

(1995) 07 KAR CK 0047

In the Karnataka High Court

Case No : Regular First Appeal No. 256 of 1995

Special Land Acquisition Officer, Karanja Project, Bidar and
Another

APPELLANT

Vs

Mallikarjun and Others

RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 350A
Land Acquisition Act, 1894 — Section 11

Citation : (1995) 5 KarLJ 41

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. The State of Karnataka has appealed against the decision of the Additional Civil Judge, Bidar, in O.S. No. 169 of 1984 and has raised an interesting point of law in the appeal. The certain lands comprising of Survey No. 240 were taken possession of along with several other lands in connection with an irrigation project in or about year 1980. A common notification was issued and the acquisition proceedings in respect of the remaining lands were taken up, but this particular survey number came to be excluded. The lands in question were submerged and the plaintiff filed a suit before the Trial Court for two reliefs, the first being that it be declared that he was the owner of the lands in question and secondly, that compensation be awarded to him as the lands have been taken charge of by the State and have been submerged. The first relief was prayed for because, the Land Acquisition Officer had proceeded on the basis that certain revenue entries appear to indicate that the lands in question were "Sarkari gairan" and that therefore, it was unnecessary to acquire them and the plaintiff therefore, contended that the Court must examine the relevant material in the first instance and declare him to be the owner. Thereafter, the relief prayed for was, that since the plaintiff had already been deprived of the lands, that he be awarded compensation for the same. The suit came to be decreed and it is against that decree that the present appeal is directed. The basic point of law that has been canvassed by the learned Government Advocate hinges around the

aspect of jurisdiction of the Trial Court and two submissions are advanced in this regard. The first of them is that the relief by implication constitutes a direction to the Government Authorities to carry out a rectification in the revenue records and that such a relief is impermissible by virtue of the provisions of Section 135 of the Land Revenue Act. More importantly, what is contended is that compensation in respect of acquisition can only be awarded in the course of proceedings under the Land Acquisition Act and in the face of such statutory provisions, that even if the petitioner were to succeed in establishing his title to the lands in question that the learned Judge was precluded from quantifying compensation which can only be done by the Land Acquisition Officer in proceedings under the Land Acquisition Act. The learned Government Advocate submits, that in the face of such statutory provision that the Court totally lacked the jurisdiction to pass a decree of the present type and that therefore, it is liable to be set aside.

2. In this regard, the learned Government Advocate has relied heavily on the observations of the Supreme Court in two decisions. The first of these is a case in *Chand Dhawan (Smt.) v Jawaharlal Dhawan*, 1993(3) SCC 406. That was a case in which alimony had been prayed for and the Court while dealing with the matrimonial dispute laid down the principle that a relief which is prescribed for under a particular statute cannot be sought under some other statute. The learned Government Advocate submitted that compensation is a relief that can only emanate under the provisions of the Land Acquisition Act and that the respondents could not have therefore, sought this relief in any other proceedings before the Trial Court. As far as this decision is concerned, it is necessary to record that the Supreme Court was dealing with a situation whereunder the proceedings under the Hindu Marriage Act, had come to an end and the Court held that the right of the wife who claimed maintenance still subsisted under the provisions of the Hindu Adoption and Maintenance Act and that consequently, the order passed for payment of maintenance under the other statute, namely, the Hindu Marriage Act was not permissible. The facts of the present case are clearly distinguishable from the material that was before the Court on that occasion. In the present proceedings, the position that emerges is that the plaintiffs did not make any application to the Court under any parallel statute or under the provisions of any law that was in conflict with the provisions of the Land Acquisition Act. What has in fact, transpired in this case is that the plaintiff has complained to the Court about the deprivation of his property by the State without following the procedure prescribed by law and without the payment of any compensation to him against that property. Undoubtedly, it was obligatory on the part of the State to have followed the provisions of the Land Acquisition Act, but the reason given was that since the officer was bona fide under the impression that the lands in question belong to the State and not to the plaintiffs, this was not done. It was therefore, necessary that the factual position be resolved which was why the plaintiff had to move the Court for the first of the two reliefs. Once this had been achieved, the question arises as to whether it

was thereafter obligatory on the part of the plaintiff to institute one more legal proceeding for a direction to the State to commence and complete proceedings under the Land Acquisition Act or whether it was within the jurisdiction of the Civil Court to award compensation namely, the market value of the property that has been taken away from the citizen. In essence, the decision of the Supreme Court mandated that where a remedy is permissible under the specific provisions of a particular statute, that it was not competent for anybody to bypass that procedure and pray for a relief in some other proceedings under some other statute. In the present instance, the plaintiffs having already been divested of their lands and the lands having ceased to exist insofar as they have been submerged, it would be an absurdity in law to direct that acquisition proceedings be commenced in respect of property that has long ceased to be in existence. There was therefore, no remedy open to the plaintiffs under the provisions of the Land Acquisition Act and the submission advanced by the learned Government Advocate that such remedy was available is therefore, factually incorrect.

