
(2007) 08 AP CK 0073

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 1154 of 1994

The State of A.P.

APPELLANT

Vs

Konala Subbireddy

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 80, 9
Land Acquisition Act, 1894 — Section 12(2), 16, 18, 18(1), 18(2)
Sea Customs Act, 1878 — Section 188, 191
Specific Relief Act, 1963 — Section 39

Citation : (2008) 1 ALD 401 : (2008) 1 ALT 486

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : A.G.P, for the Appellant; V. Parabrahma Sastry, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This appeal is filed by the State of Andhra Pradesh represented by the Collector, West Godavari District, Eluru, the defendant in OS No. 46 of 1978 on the file of Subordinate Judge, Tanuku. Respondent herein is the plaintiff in the said suit.

2. The suit was filed for a declaration that the plaintiff is entitled to recover fair, adequate and reasonable compensation in respect of plaint schedule property and for consequential mandatory injunction directing the appellant herein, the defendant in the said suit, to make a reference u/s 18 of the Land Acquisition Act. The suit was dismissed and the matter was carried by way of appeal to this Court AS No. 930 of 1982 and this Court allowed the appeal setting aside the decree and judgment of the trial Court and remanded the matter and on remand the trial Court, on considering the oral and documentary evidence available on record, decreed the suit with costs declaring that the plaintiff has a right to recover fair, adequate and reasonable compensation in respect of the schedule property and also granted consequential relief of mandatory injunction directing

defendant to cause proper reference u/s 18 of the Land Acquisition Act. Aggrieved by the same, the present appeal had been preferred.

3. The learned Assistant Government Pleader for Appeals had taken this Court through the grounds of appeal and also the order of remand made by this Court and the findings recorded by the trial Court and would maintain that from the beginning the question of want of jurisdiction of the civil Court to entertain the present suit had been raised and agitated and it is not as though for the first time the said question is being raised in this appeal. The learned Counsel also further touched the merits and demerits of the matter in the light of the oral and documentary evidence available on record and further would maintain that even otherwise the suit is not maintainable since no notice u/s 80 of the CPC had been issued before the institution of the suit. The counsel also would maintain that in any event the relief of mandatory injunction prayed for by the respondent-plaintiff to refer the matter under the provisions of the Land Acquisition Act cannot be granted by a civil Court and definitely the said remedy or the relief prayed for is a misconceived one. The learned Counsel had placed reliance on certain decisions in this regard.

4. Per contra, Sri V.Parabrahma Sastry, learned Counsel representing respondent-plaintiff would maintain that it is not as though for the first time the parties are approaching this Court and this is a second round of litigation and in the light of the specific findings recorded or the specific observations made in the order of remand by this Court, such questions which had not been agitated at that time cannot be reopened again. In other words the counsel would maintain that the question of want of jurisdiction of the civil Court to entertain a suit of this nature cannot be permitted to be raised by the appellant. While further elaborating his submissions, the learned Counsel also had pointed out to the relevant provisions of the Land Acquisition Act and also the relevant provisions of the Specific Relief Act and Section 9 of the CPC in particular and would maintain that in the light of the clear language of Section 18 of the Land Acquisition Act, since there is an obligation to make a reference on the concerned authority or officer in the event of failure in doing so for enforcement of such obligation in the light of Section 39 of the Specific Relief Act, a suit for mandatory injunction of this form can be maintained. While elaborating his submissions the learned Counsel also would point out that when there is an infringement of a civil right, the civil Court can take cognizance of such a matter and perfectly a civil suit is maintainable. The counsel also would maintain that when the exclusion of the civil Court's jurisdiction, expressly or by necessary implication, this aspect is being taken as a ground, it is for such party to establish the same. The learned Counsel also would maintain that on a careful reading of the different provisions of the Land Acquisition Act, Sections 18 and 30 and also Sections 52 and 53 of the said Act, the contention that under no circumstances the civil Court can entertain a suit in the context of the land acquisition proceedings, cannot be accepted, such broad proposition as such cannot be laid down; hence, in the peculiar facts and circumstances, the findings recorded by the trial Court being inconformity with

the order of remand made by this Court, the said findings to be confirmed. The counsel also placed strong reliance on several decisions to substantiate his submissions.

