
(2016) 03 TP CK 0032
In the Tripura High Court
Case No : W.A. Nos. 31 and 32 of 2013

Shikha Rani Dey	Vs	APPELLANT
The State of Tripura and Others		RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, Section 11(1), Section 12, Section 12(2),
Section 13(1), Section 16, Section 18, Section 18(1), Section 30, Section 4, Section 9

Citation : (2016) AIRCC 1777

Hon'ble Judges : Utpalendu Bikas Saha and S.C. Das, JJ.

Bench : Division Bench

Advocate : P. Roy Barman, S. Bhattacharji, K. Nath and N. Guha, Advocates, for the Appellant; D.K. Biswas, S. Chakraborty and U.K. Majumder, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

S.C. Das, J.—1. This is an intra Court appeal challenging common judgment and order dated 19.03.2013 passed by a learned Single Judge of this Court in W.P.(C) No. 246 of 2012 and W.P.(C) No. 352 of 2012.

2. W.P.(C) No. 246 of 2012 was filed by Smt. Shikha Rani Dey, appellant herein, as petitioner, seeking the following orders/directions:-

"Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders direction/directions of like nature shall not be issued whereby directing the Respondents to make payment of the awarded amount i.e. Rs. 16,02,625/- to the petitioner as the amount of the award, passed u/s. 11(1) of the L.A. Act.

And

Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders, direction/directions of like nature shall not be

issued whereby directing the Sub-Divisional Magistrate, Sadar i.e. Respondent No. 3 to cause payment of awarded amount i.e. Rs. 16,02,625/- to the Petitioner, in pursuance with the notice bearing No. 6818-6935, dated 17.11.11, issued u/s. 12(2) & 13(1) of the L.A. Act, 1894 by the L.A. Collector, West Tripura,

And

Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders direction/directions of like nature shall not be issued whereby quashing and cancelling the letter vide No. 2406-07/F.D.M/W/LA/SDR/6/09/Vol-1, dated 04.05.12 issued by the Respondent No. 2, i.e. the L.A. Collector, West Tripura."

3. W.P.(C) No. 352 of 2012 was filed by Sri Sujit Chakraborty, Sri Chandan Kumar Shil and Sri Jogendra Chandra Das, respondent Nos. 1, 2 and 3 herein, as petitioners, seeking the following orders/directions:-

"In the above circumstances it is humbly prayed that your Lordships would be pleased to hear the parties and after hearing be kindly satisfied that the Petitioners have a good case for an Order of Reference under Section 30 of the L.A. Act in respect of the award made by the Respondent-2 in L.A. Case No. 1/SDR/2010, and accordingly pass appropriate direction, after quashing the Notice under Section 12(2) (Annexure-4) and orders of the Respondent-2 related thereto."

4. The parties in both the writ petitions and the subject matter in issue were same and so both the writ petitions were heard together by the learned Single Judge and common judgment was passed.

5. Both the appeals filed by the same appellant, Smt. Shikha Rani Dey, were also heard together on the prayer of learned counsel of both sides and this common judgment is passed in respect of both the appeals.

6. We have heard learned counsel, Mr. P. Roy Barman for the appellant in both the appeals, learned counsel, Mr. D.K. Biswas for the respondent Nos. 1, 2 and 3 in W.A. No. 32 of 2013 and respondent Nos. 4, 5 and 6 in W.A. No. 31 of 2013 and learned Additional Government Advocate, Mr. S. Chakraborty for the State-respondents in both the appeals.

7. It is an admitted position that land measuring 6.9900 acres, recorded in Khatian No. 823, plot Nos. 111, 119, 120, 121, 122, 124 and 136, situated at Mouja-Radhakishorenagar under revenue circle-Jirania, Tehsil-Khayerpur along with other land was acquired for the purpose of Industrial Growth Centre. Notice under Section 9 of the Land Acquisition Act, 1894 (for short "L.A. Act") was issued to the appellant, i.e., the petitioner of W.P.(C) No. 246 of 2012 and she appeared before the Land Acquisition Collector (for short "L.A. Collector") with all documents in support of her claim of compensation for acquisition of her land and the L.A. Collector on 17.11.2011 made an award in favour of Smt. Shikha Rani Dey amounting to Rs. 16,02,625.00 as compensation and she was informed

to contact the Office of the Sub-Divisional Magistrate, Sadar on 25.11.2011 personally or through any authorized representative. On that very day, i.e., on 17.11.2011, she made an application seeking reference under Section 18 of the L.A. Act.

