

(2009) 01 SC CK 0151

In the Supreme Court Of India

Case No : Criminal Appeal No. 174 of 2009 (Arising out of SLP Criminal No. 3173 of 2006) and Criminal Appeal No. 175 of 2009 (Arising out of SLP Criminal No. 6213 of 2006)

Surendra Kumar Bhatia

APPELLANT

Vs

Kanhaiya Lal and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Land Acquisition Act, 1894 — Section 10, 11, 11(2), 12, 13
Penal Code, 1860 (IPC) — Section 19, 420, 467, 468, 471

Citation : (2009) AIRSCW 979 : (2009) AIRSCW 1590 : (2009) 2 ALT(Cri) 1 : (2009) 2 JT 1 : (2009) 42 OCR 706 : (2009) 2 PLJR 185 : (2009) 3 RLW 2744 : (2009) 2 SCALE 80 : (2009) 12 SCC 184 : (2009) 2 SCR 774 : (2009) 1 Supreme 58 : (2009) 5 Supreme 485 : (2009) 2 UJ

Hon'ble Judges : R. V. Raveendran, J;J. M. Panchal, J

Bench : Division Bench

Advocate : Manish Singhvi, A.A.G., Vijay Hansaria, P.H. Parekh, Sneha kalita, B.D. Sharma, Narottam Vyas, Sohan Singh, Ajay Choudhary, Pravin Chandra, Ajay K. Jha, Divya Sinha, Pallavi Srivastava, for Parekh and Co., Milind Kumar, Aruneshwar Gupta, Mukul Kumar and P.D. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—Leave granted. Heard counsel.

2. These appeals by special leave are preferred against the order dated 24.2.2006 passed by the Rajasthan High Court, allowing a petition filed by respondents 1 and 2 herein, u/s 482 of the Code of Criminal Procedure ('the Code' for short) and quashing FIR No. 241 of 2005 registered at Jyoti Nagar Police Station, Jaipur, in so far as respondents 1 to 3 herein.

3. One Chauthmal is said to have entered into an agreement of sale dated 11.8.1980 followed by an agreement dated 24.11.1988 agreeing to sell 20 bighas of land in Khasra No. 9 in Sukhalpura village to Shiva Co- operative

Housing Society Ltd. (for short 'Society'). The said agreement is said to have confirmed (i) that payment of the entire price of 20 bighas of land was made by the society to Chauthmal; (ii) that possession of the land agreed to be sold was delivered to the society; and (iii) that out of 20 bighas agreed to be sold, 5 bighas of land stood in the name of other persons and Chauthmal would ensure that an agreement was executed by them also in favour of the society in regard to that extent.

4. Some lands in Sukhalpura village, including 31 bighas in Khasra No. 9, were acquired for a housing scheme floated by Rajasthan Housing Board (for short, 'the Board') under preliminary notification dated 5.4.1985 and final notification dated 16.10.1985 issued under the Land Acquisition Act, 1894 ('Act' for short). Khasra No. 9 was shown as 'Sivaya Chak' (government land) in the said notification and possession thereof was delivered to the Housing Board on 13.6.1988.

5. Chauthmal is said to have filed a revenue suit for a declaration that Khasra No. 9 was not government land and that he was one of the owners of the said land and for consequential reliefs. The said suit was decreed on 10.9.1986, and was affirmed by the Revenue Board, Ajmer. In pursuance of it, the following five persons were shown as owners of Khasra No. 9 in the revenue records, their share being shown in brackets : Chauthmal (15/33), Mohanlal (2/33), Geeta Devi (2/33), Kaushaliya Devi (1/33) and Kanhaiyalal (13/33).

6. The State Government formulated a scheme enabling the land owners to opt for allotment of developed land equal to 15% of acquired land in lieu of the compensation for the acquired land. The cases where the land owners opt for such allotment, were to be considered by an Allotment Committee, to decide upon the requests after due inquiry into title and after ascertaining that there were no claims or court-cases.

