

(2016) 08 KL CK 0056

In the High Court Of Kerala

Case No : R.P. No. 1104 of 2012 in La. App. 400 of 2011

State of Kerala

APPELLANT

Vs

Radhamma K.

RESPONDENT

Date of Decision : 26-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1(2)
Land Acquisition Act, 1894 — Section 18, 54

Citation : (2016) 4 CivCC 409 : (2016) 4 ILRKerala 953 : (2016) 4 KerLJ 40 :
(2016) 3 KLT 982

Hon'ble Judges : Mr. V. Chitambaresh and Mr. K. Harilal, JJ.

Bench : Division Bench

Advocate : Smt. Latha K. Thankappan Special Government Pleader, for the
Petitioner; Sri. Rajesh Kannan K and Sri. G.S. Reghunath, Advocates, for the
Respondent

Final Decision : Dismissed

Judgement

Chitambaresh, J.—Question

It is true that the judgment in a Land Acquisition Appeal relied on in subsequent appeals has been set aside by the Supreme Court in further appeal. Does it enable the parties to freely apply for review of the subsequent judgments without filing appropriate appeals therefrom ?

Facts

2. An extent of 0.85 Ares of land in R.S.Nos.688/38 & 39 of Nemom Village belonging to the respondent was acquired for the purpose of improvement of a road under the Land Acquisition Act, 1894. The respondent objected to the adequacy of compensation whereupon there was reference under Section 18 of the Land Acquisition Act, 1894. The Court of the II Additional Subordinate Judge of Thiruvananthapuram in L.A.R. No. 382/2007 enhanced the compensation fixing the land value at Rs. 3,00,000/- per cent. The State of Kerala and the

Executive Engineer of the Public Works Department filed an appeal therefrom as L.A.A. No. 400/2011 on the file of this Court. The appeal was allowed refixing the land value at Rs. 2,00,000/- per Are following L.A.A. No. 286/2011 in respect of a land similarly situate and covered by the same notification. This petition has been filed by the appellants seeking review of the judgment in L.A.A. No. 400/2011 with a delay of 304 days in preferring the same pointing out certain subsequent events.

3. It appears that the State had challenged the judgment in L.A.A. No. 286/2011 in appeal before the Supreme Court in S.L.P.(c). No. 491/2012 to further scale down the compensation refixed. The Supreme Court granted leave and eventually by judgment in Civil Appeal No.4332/2012 set aside the judgment in L.A.A. No. 286/2011 of this Court. The matter was remitted to the reference court whose revised award happened to be set aside by this Court by the judgment in L.A.A. No. 590/2013 and connected cases filed by the appellants. It is the case of the appellants that the judgment in L.A.A. No. 400/2011 which had simply followed the judgment in L.A.A. No. 286/2011 deserves to be reviewed therefore. The endeavour of the appellants is to have L.A.R. No. 382/2007 reconsidered by the reference court along with L.A.R. No. 383/2007 which stands remanded in L.A.A. No. 590/2013 and connected cases.

Counsel

4. We heard Mrs. Latha K. Thankappan, Special Government Pleader on behalf of the review petitioners/appellants and Mr. Rajesh Kannan K., Advocate on behalf of the respondent/claimant.

Analysis

5. The assessment of compensation for the land acquired in a reference or an appeal depends on several factors including its potential value which is a mixed question of fact and law. Such assessment cannot be compartmentalised into a "question of fact" or a "question of law" for it to be clubbed together in arriving at a final figure. It should be deemed that a decision on a question of law is also involved in the assessment of compensation for the land acquired in a land acquisition reference or appeal. Any subsequent decision on the question of law which is a component of the assessment of compensation by a superior court cannot be a ground for review. This is explicit from the Explanation to Order 47, Rule 1 (2) of the Code of Civil Procedure, 1908 which is extracted hereunder for the sake of clarity:

"Explanation. - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

6. That there has been an exercise on a question of law apart from the questions of fact with reference to the evidence and pleadings is explicit from the order in

Civil Appeal No. 4332/2012. It concludes as follows:

"In the result, the appeal is allowed, the impugned judgment as also the one passed by the Reference Court are set aside and the matter is remitted to the Reference Court for fresh determination of the compensation payable to the respondent, keeping in view the guiding principles laid down by this Court for determination of the market value of the acquired land."

(emphasis supplied)

The setting aside of the judgment in L.A.A. No. 286/2011 in Civil Appeal No. 4332/2012 is no reason to automatically topple down the judgment in L.A.A. No. 400/2011 in the circumstances.

7. The following observations in *Union of India v. Sube Ram* (1997) 9 SCC 69 which was also a case that arose under the Land Acquisition Act, 1894 is apposite to the context:

"It is true that if it were a case of a superior court having interpreted the law and the law having become final, by Order 47, Rule 1 CPC, it could not constitute a ground for review of the judgment. But here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984, is a question of jurisdiction of the court."

(emphasis supplied)

No question of jurisdiction arises common to the land acquisition reference on hand and the land acquisition reference dealt with in Civil Appeal No. 4332/2012 to escape from the Explanation afore quoted. We are of the firm view that the Explanation to Order 47, Rule 1 (2) of the Code of Civil Procedure, 1908 remains as an impediment to entertain the petition for review. (See:- *Shanti Devi v. State of Haryana* (1999) 5 SCC 703 wherein also the impact of the above statutory provision has been reiterated).

Comment

8. It is usual for this Court to follow the judgment passed in connected appeals that too when it concerns the acquisition of the land of similar character and covered by the same notification. The judgment in the subsequent appeals should also be subjected to the same challenge as was done to the judgment in the earlier appeals. The parties cannot await the outcome of the challenge made to the judgment in the earlier appeals in order to apply for review of the judgment in the subsequent appeals.

Conclusion

9. There is no error of law apparent on the face of the record warranting exercise

of the jurisdiction of review by recourse to Section 53 of the Land Acquisition Act, 1894. It is by virtue of the said provision have the appellants attempted to invoke the jurisdiction under Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure, 1908.

Result

10. The review petition is dismissed. No costs.