
(2016) 07 GAU CK 0071
In the Gauhati High Court
Case No : CRP No. 7 of 2016

R.K. Bawnga

APPELLANT

Vs

District Collector, Kolasib District

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2017) 1 GauLR 673 : (2016) 5 GauLT 44

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. K. Lalchhanliana and Mr. Vanlalfela, Advocates, for the Petitioner;
Mr. Ali Hussain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Michael Zothankhuma, J. - Heard Mr. Lalchhanliana Khiangte, counsel for the petitioner who submits that the petitioner's land was acquired for construction of a Railway Line vide Draft Award No. 1/2012 (Part B-Kawnpui), which was issued on 4.9.2012 by the District Collector, Kolasib. The petitioner was given compensation for the value of the loss of crops on the land, but was not given any compensation for loss of the land. The petitioner was also not given solatium and interest as per Section 23 of the L.A Act, 1894.

2. The petitioner thereafter submitted a reference petition under Section 18 of the L.A Act dated "Nil". The reference petition was sent by the District Collector, Kolasib to the Civil Court for adjudication where it was registered as L.A Case No. 30/2013.

3. L.A Case No. 30/2013 was disposed of by the Addl. District Judge-II, Aizawl vide Judgment and award dated 5.12.2013 wherein the petitioner was awarded solatium and interest as per Section 23 of the L.A. Act, 1894 against the compensation amount awarded for the value of the crops. The petitioner was also awarded interest @ 6% p.a. in case of failure to deposit the awarded

amount within 90 days from the date of the Judgment and Award.

4. The petitioner being aggrieved by the Reference Court not having considered the grievance of the petitioner with regard to payment of the land value in L.A Case No. 30/2013, the petitioner then filed a review petition against the Judgment and Award dated 5.12.2013 passed in L.A Case No. 30/2013 vide Review Petition No. 25/2014, praying for payment of land value along with the solatium and interest. The Review Court dismissed the review petition vide order dated 6.5.2016 holding that the petitioner did not pray for assessment of the market value of his land in his reference petition. The petitioner being aggrieved by the Judgment and Award dated 5.12.2013 passed in L.A Case No. 30/2013 and the Order dated 6.5.2016 passed in Review Petition No.25/2014 has challenged both the above two Judgment and Order by way of this Civil Revision Petition under Section 115 CPC.

5. The petitioners' counsel submits that the petitioner is the owner of the land covered by Periodic Patta and as such the land of the petitioner has to be assessed for payment of land value. The petitioners' counsel also submits that the petitioner having made a categorical prayer to make a fresh measurement of his land and to assesses fresh compensation as per Land Acquisition Act, 1894, the Court below erred in coming to a finding that the petitioner had not made any prayer for assessment of market value of his land in his reference petition. The petitioner's counsel submits that the District Collector, Kolasib not having determined the market value of his land which has been acquired, the District Collector, Kolasib is bound to determine the market value of his land by making a proper assessment. The petitioners' counsel thus prays that the Judgment and Award dated 5.12.13 passed in L.A Case No. 30/2013 and Order dated 6.5.2013 passed in Review Case No. 25/2014 should be set aside and quashed.

6. Mr. Ali Hussain, counsel for the North East Frontier Railway, respondent No. 3 submits that a perusal of the Draft Award No. 1/2012 shows that the petitioners' land is covered by VC Pass No. 612/1978. However, in para-2 of the present revision petition, the petitioner has stated that the petitioners' land is covered by a Periodic Patta. The counsel for the respondent No.3 also submits that the petitioners' reference petition nowhere states that the petitioner is the owner of the land covered by a Periodic Patta. He thus submits that there is no question of the Reference Court going into the question of the petitioner having a Periodic Patta inasmuch as the same was not the case of the petitioner even in his reference petition. He thus submits that there is no question of payment of compensation for land allotted for a garden by a Village Council as per the land laws of the State of Mizoram.

7. Mr. Ali Hussain, counsel for the respondent No. 3 also submits that the petitioner having taken compensation on the basis of land covered by the VC Pass No. 612/1978, the petitioner cannot now claim that he has to be paid compensation on the basis of his land being covered by Periodic Patta, which is not a part of the revision petition or a part of the records of the Lower Courts in

L.A Case No. 30/2013.

8. I have heard the learned counsel for the parties.

9. In respect of the petitioner's submissions that he is the owner of land covered by a Periodic Patta, I find that no documents have been furnished by the petitioner to support his stand that his land is covered by a Periodic Patta. In fact, Draft Award No. 1/2012 shows that the petitioner's land is covered by VC Pass No. 612/1973 and not by any Periodic Patta. The reference petition submitted by the petitioner to the District Collector, Kolasib also nowhere states that the land which was a part of Draft Award No. 1/2012 was in fact land covered by a Periodic Patta. The petitioner having taken compensation on the basis of loss of crops grown on the land covered by VC Pass No. 612/1973 and to which no objection has been-made by the petitioner even in his reference petition, the petitioner cannot be now allowed to make a claim that his land was/is covered by a Periodic Patta. The petitioner cannot be allowed to change his stand at this late stage.

10. The question in this case is whether the Civil Revision Petition is maintainable. Under Order 47, Rule 7 CPC, an Order rejecting a review is not an appealable order. Under Section 115(2) CPC, the High Court cannot vary or reverse any decree or order against which an appeal lies either to the High Court or any other Court sub-ordinate thereto.

11. Order 47, Rule 7 CPC having clearly provided that an order of the Court rejecting the review petition being not appeal-able, the question is whether the order rejecting the review petition can be challenged by way of this revision petition. In view of Section 115 (2) CPC, the Judgment and Award dated 5.12.2013 passed in LA Case No. 30/2013 being an appealable order, the order rejecting the review petition cannot be challenged by way of revision. In respect of the challenge made to the Judgment and Award dated 5.12.2013 passed in LA Case No. 30/2013 by way of this Civil Revision Petition, this Court finds that the present revision petition is not maintainable in view of there being an alternative remedy under the CPC, Section 17 of the Mizoram Civil Courts Act, 2005 and the bar made by Section 115(2) of CPC.

12. In view of the reasons stated above the present revision petition not being maintainable, the same is dismissed. No cost.