

(1964) 07 OHC CK 0002
In the Orissa High Court
Case No : First Appeal No. 62 of 1962

State of Orissa

APPELLANT

Vs

Ajoya Kumar Padhee

RESPONDENT

Date of Decision : 30-07-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 24
Land Acquisition Act, 1894 — Section 18, 3
Limitation Act, 1963 — Section 5
Orissa General Clauses Act, 1937 — Section 15 , 16

Citation : (1965) 31 CLT 375

Hon'ble Judges : Narasimham, C.J;Das, J

Bench : Division Bench

Advocate : Advocate General and R.N. Das, for the Appellant; S.C. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—This an appeal by the State of Orissa from the judgment of the Subordinate Judge of Sambalpur on a reference made by the Land Acquisition. Collector Sambalpur u/s 18 of the Land Acquisition Act. The Respondent's plot of land, bearing Nos. 508, 511 and 516 having a total area of about 56 cents were acquired by the State for the construction of bridge over Haradjore near Sambalpur town. The Collector estimated the compensation payable at Rs. 25/- percent but the Respondent claimed compensation at Rs. 300/- percent. The suit was registered in the Civil Court on 9-2-1962 and for nearly a year adjournments were freely granted to both parties on their request. On 20-8-1962, the Government Pleader appearing for the Appellant filed a petition for issue of Dasti summons to his witnesses. Dasti summons were issued as prayed for and again on 2-7-1962 summons were issued at the request of the Advocate for the Respondent. The suit was posted for hearing on 7-7-1962 but on that day though the Respondent was ready with his witnesses, the State of Orissa asked for adjournment on the ground that the Government Pleader had

gone away to Kuchinda on some urgent work. The prayer for adjournment was rejected and then the case was heard ex-parte and, after examining the Respondent and his witnesses the Court passed an ex-parte order to the effect that compensation be paid at Rs. 300/- percent as deposed to by the Respondent. Soon after, a petition was filed for setting aside the Ex-parte judgment, but that petition itself was filed late by two days, Hence another petition for condoning the delay u/s 5 of the Limitation Act was filed stating that due to the absence of the Collector, the restoration petition could not be filed earlier. The learned Subordinate Judge was not satisfied with the reason given and hence refused to condone the delay and to set aside the ex-parte decree and dismissed the petition on 18-8-1962. The learned Advocate General contended that the lower Court exercised its discretion wrongly in not granting an adjournment when the State of Orissa was not ready on 7-7-1962 and that the State was willing to pay costs if the suit was remanded to the lower Court for re-hearing after giving both the parties an opportunity of being heard. Mr. Mohapatra for the Respondent was not agreeable to this suggestion. We are also not satisfied with the reasons given by the State for its non-appearance on 7-7-1962 when the case was fixed for hearing and also for the delay of two days in filing an application under Order 9, Rule 13 CPC for setting aside the ex-parte decree. The State appears to have conducted this litigation in a very leisurely manner. It is not clear as to whether the work at Kuchinda was so very urgent that the Government Pleader could not give prior intimation to the Court about his inability to appear on 7-7-1962. Then again there is no reason as to why there should be a delay of two days in filing petition for restoration under Order 9, Rule 13 Code of Civil Procedure. Such gross negligence on the part of the lawyer for the State of Orissa could not be condoned. We are therefore not inclined to set aside the judgment of the lower Court merely because there was an ex-parte decree.

2. The learned Advocate-General contended that even on the ex-parte evidence as recorded by the trial Court the amount of compensation fixed for the Respondent was not justified. But I find that the Respondent is a respectable legal Petitioner of Sambalpur, and his statement that the price would be Rs. 300/- percent is fully corroborated by the evidence of recent sales of lands in the vicinity. His witness Ali Khan (p.w. 2) deposed that lands in the vicinity of the acquired land were purchased by him for Rs. 6500/- about 4 or 5 years before the present acquisition (i.e. some time in 1957-1958). Those lands were 25 cents in area hence the price of the adjacent land in 1957-58 may be taken as Rs. 260/- percent. The acquisition of the disputed lands took place in 1960 and in view of the steady increase in price of lands since then, especially in a place like Sambalpur town which is developing rapidly, it cannot be said that an increase of Rs. 40/- percent during a period of three years was an exaggeration. We are therefore not inclined to interfere with the finding of the lower Court that the value of the acquired land should be estimated at Rs. 300/- percent.

