

(1979) 02 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 178 of 1972

Sheo Shankar Jaiswal

APPELLANT

Vs

Government of India and others

RESPONDENT

Date of Decision : 23-02-1979

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14, 14(2), 9
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18

Citation : (1979) 02 MP CK 0010

Hon'ble Judges : G.P. Singh, C.J.;B.C. Verma, J

Bench : Division Bench

Advocate : S. Awasthy, for the Appellant; K.P. Munshi and K.N. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.—The petitioner was Bhumiswami of Khasra Nos. 34/2, 35 and 36/2 of village Bhukbhuki, Tahsil Manendragarh, District Sarguja. The aforesaid lands, with trees and a house, were acquired u/s 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957. A sum of Rs. 7,943.10 was offered to the petitioner as compensation. The petitioner claimed Rs. 20,000 as compensation. The petitioner accepted the amount offered to him on 9th June 1967 under protest. As the petitioner did not agree to the amount of compensation that was offered to him and as he accepted the amount offered only under protest, steps had to be taken u/s 14 of the Act for determining compensation. By Notification No. 3772, dated 10th October 1967, the Central Government, in exercise of the powers conferred by section 14(2), constituted Shri Padmakant Choudhary, Additional Judicial Commissioner, Ranchi, as a part-time Tribunal (hereinafter referred to as the Ranchi Tribunal) for the purpose of determining the amount of compensation payable to the petitioner. By another Notification No. 340, dated 24th December 1970, issued u/s 14 cases pending before Shri Choudhary were transferred to a Whole-time Tribunal (hereinafter

referred to as the Tribunal) consisting of Shri Ram Sevak Agarwal, retired District & Sessions Judge, Bilaspur. This Tribunal was constituted by Notification, dated 3rd June 1970. It appears that immediately the notification, dated 3rd June 1970, was issued, cases were transferred without waiting for the notification u/s 14(2). The order-sheet, dated 27th July 1970, of the Tribunal goes to show that the petitioner's case was received on that date on transfer from the Ranchi Tribunal. The Tribunal directed the filing of the notification u/s 14(2). The proceedings were adjourned from time to time for the purpose of filing the notification. On 8th December 1970 the petitioner appeared through counsel before the Tribunal and the case was again adjourned to 5th January 1971 for filing of the notification. On 5th January 1971 the petitioner did not appear. The notification by that time had been published and received by the Tribunal. The case was adjourned to 4th February 1971. The petitioner was absent on this date and the case was dismissed in default of his appearance. The petitioner made an application for restoration which was dismissed on 27th September 1971. The petitioner then filed this petition under Article 226 of the Constitution for quashing of the orders of the Tribunal, dated 4th February 1971 and 27 September 1971.

2. The argument of the learned counsel for the petitioner is that the Tribunal constituted u/s 14 of the Act cannot dismiss a reference for default of appearance and that it is bound to determine the amount of compensation even though the party, who claims compensation, is absent or does not produce any evidence. The learned counsel for respondents 1 and 2, the Government of India and the National Coal Development Corporation, submitted that as the petitioner did not, at the commencement of the proceedings before the Tribunal, state what in his opinion was the fair amount of compensation, the dispute relating to the amount of compensation came to an end and the Tribunal was justified in dismissing the reference for default of the petitioner's appearance. It was also submitted by the learned counsel that the petitioner did not make an application under sub-rule (5) of rule 7 framed under the Act and that in the absence of any such application, there was nothing before the Tribunal which it could decide.

3. A perusal of the order-sheets of the Ranchi Tribunal goes to show that no notice was issued to the petitioner. The case was adjourned by the Ranchi Tribunal from time to time for production of certain notifications which it directed the National Coal Development Corporation to produce. It appears that after the case was transferred to the Tribunal, notice was issued to the petitioner and the petitioner appeared on 8th December 1970. We have earlier stated that the notification u/s 14(2) empowering the Tribunal to take up the case of the petitioner was issued on 24th December 1970. 8th December 1970 could not be taken to be the date for commencement of the proceedings before the Tribunal because on that date the Tribunal had no jurisdiction to take up the petitioner's case. The Tribunal had also no jurisdiction to call upon the petitioner to appear on the next date, i. e., 5th January 1971 for the simple reason that on 8th December 1970, when the Tribunal so directed it had no jurisdiction. The failure

