
(2010) 12 PAT CK 0028
In the Patna High Court
Case No : First Appeal No. 237 of 1997

State of Bihar

APPELLANT

Vs

Janak District Education Officer Singh

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Citation : (2010) 12 PAT CK 0028

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—This First Appeal has been filed by the State of Bihar against the judgment dated 04.12.96 and the Award following thereupon signed on 06.01.1997 by Sri H.N. Singh, the learned Special Acquisition-cum-Subordinate Judge, Ist Court, Siwan in Land Acquisition Reforms Case No. 19 of 1989 enhancing the compensation amount and fixing the market value of the lands acquired at the rate of Rs. 4,000/- Per Kattha.

2. It appears that 3 acres of land of the Respondent was acquired by the State of Bihar. The notification u/s 4 of the Land Acquisition Act was issued on 18.11.1987. Thereafter, the land were acquired on 02.02.1989. It may be mentioned here that the said lands were acquired for the purpose of establishing a power house of the electricity Board. The Land Acquisition Officer, Siwan fixed the compensation amount at Rs. 1,34,572.33/- in addition to that Rs. 10,500/- as cost of was also awarded. The land owner-Respondent received the said compensation with objection. Thereafter, he filed an application u/s 18 of the Land Acquisition Act directly before the Special Land Acquisition Judge instead of filing the same before the Land Acquisition Officer, Siwan. It further appears that the Special Land Acquisition Judge advised the land owner to file objection before the competent authority, i.e., Land Acquisition Officer, Siwan and then referred the matter. Thereafter, the Land Acquisition Officer submitted his report on 05.10.1994 stating that the application referred to him is time barred.

3. After the said report, the Special Land Acquisition Judge decided the application filed by the land owner-Respondent assuming jurisdiction himself by

the impugned judgment and enhanced the compensation amount as stated above.

4. The learned G.A.2, Mr. Anil Kumar Jha, Sr. Advocate, appearing on behalf of the Appellant submitted that since there was no valid reference u/s 18 of the Land Acquisition Act, the Civil Court had no jurisdiction to decide the reference case. The learned Counsel further submitted that the application u/s 18 of the Land Acquisition Act filed before the Land Acquisition Judge was not maintainable and, therefore, the Land Acquisition Judge should have rejected the same as not maintainable. Moreover, when the matter was referred to the Land Acquisition Officer, a report was also submitted to him to the effect that the application u/s 18 is time barred, therefore, after report, the learned Land Acquisition Judge should have dismissed the said application but assumed the jurisdiction himself observing that it is only a technical ground and decided the application on merit.

5. The learned Counsel for the Appellant further submitted that while fixing the market value of the lands acquired, the Land Acquisition Judge has relied upon sale deeds by which very small area of lands were acquired which were not admissible at all and / or the said sale deeds could not have been made the basis for fixing the market value because the area acquired is about 3 acres. The learned Counsel further submitted that the lands were acquired for the purpose of Electricity Department, i.e., for the Electricity Board, but no notice was even sent to the Electricity Board. On these grounds, the learned Counsel submitted that the impugned judgment and Awards are liable to be set aside.

6. On the other hand, Mr. Bipin Bihari Singh, the learned Counsel appearing on behalf of the land owner-Respondent submitted that u/s 9 of the Code of Civil Procedure, the Civil Court has the jurisdiction to decide the question if arbitrarily the Land Acquisition Officer refused to award the proper market value of the lands acquired. The learned Counsel further submitted that considering all these aspects of the matter, the learned Court below has rightly enhanced the compensation and there is no illegality in the impugned judgment and Award. According to the learned Counsel, it was not necessary for the land owner to file application u/s 18 before the Land Acquisition Officer. There was no bar of the jurisdiction of Civil Court and, therefore, the Civil Court has decided the application of the Respondent rightly. On these grounds, the learned Counsel submitted that the First Appeal is liable to be dismissed with cost.

7. In view of the above contentions of the parties, the points arises for consideration in this Appeal is as to whether the learned Special Land Acquisition Judge had the jurisdiction to entertain the application u/s 18 of the Land Acquisition Act which was filed directly by the land owner before him and whether the Special Land Acquisition Judge could have enhanced the compensation?

8. As stated above, it is admitted fact that after the Award by the Collector, the land owner-Respondent did not file any objection u/s 18 of the Land Acquisition

Act. Therefore, in this case, there is no reference at all u/s 18 of the Land Acquisition Act what to speak of a valid reference by the Collector to the Civil Court. The land owner directly filed application u/s 18 of the L.A. Act before the Land Acquisition Judge. It is well settled principal of law that the scope of enquiry before the Court is to consider the objection made by the persons interested u/s 18 and nothing more. The jurisdiction conferred on the Court under this Section is special one. Therefore, the Court itself has no power to assume jurisdiction and decide amount of compensation and give a decree in the absence of any reference made to Court by Land Acquisition Officer. The Land Acquisition Judge being a Tribunal of special jurisdiction must see that the reference is made to it by a competent authority and the matter referred to it is permitted under the Act. In the present case, it is reiterated here that there was neither application u/s 18 by the land owner, nor there was valid reference made by the Land Acquisition Officer to the Civil Court.

