
(2012) 05 CHH CK 0003
In the Chhattisgarh High Court
Case No : First Appeal (M) No. 16 of 2012

Pannalal Mourya

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 12, 18, 18(1), 18(2), 18(3)

Citation : (2012) 4 MPHT 92

Hon'ble Judges : Nawal Kishore Agarwal, J; I.M. Quddusi, J

Bench : Full Bench

Advocate : Hari Shanker Patel, for the Appellant; Vinay Harit, Dy. Advocate General for the State, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This appeal has been filed against the impugned order/award dated 15-1-2010 passed by Additional Judge, Sakti in Misc. Civil Case No. 57/2008, whereby the Trial Court has dismissed the reference application. Brief facts of the case are that the appellant's land bearing khasra No. 723/1, area 0.08 acre is situated near highway road and the said land has been submerged in Bilaspur-Ratgarh National Highway No. 200, in the year 1964-65. After submerging the land, the respondent-authorities had not started proceedings for land acquisition. After several requests of the appellant the Land Acquisition Officer, Sakti had started proceedings in the year 2006. The Land Acquisition Officer proceeded u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") as per notification issued on 8-6-2007. The grievance of the appellant is that during the course of hearing, proper opportunity was not given to the appellant and after completion of the proceedings, the award was passed on 1-10-2007. In the said award, the Land Acquisition Officer had not properly assessed the land in question of market value, interest solatium, as per Sections 23, 23(1-A), 23(2), 28, 31 and 34 of the Act.

2. On perusal of the report of Land Acquisition Officer, we have found that application for reference was moved before him on 5-1-2008 against the award dated 1-10-2007 but the same was rejected vide order dated 25-4-2008. Thereafter, the appellant filed an application directly to the Additional District Judge, Sakti mentioning the Section 18(3)(b) of the Act with a prayer for direction to the Land Acquisition Officer in respect of the land acquired and after providing opportunity of hearing to assess the value of the land.

3. Additional District Judge, Sakti registered the application as MJC No. 57/2008 u/s 18(3) of Act on 5-9-2008 but decided the same u/s 18(2) of the Land Acquisition Act after framing issues and recording evidence of the applicant, as no reply was given to the application by the respondents. The application was rejected on the ground that the appellant has failed to prove his case and the Land Acquisition Officer has assessed the value of land correctly. Hence this appeal.

4. The first question, which came before us for consideration is that as to how a reference u/s 18 has been entertained directly by the Additional District Judge. For that purpose, it is necessary to peruse the provisions of Section 18(1) and (2) of the Land Acquisition Act; which are reproduced as under:-

18. Reference to Court.-- (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 the determination of the Court, whether his objection be to the measurement of the land, the amount of 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 shall first expire.

5. The State of Madhya Pradesh vide C.P. and Berar Act 7 of 1949, which came into force with effect from 25-3-1949 has inserted the following after subsection (2):-

Sub-section (3) of the Act: Any order made by the Collector on any 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.

6. Therefore, against the rejection order of the application filed before the Land Acquisition Officer for reference u/s 18 of the Act, the remedy available to the appellant was to file a revision u/s 115 of the CPC before this Court but instead of that he had wrongly filed an application before the Additional District Judge and learned Additional District Judge has wrongly entertained the application, framed the issues and decided the application on merit, as if, it was a reference u/s 18(2) of the Act. Thus, we are of the opinion that the impugned order passed by the Additional District Judge on the reference filed by the appellant is per se illegal, which was not maintainable at all.

7. Hon"ble Supreme Court in case of Mirza Majid Hussain Vs. State of M.P. and another, , has held that: "Thus, it could be seen that against the order of rejection of reference by the Collector on 2-5-1975 only jurisdiction that could be exercised as per the amendment is by the High Court u/s 115, CPC Thereby, the exercise of the power by District Judge in this behalf is clearly without authority of law or jurisdiction. The order of the District Judge, therefore, is nullity".

8. In view of above, the first appeal is allowed with cost and the impugned order is set aside. It is held that the application before the Additional District Judge was not maintainable at all as the same was not the remedy available to the appellant under the law. However, it will be open for the appellant to take recourse to the law available to him.

Certified copy, as per rules.