8. It is the contention of the appellant, Smt. Shikha Rani Dey, i.e., the writ petitioner of W.P.(C) No. 246 of 2012, that though she appeared on 25.11.2011 before the Sub-Divisional Magistrate to receive the payment of the awarded compensation, but the payment was not made on flimsy pretext. She made representation and thereafter issued notice through her engaged learned counsel on 06.02.2012 and in response to that notice, the L.A. Collector informed her counsel in writing thus:-

"The petitioner during hearing U/S. 9 of the L.A. Act did not agitate against the process of acquisition. The L.A. Collector on being satisfied prepared award U/S. 12 of the L.A. Act in the name of the petitioner. Ultimately the possession of the entire land including the land of the petitioner has been handed over to TIDC authority on 28/11/2011 which is an well accomplished fact. It is noteworthy that there was no resistance/dispute noticed during the process of acquisition from any corner. The petitioner was duly served notice U/S. 12(2) & 16 of the L.A. Act for taking payment as well as to deliver the possession. According to the provision of the L.A. Act the petitioner has every liberty to file prayer for reassessment of the awarded amount if the same considered to be inconsistent within the stipulated period. Side by side it is obligation of the L.A. Collector to refer such cases before the Ld. L.A. Judge for Adjudication.

The entire awarded amount has already been placed at the disposal of Sub-Divisional Magistrate, Sadar for disbursement among the awardees. It is the duty of the awardees to satisfy the authority by production of relevant documents and to observe certain formalities.

It is pertinent to mention here that Sri Sujit Chakraborty, S/O. Bidhu Ranjan Chakraborty & others of R.K. Nagar submitted prayers accusing that Smti. Sikha Dey by way of deceitful means and fraudulently got ownership of the land acquired and requested to refer the matter U/S. 30 of the L.A. Act before the Ld. L.A. Judge for decision. The L.A. Collector on receipt of the prayers informed SDM, Sadar to withhold the payment for the time being. It has also been decided to call all the parties including the land owner Smti. Dey for hearing to ascertain the reason of grievances and to examine feasibility of the objections. It is expected that entire process will be completed shortly and necessary order will be conveyed to SDM, Sadar."

9. Thereafter pursuant to notice issued by L.A. Collector (Annexure-P/10) the petitioner, Smt. Shikha Rani Dey and the petitioners of W.P.(C) No. 352 of 2012 appeared before the L.A. Collector and by letter dated 03.05.2012 addressed to the Sub-Divisional Magistrate, the L.A. Collector directed payment of the awarded amount to Smt. Shikha Rani Dey, the writ petitioner of W.P.(C) No. 246

of 2012. On the following day, i.e., on 04.05.2012, the L.A. Collector by issuing another letter to the Sub-Divisional Magistrate directed not to make the payment and that the matter required further enquiry/re-enquiry.

10. Smt. Shikha Rani Dey, the petitioner of W.P.(C) No. 246 of 2012 challenged that letter dated 04.05.2012 (Annexure-P/12 to the writ petition) and prayed for direction to the L.A. Collector to release the payment in her favour.

11. While that writ petition was pending, respondent Nos. 1, 2 and 3 of W.A. No. 32 of 2013 filed W.P.(C) No. 352 of 2012 seeking direction to the L.A. Collector to make reference under Section 30 of the L.A. Act as already stated hereinbefore. They, inter alia, contended that they were in possession of the acquired land from 1955 and that they have acquired title over the acquired land by dint of their adverse possession and the documents, which were shown by Smt. Shikha Rani Dey, were all paper transactions and the record of rights were also prepared in collusion and that Sri Sujit Chakraborty, the writ petitioner of W.P.(C) No. 352 of 2012, filed application under Section 95 of the TLR & LR Act for correction of the record of rights and they further stated that they appeared before the L.A. Collector on receipt of notice under Section 9 of the L.A. Act. They were in possession of the acquired land at the date of notification under Section 4 of the L.A. Act and, therefore, they were entitled to get the compensation.

12. While the writ appeals were pending, respondent Nos. 1, 2 and 3 of W.A. No. 32 of 2013 with the permission of the Court submitted an affidavit contending that they made applications before L.A. Collector on 30.12.2011 seeking reference under Section 30 of the L.A. Act to the L.A. Judge for apportionment of compensation and those petitions filed before the L.A. Collector were pending. Copies of those petitions have been annexed as Annexure-B series to the affidavit. In that affidavit the respondents contended that notice under Section 9 of the L.A. Act was issued to only Smt. Shikha Rani Dey.

