

(2016) 02 OHC CK 0058
In the Orissa High Court
Case No : F.A.O. No. 629 of 2011

Samir Nayak and Others

APPELLANT

Vs

The Special Land Acquisition Officer, M.I.P. and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Section 9
Land Acquisition Act, 1894 — Section 11, Section 12, Section 18, Section 18(1),
Section 18(2), Section 30, Section 31, Section 4(1)

Citation : (2016) 02 OHC CK 0058

Hon'ble Judges : Krushna Ram Mohapatra, J.

Bench : Single Bench

Advocate : Bhaktahari Mohanty, Sr. Advocate, D.P. Mohanty, R.K. Nayak, B. Das, T.K. Mohanty, P.K. Swain and M. Pal, for the Appellant; S.C. Satapathy, B. Swain, P.K. Mishra, Pranat Ku. Mishra, S.K. Nayak and K.B. Kar, for the Respondent

Final Decision : Disposed off

Judgement

Krushna Ram Mohapatra, J.—1. Order dated 15.12.2011 passed by the learned Civil Judge (Senior Division), Jagatsinghpur in I.A. No. 80 of 2011 arising out of C.S. No. 96 of 2011 rejecting an application under Order 39 Rules 1 and 2, CPC filed by the plaintiffs is under challenge.

2. The suit has been filed for partition claiming 1/3rd share in the compensation awarded for acquisition of land pertaining to Khata Nos. 10, 11 and 12 of village Bijaychandrapur in the district of Jagatsinghpur. The plaintiffs claimed that the suit land was jointly recorded in the name of several co-villagers who were recorded as owners in respect of the suit land in the ROR published in the year 1930. Subsequently, there was amicable partition between the co-villagers and the respective owners are possessing their shares accordingly as per the allotment made in the said amicable partition. One Apariti Dhaudia Singh of Madhusudanpur, Bhajani Nayak and Bhaskar Nayak of Raghunathpur represented one branch of recorded joint tenants. Accordingly, they were in joint possession

of the properties described in the schedule-"A" of the plaint. Thus, Apari Dhaudia singh, Bhajani Nayak and Bhaskar Nayak had 1/3rd share each, who are dead since long. Accordingly, their interest devolved upon their respective legal heirs. Plaintiffs are the successors in interest of the branch of Bhaskar Nayak. Thus, they are entitled to 1/3rd share in the suit property, i.e., the compensation amount awarded for acquisition of schedule-"A" land. It is further contended that in the land acquisition proceeding, the compensation has been awarded in favour of the purchasers of the suit properties, namely, defendants 19 to 32. The plaintiffs were never given any notice in the land acquisition proceeding. After coming to know about the award of compensation for acquisition of land they filed a petition under Section 30 of the Land Acquisition Act, 1894 to refer the matter to the Court for apportionment of the compensation. The said application under Section 30 was kept pending by the defendant-Special Land Acquisition Officer (MIP), Jagatsinghpur. Thus, the plaintiffs filed Writ Petition bearing W.P. (C) No. 19087 of 2010 before this Court assailing the inaction of the Land Acquisition Officer. In the said Writ Petition, some of the purchasers were impleaded as opposite parties 2 and 3. They contended that plaintiffs have no interest as they sold the suit property in their favour for which the compensation has been awarded. This Court considering the rival contentions of the parties, vide order dated 07.07.2011, held that the matter involves disputed questions of fact with regard to ownership of the property as the opposite party Nos. 2 and 3 otherwise claimed title by virtue of registered sale deed dated 29.01.1970. Accordingly, the Writ Petition was dismissed granting liberty to the plaintiffs to work out their rights by approaching competent Civil Court. Consequently, the suit was filed. Along with the plaint, plaintiffs filed an application under Order 39 Rules 1 and 2, CPC for a direction to restrain the respondent No. 1/defendant No. 33 from disbursing the compensation amount during pendency of the suit. Learned Civil Judge in the impugned order rejected such prayer; hence the present appeal.

3. Mr.Satapathy, learned counsel for respondents 7(a) to 7(d), at the outset raised question with regard to maintainability of the suit. He contends that the Land Acquisition Act, 1894 is a self contained statute and efficacious remedy is available under the statute to work out the rights of the parties under the Land Acquisition Act. He also relied upon decisions of the Hon"ble Supreme Court in the case of State of Bihar Vs. Dharendra Kumar and others, reported in , AIR 1995 SC 1955 and Laxmi Chand and others, Vs. Ram Panchayat, Kararia and others, reported in , AIR 1996 SC 523 and contends that when specific provision is available in a special statute, namely, the Land Acquisition Act to work out remedies, the suit is impliedly barred under Section 9, CPC.

