

(2001) 05 GAU CK 0020

In the Gauhati High Court

Case No : Regular Second Appeal No. 31 of 1993

State of Tripura

APPELLANT

Vs

Sitesh Chandra Das

RESPONDENT

Date of Decision : 22-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Land Acquisition Act, 1894 — Section 12, 12(1), 18, 18(1), 3

Tripura Land Revenue and Land Reforms Act, 1960 — Section 11(3), 11(4)

Citation : (2001) 2 GLT 332

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : D. Chakraborty, for the Appellant; A.M. Lodh and A. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

B. Biswas, J.—This Second Appeal u/s 100 of CPC has been directed against the judgment and decree dated 27th July, 1992 passed by the learned District Judge, North Tripura, Kailashahar in Title Appeal No. 9 of 1992.

2. This appeal was admitted by this Court by an order passed on 31-1-1996 for a decision on the following substantial question of law:-

"Whether the Civil Court has jurisdiction to decide the question of title in respect of land which has been acquired under the Land Acquisition Act."

3. The disputed land measuring 2.29 acres was acquired by the State by a notification dated 9.3.1981 issued u/s 4 of the Land Acquisition Act, 1894 (for short, "the LA Act"). The respondent claimed compensation on the ground that he was the Jotedar of the acquired land and entitled to compensation as per provision of the LA Act. Initially, the Collector by an order dated 28.8.1981 decided that the respondent was the Jotedar of the land acquired by the State. The State preferred a Revision which was disposed by the Director of Land

Records on 29.12.1983. The Director set aside the order passed by the Collector. The respondent, thereafter approached the Court of the learned Civil Judge, (Senior Division, then known as Subordinate Judge) and filed Title Suit No. 15 of 1987 which was dismissed on 25.3.1992. Being aggrieved, the respondent preferred the Title Appeal No. 9 of 92 before the learned District Judge which was disposed of on 27.7.1992. The learned District Judge, after a detailed discussion, came to the finding that the respondent succeeded in establishing his jote-right over the land and decreed the suit. The judgment of the learned District Judge has been challenged by the State in this Second Appeal which was admitted for a decision on the substantial question of law as indicated above.

4. Learned counsel for the appellant-State submitted that since the land in question was acquired by the State Government u/s 4 of the LA Act, jurisdiction was exclusively with the Collector to decide the question of title including the claim of jote-right as per provisions of Section 12 and Section 18 of the LA Act.

5. Sub-section (1) of Section 12 of the LA Act read as follows:-

"Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between, the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested."

Sub-section (1) of Section 18 of the LA Act read as follows:-

"Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

6. The aforesaid Sub-sections provide that the jurisdiction is vested with the Collector for assessment of compensation and apportionment thereof. The expression "person interested" occurring in both the Sub-sections have been defined in Section 3(b) of the LA Act. The definition reads as follows:-

"3(b) The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

7. A conjoint reading of the aforesaid provisions of Sections 12 and 18 and the definition of the expression "person interested" clearly show that the Collector's jurisdiction is relatable to assessment of compensation and apportionment of the same. It is indeed difficult to agree with the learned counsel for the State that the Civil Court has no jurisdiction to decide the question of jote-right and it is exclusively the jurisdiction of the Collector to decide the question. It is also not shown that the jurisdiction of the Civil Court is barred under the LA Act or under

any statute.

8. Besides, Mr Lodh, learned counsel for the respondent referred to the provisions incorporated in Sub-section (4) of Section 11 of Tripura Land Revenue and Land Reforms Act, 1960 (for short, "the Act") in order to show that the law permits institution of a Civil suit to contest the orders passed in appeal or revision from an order passed by the Collector. Sub-section (3) of Section 11 provides for resolution of a dispute by the Collector in respect of any claim over a property either by or on behalf of the Government or by any person against the Government and the order of the Collector is final subject to appeal or revision "as provided in Sub-section (4) of Section 11 of the Act. Therefore, Section 11 clearly indicates that any claim made by any person against the State over a plot of land is Justiciable by the District Collector (Settlement Officer) as a Court of first instance and the order is appealable or subject to revision. The order of the appellate or revisional authority can be challenged by a suit, if filed within a period of six months. It is, therefore, clear that the Civil Court has the jurisdiction to decide the question of title i.e. jote-right in respect of land which has been acquired under the LA Act provided the suit is filed to contest the decision passed in Appeal or Revision as per provision of Sub-section (3) of Section 11 of the Act. The question formulated is answered accordingly.

9. The learned counsel for the appellant submitted that the learned District Judge failed to appreciate the evidence on record in its proper perspective and has erroneously come to the conclusion that the respondent succeeded in establishing his jote-right over the disputed land. According to the learned counsel, the judgment is passed on inadequate evidence and, hence, needs reversal.

10. I have perused the judgments passed by the Courts below. Apart from oral evidence, a Kabuliyat executed by the respondent and rent receipts showing payment of rent have been exhibited in the instant case. A Survey Commission was issued and the "Commissioner reported that the land in question pertains to K.T. No. 37. A copy of the Kabuliyat Ext.5 was tendered by the respondent to show that the land originally belonged to Akhil Chandra Ghosh and the respondent was recorded as raiyat under him. Even when the land vested with the State by operation of law, his name continued in the revenue record :as raiyat. The State also accepted rent and issued receipts, All these receipts are available on record. The documents on record are sufficient enough to prove that the respondent was a tenant under the Jotdar and as such he is entitled to compensation as per provisions of law.

11. The judgment of the learned District Judge (first appellate Court) suffers from no infirmity or impropriety resulting into miscarriage of justice.

12. In the result, the appeal is dismissed. No costs.