
(2015) 12 OHC CK 0043
In the Orissa High Court
Case No : W.P.(C) No. 8908 of 2004

Nakula Sahoo and Others

APPELLANT

Vs

Durpadi Singh and Others

RESPONDENT

Date of Decision : 22-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14, 26, 6, 7
Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 30
Waqf Act, 1995 — Section 83, 85

Citation : (2015) 12 OHC CK 0043

Hon'ble Judges : Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : P.K. Mohapatra, Advocate, for the Appellant; S.K. Dash, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dr. Akshaya Kumar Rath, J.—The seminal point that hinges for consideration of this Court is as to whether the Civil Court lacks jurisdiction to entertain the suit filed by the petitioners, herein or the subject matter of suit lies within the exclusive jurisdiction of the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as "the Act")?

2. Sans details, the short fact of the case is that the petitioners as plaintiffs instituted T.S. No. 54 of 2000 in the court of the learned Civil Judge (Sr. Division), Talcher. The case of the plaintiffs is that the suit land originally belonged to late Kunjabehari Gajraj Singh. He was issueless. He adopted one Gokul Chandra Singh, defendant No. 1 as son. While the matter stood thus, Kunjabehari died in the year 1958 leaving behind his only adopted son as legal heir and successor. Defendant No. 1 had sold the said land to the plaintiff Nos. 1 and 2 and father of plaintiff Nos. 4 to 7 by means of a registered sale deed dated 18.2.1972 for a consideration of Rs. 4500/-. They are in possession of the said

suit land since then. Since they were residing at Angul, they could not take steps in the settlement proceeding. The settlement authority recorded the land in the name of defendant No. 2, who is wife of defendant No. 1. When Hingula Coal Mines Authority came for measurement of the suit land, the plaintiffs knew that the mines authority had already awarded the compensation in favour of defendant Nos. 1 and 4. On a query made by them, defendants 2 and 4 disclosed that they had purchased the suit land from defendant No. 1 by registered sale deed. With this factual scenario, the suit has been filed with the following reliefs:--

"(i) That the right, title and interest of the plaintiff over the suit land may be declared.

(ii) That the possession of the plaintiff since 18.2.1972 to till today on the strength of sale deed followed by delivery of possession may be confirmed.

(iii) That the sale deed executed by the Defendant No. 1 in favour of defendant No. 2 and 4 may be declared null and void.

(iv) That direct the defendant No. 4 to cause the payment towards compensation award of the suit land dt. 22.2.2000 in favour of defendant No. 2 and 4 may be declared to be set aside and direct to pay the award in favour of the plaintiff.

(v) The cost of the suit be decreed in favour of the plaintiff and such other reliefs as be found entitled to."

3. Pursuant to issuance of summons, defendant No. 3 entered appearance and filed written statement contending, inter alia, that the suit land has been acquired by Hingula Coal Mines Authority as per the provisions of the Act. The Central Government is deemed to be in possession of the suit land. Further, the jurisdiction of the Civil Court has been ousted under Section 26 of the Act and the Tribunal constituted under the Act is competent to determine the right, title and interest over the suit land.

4. Defendants 2 and 4 entered appearance and filed an application under Order 7, Rule 11 of C.P.C. for rejection of the plaint. According to them, the Civil Court has no jurisdiction to determine the right, title and interest of the suit land. The Tribunal constituted under the Act has the exclusive jurisdiction to decide any dispute in respect of the suit land. The learned trial court came to hold that the dispute is purely civil in nature. The Special Tribunal constituted under Section 14 of the Act, has not been vested with jurisdiction to declare the sale deed as null and void. Having held so, the learned trial court rejected the application. Thereafter, the defendants 1 to 11 filed a revision before the learned Additional District Judge, Talcher, which was registered as Civil Revision Petition No. 6 of 2002. The learned revisional court held that the Tribunal constituted under the Act is alone competent to decide the right, title and interest over the suit land and the rightful person is entitled to receive the compensation amount. The revisional court further held that when the Tribunal has been empowered to

determine the right, title and interest over the acquired land, the question relating to validity of the document can also be incidentally gone into. The relief claimed by the plaintiffs cannot be entertained by the Civil Court. By judgment dated 29.3.2004, the learned revisional court allowed the revision. The instant application under Article 227 of the Constitution of India to vacate the order said judgment.

