

(2007) 08 AP CK 0042

In the Andhra Pradesh High Court

Case No : AS No. 2339 of 1991 and Cross-Objections (SR) No. 28490 of 1992

State of A.P. and Others

APPELLANT

Vs

A.K. Ramaswamy Kudalii

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 9
Land Acquisition Act, 1894 — Section 10, 11, 12, 12(2), 16

Citation : (2007) 6 ALD 97

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Government Pleader, for the Appellant; P.V. Vidya Sagar, for K. Govind, for the Respondent

Judgement

P.S. Narayana, J.—This appeal is preferred by the defendants being aggrieved of the decree and judgment made in OS No. 94 of 1984 on the file of Additional Subordinate Judge, Tirupati. The respondent in the appeal is the plaintiff in the said suit.

2. The suit was filed for setting aside the Award dated 30.10.1980 made by the District Social Welfare Officer, Land Acquisition, Chittoor, 3rd defendant in the said suit, and for recovery of a sum of Rs. 47,004.44 ps with interest at the rate of 12% per annum as compensation for acquisition of the plaint schedule property and for costs.

3. In the light of the respective pleadings of the parties, the trial Court having settled the issues recorded the evidence of PWs. 1 to 5, DWs. 1 and 2, marked Exs. A1 to A21 and Exs. B1 to B10, and ultimately came to the conclusion that the respondent herein, plaintiff in the suit, is entitled to a part of the amount claimed a sum of Rs. 38,863.44 ps with proportionate costs and subsequent interest at 12% per annum from the date of suit till the date of realization and accordingly decreed the suit partly and dismissed the rest of the claim without costs. Hence the present appeal.

4. The learned Assistant Government Pleader for Appeals had taken this Court through the grounds of appeal and would maintain that the trial Court ought to have seen that respondent-plaintiff was served with notice u/s 12(2) of the Land Acquisition Act on 12.12.1980 intimating him of passing of the Award on 31.10.1980 and hence the only course left open to him is to carry the matter by way of Reference u/s 18 of the Land Acquisition Act and the present suit is not maintainable in law as the Award of the Collector became final and conclusive u/s 12 of the Land Acquisition Act. The Counsel also had taken this Court through the evidence available on record and would maintain that the trial Court totally erred in entertaining the present suit and decreeing the suit partly. Incidentally the Counsel also pointed out that the suit even otherwise is barred by limitation. While further elaborating her submissions the learned Counsel would maintain that the jurisdiction of the civil Court to entertain a suit of this nature is clearly barred. The Counsel also placed reliance on certain decisions to substantiate her submissions.

5. Per contra, Sri P.V. Vidyasagar, learned Counsel representing respondent-plaintiff would maintain that the aspect of inherent lack of jurisdiction or want of jurisdiction had not been specifically raised either before the trial Court or before this Court in the grounds of appeal. The Counsel also would submit that the vague submissions made relating to the inherent lack of jurisdiction for the first time in appeal cannot be considered in the absence of a specific plea in this regard. The Counsel would maintain that because of the above plea, respondent-plaintiff is put to serious loss for the reason that had this objection been taken at the earliest point of time, respondent-plaintiff would have pursued the appropriate remedy available to him. Hence, in the light of the fact that there are several procedural infirmities, the civil Court, in the peculiar facts and circumstances, can definitely entertain the suit and pass appropriate orders. Therefore, the Counsel would contend that in the light of the peculiar facts and circumstances, the appeal to be dismissed.

6. Heard the Counsel on record and perused the respective pleadings of the parties, the issues settled and also the oral and documentary evidence available on record.

7. In the light of the rival contentions advanced by the Counsel on record, the following points arise for consideration in this appeal:

1. Whether the civil Court can entertain a suit of this nature in the light of the peculiar facts and circumstances of the present case?
2. Whether the findings recorded by the trial Court on appreciation of oral and documentary evidence to be sustained or liable to be set aside in the facts and circumstances of the case?
3. Whether the cross-objections are to be allowed or to be dismissed in the facts and circumstances of the case?