13. The State-respondents were asked to submit their response as to whether notice under Section 9 of the L.A. Act was issued to the said respondents or not, to which the State-respondents contended that notice under Section 9 was only issued to Smti. Shikha Rani Dey, the writ petitioner of W.P.(C) No. 246 of 2012, and no notice under Section 9 was issued to the writ petitioners of W.P.(C) No. 352 of 2012.

14. The appellant, Smti. Shikha Rani Dey, also submitted an affidavit-in-opposition contending that the said respondents, who are the writ petitioners of W.P.(C) No. 352 of 2012, in their writ petition itself made a clear averment that notice under Section 9 was issued to them and they appeared before the L.A. Collector.

15. Learned Single Judge by impugned judgment dated 19.03.2013 dismissed W.P.(C) No. 246 of 2012 and allowed W.P.(C) No. 352 of 2012 and directed the L.A. Collector to make reference under Section 30 of the L.A. Act and to deposit the awarded sum in the Court of L.A. Judge, West Tripura, Agartala for releasing

the same after adjudication of the dispute as to the person, who would be determined as competent to receive it.

16. Learned counsel, Mr. Roy Barman has submitted that the appellant is the title holder of the acquired land and she produced her documents of title as well as the record of rights existing in her name before the L.A. Collector and Annexure-P/6 to W.P.(C) No. 246 of 2012 shows that she has produced all relevant documents before the Sub-Divisional Magistrate for release of the awarded amount in her favour. The respondents, i.e., the writ petitioners of W.P.(C) No. 352 of 2012, having no scrap of paper in their favour only with a view to grab the awarded compensation made a futile attempt raising baseless objection and that has been entertained by the L.A. Collector time and again. He has also submitted that once the respondents, i.e., the writ petitioners of W.P.(C) No. 352 of 2012, admitted in their writ petition that they received notice and appeared before the L.A. Collector, they have no right to make a prayer for reference under Section 30 of the L.A. Act. It is also submitted by Mr. Roy Barman, learned counsel, that after hearing the objection raised by respondent Nos. 1, 2 and 3, the L.A. Collector issued letter dated 03.05.2012(Annexure-P/11) to the Sub-Divisional Magistrate for release of the awarded compensation to the petitioner, Smti. Shikha Rani Dey, but because of some extraneous consideration it was again withheld by letter dated 04.05.2012(Annexure-P/12). Once an award is made by the L.A. Collector after hearing, it shall be treated as final as per the provisions prescribe under the L.A. Act and the L.A. Collector has no authority to withhold it. He has further contended that learned Single Judge taking into consideration a report submitted by Tehsildar of Khayerpur TK dated 26.05.2012 has allowed the writ petition (W.P.(C) No. 352 of 2012), which was obviously a report obtained after the payment order was made on 03.05.2012. That letter is totally hearsay and should not have been taken into consideration by the learned Single Judge. He has further submitted that the case laws referred by the appellant in the writ petition were not correctly considered by the learned Single Judge.

17. On the other hand, learned counsel, Mr. Biswas appearing for the respondent Nos. 1, 2 and 3 of W.A. No. 32 of 2013 has submitted that the writ petitioners of W.P.(C) No. 352 of 2012 were never noticed under Section 9 of the L.A. Act and the averment made in para-1 of their writ petition might be a wrong averment. The record says that there was no notice issued under Section 9 of the L.A. Act to those writ petitioners though they were interested parties and they were in possession of the land. The Tehsildar of Khayerpur TK pursuant to the order of the L.A. Collector made an inquiry and submitted a further report on 26.05.2012, which shows that respondent Nos. 1, 2 and 3, i.e., the writ petitioners of W.P.(C) No. 352 of 2012, were in possession of the acquired land. So, the learned Single Judge correctly considered the contention of all the parties and for fair adjudication of the issues directed reference under Section 30 of the L.A. Act. It is also submitted that respondents, i.e., the writ petitioners of W.P.(C) No. 352 of 2012, made applications on 30.12.2011 before the L.A. Collector seeking

reference under Section 30 of the L.A. Act well before the impugned letter dated 03.05.2012 was issued by the L.A. Collector for making payment to Smti. Shikha Rani Dey and those petitions were never disposed of.

