

(1974) 07 CAL CK 0029
In the Calcutta High Court
Case No : Civil Rule No. 4008 of 1973

Pran Ballav Saha

APPELLANT

Vs

Sm. Maleka Bibi and Others

RESPONDENT

Date of Decision : 30-07-1974

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1975 Cal 315

Hon'ble Judges : Parimal Kumar Chanda, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Bhabani Prasun Chatterjee and Moni Mohan Mukherjee, for the Appellant;

Judgement

A.K. Sinha, J.—This is an application u/s 115 of the CPC preferred by one of the claimant petitioners in an apportionment case started before the Calcutta Improvement Tribunal a connection with acquisition of certain plots and the consequential award made thereon by the Collector.

2. What happened was that the opposite parties made an application for reference after the award was made u/s 18 of the Land Acquisition Act (Act I of 1894) for apportionment of the award made in favour of the present petitioner although no award was made in their favour. Their claim was that they are entitled to 39/64th share in the acquired plots and at least a sum of Rs. 15,000/- out of the total compensation should have been awarded by the Collector in their favour. This application, it appears, u/s 18, was followed by another application by the same petitioners-claimants for withdrawal of the application for reference. What the Collector did was that he transmitted both the applications u/s 18 as also application for withdrawal of that petition for reference on question of apportionment to the Tribunal and after deducting a sum of Rs. 15,000/- out of the total compensation money remitted that amount also to the Tribunal.

3. In the proceedings so started before the Tribunal in the written statement the claimant opposite parties took the plea that they are the joint owners having

certain share in the disputed property and in substance they denied the right, title and interest of the present petitioner to get the entire amount of compensation and that in any case they were entitled to 39/64th share of the compensation money awarded by the Collector.

4. A written statement was equally filed by the present petitioner denying the right, title and interest of the opposite parties in the property acquired or in the compensation money. His further case was that in view of the fact that referring claimant withdrew the petition of reference the Tribunal had no jurisdiction to try the apportionment case. He denied the share of the claimant-opposite parties and asserted that he was entitled to get the entire compensation money awarded by the Collector.

5. The learned Tribunal took the view that since the genuineness of the application for withdrawal of the petition of reference was seriously contested by the claimant opposite parties the Tribunal had no jurisdiction to decide that question in an apportionment proceeding and therefore the parties were referred to Civil Court for adjudication of that question as to whether there was a valid application for withdrawal and the effect thereof upon the petition of reference. The Tribunal also directed that a sum of Rs. 15,000/- would remain in deposit with the Tribunal and the payment thereof will abide by the result of the Civil Court's decision. That is how, in short, the petitioner felt aggrieved and obtained the present Rule.

6. The short point involved in this Rule is whether there was a proper application for withdrawal and if so, the question whether there was any petition of reference at all or not ought to have been decided by the Tribunal, for, if there is no proper application for reference the Tribunal could not have any seisin of the matter and proceed to determine the question of apportionment on merits. It seems to us that the question whether there was any proper application for reference before the Tribunal or not was merely incidental to the main question whether any relief ought to have been granted to the claimants on determination of the question of apportionment. In such an apportionment proceeding it is not really a question of merely apportionment of the money awarded by the Collector as between the rival claimants but a question involving the rights and interests of the parties to claim such amount. In other words, upon an application for reference u/s 18 of the Land Acquisition Act on question as to apportionment of the compensation money the Court must proceed to adjudicate the right, title and interest of the parties and then determine as to what amount, if there be any, will be available to the parties claiming such amount on apportionment. It is, therefore, clear that in order to adjudicate that question of title the Court will have also to look into the other question as to whether it has jurisdiction to decide that question at all. It is well-established that on question of absence of jurisdiction the Court in which the suit or proceeding is pending will be competent to examine that question and decide at the first instance whether the court has jurisdiction to adjudicate the issues involved in the suit or to entertain

the suit or proceeding at all. For determination of that preliminary point on question of jurisdiction the Court cannot refer the matter to any other Civil Court or Tribunal for adjudication. The principle will equally apply to the Tribunal concerned which under the law is authorised to adjudicate on the question of valuation and apportionment under the Calcutta Improvement Act as if it is a Court or at any rate it has the trappings of a Court. For it is further provided that appeal against such decision will lie to this Court.

7. Mr. Chatterjee, learned Advocate for the petitioner, has relied on a decision of the Supreme Court, we think, rightly, reported in *Sunder Lal Vs. Paramsukhdas*, and drawn our attention to the observation amongst other things of the Supreme Court that

"the scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the person who are entitled to receive compensation, and there is nothing in Section 30 which excludes a reference to the Court of a dispute raised by a person on whom the title of the owner of land has, since the award, devolved." From the above observations it seems clear that all questions ancillary or incidental to the principal dispute should be decided by the Court to which the power of determining the question of apportionment is entrusted. This power, in our opinion, will include the power to determine the question whether there was a proper petition of reference u/s 18 of the Land Acquisition Act. To decide that question the Tribunal would be alone competent to determine whether the application of withdrawal made by the claimant-opposite parties was bona fide or genuine application. This, in our opinion, cannot be delegated or referred to Civil Court for adjudication. This is a clear case where, in our opinion, the Tribunal has failed to exercise jurisdiction vested in it by law by referring the matter for determination by a Civil Court. It is clear, therefore, that the impugned order passed by the Tribunal suffers from serious infirmities and cannot be sustained as valid.

8. Accordingly, the Rule is made absolute. We set aside the order complained at and remit the case back to the Tribunal for deciding firstly, the preliminary point, as indicated above, and then if necessary, to determine the question of apportionment on merits in accordance with law and in the light of the observations made above. As this Rule is not opposed we do not make any order as to costs.

Let the records be sent down to the Tribunal below as quickly as possible.

Chanda, J.

9. I agree.