5. Heard the counsel on record, perused the oral and documentary evidence available on record, the findings recorded by the trial Court and the findings recorded by this Court while making an order of remand already specified above.

6. In the light of the rival contentions advanced by the counsel on record, the following points arise for consideration in this appeal:

1. Whether the civil Court can be said to have jurisdiction to entertain a suit of this nature in the facts and circumstances of the case?

2. Whether this Court cannot go beyond the aspects which had been already decided by this Court by virtue of an order of remand already made inclusive of the question of jurisdiction of the civil Court to entertain a suit of this nature?

3. Whether the findings recorded by the trial Court on other factual controversies to be confirmed or to be disturbed in the facts and circumstances of the case?

4. If so, to what relief the parties would be entitled to? POINTS 1 to 3:

7. For the purpose of convenience, these points are being dealt with together. The parties hereinafter would be referred to as plaintiff and defendants as shown in OS No. 46 of 1978 on the file of Subordinate Judge, Tanuku.

8. The plaintiff instituted the suit for declaration that the plaintiff has a right to recover fair, adequate and reasonable compensation in respect of the plaint schedule property and also further prayed for the relief of mandatory injunction directing the defendant to make a reference u/s 18 of the Land Acquisition Act, hereinafter in short would be referred to as Act for the purpose of convenience, and for other appropriate reliefs.

9. It was pleaded in the plaint as hereunder:

The schedule property belongs to the plaintiff which was acquired by the Government for the purpose of granting house sites to Harijans. The Land Acquisition Officer, Kovvur sent a notice u/s 12(2) of the Act, 1894 informing the plaintiff that an award was passed by him fixing a sum of Rs.25,279.73 ps as compensation. The said notice is dated 18.11.1977 and it was dispatched on 20.11.1977. It was wrongly sent to Peddireddipalem of Tanuku Taluk while the plaintiff is a native of Kantheru village. The said notice was redirected and it was again dispatched to the correct address. It was received by the plaintiff on 20.2.1978. The plaintiff filed a petition u/s 18(2) on 18.4.1978 before the Land Acquisition Officer requesting him to make a reference to a competent Court. He made enquiries which reveal that no reference was made so far by the Land Acquisition Officer, although it was stated that a sum of Rs.5,509.07 ps being the first instalment of payment, would be deposited as was mentioned in the notice u/s 12(2), no amount was deposited in the civil Court. Having regard to the

circumstances under which the plaint schedule property was acquired and the highhandedness of the various departments of the defendants, the plaintiff has reason to apprehend the Land Acquisition Officer would not be making the reference as contemplated u/s 18 of the Act. The land was taken possession by the defendant on 7.11.1977 during which time the land was puddle Dalwa paddy. As the compensation awarded by the Land Acquisition Officer is very low and is also grossly inadequate, it is necessary to make a reference to a civil Court. The present market value of the plaint schedule property is Rs.25,000/- per acre. So, the market value of the land in question comes to Rs.73,500/-. A filter point was installed in the said land by the plaintiff at a cost of Rs.2,000/-. The plaintiff also put up a barbed wire fencing around the entire land supported by cement poles by spending Rs.1,000/-. There are six mango trees, 20 palmirah trees, 21 coconut trees, one orange tree, one sapota tree, one Pampara Panasa tree, two Rambalam trees and seven Seetaphal trees. They are valued at Rs.7,470/-. The Land Acquisition Officer has not even granted 1/3rd of the amount to which the plaintiff is entitled as proper compensation. Therefore, the plaintiff is entitled to a declaration of his right to recover adequate, fair and reasonable compensation.