5. Heard Mr. P.K. Mohapatra, learned counsel for the petitioners and Mr. S.K. Dash, learned counsel for the opposite parties 1 to 4, 6, 7, 10 and 11 and Mr. P.R. Pattnaik, learned counsel for opposite party No. 12.

6. Mr. P.K. Mohapatra, learned counsel for the petitioners submits that exclusion of jurisdiction of Civil Court is not to be readily inferred unless such exclusion is either expressly spelt out in the special statute or clearly implied. He further submits that the Tribunal has no jurisdiction to adjudicate the dispute pertaining to right, title and interest of the property. The Civil Court has alone the jurisdiction to adjudicate such dispute. He relies on decision of the apex Court in the case of Bhanwar Lal and others Vs. Rajasthan Board of Muslim Wakf and others, (2014) 16 S.C.C. 51.

7. Per contra, Mr. S.K. Dash, learned counsel for the opposite parties 1 to 4, 6, 7, 10 and 11 submits that essentially the dispute between the parties pertains to payment of compensation. The question relating to validity of the sale deed can also be incidentally gone into by the Tribunal constituted under the Act for the purpose of determination of compensation. He further submits that in view of the bar contained in Section 26 of the Act, the Civil Court has no jurisdiction to decide the issue. He relies on the decision of this Court in the cases of Gadadhara Behera Vs. State of Orissa and Another, and Angada Pujhari Vs. Kanhei Pujhari and Another, and the decision of the apex Court in the case of Patel Chandulal Trikamlal and others Vs. Rabri Prabhat Harji and another, .

8. Section 14 of the Act provides for method of determining compensation. The same is quoted below:--

"14. Method of determining compensation-(1) where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a Judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective

opinions is a fair amount of compensation.

(5) The Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined insofar as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940, shall apply to any proceedings under this section.

(8) The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:--

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) reception of evidence on affidavits;

(iv) requisitioning any public record from any court or office; and

(v) issuing commissions for examination of witnesses."

9. The jurisdiction of the Civil Court has been ousted under Section 26 of the Act. The same is quoted hereunder:--

"26. Jurisdiction of Civil Courts.--Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Central Government or the competent authority or any other person is empowered by or under this Act to determine."

10. On cursory perusal of Section 14 of the Act, it is crystal clear that where the amount of any compensation payable under the Act can be fixed by agreement, it shall be paid in accordance with such agreement. But then where there is no such agreement, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a Judge of a High Court for the purpose of determining the amount. The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal. Sub-section 4 of Sec. 14 of the Act provides that at the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair

amount of compensation. Under Sub section (5) of Sec. 14 of the Act, the Tribunal after hearing the dispute shall make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid. In the event there is a dispute between the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit. Thus, the jurisdiction of the Tribunal is limited to determine the amount of compensation and the persons to whom it is payable.

11. Whether the civil court has jurisdiction to try the suit, when the issues/reliefs are inextricably mixed up and some issues/reliefs raised are exclusively triable by the Tribunal while others exclusively triable by the Civil Court ?

12. In *Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf*, , the provisions of the Andhra Pradesh Wakf Act, 1995 came up for consideration before the apex Court. The question, which was posed for determination, was whether the Wakf Tribunal constituted under Section 83 of the 1995 Act was competent to entertain and adjudicate upon disputes regarding eviction of the appellants, who were occupying different items of wakf properties? The apex Court has succinctly stated the approach of the Court while dealing with such cases. The modalities prescribed by the Court are quoted hereunder:--

"11. Before we take up the core issue whether the jurisdiction of a civil court to entertain and adjudicate upon disputes regarding eviction of (sic from) wakf property stands excluded under the Wakf Act, we may briefly outline the approach that the courts have to adopt while dealing with such questions.

12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted.

13. Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. In *Rajasthan SRTC v. Bal Mukund Bairwa*, a three-Judge Bench of this Court observed:--

"There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must

establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction."

