

(1916) 09 MAD CK 0019
In the Madras High Court

Mulambath Kunhammad and Others	APPELLANT
Vs	
Acharath Parakat Kathiri Kutti and Others	RESPONDENT

Date of Decision : 25-09-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Land Acquisition Act, 1894 — Section 53

Citation : (1917) 5 LW 472 : (1916) 31 MLJ 827

Hon'ble Judges : Srinivasa Aiyangar, J; Ayling, J

Bench : Full Bench

Judgement

Ayling, J.—In this case I have had the advantage of perusing the Judgment of my learned brother and agree in the orders proposed by him.

With all respect I am by no means satisfied that the District Judge's order reviewing his award was without jurisdiction. It is not necessary to

accept Mr. Menon's argument that Section 53 of the Land Acquisition Act extends even to appellate proceedings and would confer the ordinary

right of appeal given by the Code of Civil Procedure, even if Section 54 were nonexistent. But I see no reason why review proceedings u/s 114 of

the CPC should not be regarded as "" proceedings before the Court under this Act "" within the meaning of Section 53 of the Land Acquisition Act

or why, as Mr. Sundram would have it, the application of Section 53 should necessarily terminate with the pronouncement of the award by the

Court? If this view is correct, it would seem to follow that even Section 152 of the CPC is inapplicable to such proceedings as the present; and the

Court would be unable to rectify even clerical and arithmetical mistakes in its award. This is not seriously contended ; and if a Court is entitled to

correct such a mistake on the application of a party, as part of the proceedings u/

s 53 of the Land Acquisition Act, it is difficult to see why it should not exercise a similar power in respect to material errors in its award, which may be no less patent. I think a distinction can be drawn between the power of the Court to alter its own order (review) and the power of another Court to alter it (appeal) and that the one might be legitimately viewed as proceedings before the Court "" though not the other.

2. I do not find anything contrary to this in the judgment of the Privy Council in *Rangoon Botatoung Co., Ltd. v. The Collector of Rangoon* ILR

(1912) Cal. 21=23 M.L.J. 276. Their Lordships merely say with reference to Section 53 that it "" applies to an earlier stage of the proceedings and

seems to have nothing to do with an appeal to the High Court."" In my opinion Mr. Menon is justified in laying stress on the concluding words

quoted.

3. I do not think it necessary to add anything more, because in the present case even if I am wrong and my learned brother is right, I entirely agree

with him that it is one in which we are not bound to and should not, exercise our powers of revision.

4. It is not disputed that the order in favour of claimants eight to eleven would have been perfectly proper if it had formed part of the original

award: and it is obvious that if, as seems probable any appeal against the original award is time barred, any interference by us in accordance with

the prayer of the present petitioners would result in grave and substantial injustice. With great respect to the late learned Chief Justice I must

dissent from his view of the duty of the Court in such cases as expressed in *Ramasami Chettiar v. R.G. Orr* ILR (1902) M. 176=12 M.L.J. 264.

Section 115 of the CPC says the High Court may make "" such order as it thinks fit."" The word ""fit "" is singularly wide and I think it is a mistake to

treat this section as fettering the Court's discretion to refuse to pass an order in revision which would in its opinion operate inequitably, or even one

which it is not satisfied to be necessary in the interests of justice. Indeed the view taken in *Ramasami Chettiar v. R.G. Orr* ILR (1902) M. 176=12

M.L.J. 264 appears to have been dissented from by a bench of this Court very soon after : vide *Parameshwaran Nambudiri v. Vishnu Embrandri*

ILR (1903) M. 478. I would therefore decline to interfere and would dismiss the revision petition with costs.

Srinivasa Aiyangar, J.

5. Civil Revision Petition No. 598 of 1915:--This is an application to revise an order of the District Judge of North Malabar in certain land

acquisition proceedings. The question relates to the apportionment of the compensation money between the jenmi the first claimant and claimants

eight to eleven legatees under the will of Ummachcha Umma who with her brother Makki had a kanom on the properties acquired. Makki's share

in the kanom was sold in execution of a decree and purchased by Ummachcha in the name of a third party and she bequeathed the whole kanom

interest to claimants eight to eleven. The learned District Judge by his award dated 31st December 1914 decided on grounds not quite intelligible

that claimants eight to eleven were not entitled to any portion of the compensation money. He seems to have thought that as the purchaser in the