10. In the written statement filed by the defendant a specific stand was taken that the suit is not maintainable in law. Further it was pleaded as hereunder:

The allegation that the notice u/s 12(2) of the Act was sent to the plaintiff on 20.11.1977 and it was not received by the plaintiff on 20.2.1978 are not true. The notice was dispatched on 12.2.1978 by registered post and its service on the plaintiff could not be delayed till 20.2.1978 even if it was re- directed to the plaintiff by the postal authorities. The notice u/s 12(2) of the Act should have been served on the plaintiff within a week after it was dispatched and the date of receipt of the same mentioned in the plaint as 20.2.1978 has been incorrectly stated to overcome the period of 60 days prescribed u/s 18(2)(b) of the Act. It is true that the plaintiff filed a petition u/s 18(2) of the Act on 18.4.1978. As it was not made within two months from the date of the receipt of the notice u/s 12(2) of the Act, no reference could be made by the Land Acquisition Officer. As the plaintiff did not make any claim within two months, he is not entitled to call upon the Land Acquisition Officer to make a reference u/s 18 of the Act. The first instalment of compensation was sent to this Court on 11.2.1979 by way of a bank draft. It was returned for complying with certain defects. The bank draft was sent along with a reference under Sections 30 and 31(2) of the Act. As the major son of the plaintiff did not give his consent statement at the time of the award enquiry, this was again returned back for furnishing some more information after revalidating the draft. The draft was revalidated and was submitted to the Court, but it was again returned by the Court. There are no laches on the part of the L.A.O. either in not making a reference u/s 18(2) of the Act or depositing the first instalment into Court. The award passed by L.A.O. has become final and the plaintiff cannot get it reopened by requesting the Court by issuing a mandatory injunction. There is no provision under Land Acquisition Act or under the Specific Relief Act under which a mandatory injunction can be

issued in respect of the Act, which law does not authorize the Land Acquisition Officer to do so. This Court has no jurisdiction to entertain the suit. There is no prior notice u/s 80 C.P.C. and the suit is liable to be dismissed for want of proper notice. The allegation that there is some urgency and therefore notice u/s 80 CPC is to be dispensed with is untenable. So called fundamental right to get fair, just and adequate compensation can be expressed only within the time prescribed by law and not beyond.

11. On the strength of these pleadings, the following issues were settled:

1. Whether the plaintiff is entitled for the mandatory injunction prayed for?
2. Whether the suit is not bad for non-compliance of Section 80 CPC?
3. To what relief

Before the trial Court, PW.1 and DW.1 were examined, Exs.A1 to A19 and Ex.B1 were marked. The trial Court, after recording certain findings, initially came to the conclusion that the plaintiff is not entitled to the relief of mandatory injunction as prayed for and also the suit is bad for non-compliance of Section 80 of CPC and accordingly dismissed the suit with costs. Aggrieved by the same, the matter was carried by way of appeal AS No. 930 of 1982 on the file of this Court and this Court made an order of remand and after remand since both parties reported no further evidence in the light of the order of remand made, after referring to the specific observations made by this Court, the trial Court, after referring to certain of the decisions, which were quoted by this Court, came to the conclusion that in the light of the specific observation made by this Court while making an order of remand, the question of want of notice u/s 80 of CPC cannot be re-agitated and accordingly held that the suit was maintainable and ultimately decreed the suit.

12. Though the question of maintainability of the suit before a civil Court on the ground of want of jurisdiction had been raised, for reasons best known the said question had not been argued in elaboration as can be seen from the order of remand. In the light of the order of remand made by this Court, the trial Court, on a careful analysis of the findings recorded, came to the conclusion that the suit is maintainable and granted a decree.

13. Several of the facts are not in serious controversy between the parties. Hence, the factual controversies, if any, and the findings recorded in relation thereto need not detain this Court any longer. The principal question agitated again before this Court is that the reliefs prayed for in the present suit as framed, if carefully examined, the jurisdiction of the civil Court is clearly barred and hence the suit is not maintainable.