13. In *Bhanwar Lal (supra)*, the apex court had the occasion to consider Section 85 of the Wakf Act, 1995. In the said case, the respondents as plaintiffs filed a civil suit in the year 1980 for possession of the suit property as well as for rendition of accounts impleading the petitioners as defendants therein claiming it to be a wakf property. On coming to know, after filing of the suit, that one trustee had sold the property to the defendants on 28.2.1983. The plaintiffs amended the plaint by adding the relief of declaration to the effect that the said sale deed dated 28.2.1983 was invalid. Pursuant to issuance of summons, the defendants entered appearance and filed written statement. The trial court framed eight issues. The suit, thereafter, went on trial. All the parties laid their evidence. When the matter was ready for final hearing, plaintiffs filed the application under Section 85 of the Act raising the contention that the suit in question could not be tried by the civil court as the jurisdiction was barred. A prayer was made that the plaint filed by them may be returned to be presented before the Tribunal constituted under the Act, which alone had the jurisdiction to try the suit. The learned Additional District Judge allowed their applications holding that the question whether the property in question was wakf property or not, could be decided only by the Tribunal and Section 85 of the Act specifically barred the jurisdiction of the civil court. In the revision petition filed by the defendants challenging the validity of the orders of the learned Additional District Judge, the Rajasthan High Court concurred with the same view. The matter was then carried to the apex Court. The apex Court in paragraph-30 of the report came to hold that the suit is for cancellation of the sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. So far as relief of cancellation of sale deed is concerned, this is to be tried by the civil court for the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decide such an issue. Further, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issues of sale deed and possession are inextricably mixed with each other and it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and the civil court would be competent to decide the same.

14. The decisions cited by Mr. Dash, learned counsel, are distinguishable in facts. In *Gadadhara Behera (supra)*, the petitioner purchased a land. The land was mutated in his favour. When the land was acquired by the State Government, the Land Acquisition Collector awarded the compensation in favour of a third party. Thereafter the petitioner approached the Land Acquisition Collector and demanded payment of the same to him. The Land Acquisition Collector referred the matter to the Civil Court under Section 30 of the Land Acquisition Act. The learned trial court held that the petitioner alone is entitled to receive

compensation. Thereafter the petitioner levied execution case. The learned executing court held that the petitioner can only recover the amount from the party who received the same and not from the Land Acquisition Collector. The said order was challenged before this Court. This Court held that the petitioner cannot be relegated to file a suit for recovery of the said amount from those persons to whom payment was made. In *Angada Pujari (supra)* the question arose whether the petitioner is the adopted son of Kamlu and entitled to a share out of the compensation amount awarded under the Land Acquisition Act. In *Laxmi Chand (supra)*, the issue before the apex Court was the jurisdiction of the Civil Court to take cognisance of the cases arising under the Land Acquisition Act. The apex Court held that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognisance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to the constitutional Courts, viz., the High Court and the Supreme Court.

15. It is trite that a decision is an authority for what it decides and not what can be logically deducted therefrom. In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , in paragraph-8 of the said report, the apex Court held that there is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Thus, the aforesaid cases are distinguishable.

16. On a plain reading of Section 26 of the Act, it would show that the civil court's jurisdiction to entertain the suit or other proceedings stands specifically excluded in relation to any question referred to in Section 14 of the Act. It is evident from the language employed that the exclusion is not absolute or all pervasive. Prayer with regard to (i) to (iii) quoted in paragraph-2 (*supra*) made in the suit and the issues with regard to the right, title and interest of the plaintiffs over the suit land and declaration of the sale deed executed by defendant No. 1 in favour of defendant Nos. 2 and 4 as void, are to be tried by the civil court since the same are not covered under Section 14 of the Act. The Tribunal has not been conferred with any jurisdiction to decide the said issues. The issues of sale deed, possession and compensation are inextricably mixed up with each other. Thus, the learned Civil Judge (Sr. Division), Talcher is competent to decide the same issues.

17. In view of the finding recorded above, this Court has no other option but to quash the judgment dated 29.3.2004 passed by the learned Additional District Judge, Talcher in CRP No. 6 of 2002. The order passed by the learned trial court is affirmed. The petition is allowed. No costs.