(2018) 05 GAU CK 0219

In the Gauhati High Court

Case No : CRP 266, 257, 202, 200, 197 of 2016

North East Frontier Railway — APPELLANT

Vs

Radhika Kumar And Ors — RESPONDENT

Date of Decision : 29-05-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 47, 115, 151, Order 47 Rule 1
Land Acquisition Act, 1894 — Section 4(1), 18, 23(1A), 23(1), 23(2), 28
Constitution of India 1950 — Article 227

Citation : (2018) 05 GAU CK 0219

Hon'ble Judges : KALYAN RAI SURANA, J

Bench : Single Bench

Advocate : B. Sarmah, R. R. Borah, N. Medhi, B. Devi, M.K. Roy

Final Decision : Dismissed

Judgement

1. Heard Mr. B. Sarmah, the learned standing counsel for the N.F. Railway, the petitioner herein as well as Mr. M.K. Roy, the learned counsel

appearing for the respondents.

2) In this application under Article 227 of the Constitution of India, read with Section 115 and 151 CPC, the petitioner has challenged the order dated

28.04.2016 passed by the learned Additional District Judge (FTC) No. 3, Kamrup (M), Guwahati in M. Ex. Case No. 26/2008.

3) Before proceeding further, in view of nature of challenge made herein, this Court does not find that this application would be maintainable under

Section 115 and 151 CPC. Therefore, this Court has deemed it fit only to exercise jurisdiction under Article 227 of the Constitution of India.

4) The facts, in brief, is that by virtue of L.A. Case No. 41/1991, the land of the respondents was acquired. A notification dated 27.03.1992 to that

effect was published in the Assam Gazette and a declaration dated 30.05.1992 was also published in the Assam Gazette. The value of land was

assessed by the Collector/ Land Acquisition Officer at the rate of Rs.25,000/- per katha. Aggrieved by the valuation of the land, the respondents

herein preferred an application under Section 18 of the Land Acquisition Act and accordingly, an batch of 16 reference cases were registered, which

was numbered as Misc. (Ref.) Case No. 38/1995 to 51/1995, 66/1995 and 67/1995. These reference cases were allowed by judgment dated

30.11.2007 passed by the court of learned Additional District Judge No. 3, Kamrup, Guwahati. The learned Reference Court, in paragraph 15 of the

said judgment has referred to a covered judgment passed in connection with L.A. Case No. 41/1991 and on the basis of the said judgment, it was held

that if the award is enhanced to Rs.80,000/- per katha in the present case, the ends of justice would be met. In his connection although the Ref. case

number were not indicated in the impugned judgment, the learned counsel appearing for the respondents has produced a certified copy of judgment

and order dated 09.08.2005 passed by the said learned Court in Misc. (Ref.) Case No. 24/1996 to 34/1996, which had arisen out of the same L.A.

Case No. 41/1991, wherein the valuation of the land was enhanced from Rs.25,000/- per katha to Rs.80,000/- per katha in respect of the acquired land

as well as in respect of the severed land. In this regard, in course of trial, the learned Reference Court had framed following three issues:

(i) Whether compensation awarded by the Collector is fair, adequate and proper? If not whether the petitioners are entitled to get compensation for

their land acquired at the rate of the amount claimed or any other amount that the court may consider fair and reasonable?

(ii) Whether the petitioners are entitled to get additional compensation under Sections 23(1) and 23(2) of the LA Act, 1894 amended in 1984 together

with interest on the enhanced amount under Section 28 of the said Act?

(iii) To what other relief, these petitioners are entitled?

5) Having discussed the evidence on record, by referring to the above referred covered judgment dated 09.08.2005, the award towards the value of

the land was enhanced to Rs.80,000/- per katha. In addition, the respondents herein were held to be entitled to an additional compensation at the rate

of 30% and 12% under Sections 23(1A) and 23(2) of the Land Acquisition Act since 27.03.1992 on the enhanced compensation and they were also

held to be entitled to get interest @ 9% per annum for the first year as per Section 28 of the Act w.e.f. 27.03.1992 to 26.03.1993 and further interest

@ 15% per annum from 27.03.1993 till the final payment.

6) In the order, forming the part of the judgment, which is the bone of contention insofar as the petitioner is concerned, reads as follows:

â??ORDER

The aforesaid Misc. (Reference) cases are decreed on contest. The claimants/ petitioners are entitled to get land compensation @ Rs.80,000/- per

katha in respect of their acquired land and damage caused due to severance as indicated above with interest thereon with additional compensation as

discussed at para 16(ante).

However, the award that has already been paid by the learned Collector shall be deducted from the total compensation.

No order as to cost.â??

7) The learned standing counsel for the petitioner i.e. the N.R. Railway submits that from the language used in the said judgment passed by the

learned Reference Court, a sum of Rs.80,000/-was inclusive of the market value of the land as well as the damages caused due to severance of a part

of other land from the rest of the land. It is submitted that as the learned Reference Court did not separately assessed the market value of the land

and the damages caused due to severance, it had become difficult on the part of the petitioner to calculate the enhanced compensation at the rate of

30% and 12% under Sections 23(1A) and 23(2) of the Land Acquisition Act as well as 9% interest awarded thereon. It is submitted that the petitioner

had not challenged the judgment and award dated 30.11.2007, but as the decree was not executable, the petitioner herein had filed an application

under Order XLVII Rule 1 read with Section 151 CPC before the court of learned Additional District Judge No. 3, Guwahati in connection with M.