14. Section 18 of the Act deals with reference to Court and it may be appropriate to have a look at the language of the said provision and the said provision reads as hereunder:

Reference to Court: (1) 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. (2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

15. Emphasis was laid on "require that the matter be referred by the Collector for the determination of the Court" and submissions at length were made that in the light of this specific obligation, the statutory obligation in the event of the concerned authority not carrying out, by virtue of Section 39 of the Specific Relief Act for carrying out the said obligation and to enforce thereof, the relief of mandatory injunction can be prayed for. Section 39 of the Specific Relief Act, 1963 deals with mandatory injunctions and the said provision reads as hereunder:

Mandatory injunctions:- When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

16. Learned Counsel representing respondent-plaintiff laid emphasis on "to prevent the breach of an obligation". Section 2(a) of the Specific Relief Act, 1963 dealing with definition of "obligation" specifies that in this Act unless the context otherwise requires "obligation" includes every duty enforceable by law. In the light of these provisions, submissions at length were made that in the absence of specific exclusion of the jurisdiction of the civil Court under the provisions of the Act, a suit of this nature can be maintained. Though this contention on its face appears to be attractive, the same cannot be accepted.

17. The Act is an Act to amend the law for the acquisition of land for public purpose and for companies and the Act is a pre-constitutional law. Article 300A of the Constitution of India dealing with persons not to be deprived of property save by authority of law has been inserted by the Constitution (44th Amendment) Act, 1978, which specifies that no person shall be deprived of his property save by authority of law.

18. The scope and ambit of Article 300A of the Constitution of India had been dealt with by the Apex Court in Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, and Tinsukhia Electric Supply Co. Ltd. Vs.

State of Assam and others, . The Full Bench of Kerala High Court in Smt. Elizebath Samuel Aaron and Others Vs. State of Kerala and Others, observed at paragraphs 21 to 24 as follows:

The legislative history behind the deletion of Article 31 and the introduction of Article 300A eloquently shows that Parliament intended to do away with the concept of a just equivalent or adequate compensation in the matter of deprivation of property, and to provide only a limited right, namely that no person shall be deprived of his property save by authority of law. In other words, the limited constitutional protection intended to be continued (not as a fundamental right) was only that there shall be a law authorizing and sustaining any deprivation of property, and that none shall be so deprived by mere executive fiat. Article 300A does not provide for anything more. It does not go further and provide that the law should provide for compensation and either fix the amount, or at least specify the principles on which the compensation is to be fixed and given. Evidently, Parliament intended to shield all such legislation for acquisition or requisitioning of property from challenge on any of the grounds on which they could be challenged as per the various decisions of the Supreme Court - on the ground that the compensation was inadequate or illusory or that the principles laid down for fixing the compensation were irrelevant or irrational. If this were not the intent of the series of constitutional amendments, and if this were not achieved thereby, one wonders why Parliament should have undertaken all the exercise and effaced Article 31(2) altogether from the Constitution. The whole exercise becomes meaningless and without any purpose. It was not as if Clause (1) of Article 31 by itself did service for what was provided in Clause (2) thereof and provided for compensation. It had never been understood or held to be so. That will be the effect if we accept the argument of counsel for the petitioners that Article 300A has the same effect as that afforded by Clauses (1) and (2) of Article 31, including payment of compensation despite the absence of a provision similar to Clause (2) of Article 31 in Article 300A. The purpose of the various amendments will stand defeated if we go by the exposition of Article 300A suggested by counsel, and hold that Article 300A envisions payment of adequate compensation or just equivalent to the owner for the deprivation of his property. Article 300A does not sustain a challenge to any legislation on the ground of inadequacy or illusory nature of the compensation. This is all that we are concerned with in this case.

19. In Sukapuram Sabhayogam v. State of Kerala (1989) 2 Ker LT 511, referred to earlier, it was observed, "Article 300A enshrines the constitutional protection to private property. Right to property is no longer a fundamental right, but only a constitutional right. It can be deprived without the consent of the owner and against his will, but the mandate of the Constitution is that it can be deprived only by authority of law. Article 300A cannot be construed as declaration of the right of the State to deprive any person of his property, but has to be understood as a limitation on the power of the State to take away private property. Deprivation of property can thus be done only according to law. Without law,

