
(1982) 03 AHC CK 0071
In the Allahabad High Court
Case No : F.A.F.O. No. 198 of 1976

Smt. Katori Devi and Others

APPELLANT

Vs

The Collector, Aligarh

RESPONDENT

Date of Decision : 30-03-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8, Order 9 Rule 9
Land Acquisition Act, 1894 — Section 18, 26, 53

Citation : AIR 1982 All 394 : (1982) AWC 385

Hon'ble Judges : Satish Chandra, C.J.;A.N. Varma, J

Bench : Division Bench

Advocate : R.S. Singh and S.K. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—This appeal is directed against an order dismissing an application filed under Order IX, Rule 9 C. P. C. for setting aside of an order whereby the proceedings on a reference u/s 18 of the Land Acquisition Act were dismissed.

2. It appears that aggrieved against the Award given by the Land Acquisition Officer for acquisition of the appellants' lands the appellants got the matter referred to the District Judge u/s 18 of the L. A. Act. On the case fixed for hearing of the reference, the claimant -- appellants did not appear nor did they lead any evidence to substantiate their claim. In this view, the learned Additional District Judge rejected the reference. Soon after, the claimants made an application for setting aside of the order. This application was dismissed on the ground that the provisions of Order IX C. P. C. were not applicable to proceedings on a reference u/s 18 of the Act

3. The question is, whether the provisions of the Civil P. C. are applicable to proceedings on a reference u/s 18 of the L. A. Act ?

4. Section 53 of the L. A. Act, provides:

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

It is thus evident that the Civil P. C. applies to proceedings under the L. A. Act except in so far as they may be inconsistent with anything contained in this Act.

5. The proceedings u/s 18 of the Act are for determination of compensation payable to the claimants. They are civil proceedings in which the rights of the parties in respect of determination of the compensation are to be adjudicated. After the Collector makes a reference to the District Judge, the court has to issue a notice fixing a date for hearing the matter and determining the claim. The notice u/s 20 of the Act has to be served on the applicant, all persons interested in the objection as well as the Collector. u/s 32 of the Act, such proceeding has to take place in open Court, and all persons entitled to practice in any Civil Court in the State are entitled to appear, plead and act (as the case may be) in such proceedings Section 26 of the L. A. Act provides:

"26. (1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of Sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9), respectively of the Civil P. C. 1908."

6. It is thus evident that the learned District Judge functions as a Court I while disposing of a reference u/s 18 of the Act. The provisions of the Civil P. C- have specifically been made applicable to such proceedings by Section 53 of the Act. Ex facie the provisions of Order IX C. P. C. will be applicable to these proceedings. We have gone through the provisions of the L. A. Act and we do not find any provision anywhere which may be inconsistent with the provisions of Order IX C. P. C. in *M. S. Ramaiah v. Spl. Land Acquisition Officer* AIR 1974 Kant 122 it was observed :

"It is plain from Section 26 that the award which the Court passes must be in the form of a judgment containing the statement of the grounds for the award. Where the claimant remains absent or does not produce evidence, it is not open to the Court to dispose of the reference stating that the claim of the claimant is dismissed or that the reference is rejected. The Court has to pass an award in the manner provided u/s 26.....a reference u/s 18 cannot be dismissed for default under Rule 8 of Order IX of the Code. Consequently Rule 9 of Order IX can have no application." The learned Judge went on to observe that "this legal position when put to the learned Counsel for the parties was not contested

before me."

7. With due respect to the Hon"ble Court, we are unable to subscribe to the views expressed by the Karnataka High Court in the aforesaid decision. Section 26 of the Act comes into operation only when the reference is to be decided on merits after considering the evidence led by the parties and the provisions of Section 23 of the Act. Section 26 of the Act does not say anything which may be inconsistent with the courts power under Order IX, Rule 8 C. P. C. to dismiss a reference for default of appearance by the claimants. Since there is nothing inherently inconsistent in Section 26 of the Act with the existence of Order IX Rule 8 C. P. C. we fail to see on what principle can the provisions of Order IX, Rule 8 C. P. C, be excluded when Section 53 of the Act specifically makes them applicable.

8. In *Smt. Sumatra Bai v. State of Madh Pra.*, AIR 1966 Madh Pra 65, it was observed that under the provisions of Section 53 of the Act, the court is empowered to apply the provisions of the Civil P. C. It may frame issues and determine the amount of compensation accordingly.

9. In the *State of Madras v. Alameluthayammal*, AIR 1970 P &H 184 a Division Bench held that in view of Section 53 of the Act, the court hearing reference u/s 18 of the Act has power to allow an amendment of the pleadings in a reference.

10. In *Alihusain Abbahbai and Others Vs. Collector, Panch Mahats*, it was held that by virtue of Section 53 of the Act, the provisions of Civil P. C. are applicable to all proceedings before the court under the Act unless such provisions in the Code are inconsistent with anything contained in the L. A. Act. There is nothing in the L. A. Act which is directly inconsistent with Order XXII Rule 3 of the Civil P. C. and hence a reference u/s 18 of the Act can be attracted by Order XXII Rule 3 of Civil P. C. It was further observed that the nature of proceedings u/s 18 need not necessarily terminate with an award or determination of compensation. The reference is not different from an ordinary civil proceeding whence the private party in the position of a plaintiff claims extra compensation and the Collector defends it. If the private party fails to appear at the hearing of the proceedings the reference must by force of Order IX Rule 3 be dismissed for want of appearance and evidence in support of the claim.

11. We are in respectful agreement with the views expressed by the Madras, Madhya Pradesh and Gujarat High Courts. In our opinion the provisions of Order IX, C. P. C. are applicable to proceedings on a reference u/s 18 of the L. A. Act. We are further of the opinion that there is nothing in the L. A. Act which may be inconsistent with the provisions of Order IX, C. P. C.

12. The court below had jurisdiction to entertain the application under Order IX, Rule 9 C. P. C. It could not be dismissed on the ground that Order IX, C. P. C. is not applicable.

13. In the result, the appeal succeeds and is allowed. The impugned order is set

aside and the matter is sent back to the court below for consideration of the applicability of Order IX, Rule 9 C. P. C. on its merits. The appellants will be entitled to costs.