Court sale did not get possession of the property purchased, the benefit of the kanom reverted to the mortgagor and that Section 66 of the CPC

prevented Ummachcha and her legatees from claiming under the benami purchase. It is obvious he was entirely wrong. Section 66 of the Code of

the Civil Procedure has nothing to do with the matter; Ummachcha was in possession and the benamidar admitted her title; in any event

Ummachcha was entitled to her moiety which was not affected by the sale and it is impossible to understand how the kanom right could revert to

the jenmi. The attention of the learned Judge was drawn to this in an application for review and the learned Judge at once granted a review and

altered his previous award and gave claimants eight to eleven the amount due on their kanom. It is the order granting the review that is questioned

in the present application on the ground that the District Judge after he had passed his award, had no further jurisdiction over the matter and was

not competent to interfere with it in any manner by a review or otherwise and the principal question argued was whether he had such power.

6. Before dealing with this question I may as well notice an objection to the maintainability of this petition. Counsel for the respondent contended

that as the District Judge purported to act under Order XLVII of the code and granted a review, the petitioner should have appealed against the

order granting the review under Order XL III, Clause (w). The order is not challenged on any of the grounds specified in Order XLVII, Rule 7.

Assuming that a party can take advantage of the procedure prescribed for challenging an order passed with jurisdiction, to vacate that order on the

ground that it was passed without jurisdiction (as to which see *Abdul Rahiman Saheb v. Ganapathi Bhatta* ILR (1900) Mad. 617, the question is

whether Order XLIII, Clause (w) gives a right of appeal (when in cases where the order is questioned on grounds other than those specified in

Order XLVII Rule 7. I considered this question in a recent case and I came to the conclusion, though it was not necessary to decide the point, that

Clause (w) was not restricted to cases provided for by Rule 7 of the review order. On further consideration I think my former conclusion is wrong.

Rule 7 of Order XLVII which corresponds to Section 629 of the old Code in terms allows an appeal against an order granting a review on certain

specified grounds. Under the Code of 1882 an order granting a review was not one of the orders specified in Section 588 corresponding to the

present order XLIII and order granting a review was newly introduced by Clause (w). The reason for this change is not apparent, if it was

intended to allow an appeal only in cases provided for by Order XLVII Rule 7. At the same time it is clear that to interpret Clause (w) as allowing

a general right of appeal would render Clause 7 of Order XLVII wholly superfluous and I think such a construction should not be adopted unless it

is necessary. Section 588 of the old Code declared that an appeal lies from certain specified orders, among which an order granting a review was

not one and from no other orders. Section 629 allowed a limited right of appeal from orders granting a review. There was therefore an

inconsistency and it may be to remove this that an order granting a review was added to the list of orders from which an appeal was allowed. But

the language of the present Order XLIII is different and the words from "no other such orders" have been omitted and there was really no fear of

any inconsistency between that order and Order XLVII, Rule 7 if Clause (w) had been omitted in Order XLIII. However, as it is possible to read

Clause (w) and Rule 7 together, the one as allowing an appeal and the other as prescribing the grounds on which an order granting a review can be

challenged in appeal, I think that is the proper construction to be adopted. This is the view which has been taken in 2 cases in the Punjab Chief

Court, in which however no reference is made to Clause (w) of Order XLIII, in a case in the Patna High Court and in Calcutta and in this Court.

Yusaf v. Naza 1913 PL.R. 17 Basheshai v. Ramkishan (1915) 32 I C 860 Sundar Mall v. Upendra Nath Seal (1916) I PL J. 199 Haricharan

Saha v. Baran Khan I.L.R (1916) Order 746 Aiyarappa v. Kajarat (1911) 2 L W. 63 Srinivasier v. Nataraja Iyer (1915) 2 L.W. 366.

7. Then it was contended that the applicant was entitled to appeal from the final award passed on review u/s 54 of the Land Acquisition Act and

was not therefore entitled to apply for a revision of the order granting a review. It is no doubt true that this Court would not ordinarily interfere in

revision with orders which can be questioned in an appeal from a final decree or set aside by a regular suit. But it is only a rule for the exercise of

our discretion and there is nothing to prevent this Court from interfering with an order from which no appeal lies if the ends of justice require bur

interference; and in cases where a party can obtain complete and effective relief by the expeditious and cheap method of revision we may well

grant that relief. At any rate this is not an objection to the maintainability of the petition. Whether we ought to interfere in this particular case is a

different matter and I shall deal with it later.