there is no deprivation of property. Deprivation of property without the sanction of law has no constitutional support. No law, no deprivation is the principle of Article 300A. Article 300A uses only the expression deprivation of property. Deprivation of property, by any mode is comprehended in this provision. Deprivation may be acquisition, deprivation may be otherwise than through acquisition. Demolition of a building to prevent damage to life and property, destruction of decomposed food articles for preservation of public health, destruction of obscene literature for the promotion of public morality are some forms of deprivation which do not require any payment of compensation. To say, therefore, that one form of deprivation under Article 300A compels payment of compensation and Anr. form dispenses with compensation is to judicially dissect the constitutional provision, a judicial exercise which is not called for. Article 300A therefore, does not compel that the law which authorizes deprivation should also provide for compensation". We are in agreement with this view. In this view of the matter, there is no question of invalidating the act on the ground that the compensation fixed is inadequate or illusory.

For the reasons aforesaid, we are unable to agree with the view of the High Court of Bombay in *Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another*, , that despite the deletion of Article 31, the obligation to pay adequate amount to the owner of the property still survives. Apart from what we have stated earlier for taking a contrary view, we are also not able to discern any reason stated in the decision why the obligation to pay an adequate amount should be read into provisions of Article 300A, or why the purpose of deletion of Article 31(2) which contained specific provisions for payment of amount should be ignored. Absolutely no reasons are suggested for engrafting a deleted non-existent provision into Article 300A. If the intent of Parliament was that Article 31(2), either in its original or amended form, should find reflection even in the constitutional right introduced by the 44th Amendment, nothing prevented them from incorporating the same in Article 300A. On the other hand, what Parliament chose to do was only to transform Article 31(1) as Article 300A, and omit Article 31(2) in its entirety from the Constitution. It is not for this Court to overlook the long constitutional history of amendments, and resuscitate the excised Clause (2) of Article 31 by implication when Parliament has itself chosen to give the go-by to the right, either as a fundamental right, or as a constitutional right.

We may also note that the Supreme Court has in *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam and others*, , observed that even though Article 31 had not been deleted (at the time of the 42nd Amendment) (at p.138). "Its content had been cut down so much, so that even under a law providing for acquisition of property which did not have the protection of 31-C the adequacy of the "Amount" determined was not justiciable and all that was necessary was that it should not be unreal or illusory. By then the Constitution had done away with the idea of a just equivalent or full indemnification principle and substituted therefore the idea of an "Amount" and rendered the question of the adequacy or the inadequacy of

the amount non-justiciable". Even the attenuated operation of Article 31(2) referred to above was done away with by the 44th Amendment by deleting it altogether from the Constitution".

20. Section 30 of the Act deals with dispute as to apportionment. Section 52 of the Act deals with notices in cases of suits for anything done in pursuance of the Act. Section 53 of the Act deals with CPC to apply to proceedings before Court. In the light of these provisions, elaborate submissions were made that since there is no specific exclusion of the jurisdiction of the civil Court, on a careful reading of the Act in question, the same cannot be inferred.

21. The Apex Court while dealing with right of suit and right of appeal in *Smt. Ganga Bai Vs. Vijay Kumar and Others*, observed that there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute. The Apex Court in *Laxmi Chand and others Vs. Gram Panchayat, Kararia and others*, dealing with the question of jurisdiction of civil Court in the context of the Act observed as hereunder:

It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

The learned Judge of the Madras High Court in *Union of India and another Vs. Krishnaswamy*, observed as hereunder:

The Land Acquisition Court is a specially constituted Court, and if there is any mis-description either in the identity of the property or in its measurement, the plaintiff can get them rectified by approaching that Court, which has a special machinery for that purpose. I am of the view that the erratum notification has not misled the plaintiff regarding the property. Moreover, this is not a matter to be adjudicated by a Civil Court, and it comes exclusively within the jurisdiction of Tribunals constituted under the Land Acquisition Act.

