
(2015) 04 AHC CK 0040

In the Allahabad High Court

Case No : Matters Under Article 227 No. 1104 of 2015

National Highway Authority of India

APPELLANT

Vs

A.D.J. and Others

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 151, 2
Land Acquisition Act, 1894 — Section 18, 20, 23, 26

Citation : (2015) 04 AHC CK 0040

Hon'ble Judges : Ashwani Kumar Mishra, J

Bench : Single Bench

Advocate : R.K. Gupta, Devendra Kumar, for the Appellant

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J.—Supplementary affidavit, filed today, is taken on record.

2. This petition is directed against an order passed by the Additional District Judge, Court No. 3, Mathura, in Land Acquisition Reference No. 15 of 1996, whereby reference proceedings, which had been dismissed in default, has been restored.

3. Proceedings for compulsory acquisition of land were initiated at the instance of petitioner authority, under Land Acquisition Act, 1894 (hereinafter referred to as the "Act"). A reference under Section 18 of the Act was made to civil court, which got registered as Land Acquisition Reference No. 15 of 1996. It remained pending for a long period and was ultimately dismissed, in default, on 17.5.2005. After a long lapse of more than 8 years, an application under Section 151 CPC was filed by claimant/respondents, seeking revival of reference proceedings, and its adjudication, on merits, on the ground that a reference under Section 18 of the Act could not be dismissed in default, in view of law laid down in Khazan Singh Vs. Union of India, AIR 2002 SC 726 : (2002) 1 JT 262 : (2002) 2 PLR

669 : (2002) 1 SCALE 316 : (2002) 2 SCC 242 : (2002) 1 SCR 431 : (2002) AIRSCW 356 : (2002) 1 Supreme 250 , and that reference court was under an obligation to decide reference on merits. Reference court has allowed this application, vide order dated 31.1.2015.

4. Sri S.F.A. Naqvi, Advocate, assisted by Sri R.K. Gupta, submits that copy of restoration filed, after long lapse of time, was not served upon the petitioner or its counsel, and the reference court has restored proceedings of reference, without issuing notice and granting any opportunity of hearing to petitioner. Submission is that reference court is proceeding in under hot haste.

5. Having considered the submissions advanced, this court finds that the question as to whether reference made under Section 18 of the Act could be dismissed in default, or had to be decided only on merits, stands answered by the Apex Court in Khazan Singh (dead) (supra). Paras 6 to 11 of the aforesaid judgment is reproduced below:--

"6. Section 18 of the Act empowers a person interested in the land to move by a written application to the Collector requiring that the matter be referred for determination of the court, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. If the application for reference is in order the Collector is bound to make a reference of it to the court. Section 20 of the Act enjoins on the court to "proceed to determine the objection". The court shall after holding such inquiry as may be necessary pass an award. Section 26 of the Act reads thus:

"26. Form of Awards.--(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first 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.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2 clause (2) and Section 2 clause (9), respectively, of the Code of Civil Procedure, 1908."

7. The provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default.

8. It appears that various High Courts have taken the aforesaid view in a number of decisions: Abdul Karim v. State of M.P. Bhadar Munda v. Dhuchua Oraon, Shyam Shankar Sahai v. State of Bihar, Joseph v. Govt. of Kerala and Jogi Sahu

v. Collector.

9. In *Joseph v. Govt. of Kerala*⁴ Paripoornan, J. (as he then was) speaking for a Division Bench has made reference to two earlier decisions of Single Judges, one by the same High Court and the other by the Karnataka High Court which held the same view.

10. In *Jogi Sahu v. Collector Pasayat*, J. (as he then was) further held that an application for restoration of the reference can be entertained under Section 151 of the Code albeit the same was filed quoting Order 9 Rule 9 of the Code.

11. In the result, we allow this appeal and set aside the order passed by the Additional District Court on 29-9-1997 by which the reference was dismissed for default. The said District Court will now proceed to answer the reference in accordance with the law and pass award as envisaged in Section 26 of the Act. Appeal is disposed of accordingly."

6. It has been held by the Apex Court that once a reference under Section 18 of the Act has been made, the reference court is under an obligation to decide the reference on merits and it has no power to dismiss such reference in default. It has further been observed that in case the applicants opts not to participate, such non participation would be at the risk and cost of the applicant himself, who seeks enhancement, but the civil court cannot, and has no power, to dismiss such reference in default.

7. In view of the aforesaid law, settled by the Hon''ble Apex Court, this Court finds that the order, dismissing reference in default, on 17.5.2005, was illegal and non est. In such circumstances, if the reference court has restored the reference and is proceeding with the disposal of matter on merits, no exception can be taken. Reference Court has merely restored the proceedings and no order prejudicial to petitioner acquiring body has been passed, on merits. Petitioner has knowledge of the proceedings, and it is always open for it to raise all legal and factual submissions, in the pending reference, on merits, before the court concerned, which shall be addressed by the court, in accordance with law.

8. Subject to the aforesaid observations made, this court declines to entertain the present petition, which accordingly fails, and is consigned to records.