9. In a decision reported in *Sher Singh Vs. Union of India*, the Full Benches of Punjab and Haryana High Court held that the statute provides in no uncertain terms for the mode of assailing the Award the manner in which and to whom it is to be presented and the ground on which it can be pressed. Not only that the statute is further careful in prescribing not one but 3 specific periods of limitation. It has also held a reference to Section 18 would indicate that a written application against an Award claiming a reference for enhancing of compensation is the cornerstone of the claim. Therefore, without there being a written application u/s 18 for a reference was duly filed and that it has been so done within the period of limitation, no right for enhancing of compensation can arise in favour of the claimant.

10. In the case of *Smt. Ambey Devi v. State of Bihar* 1996 (2) P.L.J.R.60 (SC), the Hon"ble Supreme Court has held at paragraph 3 that the jurisdiction of the Civil Court to determine higher compensation as laid down u/s 23 of the Act would arise only when a valid reference has been made u/s 18 within the prescribed limitation. It is better to quote the relevant portion from paragraph 3 of the said judgment which is relevant for the purpose of this case:

... When the compensation is received under protest under Sub-section (1) of Section 18 the pplication in writing has to be made within the limitation prescribed u/s 18(2) to the Land Acquisition Officer objecting to either extent of the land, classification, value of the land or apportionment of the compensation and upon receipt thereof reference to Court would be made. Thereunder the applicant shall be required to state the grounds on which he/she objects to he compensation etc. Valid reference is a pre-condition for the Civil Court to adjudicate the objections raised in the reference application. In this case, it is found by the High Court that the Appellant had not made any application u/s 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down u/s 23 of the Act, would arise only when a valid reference has been made u/s 18 within the prescribed limitation. The jurisdiction of the Court is

founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimant.

11. In the present case, from the impugned judgment and Award itself, it is clear that the application was filed before the Civil Court. There is no application u/s 18 of the L.A. Act filed before Collector claiming reference to the Civil Court. The matter was referred to the Land Acquisition Officer then he refuse to make reference because of limitation.

12. The learned Counsel for the Respondent relied upon various decisions such as Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, Abdul Majid Haji Mahomed Vs. P.R. Nayak, and various other decisions and submitted that exclusion of the jurisdiction of Civil Court is not to be readily inferred. The said exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Court had jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principal of judicial procedure. Since all the decisions cited by the learned Counsel for the Respondent relates to the jurisdiction of the Civil Court u/s 9 of the CPC and none of the said decisions relates to the power of Civil Court u/s 18 of the Land Acquisition Act, in my opinion, those are not relevant at all to be considered here as none of them are applicable in the present facts and circumstances of the case. As discussed above, the Civil Court exercises special jurisdiction u/s 18 of the Land Acquisition Act, and, therefore, a valid and due reference is a condition precedent for the exercise of the said jurisdiction by the Civil Court u/s 18. The Civil Court cannot assume jurisdiction suo motu.

13. The learned Counsel for the Respondent submitted that the State of Bihar did not object to the jurisdiction of the Court and adduced evidence in the case and, therefore, the State of Bihar-Appellant now is estopped from challenging the jurisdiction of the Civil Court. According to the learned Counsel for the Respondent, the State of Bihar participated in the Civil Court and took a chance and when the decision went against the State of Bihar, this ground is raised in Appeal. So far this submission is concerned also I find no force because from perusal of the impugned Judgment, it appears that the learned Counsel for the Appellant raised this objection and moreover the Court itself found that the application u/s 18 filed by the land owner directly to it was not maintainable but override those objections on the ground that those are technical grounds. Moreover, it is well settled principal of law that when Civil Court has no jurisdiction to decide a matter, consent of the parties will not confer jurisdiction on Civil Court.

14. In view of my above discussion, I find that the application u/s 18 of the Land Acquisition Act filed by the land-owner-Respondent before the Land Acquisition Judge, Siwan directly was not at all maintainable. In absence of valid reference u/s 18 of the Land Acquisition Act made by the Land Acquisition Officer to the Civil Court, the Land Acquisition Judge had no jurisdiction to decide the same and on

this score alone, the impugned judgment and Award are liable to be set aside. So far the other ground raised by the parties regarding fixation of market value of the land is concerned, it is not necessary to be gone into in the presence case, I have already held that there is no valid and due reference.

15. The learned Counsel for the Respondent submitted that after the judgment and Award, the land owner filed execution case No. 13 of 1997 and in the Execution case, the land of State of Bihar was auction sold and he purchased the land and delivery of possession has already been effected on him as far back as in the year 2000 and, therefore, on the basis of this subsequent development, the First Appeal is liable to be dismissed. So far this submission is concerned also, I find no merit because the possession has been delivered to the land owner Respondent on the basis of a judgment and Award passed by the Court which had no jurisdiction. On the basis of this ground that delivery of possession has been effected, the impugned judgment and Award cannot be said to be legal and valid.

16. In the result, this First Appeal is allowed, the impugned judgment and Award are set aside and the claim application filed by the claimant-Respondent before the Civil Court is hereby dismissed with cost of Rs. 10,000/-.