

(1969) 09 KL CK 0021

In the High Court Of Kerala

Case No : A.S. No. 724 of 1963, A.S. 38/64 and A.S. 98/64

State of Kerala

APPELLANT

Vs

Thelappurath Bala Lakshmi Amma

RESPONDENT

Date of Decision : 24-09-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 1, Order 47 Rule 1, 53

Land Acquisition Act, 1894 — Section 18, 25(3), 25(3), 3(d), 3(d)

Citation : (1970) KLJ 499

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Narayana Pillai, J

Bench : Division Bench

Advocate : K. Velayudhan Nair, M.C. Sen, T.M. Krishnan Nambiar, V. Sivaraman Nair, V.M. Nayanar, K.C. Sankaran, T.V. Ramakrishnan, K.N. Karunakaran and K.G. Devarajan, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Krishnamoorthy Iyer, J.—5656 square feet of land from T. S. 211 of the Kozhikode Municipality were acquired for the construction of a bus stand. At the time of acquisition there were 12 buildings in the acquired property bearing door Nos.1227 to 1238. It is agreed that these buildings were constructed by the kanomtenants. The Notification u/s 4(1) of the Land Acquisition Act was on 24-12-1952. The jenmi of the property Thelappurath Balalakshmi Amma and kanom tenants owning the buildings bearing Nos. 1228 and 1231 to 1234 and the building bearing door No. 1235 filed applications for reference u/s 18 of the Land Acquisition Act. The application filed by the jenmi for reference was numbered as L.A.O.P. 113 of 1955. The learned Subordinate Judge of Kozhikode in the said O.P. enhanced the land value to Rs.1000/- per cent. The kanom tenants were not made parties to L.A.O.P. 113 of 1955. A.S.No. 724 of 1963 is filed by the State against the award passed in L.A.O.P. 113 of 1955. The application for reference filed by the kanom tenant who is the owner of buildings bearing door Nos. 1229 and 1231 to 1234 was numbered as L.A.O.P. 109 of

1955. The learned Subordinate Judge awarded Rs.54225/- towards the value of the buildings by capitalising the 9 months' rent at 25 times. A. S. 38 of 1964 is filed by the State against the said award.

2. The application for reference filed by the kanom tenant who is the owner of the building bearing door No.1235 is the subject-matter of L.A.O.P. 128 of 1955. The learned Subordinate Judge awarded compensation at 20 times the rental value and including solatium awarded Rs.12,420/-. A.S. 98 of 1964 is by the State against that award.

3. We shall first take up A.S. 38 of 1964. The learned counsel for the respondent raised a preliminary objection that the appeal has become infructuous because the award which is the subject of appeal has been reviewed by the Land Acquisition Court and the respondent has been given enhanced compensation and the award under appeal is therefore no longer subsisting. The award which is the subject-matter of A.S. 38 of 1964 is dated 23-8-1963. The respondent filed a review petition on 30-8-1963. A.S. 38 of 1964 was filed by the State in this Court on 21-1-1964. The review petition was allowed by the trial court on 9-3-1964 and a fresh award was passed. The question to be decided is whether in view of the fresh award it is open to the State to prosecute the appeal. The appeal was filed in this Court only after the filing of the review petition. The filing of the appeal will not affect the jurisdiction of the Subordinate Judge to deal with the review petition. It is also clear that the appellate court could have dealt with the appeal on the merits even during the pendency of the petition for review and the ground raised in the review petition could have been considered by the appellate court. But when once review petition is allowed before the disposal of the appeal and the decree appealed against is superseded the appeal will become incompetent and it cannot be considered on the merits. In our view this appeal cannot be prosecuted any further.

4. But the learned Advocate General contended that the review petition was incompetent and the proceedings based upon the same are void and the variation of the award under appeal is without jurisdiction and has to be ignored by this Court and therefore the appeal can be prosecuted on the merits. The submission of the learned Advocate General was based upon the absence of any provision in the Land Acquisition Act empowering a court to review any award and also because of the wording of Order 47, Rule 1, C.P.C. In the case before us we are concerned with the Land Acquisition Act I of 1894. It was argued by the Advocate General that the right of review is not a procedural one and has to be expressly conferred by the statute. Section 53 of the Land Acquisition Act is in the following terms:

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC (14 of 1883) shall apply to all proceedings before the Court under this Act.

The expression "Court" defined in Section 3(d) of the Act reads thus:

the expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this act.

5. It is admitted that the Court which passed the award appealed against is a Court as defined in Section 3 (d) of the Land Acquisition Act. In view of Section 53 the provisions of Order 47, Rule 1, C.P.C. must apply to proceedings before a Land acquisition Judge. There is no provision in the Land Acquisition Act which is in any way inconsistent with the provisions of Order 47, Rule I of the C.P.C. The learned Advocate General would contend that in view of Section 54 of the Land Acquisition Act which expressly provides for appeals against the awards passed by the land acquisition Court and also against the decrees passed by the High Court in appeals against such awards, if a right of review was intended it would have been expressly conferred by the statute. Though this plea is attractive we are unable to entertain the same.

