

(1998) 07 KAR CK 0116

In the Karnataka High Court

Case No : Civil Revision Petition No. 1887 of 1996

The Special Land Acquisition Officer For Railways,
Ramanagaram

APPELLANT

Vs

Ramadasegowda and Another

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Land Acquisition Act, 1894 — Section 23 (1-A)

Citation : (1998) 5 KarLJ 444

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Sri B. Veerappa, Government Pleader, for the Appellant; Sri K.L. Manjunath, Sri S. Raju and Sri Ashok B. Hinchigeri, for the Respondent

Judgement

1. The petitioner-judgment-debtor is the Special Land Acquisition Officer for the Railways. The first respondent is the decree-holder-claimant. The second respondent is the Karnataka Industrial Areas Development Board. The Land was acquired by the petitioner for the benefit of the second respondent.

2. The learned Civil Judge, Ramanagaram, in L.A.C. No. 9 of 1981 passed a decree in favour of the first respondent-claimant holding that the claimant is entitled to Rs. 10,000/- per acre as compensation and further solatium of 30% of the market value. The learned Civil Judge also held that the claimant was entitled to the additional compensation u/s 23(1-A) of the Land Acquisition Act on the amount awarded at the rate of 12% per annum from the date of the preliminary notification till the date of the award. The learned Civil Judge also held that if the possession is taken earlier to preliminary notification the amount so awarded shall carry interest at 9% per annum from the date of possession till completion of the first year and thereafter it shall carry interest at the rate of 15% per annum till payment.

3. The claimant-first respondent sought to execute the decree. The learned Civil

Judge issued the order of attachment of moveables of the judgment-debtor and for recovery of the amount if process fee is paid by certain date.

4. Aggrieved by this order, the State has preferred this revision.

5. The short question that arises for consideration in the civil revision petition is whether a judgment-debtor who has suffered a decree can, without preferring an appeal or a review resist the decree at the stage of execution.

6. It is well-settled law that if any award is passed before 30-4-1982, the claimant would not be entitled to additional benefits u/s 23(1-A) of the Act.

7. Relying on a judgment of the Supreme Court, in the State of Maharashtra Vs. Maharau Srawan Hatkar, , this Court at the first blush was of the opinion that it would not be open to the Civil Judge to alter the terms of his own decree in the execution proceedings unless for minor corrections.

8. The Supreme Court has held that the decree can be corrected only in cases of clerical or arithmetical mistakes and not otherwise.

In the Supreme Court, the said pronouncement has held as follows:

"8. Thus, it would be seen that a decree having been made u/s 26(2), the Civil Court is left to correct only either clerical or arithmetical mistakes as envisaged expressly u/s 13A of the Act or u/s 152 of the CPC. Though Section 151 CPC gives inherent power to the Court, it is intended only to prevent abuse of the process of the Court or to meet the ends of justice. The present is not a case of such nature. Further, since Section 23, is an express power under which the Civil Court has been conferred with the jurisdiction to determine compensation, and in addition to the market value certain percentage of the amount is directed to be awarded as envisaged u/s 23(1-A) and 23(2) and the interest component u/s 28, the invocation of Section 151, CPC by necessary implication stands excluded.

9. Thus, we hold that the Civil Court has inherent lack of jurisdiction and it was devoid of power to entertain the application to award additional benefits under the Amendment Act. The order thereby is clearly a void order. The High Court has not applied its mind to this crucial consideration but summarily dismissed the appeal".

9. In that view of the matter it was argued by the claimant-first respondent that there can be no amendment to the decree which alters the quantum of compensation since it is not mathematical or clerical error.

10. The learned High Court Government Pleader Mr. Veerappa, appearing for the State and Mr. Hinchigeri, learned Counsel for the second respondent submitted that a decree can be assailed even at the stage of execution if the decree is a nullity. The learned Counsel relied on a Judgment of the Supreme Court in the case of Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, . The Supreme Court also considered the judgment in the case of Maharau Srawan Hatkar, supra.