7. The land owners/power of Attorney holders of Khasra No. 9 approached the Board for such allotment. One Kailash Chand who claimed to be the successor (legatee) of Chauthmal was one of them and he claimed allotment of developed land in lieu of 15 bighas of acquired land. The society also appears to have filed an application before the Board on 21.12.2001 claiming compensation in respect of 20 bighas in Khasra No. 9 on the basis of the agreement of sale. The claim of the society was rejected on 8.7.2002.

8. On 17.7.2002 the power of attorney holders of four owners of Khasra No. 9 (Kailash Chand, Mohanlal, Geeta Devi and Kanhaiyalal) entered into separate agreements with the Housing Board, consenting for allotment of developed land (15% of the extent of the acquired land) in lieu of compensation. In the said agreements, the land owners asserted and declared that their respective shares in the land were not subject to any encumbrance and no dispute or litigation was pending in regard to the same. After an inquiry, the Allotment Committee accepted the request and a settlement award dated 22.7.2002 was passed by

the Special Officer of Rajasthan Housing Board recording the agreement to allot 15% developed land in lieu of compensation in respect of 28 bighas 17 Biswas in Khasra No. 9 (as the remaining 2 bighas 3 Biswas out of 31 bighas notified, was found to be under encroachment). Pattas were issued subsequently in regard to such allotted land.

9. Thereafter, the members of the society filed a complaint before the Board claiming that the society ought to have received the said 15% developed land in lieu of compensation relating to the 20 bighas of acquired land. Some members of the society, through a forum known as Mithila Nagar Suraksha & Vikas Samiti also made a representation to the Chief Minister on 17.10.2005 alleging that the Khatedars/power of attorney holders of Khasra No. 9 in collusion with the Special Officer had practiced fraud and grabbed the valuable land from the Rajasthan Housing Board. The Chief Minister's office appears to have suggested action on such representation. In pursuance of it, the appellant on behalf of the Board lodged an FIR on 7.11.2005 (at about 9.20 p.m.), alleging that the Khatedars/Power of Attorney holders of Khasra No. 9 had made false representations to the Board, and in collusion with the Special Officer of the Board and office bearers of the society, had fraudulently obtained allotment pattas in the year 2002.

10. First respondent herein who claimed to be the owner of 13 bighas in Khasra No. 9 and respondent No. 2 herein who was his attorney holder, filed a petition u/s 482 of the Code for quashing the FIR on the ground that the averments made in the FIR did not make out a prima facie case against them, even if the allegations in the FIR was taken to be true. The High Court by the impugned order dated 24.2.2006 allowed the said petition and quashed the FIR insofar as respondents 1 and 2 as also the Special Officer of the Board on the following two grounds :

(i) The Land Acquisition Officer, when passing an award u/s 11 of the Act functions as a "Judge" as defined in Section 19 of the Indian Penal Code ('IPC' for short) and therefore, is entitled to the protection of Section 77 IPC. Therefore making a settlement award by the Special Officer of the Board granting developed land in lieu of compensation to the land owners could not, under any circumstances, give rise to an offence under the penal Code.

(ii) The allegations in the FIR did not constitute an offence of cheating or forgery punishable under Sections 420, 467, 468 and 471 of IPC.

11. The said order of the High Court is challenged in these two appeals by special leave. The first is filed by the complainant namely the Deputy Housing Commissioner of Rajasthan Housing Board. The second is filed by 'Mithila Nagar Nyay Manch' claiming to represent the members of the society. On the contentions urged, two questions arise for consideration:

(i) Whether the immunity u/s 77 IPC is available to a Collector/Land Acquisition Officer/Special Officer who makes an award, by way of settlement or otherwise, under the provisions of Land Acquisition Act, 1894.

(ii) Whether the allegations in the FIR did not constitute an offence under Sections 420, 467, 468 and 471 of IPC.

Re : Question No. (i)

12. Section 77 IPC provides that nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law. Section 19 IPC defines a 'Judge' as denoting not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceedings, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons empowered by law to give such a judgment. The question is whether the Collector (or any officer appointed by the appropriate government or other acquiring authority) performing functions assigned under the Land Acquisition Act, can be said to be a 'Judge' as defined in Section 19 IPC, that is, a person empowered by law to give a definitive judgment in a legal proceeding and acting judicially in the exercise of such power.

