a revision, directed the attention of the Bench to be drawn at the time of the final hearing to the question as to whether the application as a revision was maintainable or it was an appealable order.

3. In order to appreciate the question, I would state the relevant facts very briefly. 8.33 acres of Land of the petitioner were acquired under a land acquisition proceeding. The Collector gave his award on 20th March, 1961, and the petitioner being dissatisfied with the amount of compensation made an application for referring the matter for determination of the Court. The Collector had allowed a total compensation of Rs. 2507,52 whereas the petitioner in her application u/s 18 of the Act, made a claim for Rs. 36,900. The Court below registered the case as Land Acquisition Case No. 17 of 1963 and proceeded to determine the amount of compensation to be awarded to the petitioner under the various heads as contemplated u/s 23 of the Act. Parties adduced evidence by

examination of witnesses and production of documents. On merits the court below recorded a finding in favour of the petitioner in part whereby the petitioner could be entitled to get a compensation of Rs. 8,111.20. The Court below, however, in spite of the above determination confirmed the award of the Collector on the ground that the reference was barred by limitation not having been made within a period of six weeks as provided u/s 18(2)(b) of the Act. The petitioner was accordingly held not entitled to the benefit of his finding on the matters determining the compensation.

4. Mr. Hari Kishore Thakur, appearing for the petitioner, contended that as the proceeding before the Court below had resulted in its dismissal on the ground of limitation, the order was not appealable within the meaning of Section 54 of the Act, and a revision was competent. He however could not cite a single authority where, in a similar situation the Civil Court, after a valid reference u/s 18 of the Act, had disposed of the matter on merits as well as on some other technical questions resulting in the ultimate dismissal of the proceeding. He referred to the decision of *Nafis-ud-Din v. Secy. of State* (AIR 1927 Lah 858 (2)). That decision has followed the Bench decision of the *Dambeswar Sharma v. Collector of Sibsagar* AIR 1918 Cal 445 (2). In both the cases, referred to above, the reference applications were dismissed by the Civil Courts on a pure question of limitation. In other words, these references were held to be time barred as such and the Court did not proceed to determine any other question on merits of the case, much less the matter which it has to consider in regard to the determination of the compensation. In my opinion, therefore, these decisions are of no assistance to the petitioner. Learned counsel next contended that an appeal is contemplated u/s 54 of the Act only from the award or any part thereof. He, accordingly, contended that inasmuch as the order in question did not amount to an award, a revision would lie against the same. In this context, it would be necessary to refer to Section 26 of the Act which indicates the form of an award, which has to be in writing signed by the Judge, specifying the amount awarded under the various clauses 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. The order of the learned Subordinate Judge in question as already said above, has proceeded to consider the matter for the determination of the amount of compensation to be awarded for the property in question and, in my view, all the relevant ingredients which have been mentioned u/s 23 of the Act, which would correspond to form of an award are fulfilled.

It is plain that had the reference not failed on the question of limitation, which, learned counsel submitted, was urged towards the end of the argument in the court below, the decision would have been an award on all fours within the meaning of Section 26 of the Act. There cannot be any doubt of this situation. If that be so, then simply for the reason that the petitioner did not succeed in getting the advantage of the decision and the compensation determined by the learned Subordinate Judge on account of the question of limitation, that would

not, in my view, make any change in the form of the order from being an award to be anything else. I may illustrate the point with reference to a suit. Take for example a suit for money on the basis of a hand note. If on merits, the Court finds in favour of the plaintiff, but dismisses the suit on the question of limitation then it is obvious that only an appeal would lie against the said judgment and decree. It would not be argued in that case that the decision of the court was only on the question of limitation and not on the merits. That apart, there is a further difficulty in the way of the petitioner, for the expression that has been used in Section 54 of the Act "..... 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....." it cannot be doubted that even if a person is aggrieved by even any part of the award, his remedy lies in filing an appeal if that part of the order happens to be an award.

5. As already said above, no direct authority was cited at the bar. Nonetheless I would venture to take support for my views from a few decisions although not directly in point. Reference may be first made to a Bench decision in (Cherukat Madhathil Etakramancheri Illath Karnavan) Narayanan Nambudri and Another Vs. (Peruvampura Devaswam Samudayi Kizhakkiniyakath Polancheri Illath) Damodaran Nambudri and Others, . This decision lays down that once a proper reference comes before the District Judge, his final order on it is an award whether he gives an additional amount or whether the ecquisitioning officer's award is upheld or not upheld for some reason. In that case an appeal would be competent. Shelat J. as he then was, delivering the judgment in the case of Bai Lalita Vs. Shardaben and Others, had also considered somewhat similar question. According to this decision every award shall be deemed to be a decree and the statement of the grounds of every such award is a judgment within the meaning of Section 2, Clause (2), and Section 2, Clause (9), respectively, of the Code of Civil Procedure. The final decision becomes the award which shall be deemed to be a decree as contemplated in Section 2(2) of the Civil Procedure Code. The award has thus to be on the basis of a reference made to the Court u/s 18 of the Act. The proceedings then commence in the court and the decision given on any such reference becomes an award u/s 26 of the Act. Any party to such a decision will be bound by the same and the only remedy for the aggrieved party will be to file an appeal.

Reference may also usefully be made to our own High Court's decision in Nitai Dutt Vs. Secretary of State, . I would like to refer some facts of this case. A house in the town of Jharia was acquired by the Collector. Notices u/s 9 of the Act were ordered to be issued upon three persons, namely, Nitai Dutt and his two brothers, who were presumably members of the joint family. All the three notices were, however, accepted by Bhusan Dutt alone, who also appeared before the Collector in the proceeding u/s 11 of the Act and obtained time purporting to act on behalf of himself and his two brothers. Time was allowed, but no action was taken by any party on the adjourned dates, and the proceeding was concluded and an award was made by the Collector. Nitai Dutt alone then presented a

petition claiming for a reference to the Court. When the matter came before the Court it took the view that the petition for reference of Nitai Dutt was itself not maintainable and dis-missed the reference. A first appeal was taken by Nitai Dutt to this Court and it was contended on behalf of the State that the appeal as such was not maintainable. Repelling this objection it was held that the appellant's application for reference having been rejected, there was in fact an award of the court in a proceeding under the Act and that, therefore, there was an appeal permissible within the provisions of Section 54. Learned Judges held that what in fact happened was that when a reference took place, the result of dis-missing the claim referred had the effect of confirming the Collector's award whether the award was varied or whether it was confirmed, in either case an appeal was permissible u/s 54 of the Act. Reference was also made to the further finding in the order. "..... Reference be dismissed and the Collector's award be upheld". In my opinion the Patna decision is almost a complete answer to the contention raised by Mr. Thakur inasmuch as in the last paragraph of the order the learned Subordinate Judge has held "Hence it is ordered, that the reference be rejected. The award prepared by L. A. Department is accepted". Having considered the matter from all possible angles, I have no hesitation in taking the view that the order in question was an award within the meaning of Section 54 of the Act and to providing the remedy to the petitioner by way of an appeal. This revision application is, therefore not maintainable.

6. Learned counsel for the petitioner lastly made a prayer that this revision application should itself be permitted to be converted into a first appeal. I would grant this prayer and direct that this revision application may be converted into a first appeal to proceed in accordance with law. In the circumstances, I would make no order for cost.