Ex. Case No. 26/2008 and had made a prayer for recall of the execution warrant and to dismiss the execution case. It is submitted that in the absence

of quantification of the market value of land, the award of enhanced compensation was contrary to the provisions of Section 23(1) of the Land

Acquisition Act. In this connection, it is submitted that the market value of the land alone is to be considered for determining the amount of compensation under Section 23(1) of the Land Acquisition Act, taking into consideration the first factor i.e. the market value of the land at the date of

publication of the notification under Section 4, sub-section (1). However, for determination of such value, the second to six factors as provided under

Section 23(1) of the Land Acquisition Act cannot be considered. In support of his submissions, the learned counsel for the petitioner has placed

reliance on the case of Sarup Singh and another Vs. Union of India and another, AIR 2011 SC 514 and the case of State of Punjab Vs. Amarjit Singh

and another, AIR 2011 SC 982. By referring to the same, it is submitted that in the case of Amarjit Singh (supra), the Honâ??ble Apex Court had

settled the point that additional ground under Section 23(1A) is awardable only on the market value determined under the first factor of Section 23(1)

of the Land Acquisition Act and cannot be calculated on the solatium payable under Section 23(2) of the Act. Moreover, by relying on the case of

Sarup Singh (supra), it is projected that as the judgment dated 30.11.2007 was inherently bad in law for providing additional compensation on the 3rd

factor, viz., arising out of severance of the land from his other land under acquisition, such an order was not binding and not executable and therefore,

it is submitted that the said order dated 30.11.2007 would be a nullity and the same can be challenged and interfered with at any stage, even at the

execution stage and even in a collateral proceedings.

8) It is further submitted that the judgment dated 09.08.2005, which was registered by the learned Reference Court to be the covered case is also the

subject matter of challenge in the connected CRP 202/2016. Hence, the said order cannot be said to have any binding force.

9) Per-contra, the learned counsel for the respondents has submitted that there was no infirmity in the judgment dated 30.11.2007 because the learned

Reference Court had enhanced the market value of the land from Rs.25,000/- to. Rs.80,000/- and as a result, the market value of the land covered by

the principles of severance was also quantified at the market rate of Rs.80,000/- per katha and there is no justification in the present challenge

because the enhancement of the award on the basis of market value was at the rate of Rs.80,000/- per katha which was applicable in respect of the

acquired land and also in respect of the value of market value of land in respect of which the respondents had suffered damages by reason of severance on such land from his other land, which is covered by the third factor of Section 23(1) of the Land Acquisition Act. The learned counsel for

the respondents has categorically stated that the respondents had not claiming enhanced compensation of 30% and 12% as provided under Section

23(1A) and Section 23(2) of the Land Acquisition Act on the severed land covered by 3rd factor of Section 23(1) of the Land Acquisition Act and

such amount is claimed only in respect of the land covered by the acquisition. It is further submitted that insofar as interest is concerned, Section 28

would apply on the total award. At this juncture, the learned standing counsel for the petitioner states that except for the market value in dispute, all

other components of award have been satisfied. The learned counsel for the respondents submit that if there is a mistake in the order passed by the

learned Appellate Court, it is open for this Court to cure such mistake so that the respondents, who are waiting for their compensation since the year

1991 do not get deprived of the compensation.

10) Having considered the nature of dispute which has been raised herein, the following points of determination arise for consideration by the Court in

this case:-

(i) Whether the judgment and award dated 30.11.2007 in reference contains any ambiguity as regards the quantification of compensation?

(ii) Whether the order dated 28.04.2016 impugned herein, passed by the learned Additional District Judge (FTC) No. 3, Kamrup (M), Guwahati in M.

Ex. No. 26/2008 is liable to be interfered with?

11) It is seen that by the impugned order dated 28.04.2016, the learned Executing Court had observed that the judgment dated 30.11.2007 has attained

finality and it was further held that since the market value of the land and entitlement under Section 23(1A) and 23(2) of the Land Acquisition Act

was dealt in favour of the respondents herein, there is no ambiguity over the controversy raised by the petitioner herein, which was not raised earlier.

It was further held that if the decree is interpreted in a prospective manner without heeding to its technicalities, it can easily be held that the amount of

compensation so awarded includes market value of the land for the purpose because in the judgment itself, it has been signified that the respondents

are entitled to the same under Section 23(1A) and 23(2) of the Land Acquisition Act. Therefore, by holding that there was no legal bar to pay additional compensation, the said application under Order XLVII Rule 1 read with section 151 CPC was dismissed by directing the petitioner herein to

satisfy the decree within one month.

