

(2005) 07 BOM CK 0111

In the Bombay High Court

Case No : Writ Petition No. 3074 of 2005

Punja Polade deceased through LRs. Pandharinath Polade

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 2, 2(2), 2(9)
Land Acquisition Act, 1894 — Section 11, 18, 20, 21, 23

Citation : (2006) 2 BomCR 283 : (2005) 4 MhLj 621

Hon'ble Judges : S.P. Kukday, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : K.S. Bhore, for the Appellant; U.K. Patil, Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order rejecting his application u/s 28-A of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act" and the same was disposed of by the award dated 5-7-2003.

3. Few facts relevant for the decision are that the property which originally belonged to the petitioner's father came to be acquired in the year 1980 and the award in that regard came to be passed on 16-3-1981. Being dissatisfied with the compensation awarded, the father of the petitioner filed an application for reference u/s 18 of the said Act. However, the proceedings in the said reference were not diligently conducted on behalf of the father of the petitioner and the said reference came to be rejected under the order dated 1-4-1987. The father of the petitioner had expired on 28-2-1987. Subsequently the petitioner filed an application u/s 28-A of the said Act on 2-9-2003. This application u/s 28-A came to be dismissed by the impugned order dated 31-3-2005. Hence the petition.

4. Placing reliance in the decisions of the Apex Court in the matters of Union of India and Anr. v. Hansoli Devi and Ors., reported in AIR 2002 SCW 3755 and Khazan Singh (dead) LRs. v. Union of India, reported in AIR 2002 SCW 356, the learned Advocate for the petitioner submitted that the order dated 1-4-1987 rejecting the reference filed by the father of the petitioner was merely on the ground of non-prosecution of the proceedings and there was no determination of the claim for enhancement of the compensation as was required under the provisions of law comprised under the said Act and the law laid down in that regard by the Apex Court. Once the proceedings were disposed of merely on the ground of non-prosecution by the authority, there is no bar for filing the application u/s 28-A and in that regard also the law has been made very clear by the decision of the Apex Court in Hansoli Devi's case (supra). The learned A.G.P., on the other hand, referring to the order dated 1-4-1987 submitted that the reference was not rejected merely on the ground of non-prosecution as such but on account of failure on the part of the father of the petitioner to lead necessary evidence in support of his claim for enhancement of compensation and, therefore, it amounts to an award and hence disentitles the petitioner to prefer an application u/s 28-A of the said Act and therefore no fault can be found with the impugned order.

5. The fact that the father of the petitioner filed an application for reference u/s 18 of the said Act is not in dispute. It is also a matter of record that such a reference was rejected by the order dated 1-4-1987. The first point, therefore, which arises for consideration is whether the order dated 1-4-1987 can be said to be an award in the reference proceedings within the meaning of the said expression under the provisions of the said Act.

6. The Section 18 of the said Act entitles the interested person to file an application for reference for enhancement of compensation and once such an application is filed within the period of limitation prescribed under the said provisions of law, the Reference Court has to deal with the said application in terms of the provisions comprised u/s 20 onwards of the said Act. The Section 20 clearly provides that the Court upon receipt of such application shall cause the notice to be issued specifying the day on which the Court will proceed to determine the objection raised by the interested person to the compensation awarded by the Land Acquisition Officer in the award passed u/s 11 of the said Act. The Section 21 provides that the scope of the inquiry in such proceedings shall be restricted to the consideration of the interest of such person affected by objection. The Sections 23 and 24 prescribes the matters to be considered in determining the compensation and the matters to be neglected in determining the compensation. The Section 25 provides that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector u/s 11 of the said Act. The Section 26 then provides that every award under the said Act in the reference proceedings shall be in writing, signed by the Judge and shall specify the amount awarded under the first clause of Sub-section (1) of Section 23, and also the amount, if any, awarded under each of the other

clauses of the same sub-section, together with the grounds for awarding such amount. The Sub-section (2) of Section 26 provides that 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. In terms of the Section 2(2) of the Code of Civil Procedure, hereinafter referred to as "the C.P.C.", the term "decree" means the formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It also clarifies that an order of rejection of a plaint and the determination of any question within Section 144 would also be a decision within the meaning of the said expression under the said provision of law, but it does not include any adjudication from which an appeal lies as an appeal from an order, or any order of dismissal for default. (emphasis supplied). The Sub-section (9) of Section 2 defines the term "judgment" to mean the statement given by the Judge on the grounds of a decree or order.