Similar question was decided in the decision reported in *Laxmi Chand and others Vs. Gram Panchayat, Kararia and others*, . Their Lordships of the Supreme Court have held thus (at p.4424 of AIR):

...It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the Civil Court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose compulsorily acquiring the land for use of public purpose. The notification u/s 4 and declaration u/s 6 of the Act are required to be published in the manner contemplated there under. The inference gives inclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made u/s 11 as envisaged there under. The dissatisfied claimant is provided with the remedy of reference u/s 18 and a further appeal u/s 54 of the Act. If the Government intends to withdraw from the acquisition before possession of the land, procedure contemplated u/s 48 requires to be adhered to. If possession is taken it stands vested u/s 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

It would thus be clear that the scheme of Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court.

22. While referring to the Full Bench decision in Abdul Sattar Sahib v. Special Deputy Collector, Vizagapatnam equivalent to ILR 47 Mad 357 in Land Acquisition Officer, Guntur Vs. Patibandla Mallikamba and Others, , the learned Judge of this Court observed at paragraph 7 as follows:

The point for consideration is whether it is open to the first respondent in this case to have directly made an application u/s 18(1) of the Act. A perusal of the various sections in the Act makes it abundantly clear that there is no provision in the Act authorizing an aggrieved party to directly approach the principal civil court of original jurisdiction under the provisions of the Land Acquisition Act. It is true that there is also no provision in the Act which compels the Land Acquisition Officer to make a reference u/s 18(1) of the Act to the Civil Court.

When a person interested applies to him to make a reference all that the employment of the expression "require" in Section 18(1) seems to imply is to make it an obligation on the part of the Collector to make the reference. In determining the scope of this obligation, it is obviously necessary to consider as to who can so "require" the Collector to make the reference. The section says "any person interested" can require the Collector to make the reference. A "person interested" is defined in Section 3(b) of the Act in the following terms:

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". Giving a liberal interpretation to this expression all that is required for the application therefore is that the person concerned should make a claim to be interested. Whether he is in fact interested or not, whether ultimately he is found to be interested in the land or not, do not require to be considered. In that view, there is no doubt that the present first respondent claiming as she does to be interested in the property and in the compensation amount payable, is a person competent to apply u/s 18(1) of the Act, requiring the Collector to make a reference.

The next question to consider is what are the remedies, if any, open to the person interested who makes an application to the Collector u/s 18(1) of the Act but who receives no satisfaction and the Collector fails to make the reference. If the person interested feels aggrieved on account of the Collector either refusing or omitting to make a reference under Sec 18(1), it would appear that he has no remedy under the provisions of the Act as there is no section in the Act which, for example, provides that on an application made to the Collector u/s 18(1) and on the Collector failing or refusing to make the reference, it would be open to the party aggrieved to approach a Court by an application directing the Collector to make reference.

In the absence of any such provision there is no relief that the Court could give to the aggrieved party as contemplated by the Act. This is indeed a lacuna in the Act which requires to be set right by suitable amendments to the Act by the Parliament. In the state of the law therefore the present O.P. which is sought to be filed u/s 18(1) of the Act is misconceived, inasmuch as Section 18(1) does not authorize or permit to provide for a person aggrieved, to make an application directly to the Civil Court under that section.

In fact, it is extremely doubtful whether this Court, in exercise of its revisional powers u/s 115 C.P.C. could interfere with the award or give a direction that a reference u/s 18(1) of the Act be made inasmuch as the Land Acquisition Officer is not a Court and in any event, he certainly is not a Court subordinate to this Court having regard to the language of Section 115 C.P.C. and also having regard to the decision in *Abdul Sattar Sahib v. Special Deputy Collector, Vizagapatnam* AIR 1924 Mad. 442 (FB) in which it was held as follows:

In *Ezra v. Secretary of State* ILR 32 Cal 605 (PC) the Privy Council has decided that the Collector exercising functions under the Land Acquisition Act down to the point when he gives what is called his award, is acting only in an advisory capacity and is not exercising any judicial function at all; but in these later cases, which I have referred to, it is pointed out and I think correctly pointed out, that when he acts under part III of which Section 18 forms part, he is acting in a different capacity, because he has there to decide certain things; he has to send the case to the District Court if certain provisions in that section have been complied with, one of which is the question of time; that is to say, he has to

decide whether the application is barred or not; and in doing so, in my judgment he acts judicially.