12) Insofar as the first point of determination is concerned, having perused the judgment dated 30.11.2007, it is seen that the first part of the order is in

two parts. While it was held that the respondents herein were entitled to get land compensation @ Rs.80,000/- per katha in respect of the acquired

land. By use of the conjunctive â??andâ?? the second part in respect of damages caused due to severance. Therefore, this Court is not inclined to

accept the projection made by the learned counsel for the petitioner that the enhanced compensation of Rs.80,000/- per katha was inclusive of the

compensation payable by way of damages due to severance as defined by the third factor of Section 23(1) of the Land Acquisition Act. The

interpretation sought to be given to the said order cannot be accepted because of the fact that enhanced compensation is quantified at the rate of

Rs.80,000/- per katha. In this regard, while the land acquired by the concerned notification and declaration is quantified in terms of â??Bigha, Katha

and Lechasâ?, the land in respect of which the respondents have complained of severance, is also quantified separately in terms of â??Bigha, Katha,

Lechasâ?. The individual land measuring in respect of the 16 references cases is not referred herein as the same is not relevant. Therefore, if the

interpretation sought to be given by the learned counsel for the petitioner is accepted, it would mean and include that the land which is acquired is

inclusive of the land of which severance is complained. As both the land acquired and the land which has been severed are quantifiable and distinct,

the compensation of Rs.80,000/- per katha is required to be calculated not only in respect of the land acquired, but also in respect of the land for which

severance is complained. Hence, it is needless to say that there is no factual discrepancy in the judgment dated 30.11.2007 as the land which was

acquired in distinct and different from the land in regard of which there is complain of severance, which is covered by third factor of Section 23(1) of

the Land Acquisition Act. Hence, the enhanced compensation under Section 23(1A) and Section 23(2) of the Land Acquisition Act would only be

applicable in respect of the land acquired, inclusive of only the first factor of Section 23(1) of the Land Acquisition Act. However, such enhancement is neither possible nor payable and not even claimed in respect of the land for which severance is complained, which is covered by the third factor of

Section 23(1) of the Land Acquisition Act.

13) Accordingly, the order passed by the learned Reference Court is found to inconsonance with the case of Sarup Singh (supra) as well as Amarjit

Singh (supra). Therefore, the first point of determination is answered in the negative and against the petitioner, by holding that there was no ambiguity

in the judgment and award dated 30.11.2007.

14) Insofar as the second point of determination is concerned, it is seen that the challenge to the execution proceeding was made by invoking the

provisions of Order XLVII Rule 1 read with Section 151 CPC in connection with the M. Ex. Case No 26/2008. It appears that the no objection as to

the executability of the decree was taken in terms of the provisions of Section 47 CPC. In the opinion of this Court, the provisions of Order XLVII

Rule 1 CPC cannot be invoked at the execution stage and before the learned Executing Court for the purpose of recalling the execution warrant. In

the opinion of this Court, the provisions of Order XLVII Rule 1 CPC can be invoked only in cases were appeal is allowable but no appeal has been

preferred. The order of issuance of warrant in an execution proceeding is not an appealable order within the meaning of Order XLVII Rule 1 CPC. It

is seen that in the present application, the judgment dated 30.11.2007 is not under challenge herein. The said judgment dated 30.11.2007 was also not a

subject matter of challenge in the application under Order XLVII Rule 1 read with Section 151 CPC, filed before the learned Executing Court.

Therefore, the question arise what whether issue raised herein by the petitioner would amount to a challenge of the said order in a collateral

proceeding. In this connection, it would be relevant to quote paragraph 19 of the case of Sarup Singh (supra), cited by the learned counsel for the

petitioner:

â??19. But, if a decree is found to be nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or

even in a collateral proceeding. This is in view of the fact that if a particular court lacks inherent jurisdiction in passing a decree or making an order, a

decree or order passed by such court would be without jurisdiction and the same is non-est and void ab initio.â??

15) With reference to above, it is seen that there is no prayer in the present application to declare the decree passed consequent to judgment dated

30.11.2007 to be a nullity and therefore, there being no challenge in the present application or in the application under Order XLVII Rule 1 CPC

before the learned Executing Court, this Court is unable to accept that the said order can be challenged in the manner as projected by the petitioner in

this present case. Having not raised the issue of nullity of the decree in any proceeding, in the opinion of this Court, assuming that the application under

Order XLVII Rule 1 CPC was a collateral proceeding, in the absence of challenge, the superintending jurisdiction of this Court under Article 227 of

the Constitution of India cannot be invoked by this Court to substitute its opinion against the judgment dated 30.11.2007 on an assumption that the

challenge to the said order is made in a collateral proceeding. Therefore, in the absence of any challenge, this Court finds that the ratio laid down in

the case of Sarup Singh (supra) is not applicable in the present facts and circumstances. Accordingly, the second point of determination is answered in

the negative and against the petitioner by holding that the impugned order dated 28.04.2016 passed by the learned Additional District Judge (FTC) No.

3, Kamrup (M), Guwahati in M. Ex. Case No. 26/2008 is not liable to be interfered with as the petition for review itself was not maintainable.

16) Hence, the present revision fails and the same is dismissed.

17) The parties are left to bear their own cost.