
(1990) 07 OHC CK 0038
In the Orissa High Court
Case No : Civil Revision No. 478 of 1989

Nidra Bewa

APPELLANT

Vs

Spl. Land Acquisition Officer, Bolangir and Others

RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 18

Citation : AIR 1991 Ori 106

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : M. Patra, for the Appellant; P.K. Misra and Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The Special Land Acquisition Officer, Bolangir under the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") having rejected the application to refer her claim for compensation for adjudication by Civil Court, the petitioner Smt. Nidra Bewa, wife pf Dhobei Chandra Chhanda filed this application u/s 115 of the CPC assailing the order of rejection.

As stated in the revision petition, A.20.95 decimals of land from Khata No. 1 in village Totamunda was acquired by the State Government for the purpose of construction of "Harihara Jora". The said land belonged to one Bisol Chand, who left two sons, Rama and Dhobei. The petitioner Nidra Bewa is the widow of Dhobei and the opposite party No. 4 Gobardhan Chhand is her adopted son. Opposite parties 2 and 3 Maheshwar Chhand and Sachidananda Chhand are sons of Brahmananda, son of Rama. After the death of Dhobei in 1950, the petitioner and the opposite party No. 4 have been in possession of the land. The petitioner alleges that the Special Land Acquisition Officer, Bolangir issued notices to the opposite parties 2 and 3, did not issue any notice to petitioner and opposite party No. 4 while taking of the proceeding under the Act. The petitioner

came to learn that an award has been passed awarding compensation for the land in favour of opposite parties 2 and 3. Thereafter she and opposite party No. 4 filed an application u/s 30 of the Act before the Land Acquisition Officer to refer the matter to the Civil Court for adjudication of her claim for compensation. The Special Land Acquisition Officer by the impugned order passed on 21-4-89 rejected her claim. He further held that compensation for A.14.45 decimals shall be paid to Maheswar Chhand and compensation for A.6.50 decimals to Sachidananda Chhand. Hence this revision petition.

2. On perusal of the order sheet of the proceeding before the Special Land Acquisition Officer, Bolangir it appears that the award in favour of Maheswar, son of Rama Chhand was passed on 23-5-88; on the application filed by the petitioner Nidra Bewa on 21-6-88 claiming half share in the compensation amount the payment was withheld; on consideration of the matter the Land Acquisition Officer passed order dated 21-4-89 rejecting the claim of Nidra Bewa and directing apportionment of the compensation amount between Maheswar Chhand and Sachidananda Chhand in the manner noticed earlier; thereafter an application was filed on behalf of the petitioner for referring the matter to the Civil Court u/s 18 of the Act which was rejected by the Land Acquisition Officer by order dated 6-6-89. Subsequently the compensation amount was paid to Maheswar and Sachidananda. From the order passed on 6-6-89 it appears that the application filed u/s 18 of the Act was rejected on the grounds that Nidra Bewa never appeared before the Land Acquisition Officer at any time despite grant of sufficient opportunity, the petition filed u/s 18 of the Act by the Advocate for the petitioner was not authenticated by her which shows that she is not interested for compensation and the petition has not been filed within the statutory period as provided u/s 18(2)(a) and (b) of the Act.

3. From the facts discussed above, it is clear that though revision petition is directed against the order dated 21-4-89 under the impression that by the said order petitioner's application for reference was rejected, it is indeed by order dated 6-6-89 that her prayer for reference was turned down. There appears to have been a lot of confusion in the matter as revealed from the order sheet. The application filed by the petitioner on 21-6-88 claiming half share in the compensation amount was filed after the award was made by the Land Acquisition Officer in favour of Maheswar Chhand. Therefore the said application could be entertained either u/s 18 or u/s 30 of the Act. However the application was dealt with as a mere claim by the applicant for compensation and while passing the order dated 21-4-89 it was stated in the last sentence that the land acquisition compensation for A.14.45 decimals from Khata No. 21 of 1936-37 settlement be paid to Maheswar Chhand and 4-6-50 decimals from the said khata to Shri Sachidananda Chhand after the expiry of the statutory period of appeal and reference u/s 18 of the Act. Though in the order dated 6-6-89 it is stated that a petition has been filed u/s 18 of the Act by Shri J. P. Panigrahi, Advocate for Nidra Bewa on 6-5-89, no such application is available in the record. The only application filed by Shri Panigrahi, Advocate for the petitioner

was dated 27-7-88 wherein the prayer was that the land acquisition compensation amount be apportioned into two equal shares and compensation amount due to Dhobei Chhand may be awarded to the petitioner Nidra Bewa separately. However, the learned counsel for both parties have argued the case with reference to the order of the Special Land Acquisition Officer rejecting the petitioner's prayer for reference to the Civil Court. I shall deal with the case accordingly.

