

(1959) 12 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous First Appeals No's. 50 and 51 of 1959

State

APPELLANT

Vs

Col. Abdul Rehman and Others

RESPONDENT

Date of Decision : 31-12-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2, 60, 79, 80, 81
Land Acquisition Act, 1894 — Section 18, 23(1), 26, 26(2), 51

Citation : (1959) 12 J&K CK 0004

Hon'ble Judges : J.N. Wazir, C.J.; K.V. Gopalakrishnan Nair, J

Bench : Division Bench

Advocate : Jaswantsingh, General, for the Appellant; L.N. Sharma and Dhanpat Rai, for the Respondent

Judgement

J.N. Wazir, C.J.—These are two appeals by the Government of Jammu and Kashmir against the order of the District Judge, Jammu, dated

14-10-1959 overruling their objection to the executability of the award for payment of compensation made by him on a reference by the Collector

of Udhampur District u/s 18 of the Land Acquisition Act.

2. The facts which gave rise to these appeals briefly stated are these. Proceedings for acquisition of two plots of land, one belonging to Col. Abdul

Rehman Respondent in appeal No. 50 and the other belonging to the predecessor-in-interest of the Respondents in appeal No. 51, were taken

under the Land Acquisition Act. The Collector gave an award which was not acceptable to the proprietors and at their instance he made a

reference to the Court of the District Judge, Jammu, u/s 18 of the Act for determination of compensation. The District Judge made an award

allowing Rs. 83,242/- to Col. Abdul Rehman and Rs. 41,385-2-3 to the other

claimant. On Respondents' application for enforcement of the award made in their favour the District Judge did not issue execution but wrote to the authorities of the Revenue Department requesting them to arrange funds for satisfaction of the award.

The first letter was addressed by him in the year 1956 and after protracted and fruitless correspondence extending over a period of four years and

the failure of the Appellant to make payment, the District Judge issued a warrant to the Treasury Officer Jammu on 31-8-1959, for attachment of

an amount of Rs. 1,24,584. 14 n.P. out of Government money in the Treasury and directed him to remit the same to his Court for payment to the

Respondents. On issue of the above attachment warrant the Appellant, for the first time, filed objections in the lower Court questioning the

executability of the award on the ground that no time had been specified in the award for its satisfaction as required u/s 82 of the Civil Procedure

Code. This objection did not find favour with the executing Court and it was overruled. The State has appealed against that order.

3. The sole question which arises for consideration in these appeals is whether an award made by a District Judge on a reference u/s 18 of the

Land Acquisition Act is governed and controlled by the provisions of Section 82 of the Civil Procedure Code.

4. Section 26(2) of the Land Acquisition Act provides that an award shall be deemed to be a decree within the meaning of Section 2, Clause (2)

of the CPC and Section 51 provides:

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law in force in Jammu and Kashmir State for the

time being relating to the procedure in Civil actions shall apply to all proceedings before the Court under this Act.

Section 82 of the CPC reads as under:

(1) Where the decree is against the State of Jammu and Kashmir or against a public officer in respect of any such act as aforesaid, a time shall be

specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case

for the orders of the Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such

report.

5. The contention of the Appellant's learned Counsel is that u/s 26(2) of the Land Acquisition Act an award is a decree but in view of Section 51

of the Act it must, in order to be valid as such, strictly comply with the provisions of Section 82 of the CPC and specify a time within which it must

be satisfied. It is contended that for the validity of an award it must specify a time for its satisfaction and that as the award in these cases failed to

specify the same, it was not merely inexecutable but void and ineffective.

6. The effect of Section 26(2) of the Act in declaring an award to be a decree within the meaning of Section 2, Cl_(2) of the Code is that

execution can be taken out on the basis of the award as if it were (sic) Civil Court decree and it is not necessary to sue for a decree on the basis

thereof. Section 26(2) specifically provides that the award shall be deemed to be a decree within the meaning of Section 2, Clause (2) of the CPC

and that being so we have to go to the CPC to find out the definition of 'decree'. Section 2, Clause (2) defines a decree and specification of a

certain time for the payment of decree does not form part of that definition. The provisions of Section 82 of the Civil Procedure Code, therefore,

cannot be imported within the definition of the decree as given in Section 2, Clause (2), Code of Civil Procedure.

7. Great stress has been laid by the learned Counsel for the Appellant on the point that the provisions of law relating to the procedure in civil

actions are made applicable to all proceedings before the Court in the Land Acquisition Act by virtue of Section 51 of that Act and, therefore,

Section 82, CPC also is applicable to the award which is deemed to be a decree under the Land Acquisition Act.