6. The learned Advocate General relied on the decision in *Mulambath Kunhammad v. Parakkat Kathiri Kutti* 31. M.L.J. 827, where Srinivasa Aiyangar, J. observed:

Turning to the language of S. 53, the provisions of the CPC which are limited by the words "proceedings under the Act" and before the "Court" which means the Court of the Judicial Officer specially appointed to whom references are made under one or other of the sections of the Act. Those words would exclude the provisions of the Code relating to appeals from the award as they are not proceedings before the court and I think the provisions relating to review are equally inapplicable for as soon as a determination of the matters referred to the Court is arrived at by that Court and the award is made, all proceedings under the Act before the Court" is at an end.

7. We are unable to accept the above interpretation of Section 53. The above decision has proceeded on the basis that a decision of a land acquisition court whether made on an application for reference u/s 18 or 30 or u/s 32 is only an award and not a decree. This view is not shared by the decisions of this Court where it has been held that a decision u/s 32 of the Land Acquisition Act is a decree though not an award. It is therefore not possible to adopt the line of reasoning in *Mulambath Kunhammad v. Parakat Kathiri Kutti* 31. M.L.J. 827. On the other hand in *Sakti Narain Singh v. Bir Singh* AIR 1920 Pat 743, it was observed:

The Land Acquisition Act in S. 53 enacts that the provisions of the CPC shall apply, save so far as they are inconsistent with anything contained in the Act. We find nothing in the Act which forbids the application of O. Order 47 rule 1 of the Code, and therefore in our opinion, the District Judge had power to entertain an application under O. 47.

8. We follow the decision of the Patna High Court and hold that a petition to

review an award is maintainable because of section 53 of the Land Acquisition Act. The decision in *Rangoon Bototoung Co. Ltd. v. Collector of Rangoon* ILR 40 Cal. 21, relied on by the learned Advocate General has no application at all as in that case the question that was considered was whether an appeal will lie before the Privy Council from a decree of the High Court in a land acquisition proceeding.

9. It was then argued by the learned Advocate General that the review petition is not maintainable because of Order 47, Rule I, sub-rule (2) which lays down that a party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the Appellate Court the case on which he applies for the review. The contention is that since the review petitioner himself filed the appeal he was debarred from prosecuting the review petition because of Order 47, Rule 1, sub-rule (2). In *Punjab Sindh Bank Ltd. v. Ram Kishen* AIR 1916 Lah 173, relied on by the learned Advocate General the review petition was filed after the filing of the appeal. The principle of law, upon which the sub-rule is based, is that when an Appellate Court is seized of the case, and is empowered by law to grant the relief claimed by the applicant, the latter should have recourse to the Appellate Court, and not to the Subordinate Court. The act of filing an appeal subsequent to the filing of the review petition will not deprive the jurisdiction of the court to deal with the review petition filed earlier. The said provision only restricts the right of a person to apply for review and does not render the review petition already filed untenable. The wording of the provision itself is a party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the Appellate Court the case on which he applies for the review. The very wording of the provision shows that it deals with the filing of petitions for review subsequent to the filing of an appeal. We therefore overrule the plea of the learned Advocate General and hold that Order 47, Rule 1, sub-rule (2), C.P.C. will not in any way affect the jurisdiction of the court to deal with the review petition on the merits.

10. The law is now well-settled that if a decree made previously is vacated by a petition for review any appeal preferred against the decree can no longer be prosecuted. If any authority for the proposition is necessary we will cite the decisions in *Shidramappa v. Gurushantappa* AIR 1929 Bom 183, *Aditya Kumar Bhattacharjee Vs. Abinash Chandra Mukhopadhyaya and Others*, , *Vadilal v. Fulchand* ILR 30 Bom 56 and *Md. Rowther v. Swaminatha Mudaliar* AIR 1936 Mad 464. We therefore hold that A.S.38 of 1964 has become infructuous and we dismiss the same without any order as to costs.

A. S. No. 724 of 1963

11. This appeal is directed against the award passed by the learned Subordinate Judge on an application made u/s 18 of the Land Acquisition Act by the jenmi of

the property. The land value was enhanced by the learned Subordinate Judge to Rs.1000/- per cent. The main plea of the learned counsel for the State was that the claim is barred u/s 25(3) of the Land Acquisition Act. The claim for enhancement was disallowed by the learned Subordinate Judge against which A.S. 1139 of 1959 was preferred in this Court. The decision was set aside and this Court directed that in view of the order in I.A.846 of 1956 for rectification of the mistake in the application for reference the decision could not be sustained and therefore the matter was remanded. Section 25(3) of the Act reads thus:

When the applicant has omitted for a sufficient reason to be allowed by the Judge to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

Ex. C1 is the petition filed before the Land Acquisition Officer. What is stated therein is to the following effect:

12. In the application for reference also the mode of valuation is stated clearly in paragraphs 5 and 6 thereof. We are therefore of the view that the plea that Section 25 (3) is a bar cannot be accepted. We therefore dismiss this appeal. But we make no order as to costs. A. S. No. 98 of 1964

The compensation was awarded on the basis of capitalisation at 20 times. We do not find anything wrong in this calculation. We dismiss the appeal, but we make no order as to costs.