18. Learned Additional Government Advocate, Mr. S. Chakraborty for the State-respondents has submitted that so far the records are concerned, no notice under Section 9 of the L.A. Act was issued to respondent Nos. 1, 2 and 3, i.e., the writ petitioners of W.P.(C) No. 352 of 2012. He has also submitted that those writ petitioners filed two applications on 30.12.2011 before the L.A. Collector seeking reference under Section 30 of the L.A. Act and those were pending.

19. It is an admitted position that notice under Section 9 of the L.A. Act was issued to the appellant and she appeared before the L.A. Collector and submitted her claim in respect of award of compensation in her favour and accordingly, award was made on 17.11.2011 (Annexure-P/4 to W.P.(C) No. 246 of 2012). Though the award was made on 17.11.2011, payment to the petitioner was not made and it was kept withheld and, therefore, she submitted representation and issued Advocate's notice and in response to the Advocate's notice the L.A. Collector informed the learned counsel of the appellant that the payment was withheld since some objections were filed by Sri Sujit Chakraborty and it was decided to call all the parties and to have a hearing of the grievance.

20. We have already quoted hereinbefore the relevant part of the L.A. Collector's reply to the learned counsel, Mr. Roy Barman of the appellant. It was clearly stipulated therein that possession of the acquired land was taken over from the appellant, Smti. Shikha Rani Dey and was handed over to TIDC, i.e., the requiring department. We agree with the submission of learned counsel, Mr. Roy Barman that the documents of title and record of rights are in the name of Smti. Shikha Rani Dey and the respondents, i.e., the writ petitioners of W.P.(C) No. 352 of 2012 could produce no scrap of paper in support of their alleged right of adverse possession of the acquired land.

21. Be that as it may, the writ Court is not required to decide as to which of the party is entitled to get compensation as a whole or in part. It is quite clear from the stand taken by the parties in both the writ petitions that the issue was still pending before the L.A. Collector for taking decision in respect of release of the awarded compensation. No doubt the L.A. Collector after considering the objections once taken decision to release the award and accordingly, wrote letter dated 03.05.2012 (Annexure-P/11) to the Sub-Divisional Magistrate for releasing the awarded compensation to the appellant, but on the following day he again directed Sub-Divisional magistrate by writing Annexure-P/12 letter dated 04.05.2012 to stop payment and directed the Tehsildar of Khayerpur TK to again enquire into the issue and Khayerpur TK submitted a report on 26.05.2012. That report is absolutely a vague report since the report itself shows that the Tehsildar had conversation with a neighbouring land holder and on the basis of what had been stated by the neighbouring land holder he submitted the report. Whatever may be the report of the Tehsildar, it is a fact that L.A. Collector has not yet

taken a decision on that report and it is still pending.

22. It is also a fact that the writ petitioners of W.P.(C) No. 352 of 2012 submitted applications on 30.12.2011 before the L.A. Collector seeking reference under section 30 of the L.A. Act and that those applications also have not been disposed of by the L.A. Collector.

23. The Supreme Court in the case of Sarada Devi V. State of Bihar & Anr., reported in , (2003) 3 SCC 128 in para-23 of the judgment has clearly distinguished the power of L.A. Collector to make reference under Section 18 and under Section 30 of the L.A. Act, which is referred by the learned Single Judge also. We may gainfully refer here para-23 of the judgment, which reads as follows:-

"23. The two provisions contemplating power of the Collector to make reference as contained in Section 18 and Section 30 of the Act need a comparative study. Under Section 18 the subject-matter of reference can be a dispute as to any one or more of the following: (i) as to the measurement of the land, (ii) as to the amount or the quantum of the compensation, (iii) as to the persons to whom the compensation is payable, (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the subject matter of dispute can be: (i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable. Though the expression employed in Section 18 is "the amount of compensation" while the expression employed in Section 30 is "the amount of compensation or any part thereof", this distinction in legislative drafting is immaterial and insignificant and a dispute as to entitlement or apportionment of part of the compensation would also be covered by Section 18 of the Act on the principle that the whole includes a part too.

Thus, at the first blush, it seems that Section 30 overlaps Section 18 in part; but as will be seen shortly hereinafter, it is not so."

In para 25 of the Judgment the Apex Court further held:-

"....."

Under Section 18(1) a reference can be made by Collector only upon an application in writing having been made by (i) any person interested (ii) who has not accepted the award (iii) making application in writing, to the Collector, requiring a reference by the Collector to the Court (iv) for determination of any one of the four disputes (specified in the provision), and (v) stating the grounds on which objection to the award is taken. For reference under Section 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made suo motu by the Collector without any one having invited the attention of the Collector for making the reference.