8 In our opinion Section 51 does not make Section 82 of the Code applicable to an award. In the first place, if the scheme of the Land Acquisition

Act is kept in view it will be clear that it has not envisaged the specifying of time in the award for its satisfaction. The above provision of Section 82

of the Code making it obligatory to specify a time for the satisfaction of a decree passed against the Government applies only to decrees passed in

suits referred to in the immediately preceding sections, namely, in Sections 79, 80 and 81 of the Code and not also to the awards as proceedings

before the District Judge under the Land Acquisition Act which culminate in an

award are not in the nature of suits referred to in these sections. A

casual perusal of these sections of the Code will clearly show that none of them applies to proceedings before the District Judge under the Land

Acquisition Act. In this view I am supported by a ruling of the Calcutta High Court, reported as *Asmaboo Kurban Hossain and Others Vs.*

Province of Bengal, , where it was held as follows:

Section 82 is confined to decrees passed in suits which are referred to in previous sections and which can only be instituted after service of notice

u/s 80. The object of the section undoubtedly is to allow time and opportunity to the Crown or Public Officers to satisfy the decree amicably

before execution proceedings are allowed to be started against them. This provision cannot be applied to an award made by the Calcutta

Improvement Trust Tribunal. An award made by the Tribunal is not a decree at all for purposes of the Civil Procedure Code. It simply specifies

the amount of compensation that is allowed to the claimant under several heads and the grounds of awarding the said amount. Power is given to the

Calcutta Small Causes Court to enforce the award as if it were a decree of that... Court; but as a matter of fact, it is not a decree of that Court or

of the Court which actually made it. Even assuming that an award made by the Tribunal is a decree, it is not a decree-to which Section 82 is

applicable, when there is no suit against the Crown or any Public Officer as such as contemplated by Part 4, Code of Civil Procedure, and which

could only be instituted after service of notice u/s 80 of the Code.

9. The learned Counsel for the Appellant has tried to distinguish this ruling on the score that the provisions of Section 26(2) are not contained in the

Calcutta Improvement Act. It is true that the provisions contained in Section 26(2) do not exist in the Calcutta Improvement Act but u/s 71, Clause

(d) of Calcutta Improvement Act the award of Tribunal is deemed to be an award of the Court under the Land Acquisition Act of 1894 and

Section 26 of that Act prescribes the form of an award to be made by that Court. It lays down that the award shall be in writing, signed by the

Judge and shall specify the amount awarded under Clause (1) of Sub-section (1) of Section 23, and also the amounts respectively awarded under

each of the other clauses of the same sub-section. Section 77, Clause (2), Calcutta Improvement Act provides that every award of the Tribunal

and every order made by the Tribunal for the payment of money shall be enforced by the Court of Small Causes of Calcutta as if it were a decree

of that Court. So, the award made under the Calcutta Improvement Act is deemed to be the award under the Land Acquisition Act and the award

made under the Calcutta Improvement Act has to be enforced by the Court of Small Causes Calcutta as if it were a decree of that Court.

10. The award made under the Land Acquisition Act and the award made under the Calcutta Improvement Act have to be enforced as decrees

and, therefore, absence of specific provision of Section 26 of the Land Acquisition Act from the Calcutta Improvement Act is absolutely

immaterial.

11. Moreover, if the contention of the learned Counsel for the Appellant that Section 51 of the Land Acquisition Act makes all the provisions of

the CPC applicable to proceedings before the Court under the Land Acquisition Act were correct, then the award made by that Court would itself

be a decree under the Code and there was no necessity of enacting Section 26(2) of the Land Acquisition Act; but the fact that Section 26(2) has

been specifically inserted in the Land Acquisition Act makes it abundantly clear that the award made u/s 18 of the Land Acquisition Act is not a

decree by application of the provisions of the CPC u/s 51 of the Land Acquisition Act, but it is deemed to be a decree and is executable as such

only under the provisions of Section 26(2) of the Land Acquisition Act.

12. That the provisions of Section 82 were not intended to apply to awards will be further clear from the fact that in order to make them so

applicable the Indian Legislature has added Sub-section (3) to Section 82 of the Code in 1949. That sub-section is as follows:

The provisions of sub-ss. (1) and (2) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award-

(a) is passed or made against the Union of India or a State or a public officer in respect of any such act as aforesaid....

By this sub-section the provisions of Section 82 have been made applicable to awards also. This Sub-section (3) it may be observed, has not so

far been added to the State Code of Civil Procedure.

13. For the foregoing reasons we are clearly of the opinion that under the law in force in the State Section 82 of the Code does not apply to

awards made by the District Judge under the Land Acquisition Act.

