
(2013) 10 KL CK 0019
In the High Court Of Kerala
Case No : Z.R.F.A. (Misc.) No 265 of 2013

Nafeesa

APPELLANT

Vs

Deputy Collector and Special Land Acquisition Officer

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 889 : (2013) 4 KHC 868 : (2013) 4 KLT 612

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : K.G. Balasubramanian, for the Appellant;

Judgement

Thottathil B. Radhakrishnan, J.—What is the remedy of a person considering himself aggrieved by the decision of the principal civil court of original jurisdiction on a reference of a dispute as to apportionment, to that court under S. 3H(4) of the National Highways Act, 1956? The Registry has objected to this appeal instituted under S. 96 of the Code of Civil Procedure, for short, "CPC", by one of the parties to such a reference. Heard the learned counsel for the appellants, the learned counsel for the National Highways Authority and the learned Senior Government Pleader.

2. Sub-section (3) of S. 3H of the aforesaid Act, hereinafter called, the "NH Act", provides that where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. Sub-section (4) provides that if any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated; hereinafter referred to as "court". What thus comes to that court is the reference of the dispute, it comes for the decision of that court. The decision that would be rendered by that court on the dispute that is referred to it, does not fall within the term "decree" as defined in S. 2(2)

of C.P.C. because, it is not one amounting to determination of the rights of the parties with regard to matters in controversy in a suit. There is no provision in the N.H. Act which provides a right of appeal against the decision by the court on the reference under S. 3H(4). Such a decision is also not given the status of a decree at least using a deeming provision. Therefore, an appeal under S. 96 C.P.C. will not lie. An appeal under S. 104 of C.P.C. also does not lie since such a decision does not fall among those orders enumerated as appealable under that provision or under Order XLIII of C.P.C. In terms of sub-section (1) of S. 105 C.P.C., no appeal shall lie from any order made by a court, that is to say, a civil court, in the exercise of its original or appellate jurisdiction, save as otherwise expressly provided. In the absence of a specific provision conferring a right of appeal, no appeal can be entertained even by making reference to S. 141 C.P.C. because, right of appeal is not a matter of procedure but a substantive right. For these reasons, a decision rendered by the court on a reference under S. 3H(4) of the N.H. Act is not appealable under C.P.C. The objection of the Registry, therefore, stands.

3. But, a principal civil court of original jurisdiction is a court subordinate to the High Court. Therefore, a decision rendered by such a court on a dispute referred to it under S. 3H(4) of the N.H. Act is one amounting to a case decided by a court subordinate to the High Court. Since no appeal lies to the High Court against that decision, a revision under S. 115 C.P.C. would lie against such decision, it being a decision by a court subordinate to it. Hence, the High Court may call for the records of any case in which a decision has been rendered by the court on a dispute referred to it under S. 3H(4) of the N.H. Act.

4. For the aforesaid reasons, we accept the oral application made by the learned counsel on behalf of the appellants and order conversion of this proposed Regular First Appeal (Miscellaneous) as a Civil Revision Petition under S. 115 C.P.C. and also grant leave to apply for inclusion of additional grounds as may be found necessary in accordance with law. Let this matter be numbered as C.R.P. which shall stand admitted by the force of this order. As a matter of prudence, practice and procedure, it is appropriate that the authorities involved in carrying out land acquisition are made parties even to litigations relating to apportionment on references and appeals since that would exclude such authorities being oblivious of what is happening to the disputes as to apportionment. Having already noted that sub-section (3) of S. 3H of N.H. Act authorises the competent authority to determine the persons who, in its opinion, are entitled to receive the amount payable to each of them, it is only appropriate that the competent authority is included as formal party in proceedings under S. 3H(4) and even in appeals arising therefrom. Similarly, sub-section (2) of S. 3D of the N.H. Act provides that on publication of the declaration under sub-section (1) of that section, the land shall vest absolutely in the Central Government free from all encumbrances. Therefore, the Central Government would also be a proper formal party. The presence of the Central Government and the competent authority under the N.H. Act as formal parties to such proceedings will exclude considerable confusions

which we can easily foresee in matters relating to acquisition of land and disbursement of amounts as compensation. We see that the competent authority is already on the array as first respondent in this case, we, therefore, order impleadment of the National Highways Authority of India, represented by its Project Director, Palakkad and Union of India, represented by Secretary to Government, Ministry of Road Transport and Highways, New Delhi as additional respondents in this matter.

Appellants (revision petitioners) will serve copy of this appeal/revision memorandum on the Assistant Solicitor General who takes notice on behalf of Union of India. Standing counsel appears for the National Highways Authority. Senior Government Pleader appears for the first respondent. Issue notice to the second respondent.