Hence, Mr. D. Mohanty, learned counsel for the appellants was asked to make submission on the question of maintainability of the suit, more particularly in view of the aforesaid decisions of the Hon"ble Supreme Court. Mr. Mohanty in his reply, relied on some decisions of the Hon"ble Supreme Court as well as High Courts: Dr. G.H. Grant Vs. The State of Bihar, reported in , AIR 1966 SC 237,

Raja Ram Kumar Bhangara (dead) by LRs. Vs. Union of India, reported in , AIR 1988 SC 752 and Asher Ali Vs. Sukhna Seikh (deceased by LRS) and others, reported in , AIR 1992 Gauhati 1 and submits that the suit is maintainable in the eye of law and the learned Civil Judge is competent to pass necessary/ appropriate interim orders under the provisions of Code of Civil Procedure.

In view of the rival contentions of the parties, this Court feels it appropriate to address on the question of maintainability of the suit at the threshold.

Section 9 of Code of Civil Procedure, 1908:-

"9. Courts to try all civil suits unless barred.--The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

4. On a plain reading of aforesaid provision, it emanates that the Civil Court has jurisdiction to try all suits unless it is barred either expressly or impliedly. Though the suit filed for a preliminary decree of partition, it is essentially an apportionment of the compensation awarded in a land acquisition proceeding under Section 11 of the Land Acquisition Act. The plaintiff in the suit claimed 1/3rd share in the compensation amount. Undoubtedly, Section 30 of the Act takes care of the same which reads as follows:-

"30. Dispute as to apportionment.--When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court."

Mr. Satapathy, learned counsel for the respondents, in course of his arguments, places reliance on Laxmi Chand and others (supra), in which the proceeding under the Land Acquisition Act was under challenge in a civil suit. Further, in the decision reported in Laxmi Chand and others (supra) as relied upon by Mr. Satapathy relates to a suit in which the notification under Section 4(1) of the Land Acquisition Act along with the award was under challenge. On the other hand, learned counsel for the appellants places reliance upon the decision in Dr. G.H. Grant (supra) in which the Hon"ble Supreme Court has examined the scope of Section 9, CPC vis-?-vis. the reference made under Section 30 of the Land Acquisition Act. A similar question as in the present case was involved in the said decision.

Law is well-settled that the ratio decided in a particular case law should not be read like a statute, but it has to be read in the context of fact and circumstances involved in it.

5. Paragraphs 13 and 19 of the decision in the case of Dr. G.H. Grant (supra) reads as follows:-

"13. There are two provisions ss. 18(1) and 30 which invest the Collector with

power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By sub-s. (1) of s. 18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed" by sub-s. (2) of that section of a person interested who has not accepted the award. Section 30 authorises the Collector to refer to the Court after compensation is settled under s. 11, any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served under sub-s. (2) of s. 12, must, if he does not accept the award, apply to the Collector within the time prescribed under s. 18(2) to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference under s. 30, for determination of his right to compensation which may have existed before the award, or which may have devolved upon him since the award. Whereas under s. 18 an application made to the Collector must be made within the period prescribed by sub-s. (2) cl. (b), there is no such period prescribed under s. 30. Again under s. 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is under s. 30 not enjoined to make a reference: he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award.

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19. It was strongly pressed that under s. 31 of the Land Acquisition Act the Collector is bound to tender payment of compensation awarded by him to the persons entitled" thereto according to the award and that implied that a right in the amount of compensation arises to the person to whom compensation is directed to be paid under the award, and therefore the only persons who can raise a dispute under s. 30 are those whose names are set out in the award. This contention stands refuted by the plain terms of s. 30. The Collector is not authorised to decide finally the conflicting rights of the persons interested in the amount of compensation: he is primarily concerned with the acquisition of the land. In determining the amount of compensation which may be offered, he has, it is true, to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation: the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference under s. 18 or

under s. 30 or in a separate suit. Payment of compensation therefore under s. 31 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to compensation to agitate his right in a reference under s. 30 or by a separate suit."

