
(2018) 07 JH CK 0136
In the Jharkhand High Court
Case No : Writ Petition Civil No. 2245 of 2010

Purni Devi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 26, 30, 53, 54, 56
Code of Civil Procedure, 1908 — Section 2(2)

Citation : (2018) 07 JH CK 0136

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : V. Shivrath, A. N. Gupta, Shadab bin haque

Final Decision : Dismissed

Judgement

1. The petitioners are aggrieved of judgement dated 15.10.2009 passed in L.R. Case No. 22 of 2008. By this order their application under Section 30

of the Land Acquisition Act, 1894 has been held not maintainable.Â Â

2. By an order dated 25.11.2010 a direction was issued by this Court not to disburse the compensation amount to any of the parties.Â Â

3. Order dated 15.09.2011 by which this writ petition was admitted for hearing records preliminary objection raised by the respondent-State on maintainability of the writ petition.Â

4. Plea urged by the petitioners is that once it has been declared that the reference case is not maintainable, judgement dated 15.10.2009 passed in

L.R. Case No. 22 of 2008 would not fall under Section 26 of the Land Acquisition Act, 1894 and, thus, it is not an award against which an appeal shall

lie under Section 54 and since right of the parties has not been finally adjudicated it is not a decree as defined under Section 2(2) of the Code of Civil

Procedure and while so, an appeal under Section 54 of the Land Acquisition Act, 1894 would not lie.

5. Before entering into the legal issues raised by the petitioners it would be appropriate to record few facts. Subject matter of L.A. Case No. 5 of 86-

87 was a piece of land admeasuring about 1.95 acres comprised under Plot No. 1221 within Khata No. 33 in village- Bongasori

which was purchased by Mostt. Fulkuwari through two registered sale-deeds executed by Sheikh Amin Mian and Bibi Mazidan Nisha. The

aforesaid land was acquired by the State of Bihar for construction of Bhairwa Dam. An award was prepared in the name of the land owner-Mostt.

Fulkuwari and compensation was paid to her in the year 1990. On receiving objection under Section 18 of Land Acquisition Act, 1894, a reference

for enhancement of compensation was made vide Reference Case No. 434 of 1990. This reference case was finally disposed of on 17.05.1991 in

terms of compromise between the parties. Order passed in the reference case, however, was challenged before the High Court by the State on the

ground of fraud and the matter was remanded back with a direction to cause an enquiry. Consequently, a miscellaneous case was registered vide

Misc. Case No. 201 of 2002 in L.R. Case No. 434 of 1990. Mostt. Fulkuwari died on 08.10.2000 and in her place respondents herein were substituted

in Misc. Case No. 201 of 2002. In the miscellaneous case the petitioners claiming themselves son and grand-sons of the awardee Mostt. Fulkuwari

have filed application for their substitution on 07.12.2006.

6. Before that, few persons namely, Bhola Mahto, Jagdish Mahto, Arjun Mahto and Gopal Mahto, who are respondents herein, had filed a substitution

petition in the reference case on which an order was passed on 20.08.2003 by the court treating them legal heirs and successors of Mostt. Fulkuwari

and finally on enhanced amounts an award was prepared in their name. The aforesaid persons have in fact received the enhanced amounts also.

When no decision was taken on the application for substitution dated 07.12.2006 filed by the petitioners in Misc. Case No. 201 of 2002 instituted in

L.R. Case No. 434 of 1990, they have filed an objection on 20.04.2007 to the award prepared in L.A. Case No. 5 of 86-87. The petitioners have

pleaded that their objection dated 20.04.2007 has been filed under Section 30 of the Land Acquisition Act, 1894. This application has been

registered as L.R. Case No. 22 of 2008.Â Â

7. During hearing of this reference case the petitioners led oral as well as documentary evidence; they have examined four witnesses in support of

their claim that they are the real legal heirs and successors ofÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Mostt. Fulkuwari and the persons who have

been arrayed as opposite-parties namely, Bhola Mahto, Jagdish Mahto, Arjun Mahto and Gopal Mahto have fraudulently got themselves substituted as

legal heirs of Mostt. Fulkuwari Devi. The trial court on the basis of the evidence brought on record has held that as long as substitution of the

aforesaid persons as legal heirs and successors of Mostt. Fulkuwari stands on the record, claim of the petitioners cannot be granted and in fact this

issue, whether the petitioners are the real legal heirs and successors of Mostt. Fulkuwari or not can be decided only by a competent court of civil

jurisdiction, and not by the reference court.Â Â Â

8. Section 54 of the Land Acquisition Act 1894 reads as under :

â??54. Appeals in proceedings before Court.- Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from

original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings

under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such

appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908,

and in order XLIV thereof.â??

