

(1973) 11 PAT CK 0010
In the Patna High Court
Case No : Civil Revision No. 1377 of 1973

Shyam Shankar Sahai and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-11-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Land Acquisition Act, 1894 — Section 18, 26

Citation : AIR 1974 Patna 176

Hon'ble Judges : N.L. Untwalia, C.J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Krishna Prasad Sinha and Ravinandan Sahay, for the Appellant;

Final Decision : Allowed

Judgement

1. Certain land belonging to the petitioners was acquired under the Land Acquisition Act, 1894 (hereinafter called the Act). Collector's award was made for a certain amount. The petitioners asked the Collector to make a reference u/s 18 of the Act as, according to them, the amount awarded by the Collector was too inadequate. Accordingly reference was made by the Collector in Land Acquisition Case No. 289 of 1964. On the 9th of September, 1967 a time petition was filed on behalf of the petitioners on certain grounds. The time petition was rejected and thereafter the court dismissed the land acquisition case for default. The petitioners filed an application, presumably, under Order 9, Rule 9 of the CPC (hereinafter called the Code) for restoration of the land acquisition case trying to make out a sufficient cause. The court below, on a consideration of the evidence adduced before it, did not find in favour of the petitioners that sufficient cause prevented them from appearing when the land acquisition case was called out on 9-9-67. In that view of the matter, their application was dismissed. The petitioners filed miscellaneous first appeal under Order 43, Rule 1 (c) of the Code.

2. Learned counsel for the petitioners first pressed his miscellaneous appeal and endeavoured to persuade us, on the evidence adduced by the petitioners, to find

sufficient cause for them for their non-appearance on 9-9-67. We did not feel persuaded to hold that there was sufficient cause for their non-appearance. Learned counsel for the petitioners then pointed out that the order of the court below passed on 9-9-67 dismissing the land acquisition case in default of appearance of the petitioners was without jurisdiction as the court below had no power to dismiss a reference case u/s 18 of the Act for default of the claimant. In support of the said proposition of law, learned counsel relied upon a Bench decision of the Madhya Pradesh High Court in Abdul Karim v. State of Madhya Pradesh, (AIR 1964 Madh Pra 171) and some observations in a Bench decision of this Court in Bhadar Munda and Another Vs. Dhuchua Oraon, . Learned counsel submitted that the application filed by the petitioners ought to have been treated as an application invoking the inherent jurisdiction of the court u/s 151 of the Code to recall the order dated 9-9-67 which was passed without jurisdiction. We were impressed by this argument. The claimant has to file a petition before the Collector u/s 18 of the Act asking him to make a reference to the court. On such reference being made, the claimant does not become a plaintiff or a petitioner in the land acquisition case; rather u/s 20 of the Act the court has to serve a notice even on the claimant who had filed the application before the Collector asking for a reference u/s 18 of the Act. The court has to make an award u/s 26. Although Section 53 provides-

"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC (XIV of 1882), shall apply to all proceedings before the Court under this Act"

a land acquisition reference case cannot be dismissed for default on non-appearance of the claimant. Order 9, Rule 8 read with Section 141 of the Code or Section 53 of the Act will not apply to such a case. The court has to make an award even in absence of any evidence. The court may be obliged to accept and determine the amount of compensation mentioned in the Collector's award as correct. But that is not to say that a court can dismiss the reference case for default. An order passed by the court below, therefore, refusing to exercise the Inherent jurisdiction of the court is not appealable. And, that is the reason that, at the request of the learned counsel for the petitioners, we treated this miscellaneous first appeal as a civil revision and proceeded to hear it as such.

3. In our opinion, the order dated 9-9-67 passed by the court below dismissing Land Acquisition Case 289 of 1964 for default was without jurisdiction; this ought to have been recalled in exercise of the inherent power of the court. We accordingly allow this civil revision, set aside the order of the court below dismissing the application for restoration of the land acquisition case and direct the court below to recall the order dated 9-9-67 and proceed to make the award in accordance with Section 26 of the Act on such materials as were available before the court on that date, i.e., 9-9-67. In this civil revision we cannot, justifiably in law, allow the petitioners to adduce any further evidence because it is not for us to examine in this civil revision whether the time petition filed by

them on 9-9-67 was rightly rejected or wrongly rejected. This matter may come up for consideration if a first appeal is filed in this Court from the award which may be made by the court below, in pursuance of our direction, on the materials available on 9-9-67. In that first appeal it may be possible for the petitioners to agitate that their time petition was wrongly rejected and then it will be for the first appellate court to take such view of the matter as it may deem fit and proper to take for deciding the case in accordance with law. As the State of Bihar has not appeared to oppose this application, there will be no order as to cost.