

(1972) 09 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : F.A.F.O. No. 16 of 1969

Natha Singh

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 19-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8, 53
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1973 HP 54 : (1972) 1 ILR HP 175

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; T.C. Chitkara, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This appeal is directed against the order of the learned District Judge Kangra, refusing to restore a reference made u/s 18 of the Land Acquisition Act 1894.

2. Proceedings for the acquisition of land belonging to the appellant were taken under the Land Acausition Act, and an award was made by the Collector. The appellant applied for a reference u/s 18 for enhancement of the compensation awarded by the Collector, but the reference was dismissed by the learned District Judge for want of prosecution. The appellant applied for restoration of the reference, and the restoration application has also been dismissed by the learned District Judge. The learned District Judge held that he had inherent power to dismiss the reference for want of prosecution when the appellant, who was duly served, failed to appear. He also held that there was no sufficient cause for the absence of the petitioner. Further he held that the application was barred by time.

3. Three contentions have been raised on the merits by the appellant -in this appeal.

4. It is contended that the learned District Judge had no jurisdiction to dismiss,

the reference for default. Opposing views have been Propounded by different courts. In support of the proposition that there is no power to dismiss a reference for default, I have been referred to Abdul Karim and Another Vs. State of Madhya Pradesh, The Madhya Pradesh High Court held that Order 22 of the Code could not be applied to proceedings u/s 18 of the Act, and that once a reference u/s 18 was made, the Court had to make an award u/s 26 no matter whether the person at whose instance the reference was made appears or fails to appear before the Court or fails to produce evidence in support of his objection- Then there is the case Bhadar Munda and Another Vs. Dhuchua Oraon, where the Patna High Court appears to have taken the same view. It was held that Order 22 of the Code was inconsistent with the very nature and scope of the proceedings u/s 18 of the Act and, therefore, it could not be invoked by resort to Section 53 of the Act. To the contrary is the view taken by the Punjab High Court in Phuman v. State of Punjab ILR (1963) Puni 442 that Order 22 of the Code is not inconsistent with anything contained in the Land Acquisition Act and, therefore, would apply by resort to Section 53 of that Act. To the same effect is the view taken by the Gujarat High Court in Alihusain Abbahbai and Others Vs. Collector, Panch Mahals, It was observed that the nature of the proceeding u/s 18 need not necessarily terminate with an award or the determination of compensation, and that a reference was no different from an ordinary civil Proceeding in which a private party in the position of the Plaintiff claims extra compensation and the Collector opposes the claim. It was pointed out that if the private party failed to appear at the hearing of the proceeding the reference had to be dismissed by resort to Order 9 Rule 8 for want of appearance and evidence in support of the claim. It was said that since the right to claim additional compensation devolves on the heirs of the Private party on his death, the provisions of Order 22 Rule 3 were applicable.

5. In my opinion, the provisions of Order 9 of the Code apply to a reference made u/s 18 of the Land Acquisition Act. The provisions of Order 9 are not inconsistent with anything contained in the Act and therefore, by virtue of Section 53 of the Act they are applicable. When the claimant to compensation declines to accept the award made by the Collector and obtains a reference to the Court the proceeding pending before the court represents a dispute between the parties thereto. The procedure for deciding that dispute, where the Act is silent, is that laid down in the CPC by virtue of Section 53 of the Act, so far as the provisions of the Code are not inconsistent with the Act-There is no apparent reason why a reference made at the instance of the claimant to compensation cannot be dismissed for default. The reference u/s 18 is made at his instance. It is for him to prosecute it. and if he defaults in doing so the court is not bound to proceed with it. It will be noticed that the proceeding before the court u/s 18 of the Land Acquisition Act is unlike a reference under the Income Tax Act or the Code of Civil Procedure. It is not of an advisory nature in the sense that a question posed for the opinion of the High Court is answered by the High Court and returned to the Income Tax Appellate Tribunal or the lower court which made

the reference in order that the Tribunal or the lower court can then effectively dispose of the proceeding before it. A reference u/s 18 of the Land Acquisition Act proceeds to an award, which has the status of a decree, and terminates the proceeding for the determination of compensation. In my opinion, the court before which a reference is pending is empowered under Order 9 Rule 8 of the Code read with Section 53 of the Land Acquisition Act to dismiss it for default. It may be that the learned District Judge in this case, has Proceeded on the belief that he was exercising an inherent power to dismiss the reference. It seems to me that when the power can be attributed to Order 9 Rule 8 it was not necessary to justify it by reference to any inherent power.

6. The second contention is that the appellant had sufficient cause for not appearing when the reference was called on for hearing. The court below has come to the conclusion that no sufficient cause has been shown by the appellant. After carefully considering the facts and the explanation tendered by the appellant for his absence it appears to me that the finding of the court below that there was no sufficient cause does not call for interference.

7. In the circumstances, it is not necessary for me to examine the third contention that the application is not barred by time.

8. A preliminary objection as to the maintainability of the appeal was raised by learned counsel for the respondent- As, in my judgment, the appeal fails on the merits, it is unnecessary to go into this question.

9. The connected appeals. First Appeals from Orders Nos. 17 to 27 of 1969 arise upon substantially similar facts, and for the reasons mentioned above they must also go the same way.

The appeals fail and are dismissed with costs.