4. Section 18 of the Act provides:

"Section 18(1). Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made--

(a) if the person making it was present or represented before the Collector at the time" when he made his award, within six weeks: from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever" period shaUfirst expire."

In Sub-section (3) of the said section introduced by amendment made by the Government of Orissa, it is provided :

"(3). Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908."

5. Shri M. Patra, learned counsel appearing for the petitioner, contended that the Land Acquisition Officer clearly erred in rejecting the application for reference on the ground of limitation since in this case no notice was issued to the petitioner at any stage of the proceeding before the award was passed by the Land Acquisition Officer. He further contended that since the petitioner was claiming half share in the compensation amount the only course open to the Land Acquisition Officer was to refer the matter to the Civil Court and he was not competent to adjudicate finally on the claim laid by the petitioner.

Shri P.K. Misra appearing for opposite party No. 2 supporting the impugned order of rejection submitted that the application filed by the petitioner was only for apportionment of the amount of compensation and award of half of the amount

to her. Hence the application was not one u/s 18 of the Act but u/s 30 of the Act. As such, the revision petition against the said order is not maintainable.

6. On the submissions of the learned counsel for the parties, two main points arise for consideration, one relating to maintain-ability of the revision petition, and the other relating to locus standi of the petitioner to file the application for reference to the Civil Court.

7. Regarding maintainability of the revision petition the submission was that since the claim of the petitioner was for a share in the compensation, the application was one u/s 30 of the Act and the Collector exercising the discretionary jurisdiction vested in him under the said section is not a Court subordinate to this Court and hence the revision petition filed u/s 115, C.P.C. is not maintainable. It is relevant to note that by virtue of the State amendment to Section 18 any order made by the Collector on an application u/s 18 shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115, C.P.C. Therefore the question whether the application filed by the petitioner is one u/s 18 or Section 30 of the Act assumes importance.

Section 18(1) of the Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. Sub-sec. (2) lays down the manner in which the application is to be filed and the limitation for filing the application. Section 30 on the other hand deals with dispute as to apportionment. It lays down that when the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. The apparent distinction between the two sections is that Section 30 leaves the Collector with a power of discretion which he does not possess u/s 18. The essential conditions for a valid application for reference u/s 18 are: (i) the application must be by a person who has not accepted the award; (ii) it must be in writing and require the Collector to refer the matter for determination of the Court; and (in) it should state the grounds of object to the award.

On a fair reading of the provisions of Section 18 it is manifest that a person interested in the property who feels dissatisfied with the award has a right to move the Collector for reference under this section, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable or apportionment of the compensation among the persons interested. The language used in the section is wide enough to include dispute relating to all the aforementioned matters,

The Supreme Court in the case of Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., ruled that the definition of a "person interested" given in Section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directed or indirectly interested either in the title to the land or in the quantum of compensation; thus the definition of "person interested" in Section 18 must be construed so as to include a body, local authority or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. The Court observed that this view accords with the principles of equity, justice and good conscience. This view has been followed by the Gauhati High Court in the case of Mrs. Ka Kriksibon Kharkongor and Another Vs. The Deputy Commissioner and Collector, Khasi Hills and Another, .

The Madhya Pradesh High Court in the case of Smt. Sugandhi widow of Dammulal and Others Vs. Collector, Raipur and Others, construing Sections 3(b), 9, 12 and 18 held that Section 18 does not provide that a reference can be claimed only by a person who has been served with notices under Sections 9 and 12. Any person interested who has not accepted the award has a statutory right, if he applies within limitation to require the Collector to refer his objections to the Court. The definition u/s 3(b) of the expression "person interested" also does not require that a person to come within the definition must be one who is noticed under Sections 9 and 12. The fact of notice may affect the question of limitation within which an application for reference should be made u/s 18, but it has nothing to do with the eligibility of a person for making the application.