3. The lower Court has however awarded damages for fragmentation of land, due

to acquisition, at Rs. 2000/-. The only piece of evidence in support of this claim is that of the Respondent who merely stated that on account of acquiring portions of the said plots, the remaining portions became too small to be conveniently used. He has not stated as to how he fixed the damages at Rs. 2000/- per acre. The map shows that these plots consist of fields and even a small field may give some income. In the absence of further evidence about how exactly the damage took place the Respondent could not give Rs. 2000/- as damages under this head.

4. The learned advocate-General also raised the question of jurisdiction of the Subordinate Judge of Sambalpur to bear this reference. We find that the reference was originally made to the District Judge who transferred it to the file of the subordinate Judge of Sambalpur on 6-12-1961. There were innumerable adjournments taken by the Government Pleader on behalf of the State of Orissa but the jurisdiction of the District Judge to transfer the case for disposal to the Subordinate Judge or of the latter's jurisdiction to hear the case was not challenged. The contention of the Advocate-General is that by virtue of Clause (d) of Section 3 of the Land Acquisition Act the Court having the jurisdiction to hear the reference, is the principal Court of original jurisdiction (i.e. the District Judge) or any other special judicial officer appointed by the State Government for that purpose. Clause (d) of Section 3 of the said Act may be quoted in full:

3(d) the expression 'Court' means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed...a special judicial officer within any specified local limits to perform the functions of the Court under this Act.

We further find that in Law Department notification No. 7655-ILJ 93/60 dated 14th November, 1961, all principal Subordinate Judges within the local limits of their respective jurisdiction have been conferred power to perform the functions of a Court under the Land Acquisition Act. The power to appoint conferred by Clause (d) of Section 3 can be exercised either by an officer appointed by name, or by an officer appointed by virtue of his office, (see Section 15 of the General Clauses Act and Section 16 of the Orissa General Clauses Act). Hence, the validity of the said Notification appointing all principal Subordinate Judges, ex officio as Courts for the purpose of Section 3(d) of the Land Acquisition Act is beyond question.

5. The further question arises as to whether the District Judge had jurisdiction to transfer the suit to a Subordinate Judge specially empowered under Clause (d) of Section 3 of the Land Acquisition Act. The answer to this question will depend on whether a Subordinate Judge exercising such special jurisdiction is a 'Subordinate Judge' of the District Judge or not. Section 9 of the Bengal, Agra and Assam Civil Courts Act places all civil Courts in a district under the administrative control of the District Judge. Hence it is clear that the Subordinate Judge even while exercising special powers u/s 3(d) is under the administrative control of the District Judge. By virtue of Section 24 of the Code of Civil Procedure, the District

Judge is competent to transfer the case to the Subordinate Judge for disposal provided of course that the Subordinate Judge is otherwise competent to hear the suit which competence was obtained here by virtue of the said notification. In our opinion there is no substance in the argument of the Advocate-General challenging the jurisdiction of the Subordinate Judge to hear the suit.

6. For the reasons, we allow the appeal to the limited extent of disallowing the Respondent's claim for damages at Rs. 2000/. but in all other respects the decision of the lower Court is upheld, specially his direction, fixing the valuation at Rs. 300/- percent. The total amount of compensation payable may be recalculated and, after making due allowance for the amount already received, and adding 15 percent for the company nature of the acquisition. Future interest also may be calculated at 6 percent per annum.

7. Both parties will bear their own costs for this appeal.

R.K. Das.

8. I agree.