4. If so to what relief the parties would be entitled to?

Points 1 and 2:

8. The parties hereinafter, for the purpose of convenience, would be referred to as plaintiff and defendants as shown in OS No. 94 of 1984 on the file of Additional Subordinate Judge, Tirupati.

9. The suit had been instituted for setting aside the award made by the District Social Welfare Officer, Land Acquisition, Chittoor, the 3rd defendant in the suit, for recovery of a sum of Rs. 47,004.44 ps with interest at 12% per annum as compensation for acquisition of the plaint schedule land and for costs.

10. Before taking up further discussion, it may be appropriate to have a look at the respective pleadings of the parties. It was pleaded in the plaint as follows:

Plaintiff was the owner of the plaint schedule land. 3rd defendant issued a notice dated 9.3.1977 u/s 9(1) and Section 10 of the Land Acquisition Act calling upon the plaintiff to appear before him on 25.3.1977 to put in a statement. But as the officer cancelled his camp at Puttur, a fresh notice dated 23.6.1977 was issued to the plaintiff calling upon him to appear on 9.7.1977 at Puttur Panchayat Samithi Office. The plaintiff attended the enquiry and put in a statement dated 9.2.1977 intimating the acquiring authority that the value of the property sought to be acquired was Rs. 37,700/-. It appeared that on second thought the orders for acquisition was dropped. But a fresh notice was issued to the plaintiff on 24.9.1980 calling upon him to appear on 14.10.1980; on that day the plaintiff represented that the proceedings may be dropped. While pointing out that the market value of the land was Rs. 400/- per cent. He also sent a statement dated 15.10.1980 by registered post and it was acknowledged by the Land Acquisition Officer on 16.10.1980, a copy of it was also sent to the District Collector. Later on another notice was sent by the Land Acquisition Officer on 4.11.1980 to the plaintiff fixing the date of hearing as 8.11.1980. But the said notice was received by the plaintiff on 10.11.1980. The said notice is therefore, invalid, because u/s 9 of the Land Acquisition Act, there must be 15 days notice. Any award passed on the basis of such invalid notice is not valid and binding. The plaintiff received a copy of notice u/s 12(2) of the Act issued by the Officer on 12.12.1980 intimating that an award was passed granting compensation of Rs. 1012/-. The said notice was received by the plaintiff on 15.12.1980. The plaintiff sent a petition dated 9.1.1981 to the Land Acquisition Officer u/s 18 of the Act claiming compensation at Rs. 49,925/-. The said notice was served on the Land Acquisition Officer on 10.1.1981. He has not chosen to refer the matter to the Sub-Court, Tirupati, for adjudication so far. The plaintiff received a bill dated 12.11.1982 from 2nd defendant and found that only a sum of Rs. 5,060/- was fixed as compensation in the award dated 30.10.1980. The plaintiff so far received Rs. 1012/- on 27.4.1981; Rs. 1072.72 ps on 11.11.1981 and Rs. 1133.44 ps on 15.2.1983 totalling Rs. 3,218.16 ps from 2nd defendant under protest towards part payment of compensation. The Land Acquisition Officer has

not followed the procedure prescribed under law and he has not given any opportunity to the plaintiff to state his case regarding the market value of the property acquired. The entire proceedings are illegal arbitrary, capricious and void. The award is dated 30.10.1980 and the notice of enquiry is dated 4.11.1980 and this itself shows the illegality of the award. The market value of the property was Rs. 600/- per cent as on the date of taking possession in April, 1981. The value given by the officer is grossly low and is arbitrary and is not in consonance held the value of the adjoining lands. Though the well is not in the land, still it is also acquired and thereby the plaintiff sustained loss. The plaintiff was getting an income of not less than Rs. 5,000/- per year from the land. The said land is fit for house sites as it is abutting Madras-Tirupati trunk road. Hence the compensation awarded is grossly low. The plaintiff issued a notice u/s 80 CPC to defendants 1 and 2 calling upon them to pay the amount of Rs. 46,889/- with 15% solatium and interest. The defendants received the notice on 1.8.1983 but did not comply with the demand nor gave any reply.