(emphasis supplied)

He also places reliance upon the decision in the case of Raja Ram Kumar Bhangara (dead) by LRs (supra) in which the Hon''ble Supreme Court while examining the scope of Section 9, CPC came to a conclusion at paragraph 9, which is quoted here under:-

"9. ...Generally speaking the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno-flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts'' jurisdiction is impliedly barred. If, however, a right pre-existing in common-law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts'' jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open on element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the civil courts'' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai''s case."

Relying upon the aforesaid two decisions, the Gauhati High Court in a decision in the case of Asher Ali (supra) held as follows:-

"10. In the light of the foregoing discussion, I am of the clear opinion that a person claiming a part of the compensation awarded by the Collector in land acquisition proceeding under the Land Acquisition Act, 1894 is entitled to file a civil suit. This view of mine also gets full support from the ratio of the decisions of the Punjab Chief Court in Chandu Lal v. Ladli Begam, (1919) 49 Ind Cas 657: (AIR 1919 Lah 411), Lahore High Court in Bago v. Roshan, , AIR 1926 Lah 321 and Patna High Court in Md. Imram v. Mohammad Jafar Momin, , AIR 1972 Pat 482; State of Bihar v. Banarsi Devi, , AIR 1973 Pat 146 and Sarjug Rai v. Maheswari Devi, , AIR 1975 Pat 192."

6. Taking into consideration the aforesaid two decisions, Mr. Mohanty further submits that the party seeking relief has the choice either to approach the authority under the Land Acquisition Act or the Civil Court for redress of his grievance and in this case he had approached the Special Land Acquisition Officer who failed to exercise jurisdiction vested in him under the statute, which constrained the plaintiffs to file W.P.(C) No. 1987 of 2010 before this Court. This Court while disposing of the said Writ Petition vide order dated 07.07.2011 has granted liberty to the plaintiffs to work out their rights by approaching the

competent Civil Court. Thus, the suit is maintainable in the eye of law.

7. Upon hearing the rival contentions of the parties and on perusal of materials on record, I find that the ratio decided in Dr. G.H. Grant (*supra*) is more akin to the facts and circumstances of the case involved in the present case. Hence, applying the principles laid down in the case of Dr. G.H. Grant (*supra*), I hold that the suit is maintainable.

8. The next question that comes up for consideration with regard to entitlement of the appellants for relief of interim injunction. The plaint averments narrated above, *prima facie* disclose that the plaintiff has a share in the suit compensation awarded and apparently he has not been given any opportunity in the land acquisition proceeding. Thus, Mr. Satpathy, learned counsel for the respondents raises certain issues to be resolved at the time of trial. To add to it, I have already held that the suit is maintainable. Thus, the plaintiffs have a *prima facie* case in their favour.

9. Coming to the question of balance of convenience, this Court has to balance the relative mischief/inconvenience that would be caused to the parties if the interim order of injunction is granted or refused. The plaintiffs have claimed 1/3rd share in the compensation. On the other hand, defendants being purchasers of the schedule land claim that they are entitled to the amount awarded in their favour, as the same has reached its finality being not challenged in the competent Court of law. In one hand, the court has to protect the right, if any, of the plaintiffs during pendency of the suit and at the same time, it is the duty of the Court to see that the defendants do not suffer for the protection, if any, given to the plaintiffs. In the instant case, unless the share claimed in the compensation is protected during pendency of the *lis* and the same is disbursed in favour of the defendants-purchasers, it would be a nightmare on the part of the plaintiffs to recover the same in the event of their success in the suit. In other words, they would suffer irreparable loss if an order of interim injunction is not granted in their favour. This Court while issuing notice in the matter vide order dated 10.01.2012 passed in Misc. Case No. 922 of 2011 has directed that the respondent No. 1, i.e., the Special Land Acquisition Officer (MIP) shall not disburse the amount taking into account the cost of acquisition of disputed suit land to anybody till the next date. The said order is continuing till date.

10. In the facts and circumstances of the case, interest of the parties can be best served if 1/3rd share out of the compensation amount is protected during pendency of the suit. Thus, it is directed that 1/3rd share of the suit amount awarded in the land acquisition proceeding shall not be disbursed to anybody during pendency of the suit. It is open for the defendants in the suit to seek for appropriate relief in respect of the rest of the awarded amount.

11. With the aforesaid observation and direction, the appeal stands disposed of, but in the circumstances no order as to costs.