13. The findings of the High Court that a Collector/Land Acquisition Officer making an award u/s 11 of the Act is entitled to the immunity of a Judge u/s 77 IPC, is based on the following reasoning :

Once an agreed award is passed by the competent authority and that award acquires the status of an executable decree under the law, the evidence which came before the competent authority on the basis of which such award is passed, cannot be subjected to investigation by the police authorities.

The respondents also supported the said finding by referring to the various provisions of the Act relating to the powers exercised by the Collector (which term includes not only the Collector of a District or Deputy Commissioner, but any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act). Section 9 requires the Collector to cause public notice to be given stating that the Government intends to take possession of land in pursuance of the acquisition and that claims to compensation for all interests in such land may be made to him. Section 10 empowers the Collector to require any such person to make a statement containing the names of persons possessing any interest in the land and of the nature of such interest etc. Section 11 authorizes and requires the Collector to hold an enquiry and make an award in regard to the true area of land, the compensation which, in his opinion should be allowed for the land, and the apportionment of the compensation among all the persons interested in the land. It also provides that no award shall be made by the Collector without the previous approval of the appropriate Government or officer authorized by it. Section 12 provides that the award so made shall be final and conclusive evidence as between the Collector and the person interested, of the true area and value of the land and the apportionment of the compensation among the persons interested. Section 13 empowers the Collector to adjourn the

inquiry from time to time for any cause he deems fit. Section 13A empowers the Collector to correct any clerical or arithmetical mistakes in the award within six months. Section 14 empowers the Collector for the purpose of enquiries under the Act, to summon and enforce the attendance of witnesses, including the parties interested or any of them and to compel the production of documents by the same means and so far as may be in the same manner, as is provided in the case of a Civil Court only or of Civil procedure Code. Section 15 requires the Collector to be guided by the provisions contained in Section 23 and 24 of the Act in determining the amount of compensation. Having regard to the said provisions, it was contended that the powers and functions exercised by the Collector under the Act were judicial powers of a Civil Court in rendering definitive judgments and therefore a Collector making an award, determining the compensation is a Judge as defined in Section 19 IPC.

14. On the other hand, the appellant contended that the Land Acquisition Officer merely makes an offer on behalf of the Government/Acquiring Authority and does not discharge any judicial functions. It was also submitted that the award made by the Collector does not bind the claimants, as they have the choice of not accepting the award and requiring the Collector to refer the matter to the Civil Court for determination of the compensation. The appellants pointed out that while Section 26 the Act specifically provided that the award by the 'Judge' (Reference Court) shall be deemed to be a decree and the statement of the grounds of such award, a judgment, Section 11 contains no such provision in regard to the awards by Collector.

15. The question whether the Collector/Land Acquisition Officer while making an enquiry and award under the Act, acts in a judicial capacity or not, has been considered in a series of judgments. The well settled principles are :

(a) Any inquiry as to the market value of property and determination of the amount of compensation by the Collector, is administrative and not judicial in nature, even though the Collector may have power to summon and enforce the attendance of witnesses and production of documents. In making an award or making a reference or serving a notice, the Collector neither acts in judicial nor quasi judicial capacity but purely in an administrative capacity, exercising statutory powers as an agent and representative of the Government/Acquiring Authority.

(b) The award by a Collector is merely an offer of the amount mentioned as compensation, on behalf of the Government/Acquiring Authority to the person/s interested. It is neither an executable decree, nor binds the owners or persons interested in the acquired property.

(c) The Collector does not function as a Judicial Officer who is required to base his decision only on the material placed in the enquiry in the presence of parties, but functions as a valuer who ascertains the market value on material collected from all sources, personal inspection and his own knowledge and experience.

(See the decision of the Privy Council in *Ezra v. Secretary State* 1905 (32) IA 93, the decision of the Patna High Court in *Gokul Krishna Banerji v. Secretary of State* AIR 1932 Pat. 134 and the decisions of this Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, ; *N. Boman Behram (Dead) by Lrs. and Another Vs. State of Mysore and Another*, ; *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, ; *Sharda Devi Vs. State of Bihar and Another*, , and *Kiran Tandon Vs. Allahabad Development Authority and Another*,).