11. The 1st defendant filed written statement which was adopted by the 2nd defendant and 3rd defendant. It was pleaded in the written statement of the 1st defendant as hereunder;

In the enquiry on 9.7.1977, the plaintiff and other pattadars attended and presented petitions objecting to the proposed acquisition. The plaintiff also claimed that his land is worth Rs. 400/- per cent. But he did not produce any documentary evidence in support of his claim. Since some marginal farmers are involved in the land acquisition proposals, it was felt that it is not worthwhile acquiring their lands. The Land Acquisition Officer therefore directed the B.D.O. Puttur to submit revised proposals touching any other suitable land is available. The District Social Welfare Officer i.e., the Land Acquisition Officer himself had to visit the village on 8.6.1980 to select suitable lands for provision of house sites. Since no other suitable land of wealthy pattadar was found, he decided to proceed further with the acquisition of the land already notified. All the above steps naturally involved some delay in the land acquisition proceedings. During his visit the Land Acquisition Officer ascertained that the plaintiff is a wealthy pattadar. As there was much delay, fresh notice was issued to conduct fresh enquiry fixing the date of enquiry as 14.10.1980. The notices were served on the plaintiff and other pattadars on 28.9.1980. On 14.10.1980 the plaintiff did not attend the award enquiry, while the other pattadars attended and their statements were recorded, the statement of plaintiff could not be recorded as he did not attend the enquiry wilfully and deliberately. In the petition dated 14.10.1980 the plaintiff claimed at the rate of Rs. 400A per cent, but he miserably failed to substantiate his claim. After taking into consideration all aspect of the case, the rates prevailing in the vicinity with reference to the sales statistics garnered from the Sub-Registrar's Office, Puttur and after observing the procedure prescribed, 3rd defendant passed the award dated 31.10.1980. Issue of notice with dated 4.11.1980 is only a clerical error and it does not prevent him from passing an award on the material available in the concluded

enquiry on 14.10.1980. After passing the award, 3rd defendant offered payment by issuing notice u/s 12(2) of the Act and it was served on the plaintiff on 15.12.1980. The plaintiff also received three instalments totalling Rs. 3,218.16 ps under protest as against compensation of Rs. 5,060/-. No notice seeking reference to Sub-Court, Tirupati was received by the defendants. The basis for awarding compensation is market value of the lands acquired on the date of notification published in the Gazette and not the date of taking possession. In the absence of any reliable documentary evidence placed by the plaintiff, the Land Acquisition Officer, 3rd defendant, rightly took into consideration the sales statistics obtained from the Sub-Registrar, Puttur for three years preceding the date of notification and passed the award dated 31.10.1980. The said award is legal, valid and binding on the plaintiff. The well is located in different land in survey No. 8. There are no supply channels connecting the lands in survey No. 7/6. In between the acquired land and well there are lands of third parties. The plaintiff never used the water in the well in survey No. 8 to irrigate the lands in survey No. 7/6. The alleged loss of the plaintiff is imaginary and baseless. No notice is given to 3rd defendant u/s 80 CPC though 3rd defendant is a public officer. Defendants 1 and 2 cannot interfere with the award passed by 3rd defendant. The award dated 31.10.1980 became final and is therefore binding on the plaintiff.

12. On the strength of these pleadings, the following issues were settled by the trial Court:

1. Whether the award dated 31.10.1980 is legal, valid and binding on the plaintiff?
2. Whether the said award is liable to be set aside?
3. Whether the plaintiff is entitled for the recovery of the suit amount?
4. Whether the valuation is correct and Court fee paid is sufficient?
5. To what relief?

The plaintiff examined himself as PW. 1 and apart from PW.1, PWs.2 to 5 were examined on his side and Exs. A1 to A21 were marked. On behalf of the defendants, DWs.1 and 2 were examined and Exs. B1 to B10 were marked. The trial Court while answering issues 1 and 2 had appreciated the oral and documentary evidence available on record in detail, recorded findings at length, came to the conclusion that the notice issued u/s 80 of the CPC is in accordance with law since the 3rd defendant also is only an agent of the State Government and also came to the conclusion that the plaintiff is entitled to recover a sum of Rs. 42,081.60 ps less the amount of Rs. 3, 218.16ps., i.e., Rs. 38,863.44ps. with subsequent interest at 12% per annum from the date of suit till the date of realization and accordingly further answered issues 4 and 5 and ultimately partly decreed the suit.