3. The question arises therefore, as to whether in the absence of any such remedy being available, it was open to the learned trial Judge to quantify the compensation payable. To my mind, the Trial Court was obliged, once a finding had been recorded that the lands in question did belong to the plaintiffs, as and by way of an ancillary relief, to pass a decree in favour of the plaintiffs for payment of compensation in respect of the deprivation of the property. This was a case where the property has been taken away without following the procedure prescribed by law and where, for the reasons indicated by me, it was no longer possible to follow that procedure. The Court was therefore, not helpless, but well within its inherent powers to pass a decree which was in consonance with the ends of justice. While doing so however, the safest guideline that the Court could follow would be to quantify the compensation exactly on the basis of the compensation awarded in respect of the adjoining properties all of which were similarly situated and which came to be acquired at the same point of time.

4. The learned Government Advocate had commenced his submissions by raising a preliminary objection with regard to the aspect of jurisdiction and he pointed out that any proceedings for rectification of revenue records are required to be instituted before the Designated Authorities under the provisions of the Land Revenue Act and in order to prevent aggrieved parties from directly approaching the Court, that Section 135 of the Act embodied a bar of jurisdiction whereby the Civil Courts were precluded from entertaining such disputes. A distinction requires to be drawn between the facts of the present case and the situations contemplated by the Legislature. The normal disputes in relation to revenue records relate to wrong entries or disputes between persons with regard to whose names should be shown there or from what period of time etc. It is true that the jurisdiction in respect of examining these disputes lies with the Revenue Authorities. In the present instance, the plaintiff had not gone to the Court for rectification of any entries. The relief asked for before the Court was for a declaration simpliciter insofar as the plaintiff relied on material on the basis of

which he contended that he is the rightful owner in respect of that property. It was the officers of the State Government who had taken up the contention that the property belonged to the Government and it was for them to justify this position before the Court. The petitioner has relied on considerable material, but the learned trial Judge has carefully examined the material in support of his plea that the contention put forward by the Land Acquisition Officer that the lands were Government lands is without substance and that in fact, on the basis of those very records, it must be declared that the plaintiff was the owner. This dispute fell squarely within the jurisdiction of the Civil Court and is distinguishable from the class of cases which relate to rectification of entries. The learned Government Advocate relied on the decision of the Supreme Court reported in the case of Ram Singh and Others v Gram Panchayat, Mehal Kalan and Others, AIR 1986 SC 2197, wherein the Supreme Court had occasion to deal with a question of exclusive jurisdiction under Section 9 of the Civil Procedure Code. The Court was dealing with the provisions of Sections 11 and 13 of the Punjab Village Common Lands (Regulations) Act, (18 of 1961) wherein, the jurisdiction of the Civil Court was barred in respect of certain disputes. The facts of that case did justify the Court taking the view that the Civil Court ought not to have exercised jurisdiction. The facts of the present case are entirely different and for the reasons indicated by me above, the jurisdiction of the Trial Court was not barred and the learned trial Judge has rightly exercised jurisdiction in this case.

5. The respondent's learned Advocate has produced the copy of the order passed by the learned District Judge in respect of the adjoining lands which were acquired at the same point of time under a common notification whereunder, the compensation was fixed at Rs. 7,500/- per acre. The claimants would naturally be entitled to the solatium, interest, etc., as provided for under the Land Acquisition Act and it was at this scale that the compensation was fixed. The learned Advocate submits that had the correct procedure been followed at that point of time, that the present respondents who were the original plaintiffs would have been entitled to be compensated at precisely that scale and this is all that is asked for. He further submits, that the decision of the learned trial Judge was confirmed by the High Court and that it has become final and he submits that it is at the same scale that the compensation would have to be paid adding on the admissible interest upto the date of payment.

6. The last objection canvassed by the learned Government Advocate is that the quantification of the compensation is required to be done by the Land Acquisition Officer and that the Court ought not to do it in the present proceedings as this is not a case in which the correctness or otherwise of the compensation has been preceded by proceedings under the Land Acquisition Act. This objection to my mind, is also devoid of substance because, the facts are unusual and the Court is required therefore to mould the relief and to innovate in order to prevent protraction of litigation and to avoid prejudice to the claimants by unnecessarily inordinate procedural delays. When one speaks of interests of justice, it

necessarily presupposes that the Court is invested with those powers to further the ends of justice. It is true that the Court is not either quantifying or approving of compensation under the provisions of the Land Acquisition Act, all that the Court is doing is to use the scale awarded in the other proceedings in respect of the similarly situated lands as a guideline while fixing the quantum of compensation payable as and by way of a relief in the present suit.

7. Having regard to the aforesaid situation, the appeal fails and stands disposed of. The decree passed by the learned trial Judge is confirmed with the additional direction that the Land Acquisition Officer concerned shall quantify the compensation payable in keeping with the decision of the Trial Court as confirmed by this Court and shall deposit the same with the Trial Court within an outer limit of twelve weeks from today.

The appeal to stand disposed of. No order as to costs.