16. Only Judges (as defined in Section 19 IPC) acting judicially are entitled to the protection u/s 77 IPC. The Collector is neither a Judge as defined u/s 19 nor does he act judicially, when discharging any of the functions under the Act. Therefore he is not entitled to the protection u/s 77 IPC. The decision of the High Court that the FIR is to be quashed as the subject matter of the complaint related to the action taken by the Collector/Special Officer in his capacity as a 'Judge' is opposed to law and therefore, liable to be set aside.

Re : Question No. (ii)

17. The complaint by the members of the society was in regard to the 20 bighas of land out of Khasra No. 9 in regard to which late Chauthmal is alleged to have agreed to sell to the society under agreements dated 11.8.1980 and 24.11.1988. The members of the society gave a complaint to the Board claiming that the compensation payable (or 15% developed land in lieu of compensation) in respect of the said 20 bighas of land, had to be given to the society and not persons claiming to be legal heirs of Chauthmal. It was also their contention that on account of collusion among the successor of Chauthmal and his attorney holder, the Special Officer of the Board, and the office bearers of the society, the 15% developed land was allotted to persons who were not entitled to allotment, thereby defrauding the society and the Board. The respondents 1 and 2 approached the High Court pointing out that neither the society nor the members of the society, at any point of time had made any claim in regard to the 13 bighas in Khasra No. 9, which belonged to first respondent, that the entire complaint related to 20 bighas agreed to be sold by Chauthmal to the society, and that as there was no complaint of irregularity or commission of any offence in regard to the 13 bighas of land belonging to the first respondent, there was no question of involvement of first respondent or his attorney holder (second respondent) in any offence of cheating or forgery. It is not in dispute that even the suit filed by the society, that was said to be pending at the relevant time was against Chauthmal in regard to the 20 bighas in Khasra No. 9 and that no suit or proceeding was pending in regard to the remaining 13 bighas claimed by the first respondent. Only in January, 2003, second respondent and some others were impleaded in the said suit relating to 20 bighas, in pursuance of an application filed on 14.11.2002, long after respondents 1 and 2 had executed the agreement and consent award had been made. The High Court, therefore, rightly held that the allegations in the FIR, even if accepted as true, did not relate to the

respondents 1 and 2 but to others who had claimed to be the owners/attorney holders in regard to remaining 20 bighas of land.

18. Having regard to the well settled principles laid down in State of Haryana and others Vs. Ch. Bhajan Lal and others, ; Indian Oil Corporation Vs. NEPC India Ltd. and Others, ; Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , we are of the view that the High Court was justified in holding that the allegations even if taken at their face value did not prima facie constitute an offence under Sections 420, 467, 468 and 471 IPC, by respondents 1 and 2.

19. The learned counsel for the appellants next submitted that even if the quashing of the FIR qua respondents 1 and 2 was upheld, the quashing of the FIR against the Special Officer of the Board was unwarranted. While respondents 1 and 2 were concerned only with 13 bighas which was not the subject matter of the agreement with the society, the FIR specifically alleged collusion between Kailash Chand and the Special Officer of the Board, in regard to 20 bighas of land which was agreed to be sold to the society by Chauthmal. In fact the writ petition filed by Kailash Chand for quashing the FIR was rejected by the High Court. (Civil W.P. No. 9293/2005 decided on 23.11.2005). As the finding of the High Court that the Collector/Special Officer was a Judge has been set aside, the quashing of the FIR with reference to the Special Officer, cannot be upheld. To this extent, the contention of the appellants merits acceptance and the quashing of the FIR with reference to the then Special Officer is set aside. The quashing of FIR as against respondents 1 and 2 will have no bearing on the FIR in so far as the other accused with reference to the 20 bighas of land. Nor anything stated above shall be construed as a finding on the merits.

20. The appeals are accordingly allowed in part to the extent mentioned above.