.....

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter; whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on--are such illustrative factors which may enter into the consideration by the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit."

24. The Supreme Court has made it clear that there is a clear distinction between a reference under Section 18 and a reference under Section 30 of the L.A. Act. While it is mandatory under Section 18, it is discretionary under Section 30 of the L.A. Act. If the L.A. Collector is able to take a decision in respect of apportionment of compensation, he can pass appropriate order and any party if feels aggrieved may approach appropriate forum against the decision of the L.A. Collector. If the L.A. Collector feels and/or takes a decision that in a given case he cannot take a decision about the apportionment of compensation, he can well make a reference to the Court as contemplated under Section 30 of the L.A. Act.

25. In the present case, the L.A. Collector made the award under Section 11 and directed the appellant, Smti. Shikha Rani Dey to appear before the Sub-Divisional Magistrate to receive the awarded compensation, but it was kept withheld. Subsequently, after hearing both sides, i.e., the appellant and respondents, the L.A. Collector took decision that the payment should be made to the appellant and accordingly, wrote Annexure-P/11 letter to the Sub-Divisional Magistrate to release the awarded amount in favour of the appellant. So, it is clear that the L.A. Collector after hearing both sides once took the decision to release the amount. But soon thereafter, so far the record of the L.A. Collector produced before the Court, shows that he decided to ask Tehsildar of Khayerpur TK to again submit a report and accordingly, Tehsildar of Khayerpur TK was asked to submit reports. Consequent to which report dated 26.05.2012 (Annexure-C/3 to the counter affidavit) was submitted by the Tehsildar of Khayerpur TK. It appears that the same Tehsildar earlier also submitted a report, which was considered by the L.A. Collector and the subsequent report was a conflicting report.

26. Be that as it may, it was the duty of the L.A. Collector to decide finally regarding the apportionment of the awarded compensation. It is not expected

that a statutory authority will frequently change its decision and thereby keep the parties on tenterhooks. The L.A. Collector twice decided to release the awarded compensation in favour of the appellant, but again he withheld the decision in respect of making of payment and asked for a further inquiry. Rightly or wrongly once L.A. Collector has decided to have a further report in respect of the claim of respondents, i.e., the writ petitioners of W.P.(C) No. 352 of 2012, the appellant would wait till a reasonable time for the final decision of the L.A. Collector. The writ petition of the appellant, therefore, in our considered opinion, was premature.

27. It is also brought on record that the petitions filed by the respondents, i.e., the petitioners of W.P.(C) No. 352 of 2012, dated 30.12.2011 seeking reference under Section 30 of the L.A. Act were also pending before the L.A. Collector for decision and the L.A. Collector is bound to dispose of those petitions.

28. The Apex Court in the case of Sharda Devi (*supra*) has made it clear that if the L.A. Collector makes the reference it may be decided by the court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. The Court also held that in case the L.A. Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

29. Once the inquiry intended by the L.A. Collector was pending and once the applications filed seeking reference under Section 30 of the L.A. Act were also pending before the L.A. Collector, it has to be decided by the L.A. Collector whether the reference should be made or not. In our considered opinion, the writ Court in the given facts and circumstances is not required to give a direction to the L.A. Collector either to make a reference or not to make a reference. Once L.A. Collector takes a final decision either making a reference or refusing a prayer of reference, the writ Court may have jurisdiction to entertain a petition under Article 226 of the Constitution.

30. We are, therefore, of considered opinion that the direction of the learned Single Judge to the extent that the L.A. Collector should make reference under Section 30 of the L.A. Act is not tenable. Accordingly, the order of the learned Single Judge to the extent that L.A. Collector should make reference under Section 30 of the L.A. Act is interfered and modified. The L.A. Collector is directed to take a final decision in respect of payment of the compensation and/or apportionment thereof and the decision should be taken within 45 (forty five) days from the date of receipt of the copy of this judgment. The applications dated 30.12.2011 filed by the respondents, i.e., the petitioners of W.P.(C) No. 352 of 2012, which are pending before the L.A. Collector, also should be taken into consideration by the L.A. Collector together and shall be disposed of.

31. With the above observations and directions both the writ appeals are

disposed of.

32. Copy of this judgment be sent to the respondent-L.A. Collector immediately.