8. Plain reading of the provisions of law comprised in the said Act read with the provisions of Section 2 of the CPC would reveal that an award in reference proceedings is necessarily a judgment by the Court and therefore has to disclose a decision on the controversy sought to be raised before the Court. The decision implies application of mind to the issues relating to dispute under adjudication and the finding by the Court on such issues in relation to such dispute. It is not a mere order dismissing or concluding the proceedings on account of failure on the part of the party to prosecute the proceedings that will constitute a decree u/s 2(2) of the CPC or a judgment u/s 2(9) of the Civil Procedure Code. It essentially requires to be a reasoned order in relation to the subject-matter of the dispute. That is also clear from the expression used in Section 20 of the said Act which clearly enjoins the Court to determine "objections" relating to the compensation awarded to the interested party and who is dissatisfied in respect thereof. The Apex Court in *Khazan Singh's* case (supra) while dealing with the issue as to whether reference made by the Collector u/s 18 of the said Act can be dismissed for default or not, observed that:

"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."

It further ruled that:

"the Civil Court has to pass an award in answer to the reference made by the Collector u/s 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 concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."

9. The said ruling read with the statutory provisions referred to above clearly disclose that the Reference Court for decisive conclusion of the reference proceedings u/s 18 of the said Act has to deal with the objections sought to be raised and it cannot dispose of the proceedings merely on the ground of non-prosecution or default on the part of the applicant. Even in case of failure on the part of the interested party to assist the Court in deciding the objections raised by him, the Court will have to decide the matter on the basis of whatever materials available before it. Whether the objections raised by the interested party are sustainable, and if so, to what extent, and if not, the reasons for the same, but no reference can be decisively concluded merely by an observation that the award passed by the Collector is justified on account of the default on the part of the interested party to appear before the Court and to justify the objections sought to be raised. In the absence of such an order, it would not amount to an award within the meaning of Section 26 of the said Act. Being so, any order which dismisses the proceedings for reference merely on account of default or non-prosecution will not be an award u/s 26 of the said Act and, therefore, it would not amount to determination of the objections of the interested party which could debar such party from preferring an application u/s 28-A of the said Act.

10. It is also pertinent to take note of the decision of the Apex Court in Hansoli Devi's case wherein it was clearly held that:

"the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector u/s 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an application for reference u/s 18 and that reference is entertained and answered. In other words, it may not be permissible for a land-owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount."

The Apex Court has also further held that:

"The expression "did not make an application", as observed by this Court would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application u/s 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application u/s 28-A cannot be denied."

Evidently, the law on the point is that every interested person, other than those who have filed application for reference u/s 18 of the said Act and having been entertained and determined by the Reference Court in accordance with the provisions of law by passing an award u/s 26 of the said Act, would be entitled to file an application u/s 28-A in cases where occasion to file such application arises

on account of enhancement being granted in some other reference in relation to the property covered by the same Notification under which the interested person's property was also acquired.

11. Reverting to the facts of the case, it is not in dispute that the order dated 1-4-1987 was passed without adjudicating the objections which were raised by the father of the petitioner in his application u/s 18 of the said Act. The order was passed merely rejecting the reference on the ground that the father of the petitioner had failed to lead evidence in support of his objections. It is curious to note that while rejecting the reference, the Reference Court had observed that there was no reason to interfere with the award and the award of the S.L.A.O. was confirmed. It appears that the Reference Court considered itself as if sitting in appeal over the award passed by the S.L.A.O. The reference proceedings are original proceedings and are not appellate proceedings. The award passed by the S.L.A.O. is not an order or a judgment but it is an offer made to the interested party in relation to the compensation for acquisition of his property. Being so, there can be no occasion for the Reference Court either to confirm or to interfere with the award passed by the S.L.A.O. The Reference Court has to determine the objections bearing in mind the provisions of law comprised under Sections 23 and 24 of the said Act and the Reference Court cannot assume the role of the Appellate Court in such cases. As the rejection of the application u/s 28-A was solely on the ground stated above, the same being not sustainable, the order rejecting the application u/s 28-A is liable to be set aside, which we do hereby order.

12. For the reasons stated above, therefore, the petition succeeds. The impugned order is hereby quashed and set aside and the respondents are directed to refer the application filed by the petitioner u/s 28-A in accordance with the provisions of law and bearing in mind the observations hereinabove. The Rule is made absolute accordingly with no order as to costs.