9. Section 2(2) CPC defines decree to mean formal expression of an adjudication by which rights of the parties is conclusively determined with regard

to or any of the matters in controversy in the suit.Â Section 53 of the Land Acquisition Act provides that the provisions of the Code of Civil

Procedure shall apply to all proceedings before the Court under the Act, provided such provision in the Code of Civil Procedure is not inconsistent with

anything contained in the Land Acquisition Act.Â Â

10. The expression â??subject to the provisions of the Code of Civil Procedure 1908, applicable to appeals from original decreesâ? restricts scope of

Section 54.Â Effect of the expression â??subject toâ? in Section 54 is that, it is not every order passed in a proceeding under the Land Acquisition

Act against which an appeal under Section 54 shall lie to the High Court. An appeal shall lie to the High Court from any award, or from any part of

the award, of the Court, or against an order passed in a proceeding under the Act if it is a decree as defined under Section 2(2) of the Code of Civil

Procedure. Ordinarily the expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions subject to

which it is made (refer "Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O and Others" reported in AIR 2007

SC 1984).

11. The non obstante phrase in Section 54 gives primary and overriding effect to the provision for appeal under Section 54, but this is subject to the

provision under the Code of Civil Procedure relating to appeal from original decrees. True construction of Section 54 appears to be that against an

order passed in any proceeding under the Land Acquisition Act an appeal shall lie in the High Court if such order falls under the definition

of "decree" under Section 2(2) CPC. The Legislative intent under Section 54 of the Land Acquisition Act appears to be to confer

status of a "decree" on an award prepared under the Land Acquisition Act, but it is not only an award or part of the award, of the Court, which

can be the subject-matter of challenge under Section 54 rather any other order passed in any proceeding under the Act if falls under the definition of

decree under Section 2(2) CPC can also be challenged under Section 54.

12. In the present case the learned sub-Judge has held that the objection filed by the petitioners on 20.04.2007, purportedly under Section 30 of the

Land Acquisition Act, is not maintainable. This order is primarily founded on the order of substitution dated 20.08.2003 by which Bhola Mahto,

Jagdish Mahto, Arjun Mahto and Gopal Mahto have been substituted in place of the awardee. Mostt. Fulkuwari and award has been prepared in

their favour. In view of the order of substitution dated 20.08.2003 it has been held that the petitioners are not entitled for any relief. Thus,

dismissal of the application under Section 30 by the impugned order dated 15.10.2009 would amount to rejection of their claim. By this judgement

the proceeding in L.R. Case No. 22 of 2008 has been finally terminated. It is a decree "as defined under Section 2(2) CPC" and, therefore, an

appeal shall lie under Section 54 of the Land Acquisition Act against this

Judgement.Â May be the impugned judgement passed in L.R. Case No.Â

22Â ofÂ 2008Â isÂ Â erroneous â?" oneÂ Â ofÂ Â theÂ Â reasonsÂ Â according to the learned Senior counsel for the petitioners mayÂ

beÂ thatÂ plea set-up by the petitioners was not adjudicated on the basis of theÂ evidenceÂ ledÂ beforeÂ theÂ referenceÂ court â?" butÂ

thenÂ an erroneous judgement also is a decree. When it is found that there is a decision rendered by the court merely because the trial Judge has

written that the reference is not maintainable, judgement dated 15.10.2009 passed in L.R. Case No. 22 of 2008 cannot be said to be not an order

appealable under Section 54 of the Land Acquisition Act, 1894.Â Â Â Â Â Â Â

13. In view of the aforesaid facts and for the reasons indicated hereinabove the writ petition challenging impugned order dated 15.10.2009 passed in

L.R. Case No. 22 of 2008 is held not maintainable and accordingly, it is dismissed.Â