
(2007) 11 OHC CK 0050
In the Orissa High Court

Sri Kailash Chandra Mohanty and Others	APPELLANT
Vs	
State of Orissa	RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2008) 1 OLR 283

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This appeal is directed against the judgment passed by the learned Additional District Judge, Bhadrak in Title Appeal No. 14 of 1991 confirming the judgment and decree of the learned Munsif, Bhadrak passed in O.S. No. 138/91-1.

2. The appellants as plaintiffs filed the above noted suit against the respondent seeking a declaration that the entire proceeding undertaken by the respondent for acquiring the suit schedule land as illegal, void and that he is not to be evicted from the said land. The case of the plaintiffs, in brief, was that they purchased the suit land situated in M.S. Khata No. 586 from one Nilei Barik on 10.10.1975 for a consideration of Rs. 4,000/- through a registered sale deed and remained in possession of that land. They averred that the suit land is situated within Basudevpur N.A.C. area and is a valuable piece of land, which they had kept for raising an industry. Although the said land is not fit for goacher, the respondent tried to acquire that land and dispossess them without giving any notice of the acquisition and without undertaking the statutory procedures provided under the Land Acquisition Act, in short, "the Act".

3. The respondent-defendant in its written statement denied the plaint averments claiming, inter alia, that the suit land has been duly acquired by the State adopting the statutory legal procedures and that the plaintiffs have no

right, title, interest and possession over the suit land. The respondent-defendant also challenged the maintainability of the suit before the Civil Court.

4. Learned trial Court dismissed the suit with the observation that the encroachment proceeding against the plaintiffs is not illegal or invalid and that the civil Court lacks jurisdiction to entertain the suit of the plaintiff. The appellants carried appeal, but the learned Additional District Judge, Bhadrak confirmed the judgment and decree of the learned trial Court and hence this appeal.

5. The following substantial question of law was formulated for consideration in the appeal.

Whether the learned Courts below were justified in holding that the Civil Court has no jurisdiction to entertain the suit of the plaintiffs ?

6. Dr. M.R. Panda, learned Counsel for the appellants submits that even if the Land Acquisition Act is a special and self-contained Act, yet the jurisdiction of the Civil Court is not ousted as Section 9 of the C.P.C. gives general jurisdiction to the Civil Court to examine whether the provisions of the Act have not been complied with or whether the statutory Tribunal failed to act in conformity with the fundamental principles of judicial procedure. According to him, since proper notice of the acquisition proceeding was not issued u/s 5-A or 6 of the Act and steps like notification, publication in official gazette, notice in the local news paper as required u/s 4(1) of the Land Acquisition Act were not made, the Civil Court gets jurisdiction to examine these aspects in the suit. In support of his contentions, Dr. Panda cited the cases of Mangulu Jal and Ors. v. Bhagaban Rai and Ors. 1975 (41) CLT 526, and Paramananda Pradhan and Another Vs. Palau Sahu and Others,

7. Mr. Sangram Das, learned Addl. Standing Counsel appearing for the respondent, on the other hand, argued that the Land Acquisition Act is a self-contained Act designed to acquire land by the State for public purposes and by necessary implication, power of the Civil Court u/s 9 of the C.P.C. stands excluded. According to him, the Civil Court has no jurisdiction to go into the question of validity or legality of the notification u/s 4 and declaration u/s 6 of the Act and that only the High Court in exercise of the jurisdiction under Articles 226 of the Constitution can go into these aspects. To support his contention, Mr. Das relied on the case of Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, and State of Bihar Vs. Dhirendra Kumar and others, .

8. In the case of Mangulu Jal, a Full Bench of this Court while examining the matter relating to O.E.A. Act observed as follows:

(i) Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied.

(ii) Even if jurisdiction is so excluded, Civil Courts have jurisdiction to examine into the cases where the provisions of the Act have not been complied with or

the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Civil Court would interfere if it finds the order of the Special Tribunal is unfair, capricious or arbitrary.

In the case of Paramananda Pradhan (*supra*), also the following observation was made.

Legal position is well settled that even if jurisdiction is excluded, it is always open to the Civil Courts which are Courts of general jurisdiction to consider and decide whether the statutory Tribunal has acted within the ambit of the powers conferred upon it by the statute to which it owes its existence or the provisions of the Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure or it has transgressed the limits placed on its powers by the legislature. The Civil Court would interfere if it finds that the order of the statutory Tribunal is unfair, capricious or arbitrary.

Law is, therefore, fairly settled that even when the jurisdiction of the Civil Court is excluded by a special statute, it is always open to the Civil Court to examine whether statutory Tribunal acted in conformity with the fundamental principle of judicial procedure and complied with the provision of the Act. The next question is whether this general jurisdiction given to the Civil Court u/s 9 of the C.P.C. also extends to examination of the legality and correctness of the land acquisition proceeding undertaken by the authorities for acquisition of land for public purposes. In the case of *State of Bihar v. Dhirendra Kumar* (*supra*), the suit was filed before the Civil Court challenging the validity of the notification u/s 4 and declaration u/s 6 of the L.A. Act. The Apex Court after examining the legal position made the following observation.

The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued u/s 9 of the Act and delivered to the beneficiary. The provisions of the Act are designated to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publications envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration u/s 6, the public purpose gets crystalized and becomes conclusive. Thereafter, the State is entitled to authorize the Land Acquisition Officer to proceed with the acquisition of the land and to make the award. Section 11-A, now prescribes limitation to make the award within 2 years from the last date of publication envisaged u/s 6 of the Act. In an appropriate case, where the Government needs possession of the land urgently, it would exercise the power u/s 17(4) of the Act and dispense with the enquiry u/s 5-A. Thereon, the State is entitled to issue notice to the parties u/s 9 and on expiry of 15 days, the State is entitled to take immediate possession even before

the award could be made. Otherwise, it would take possession after the award u/s 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil Court to take cognizance of the case u/s 9, C.P.C. stands excluded, and a civil Court has no jurisdiction to go into the question of the validity or legality of the notification u/s 4, and declaration u/s 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the Civil suit itself was not maintainable. When such is the situation, the finding of the trial Court that there is a prima facie tribunal issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction.

9. Similar view was also taken by the Apex Court in the case of Laxmi Chand (supra). In that case the validity of the acquisition and the award made under the Act was under challenge before the Civil Court. The Apex Court while answering on the point of jurisdiction of the Civil Court made the following remarks.

It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz. the High Court and the Supreme Court under their plenary power under Article 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

The above noted remarks of the apex Court makes it abundantly clear that the legality of the acquisition of land for public purposes and the concerned proceeding under the L.A. Act cannot be examined by the Civil Court and that such aspects can be examined only by the High Court in exercise of the jurisdiction under Article 226 of the Constitution. In the present case, the plaintiff-appellants in the plaint have mentioned that the respondent-State have acquired the scheduled land and that the amount of compensation awarded for the scheduled land is inadequate and insufficient and that the scheduled land is not fit for goacher purposes. Once it is admitted that the proceeding under the Act was undertaken for acquiring the scheduled land for public purpose, the legality and correctness of the acquisition proceeding can only be examined in a proceeding under Article 226 of the Constitution and not before the Civil Court. Learned Courts below therefore, did not commit any legal error in concluding that the suit of the plaintiff-appellant is not maintainable in the Civil Court.

10. The substantial question of law is thus answered against the appellant. The appeal is accordingly found to be without any merit and is dismissed on contest, but without any cost.