The Andhra Pradesh High Court in the case of Yousuf Begam Vs. The State of Andhra Pradesh and Others, considering the effect of non-service of notice of award on a person interested in the acquired land on the award held that an award passed by the Collector cannot be quashed, only because an interested person is not served with notice u/s 9(3) and that he comes to know about the same after the passing of the award. Nevertheless, though such a person was not party to the land acquisition proceeding, he is entitled to seek a reference to the Civil Court on an application to be made by him to the Collector u/s 18. In the case of such an application, no question of limitation arises, when a notice u/s 9(3) is not served on the party who was entitled to it.

The Patna High Court in the case of Shivdev Singh Vs. The State of Bihar and Others, considering the said question held, inter alia, that a person even if not served with a notice u/s 9 could claim such compensation, if he was entitled to any, by asking the Collector to make a reference to the Court u/s 18. He could do so within six months from the date of the Collector's award as provided u/s 18(2) (b). On proof of the fact that he was not served with a formal notice u/s 9(3) or had no notice or knowledge of any proceeding under the L.A. Act, he would not be bound by the period of limitation provided for in Clause (b) of Sub-section (2) of Section 18. But the proceeding or the award in relation to the acquisition of the premises in question cannot be held to be illegal or void or without

jurisdiction for non-service of a notice u/s 9(3). The Collector's right to take possession of the property is consequently not affected.

The Patna High Court in the case of Sarjug Rai Vs. Mst. Maheshwari Devi and Another, construing Sections 12, 18 and 30 held that a complete machinery has been provided for settlement of the dispute, about the quantum of compensation, by resorting to the procedure prescribed by the Act as well as the dispute about the rights of the owners to compensation. But if notice of the filing of the award in question u/s 12 is not served on an interested person, he cannot be held to be bound to prosecute the remedy available under the Act itself as he may not apply to the Collector to make a reference u/s 18 much less he was bound to make such an application. The other remedy for making a reference in Section 30 being optional to the Collector himself, such a person need not make any such application at all u/s 30 and straightway file a suit in the Civil Court in its ordinary civil jurisdiction.

8. Applying the principles decided in the aforementioned cases to the facts of the present case, the position that emerges is that the petitioner who is admittedly a member of the family of the owners of the acquired land and who was not served with notice of the award u/s 9 or other relevant provisions of the Act applied in writing to the Collector for reference to the Civil Court to determine her claim to the compensation amount. The application filed by her, in the facts and circumstances of the case was, in my view, one u/s 18 notwithstanding the label which might have been put on it by the parties or by the Collector. Therefore the impugned order is one rejecting the application for reference u/s 18 of the Act and as such it is revisable u/s 115, C.P.C. as provided in the Orissa Amendment to Section 18 of the Act.

9. Coming to the question of locus standi of the petitioner to file the application for reference there is little scope for doubt that on the admitted factual position in the case she comes within the definition of "person interested" as contemplated in Section 18 of the Act and she was entitled to notice of the award and was eligible to file application for reference u/s 18 of the Act. There is therefore no substance in the challenge to her locus standi to file the application.

10. Coming to the merit of the impugned order, as noticed earlier the Collector has held that the petitioner has no right to receive any portion of the compensation amount; in other words, he has justified the award by which payment of the entire compensation to the opposite parties to the exclusion of the petitioner was directed. While deciding the question whether a reference is to be made under S, 18 of the Act the Collector was not entitled to adjudicate on the claim of the petitioner excepting for the limited purpose to decide the question of eligibility of the applicant to make the application and the adjudication, if any, cannot be held to be final. Further, u/s 18 the Collector has no discretion to refuse to refer the dispute for adjudication by the Civil Court if the application is in order. The order is therefore vitiated on account of illegal exercise of jurisdiction and also exercise of jurisdiction not vested in the authority.

11. In view of my findings recorded above, this revision petition must succeed. Accordingly it is allowed, the impugned order rejecting the petitioner's application for reference to the Civil Court is set aside and the Special Land Acquisition Officer. Bolangir is directed to refer the dispute raised by the petitioner for adjudication by the competent Civil Court. There will however be no order for costs of this proceeding.