8. The substantial question argued was as to the power of the Court exercising jurisdiction under the Land Acquisition Act to review an award

passed by it. This in the absence of a specific provision would depend upon the nature of the proceedings before the Court under that Act. The

recent decisions of the judicial committee, beyond which it is unnecessary to go are clear authorities for the position that those proceedings are in

the nature of arbitration proceedings and the conclusion reached is an award. In Rangoon Botatoung Company v. The Collector of Rungoon L. R

(1912) A.P. 391 1997 23 M.L.J. 276, the argument was that the proceedings before the Court were those in a reference and not in a suit and

they terminated in an award and this was accepted by their Lordships. In The Secretary of State for India v. Raja Chelikani Rama Rao (1916) 31

M.L.J. 324, Lord Shaw delivering the Judgment of the Privy Council, referring to the nature of the Proceedings before the Court under the Land

Acquisition Act said. "" The proceedings were from beginning to end ostensibly and actually arbitration proceedings."" In the course of the arguments

in an application for special leave to appeal from the decision of the Bombay High Court in an appeal under the Land Acquisition Act their

Lordships repeatedly pointed out that the decision was not a decree or order, but an award. The Special Officer Salsette Building Sites v.

Dasabhai Bezanji Motiwala 17 C.W.N. 121. Counsel for the respondent asked us not to look into the last case as it was not reported in the

authorised reports. It is a report made by counsel and we are entitled to treat it as authentic. These observations are clear and conclusive on the

question. It is true their Lordships were there dealing with an award settling the amount of compensation payable for the land taken and not with a

decision on the question of conflicting claims to the land or to interests therein or the proportions in which the compensation money is to be

apportioned among the persons interested in the property acquired; but I do not think any distinction can be drawn in this respect, A decision on

these questions appears to be as much an award as a determination of the value of the land acquired. Section 18 provides for a reference to "

Court" at the instance of a party interested whether his objection be to the measurement of the land, the amount of compensation, the persons to

whom it is payable or the apportionment of the compensation and Section 30 provides for a reference by the Collector if there is a dispute as to

the persons entitled to the compensation or its apportionment. It is as on a reference u/s 18 or 30 or u/s 32 that the court can take cognisance of

any matter under the Act and it is quite clear that any determination by the court is not in the exercise of its ordinary Civil Jurisdiction. The "court"

for example may be any "Judicial Officer" appointed for this purpose and he has the right to determine the matter referred to him under the Act,

though the value may be far beyond his pecuniary Jurisdiction as an ordinary Civil Court. Curiously enough there is no express provision as to what

the court should do when a question other than the amount of compensation is referred to it and Sections 26 and 27 which prescribe what the

contents of an award should be, do not say that the decision of the court on these matters should be embodied in the award; this is the more

remarkable seeing that the legislature in repealing the old Act of 1870 reenacted Section 34 with modifications--that is the present Section 26--but

did not reenact Section 39. There can be no question however that the court to which the reference is made has to decide all the questions referred

to it and that decision it is reasonably clear is an award from which an appeal is specially allowed to the High Court u/s 54 of the Act. Under the

Act of 1870 the amount of compensation was to be determined by a judge and assessors, while questions of title to or apportionment of the compensation was to be determined by the Judge sitting alone. Then there were two distinct sections providing for appeals in the two cases and appeals lay from the decision of a court other than a District Court to that court if the appeal was from a decision apportioning the compensation and if from a decision determining the amount of compensation if the amount did not exceed Rs. 5,000; if the amount exceeded Rs. 5,000 or if the first court was a District Court to the High Court. The Land Acquisition Act of 1894 abolished the system of assessors, set up the "court" as the sole authority to determine both the amount of compensation and its apportionment in case of dispute, provided for an appeal to the High Court in all cases whether the decision was one settling the amount of compensation or its apportionment or the persons entitled to it. The decision of the Court whatever may be its nature, whether passed on a reference u/s 18 or Section 30 or u/s 32, whether the dispute was between the Government and the party interested or only among the parties interested inter se is an award. This is the view taken in *Shiva Rao v. Nagappa* ILR (1905) M. 117 *Srematy Trinayani Dassi v. Krishnalal De* 17 C.W.N. 933 *Sheo Rattan Rai v. Mohri* ILR (1899) A. 354 and in the Full Bench decision in *Mahommad Ali Raja Avergal v. Ahammad Ali Raja Avergal* ILR (1902) M. 287 it was assumed that an order u/s 32 of the Act was an award. The decision then of the Court under the Land Acquisition Act being an award and not a decree or order of a Civil Court in its ordinary Jurisdiction, it is clear that unless the Court is specially empowered by statute, it cannot change its award on review. Counsel for the respondent contends--this is his main contention--that that special power is to be found in Section 53 of the Act which by reference, made the CPC applicable to proceedings before the Court under the Act. He says that Order 47 of the Code must be taken to be one of the provisions applicable, as power to review is not inconsistent with anything contained in the Act; in fact he went further and contended that except for Section 54 every provision in the Code as regards appeals either from decrees or orders would be applicable to orders passed by the Land Acquisition Court. I am unable to agree with this contention ; except for Section 54 I think no appeal will lie from the decision of the Court and that section instead of qualifying or