of the petitioner to state the amount of compensation on 8th December 1970 cannot be held to be a non-compliance on his part of sub-section (4) of section 14 which requires that at the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is the fair amount of compensation. In our opinion, after the notification had been received by the Tribunal, it should have issued notice to the petitioner fixing a date for commencement of the proceedings. The Tribunal failed to do that. The petitioner's absence on 5th January 1971 or on 4th February 1971, when the case was dismissed in default of his appearance, cannot be taken to be a violation on his part of sub-section (4) of section 14. In the circumstances, the argument of the learned counsel for the respondents that as the petitioner did not state before the Tribunal at the commencement of the proceedings the amount of compensation claimed by him under sub-section (4) of section 14, the Tribunal was justified in dismissing the case in default of his appearance, cannot be accepted. Moreover, it is nowhere provided in section 14 that if a party claiming compensation does not appear at the commencement of the proceedings before the Tribunal to state the amount of compensation that he claims, the Tribunal would be justified in dismissing the case or in refusing to determine the amount of compensation for which it has been constituted. It would be seen that sub-section (4) of section 14 requires the Central Government and the person interested to state their respective opinions as to the fair amount of compensation. If in a given case the Central Government fails to appear and state what in its opinion is the fair amount of compensation, it would be ridiculous to say that that would end the dispute enabling the Tribunal to dismiss the reference or to award whatever amount was claimed by the party interested. The language of subsection (5) of section 14 is emphatic that the Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just. The Tribunal, as is clear from subsection (2) of section 14, is constituted "for the purpose of determining the amount of compensation" in case no agreement is reached between the Central Government and the party claiming compensation. The purpose for which the Tribunal is constituted can be achieved only when the Tribunal makes an award as required by sub-section (5). There is no scope in the scheme of section 14 for dismissing a case in default of appearance of a party. Rule 7(5) on which the learned counsel for the respondents placed reliance provides that any person who has been admitted to be interested and who has accepted the payment of compensation under protest may within six weeks of the date of such acceptance prefer an application to the Tribunal for determining the sufficiency of the amount of compensation. The rule further provides that the Tribunal may entertain an application preferred within thirty days after the expiry of the specified period if it is satisfied that the applicant had sufficient cause for not preferring the application within the specified period. The rule, if taken to be mandatory, does not fit in with the scheme of section 14 which provides for constitution of a Tribunal to determine the amount of compensation when there is no agreement and which requires the parties to state the amount of

compensation which is fair in their respective opinions at the commencement of the proceedings and which further directs the Tribunal to make an award determining the amount of compensation. Section 14 does not contemplate an application as required by rule 7 (5) for obtaining adjudication on the sufficiency of compensation. In our opinion, to avoid a conflict between rule 7 (5) and section 14, the provisions of rule 7 (5) must be construed to be directory. The failure to make an application under rule 7 (5), therefore, does not disentitle the petitioner to insist that the reference made to the Tribunal should be decided by it.

4. We may also point out that section 14 was amended by Act No. 54 of 1971. By this amendment, sub-section (8) was added in section 14. This new sub-section confers certain powers exercisable by a Civil Court under the Code of Civil Procedure, 1908 on the Tribunal. It is interesting to notice that the power under Order IX of the CPC has not been conferred on the Tribunal. This supports our conclusion that the Tribunal constituted u/s 14 has no jurisdiction to dismiss a case for default of appearance of a party. It has been held that a Civil Court, to which reference is made u/s 18 of the Land Acquisition Act, 1894, has no jurisdiction to dismiss the reference for default of appearance of a party. It has further been held that the rule of abatement does not apply to a reference made u/s 18 of the Land Acquisition Act. See *M.S. Ramaiah v. Spl. L.A. Officer* AIR 1974 Kar 122, *Bhadar Munda and Another Vs. Dhuchua Oraon*, and *Abdul Karim and Another Vs. State of Madhya Pradesh*, The principle of these cases applies here. The Tribunal constituted u/s 14 of the Coal Bearing Areas Act cannot, in our opinion, on the same principle dismiss or reject a reference made to it u/s 14 for default of appearance of a party.

5. The petition is allowed. The order of the Tribunal, dated 4th February 1971, dismissing the case in default of appearance of the petitioner, and the order, dated 27th September 1971, refusing to restore the case are quashed. The Tribunal is directed to decide the reference in accordance with law. There shall be no order as to costs. The security amount be refunded to the petitioner.