11. The Supreme Court in the case of Urban Improvement Trust, *supra*, at paras 15 and 16 held as follows:

"15. The question then is: whether the objections can be raised in execution? This controversy is no longer *res Integra*. In *Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another*, , a three Judge Bench of this Court was to consider whether the nullity of a decree can be raised in execution. Under the Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973) the building was governed by the provisions of the said Act. The Civil Court granted decree of eviction. When objection was raised in execution, the executing Court rejected the same. On appeal, this Court had held that a decree passed by a Court without jurisdiction over the subject-matter or on any other ground which goes to the root of its exercise of jurisdiction or inherent jurisdiction, is a nullity. A decree passed by such a Court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the Court to pass a decree which cannot be cured by consent or waiver of the party. If the Court has jurisdiction but there is any defect in its exercise of jurisdiction it does not go to the root of its authority. Such a defect like territorial jurisdiction could be waived by the party which could be corrected only by way of an appeal or revision. In that case it was held that since the decree was a nullity the validity was upheld in execution.

16. In *Jaipur Development Authority v Radhery Shyam*, this Court had upheld the same objection raised u/s 47 of the CPC when the decree awarding allotment of land in addition to compensation was held to be a nullity. That objection was allowed to be. raised in execution and was upheld, *Hiralal Moolchand Doshi v Barot Raman Lal Ranchhodas*, relied on by the respondents is of no avail. In that case though nullity of a decree on the basis of a compromise for eviction of a tenant governed by the provisions of the Rent Act was pressed for acceptance, this Court had held that the party cannot be permitted to lead fresh evidence as to the existence of that ground for eviction. On the facts in that case, it was held that the tenant impliedly admitted existence of statutory ground for eviction. Therefore, the decree was held to be not a nullity. As regards the nullity or lack of inherent jurisdiction, this Court observed that the decree can be said to be a nullity if it is passed by a Court having no inherent jurisdiction, Erroneous decree cannot be said to be a nullity, nor can a decree based on an error be a nullity. Nullity has to be understood in the sense that it is *ultra vires* the power of the Court passing the decree and not merely avoidable decree. As stated earlier, if the decree strikes at the jurisdiction of the Court or the Court lacks jurisdiction it strikes at the very root of the authority to pass the order or the decree. As seen, the Amendment Act 68 of 1984 has no application to the lands acquired under the Act. It was amended only w.e.f. 1-8-1987 and it was made applicable only to the pending proceedings. It would, therefore, be clear that the order awarding additional benefits is clearly without jurisdiction and thereby it is a nullity. Its nullity can be assailed at any stage including at the execution or in a collateral

proceedings since it strikes at the very jurisdiction and authority of the Court".

12. The Supreme Court has held that if the decree is a nullity it would not matter whether an appeal is filed or not and it can be raised at the stage of execution. It was therefore, submitted by the learned High Court Government Pleader for the petitioner and the learned Counsel for the second respondent that the claimant would not be entitled to the benefit u/s 23(1-A) of the Act since the award passed was much prior to 30-4-1982 in accordance with the K.S. Paripoornan Vs. State of Kerala and Others, .

13. It was submitted by the learned Counsel for the first respondent that the first respondent is aged more than 80 years and has become blind and deaf. It was submitted that in spite of the order passed by the learned Civil Judge not a rupee has been paid towards compensation. It was further submitted that the first respondent is ailing and may not be able to enjoy the fruits of the award if there is any further delay in payment of compensation in accordance with law.

14. In the peculiar facts and circumstances of the case, there will be a direction directing the petitioner and the second respondent to pay a sum of Rs. 1,500/- each to the first respondent. The said deposit of Rs. 3,000/- shall be paid before the learned Civil Judge along with the compensation amount calculated as per the decree less the benefits u/s 23(1-A) of the Act within four weeks from the date of receipt of this order.

15. The first respondent is permitted to withdraw the amount.

16. The civil revision petition is allowed in part.