otherwise restricting the unqualified powers assumed to be given u/s 53, really confers a power of appeal which otherwise did not exist. I also think

for the same reason that the view taken by the Calcutta High Court in *Balaram Bhramaratar Ray v. Shamsunder Narendra* ILR (1886) C. 526 that

an appeal lies to the High Court from every award irrespective of the Court which passed it or its value, is right and the opposite view taken in

some of the decisions of the Bombay High Court, (See *Ranchhodbhai v. Collector of Kaira* ILR (1909) B 371 is not correct.

9. Turning to the language of Section 53, the provisions of the CPC which are applicable are limited by the words "" proceedings under the Act

and before the "" Court "" which means the Court of the Judicial Officer specially appointed to whom references are made under one or other of the

sections of the Act. Those words would exclude the provisions of the Code relating to appeals from the award as they are not proceedings before

the Court and I think the provisions relating to review are equally inapplicable for as soon as a determination of the matters referred to the Court is

arrived at by that Court and the award is made, all proceedings under the Act "before the Court" is at an end. There are it is to be observed,

special provisions in the Act as to the appearance of pleaders, representation of persons interested if they are not capable of representing

themselves and services of notices, provisions which would scarcely be necessary if all the provisions of the CPC were intended to be

incorporated in the Act.

10. I share the doubt expressed by Farran C.J., whether even under the new Act, proceedings by way of execution can be had to enforce the

award, *Nilkanth v. Collector of Thana* ILR (1897) B. 802. In *Nobin Kali Debi v. Banalata Debi* ILR (1905) C. 921 the Calcutta Courts enforced

an order under Article 32 of the Land Acquisition Act by proceedings in execution, but authority was sought in Section 649 of the old code

corresponding to Section 36 of the new and not in Section 53 of the Act. The case of *Kishan Chand v. Jagannath Prasad* ILR (1902) A. 183 and

Bhandi Singh v. Ramadhin Roy 10 C.W.N. 991 relied on by Counsel for the respondents do not support him, for in those cases the procedure

prescribed by the code was adopted in proceedings before the award was made and for the purpose of deciding the reference. In cases where an

award is made without hearing a party interested and without giving him an opportunity of being heard, the Court may have the power, even apart

from the provisions of Order IX to change or modify the award after hearing the party interested but this is not such a case. I am inclined to hold

that the District Judge had no power to review his award and make a fresh one.

11. Are we then bound in revision u/s 115 of the Code to interfere with the order of the District Judge? From what I have said already it will be

clear that the petition is wholly without merits and in fact in the beginning of his argument, Mr. Sundram, Counsel for the petitioner, frankly admitted

that the portion of the compensation money which represented the Kanom interest was payable to claimants Nos. 8 to 11. In Ramaswami Chettiar

v. R.G. Orr ILR (1902) M. 176, Sir Arnold White, Chief Justice felt compelled to interfere in revision with an order passed without jurisdiction

where apparently the justice of the case did not require it, but in a very recent case, Sri Raghunatha Doss Vs. Sri Sri Sir Vikrama Deo, Maharaja

of Jeypore, , Spencer and Phillips, JJ. held, the Court is not bound to interfere in revision at any rate if such interference will result in injustice. I

agree. It is unnecessary to go so far as Beaman J. in Ismalji v. Macleod ILR (1906) B. 138 where he said ""however ample our powers as a Court

of extraordinary Jurisdiction may be, Courts in the exercise of superintending powers will not ordinarily interfere except in cases of grave and

otherwise irreparable injustice."" If we interfere now, the respondent may not be in time to appeal from the original award and if he is allowed to

appeal, the delay being excused, this Court must substitute the present award for the previous one.

12. I therefore think this is not a fit case for our interference and would dismiss the petition with costs.