13. In the light of the findings recorded by the trial Court, on appreciation of the

oral evidence of PWs.1 to 5, DWs.1 and 2 and also the documentary evidence Exs. A1 to A21 and Exs. B1 to B10, this Court is of the considered opinion that as far as the factual findings are concerned, the said findings being well considered findings need not be disturbed. However, the questions which had been argued in elaboration is the jurisdiction of the civil Court to entertain a suit of this nature.

14. The relief prayed for in the suit already had been referred to supra. No doubt certain procedural infirmities had been pointed out in relation to these land acquisition proceedings. Even if such procedural infirmities are there, the question is whether a suit of this nature praying for the relief of setting aside the Award and other reliefs be maintained in a civil Court and whether such suit would fall within the protective umbrella of Section 9 of CPC would be the question in controversy.

15. It is no doubt true that though such specific ground as such had not been taken in the grounds of appeal, the maintainability of the suit as a ground has been specified. Inasmuch as it is one concerned with the jurisdiction of the civil Court to entertain the suit, this Court is of the considered opinion that this question can be raised and argued and accordingly the same is being considered by this Court. As can be seen from the findings recorded by the trial Court also, the procedural infirmities in relation to the compliance or noncompliance of the different provisions of the Land Acquisition Act had been referred to.

16. The Apex Court in *Laxmi Chand and others Vs. Gram Panchayat, Kararia and others*, , at Paragraph 3 observed as hereunder:

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 Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

17. The learned Assistant Government Pleader also placed strong reliance on the decision of the Madras High Court in *Union of India and another Vs. Krishnaswamy*, , wherein the learned Judge of the Madras High Court at Paragraphs 10 and 11 observed as hereunder:

The Land Acquisition Court is a specially constituted Court, and if there is any misdescription either in the identity of the property or in its measurement, the plaintiff can get them rectified by approaching that Court, which has a special machinery for that purpose. I am of the view that the erratum notification has not misled the plaintiff regarding the property. Moreover, this is not a matter to be adjudicated by a Civil Court, and it comes exclusively within the jurisdiction of Tribunals constituted under the Land Acquisition Act.

Similar question was decided in the decision reported in *Laxmichand v. Gram Panchayat, Kararia* (supra). Their Lordships of the Supreme Court have held thus (at p.4424 of AIR):

...It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the Civil Court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose compulsorily acquiring the land for use of public purpose. The notification u/s 4 and declaration u/s 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives inclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made u/s 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference u/s 18 and a further appeal u/s 54 of the Act. If the Government intends to withdraw from the acquisition before possession of the land, procedure contemplated u/s 48 requires to be adhered to. If possession is taken it stands vested u/s 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

It would thus be clear that the scheme of 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 Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

18. In the light of the decision of the Apex Court referred to supra, this Court is of the considered opinion that a suit of this nature cannot be maintained before a civil Court. In other words, the maintainability of the suit before a civil Court being barred, the other questions touching the merits and demerits of the matter need not further detain this Court. However, on the ground of equity, this Court is satisfied that the findings recorded relating to the facts by the trial Court cannot be found fault with, but in view of the fact that the civil Court cannot entertain a suit of this nature and since the remedy is elsewhere, this Court is left with no other option except to set aside the decree and judgment of the trial Court. It is needless to say that when the law is clear, the equity cannot over-ride the law and the law alone to prevail.

Point No. 3;

19. In the light of the findings recorded that the civil Court has no jurisdiction to entertain a suit of this nature, it is needless to say that the cross-objections being devoid of merit, the same are liable to be dismissed.

Point No. 4:

20. In the light of the findings recorded above, this Court holds that the civil Court has no jurisdiction to entertain a suit of this nature and accordingly the decree and judgment of the trial Court are hereby set aside and the appeal is accordingly allowed, but in the peculiar facts and circumstances without costs. It is needless to say that in the light of the peculiar facts and circumstances, the respondent-plaintiff is at liberty to pursue other appropriate remedies available to him in law.

21. It is needless to say that the cross-objections also being devoid of merit, the same shall stand dismissed without costs.