

(1973) 09 OHC CK 0007
In the Orissa High Court
Case No : First Appeal No. 50 of 1972

State of Orissa

APPELLANT

Vs

Krishnaprasad Lath

RESPONDENT

Date of Decision : 14-09-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Land Acquisition Act, 1894 — Section 18, 4(1), 54

Citation : (1973) 39 CLT 1068

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : Advocate General and Addl. Standing, for the Appellant; S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Ray, J.—The State of Orissa has preferred this appeal against the judgment of the learned Subordinate Judge, Bargarh enhancing the compensation payable to the Respondent for acquisition of 0.85 acre of land belonging to him in village Bargarh within the limits of the municipal area of Bargarh under the Land Acquisition Act (hereinafter called the "Act"). The notification u/s 4(1) of the Act is dated 22-6-1966 and the land in question has been acquired for the purpose or B.G. Railway line for I.D. Cement project. The Land. Acquisition Collector awarded Rs. 1,603.10 as compensation for the acquired land at the rate of Rs. 1,800/- per acre. The Respondent not being satisfied with the award filed an application u/s 18 of the Act to refer the case to the Court, and accordingly, the case was referred to the Court of the Subordinate Judge, Bargarh.

2. Before the Court below, the Respondent only examined himself and relied upon two sale deeds (Exs. 1 and 2). Under Ex. 1, 0.48 acre of land in village Bargarh has been sold for Rs. 4,500/- and under Ex. 2, 0.28 acre of land in the said village has been sold for Rs. 3,640/-. The Respondent in his evidence has asserted that lands acquired under Exs. 1 and 2 are similar in nature to the land

acquired. He has also asserted that the disputed land is within the municipal area and is situated in a busy locality. After consideration of the entire evidence led before him the learned Subordinate Judge has granted compensation for the acquired land at the rate of Rs. 7,500/- per acre. Hence this appeal.

3. So far as the merit of the appeal is concerned, I must say that the evidence is almost one-sided. It is not disputed that there is bound to be some amount of guess work in assessing the compensation payable in respect of the land acquired under the Act. Where there is no inherent defect in the assessment made by a Court, an appellate Court is reluctant to interfere with such assessment. It is only in a case of fundamental or radical error of principle adopted by a Court assessing compensation, an interference by a Court of appeal is justified. In my view, the principle adopted by the Court below in assessing compensation does not suffer from any error. Therefore, on merit, I must say that a case of interference has not been made out by the Appellant.

4. Mr. S.C. Mohapatra, learned Counsel for respdt raises another point. According to him, the present appeal is one u/s 54 of the Act and an appeal under the Act is governed by the provisions contained in the CPC applicable to appeals from original decrees. That being so, Order 41, Rule 1, CPC applies to this appeal. Order 41, Rule 1, CPC requires copies of judgment and decree to be filed along with the memorandum of appeal. Copy of a decree means a certified copy. The records in the case reveal that the memorandum of appeal is not accompanied by either a certificate copy of the judgment or of the decree under appeal. Only a plain copy of the judgment sent by the learned Subordinate Judge to the Land Acquisition Collector for necessary action has been filed along with the memorandum of appeal. Therefore, according to Mr. Mohapatra, there has been no proper filing of the appeal at all. This contention of Mr. Mohapatra is well founded. Unfortunately, the office has not pointed out this defect at the time when the appeal was filed, but that does not improve the position. It has been held in a decision reported in Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, , that a litigant feeling aggrieved by a decree-is to apply for a certified copy thereof. The rules relating to copies are provided in the G.R. & C.O. (Civil), Vol. I, Part IV, Chapter I Section III. A copy of a judgment or a decree obtained not in accordance with the rules provided in the G.R. & C.O. (Civil) cannot be a substitute for a copy as contemplated under Order 41, Rule 1, Code of Civil Procedure. It appears that the judgment of the learned Subordinate Judge has been passed on 26-9-1971. A copy of the judgment has been forwarded to the Land Acquisition Collector by the learned Subordinate Judge by his memo dated 4-1-1972. The present appeal has been filed on 21-3-1972. The prescribed period of limitation for filing an appeal is 90 days under the Indian Limitation Act. It is only when an application is made for certified copies of the judgment and decree for the purpose of filing an appeal, the Appellant is entitled to the time occupied by the office for preparing copies. When there is no application, the Appellant cannot be entitled to more than 90 days for filing his appeal. Hence according to Mr. Mohapatra, the present appeal is barred by time.

5. To meet the aforesaid contentions of Mr. Mohapatra, reliance is placed by the Appellant on the aforesaid decision of the Supreme Court and on the authority of that decision it wants me to allow it to remedy the defect by substituting a certified copy of the judgment for the plain copy of judgment already filed along with the memorandum of appeal. The case relied upon by the Appellant is distinguishable. In that case, the Appellant had filed application for copy of the decree as provided under the Rules, but before the decree was made ready, he preferred the appeal. It was in these circumstances their Lordships of the Supreme Court in the aforesaid decision held that the appeal was premature and hence permitted the Appellant to rectify the defect. In the case before me, admittedly, no application has been made for a certified copy of the judgment. It is well known that in a proceeding under the Act, no separate decree is prepared and the ordering portion of the judgment is taken to be the decree. Therefore, there is no question of preparation of decree after pronouncement of the judgment. In this view, since the Appellant has not filed any application for a certified copy of the judgment, it cannot rely upon the decision of the Supreme Court referred to above. On the aforesaid analysis, I hold that there has been no proper filing of the appeal and even assuming that there has been a proper filing, this appeal is barred by limitation.

6. This appeal, therefore, has no merit and is accordingly dismissed. In the circumstances, the parties are directed to bear their own costs.