14. Assuming for the sake of argument that the award made under the Land Acquisition Act is controlled by Section 82 of the Code, it would not

be nullity for the mere reason that no time is specified in it for its satisfaction. In such a case the award would be only incomplete for purposes of its

enforcement by execution and some further steps have to be taken to make it executable. The same view has been taken in Governor-General in

Council Vs. Piramal Marwari, , wherein it is laid down as follows:

The Judge in passing a decree against the Crown has not only to pronounce that the Crown is liable either to pay some money or to do some act

but has also to specify a time within which the decree will have to be satisfied. In case he does comply with that provision, he has a further act to

do, namely to send a report to the Provincial Government in case of non-satisfaction of the decree within the time specified by him in it. Till three

months after such a report, the decree must remain in the stage of its preliminary stage. Where the Judge performs only the first part of his duty,

namely, adjudication of the respective rights of the parties, the decree is not void but incomplete. There are two other parts to be done by him,

namely, to specify a time and after the lapse of the time in case of non-satisfaction of the decree, to submit a report; till then the decree is

incomplete and not final nor executable.

15. A similar view was taken in The U.P. Government Vs. Firm Brij Mohan Lal, . In that case it was held that a Court in passing a decree against

the State has not only to declare that the State is liable either to pay some money or to do some act but has also to specify the time within which

the decree has to be satisfied. Where no such time is specified, the decree though not void cannot be executed.

16. We may point out at once that the lower Court has substantially complied with all the provisions of Section 82 before issuing execution. Even

though no time within which payment was to be made was specified in the award, the lower Court in its several communications addressed to the

authorities of the Revenue Department specified certain time for payment of the money awarded and extended it from time to time at their request

and this clearly made up the omission in regard to this matter in the award. In the last but one letter dated 25-2-1959 addressed to the Secretary

to Government. Revenue Department, the lower Court made it clear that if no payment was made by the end of March 1959 execution for

recovery of the decretal amount according to law would issue. This letter was sufficient compliance with the provisions of Section 82 requiring

non-satisfaction of a decree to be reported to the Government before issuing an execution. When this letter also remained without response the

lower Court in its letter dated 4-4-1959 wrote as follows:

In spite of issue of numerous letters and fixing the dead line by the end of March 1959 the decretal amount has not so far been arranged since

October 1956 and remitted to this Court for satisfaction of the decrees. The decree-holders are crying hoarse for their dues ever since and the

cases are pending in this Court awaiting payment of the decretal amount by the judgment-debtor.

A final opportunity is, however, again given and in case payment is not arranged before 1-5-1959 execution for recovery of the decretal amount

according to law shall issue forthwith.

17. It was more than three months after the report of non-satisfaction of the award to the Government that the lower Court issued attachment

warrant to the Treasury Officer, Jammu on 31-8-1959.

18. From the above it will be clear that the District Judge specified the time for payment of the amount awarded by him and even extended it from

time to time at the request of the Appellant and that he made a report of non-satisfaction of the award to the Government and did not issue

execution for more than three months after that report. This would show that the provisions of Section 82 of the Code, notwithstanding the fact that

they do not apply to an award u/s 26 of the Land Acquisition Act, have been substantially applied by the lower Court and there was nothing

incomplete about the award which would come in the way of its enforcement by execution according to law.

19. Lastly it may be observed that even if Section 82 applied and it had not been followed, it would not, in view of the Appellant's conduct, affect

the executability of the award as it is. The provisions of Section 82 requiring specification in the decree of time for satisfaction of a decree passed

against the Government are, like those of Section 60 of the Code relating to exemption of certain kinds of property from attachment in execution of

a money decree, for the benefit of a judgment-debtor and the same may be waived by him. In these cases the Appellant did not in any of its

several communications object to the executability of the award for nearly four years but only requested for grant of time to enable it to arrange

funds for satisfaction of the same. It was only after issue of attachment warrant on 31-8-1959 that the Appellant came forward for the first time

with the objection that the award was not executable as no time for its satisfaction was specified in it.

In view of this past conduct of the Appellant it is not open to him now at this belated stage to object to the executability of the award.

20. For the foregoing reasons we are of opinion that the District Judge has rightly overruled the' objections raised by the Appellant and we do not

find any good reason to interfere with his order in appeal. These appeals are therefore, dismissed but in view of the circumstances of this case we

make no order as to costs. We allow a period of three months from today to the Appellant for making payment of the amount awarded against it in

the lower Court failing which the Respondents shall be at liberty to take out execution according to law.

Gopalakrishnan Nair, J.

21. I agree.