But the further question arises whether he acts as a Court. I think it is quite possible for persons to be given judicial functions or functions which they have to exercise judicially without their being made Courts properly so called, and I think a very clear instance is the case of registration authorities who have to decide whether or not they will accept registration of certain documents; and it has been held by a Full Bench of this Court in *Krishnammal v. Krishna Iyengar* 23 MLJ 50 that in respect of a refusal of registration by a registration officer no revision petition lies to this Court because he is not a Court at all. I doubt if the Collector sits in a Court.

Further, the question arises assuming that the Collector is a Court is he a court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure? In my judgment he is not. There is no power of appeal from his decision to any one either to the District Court or to this Court. There is nothing in the Act to show that he is, in the true sense of the word in any way subordinate to the High Court.

It was accordingly held in that case that the High Court had no power u/s 115 C.P.C. or u/s 107 of the Government of India Act to revise the order of the Collector acting under the provisions of the Land Acquisition Act refusing to refer to the Court an application u/s 18 of the same Act by a person interested, requiring him to refer the matter for the determination of the Court. This decision is a clear authority for the position that the present O.P. preferred to the Subordinate Judge's Court, Guntur, was not maintainable.

23. The learned Counsel representing the respondent-plaintiff placed strong reliance on the decision of this Court in *G.V.V.S.C. Annapurna v. Special Tahsildar*, Land Acquisition 1997(6) ALD 85, wherein the learned Judge observed at paragraphs 11 to 15 as hereunder:

It is therefore apparent that what has to be considered in matters relating to applications filed beyond the period of two months from the date of award u/s 18(2) of the Act is whether the mandatory notice u/s 12(2) of the Act has been issued by the Collector and whether the writ petitioners can be said to have knowledge of the essential contents of the award. In the case where no notice as contemplated u/s 12(2) of the Act has been issued, the writ petitioners would be entitled to seek reference u/s 18(2) beyond the period of two months from the date of the award. However, where writ petitioners are attributed with the constructive knowledge of the contents of the award, then the period of limitation of two months shall be reckoned u/s 18(2) of the Act from the date of such knowledge. The Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, has clarified that knowledge of the award means knowledge of the essential contents of the award.

In the instant case, it is not in dispute that notice u/s 12(2) of the Act was not

issued to the writ petitioners. It is, however, not known whether any such notice was issued to late Sri G.Chandraiah or to his sons. On behalf of the respondents, it was contended that the writ petitioners, it was contended that the writ petitioners did not make any claim nor were they parties before the Land Acquisition Officer. The petitioner's father G.Chandraiah was the claimant and "notified" person who attended the award enquiry and claimed ownership as well as possession of the lands acquired and sought payment of entire compensation to him. His five sons viz., (1) Seetharamaiah (2) Subba Rao (3) Satyanarayana (4) Bhaskara Rao (5) Tataiah @ Butchaiah had also appeared before the Land Acquisition Officer and recorded their statements wherein it was stated that a partition suit O.S.No.175 of 1981 was filed and that the same was pending adjudication and their request was not pay the compensation amount in respect of the lands to anybody till the suit is disposed of. The above facts are stated in the award. It was in those circumstances that the Respondent - Land Acquisition Officer referred the matter of apportionment to Court u/s 30 of the Act and deposited the amount into Civil Court u/s 31(2) of the Act in respect of the lands in question. The reference which was registered as O.P.No.71 of 1988 was compromised, as noted above, and decree in terms of the compromise was passed in I.A.No.1215 of 1991 in O.P.No.71 of 1988.

In the light of the said facts and circumstances of the case can it be said that the writ petitioners had no knowledge of the contents of the award passed by the Respondent - Land Acquisition Officer. The further question is whether the writ petitioners had knowledge of the essential contents of the award. These are, however, pure questions of fact which need to be established in accordance with law and which it may not be appropriate to decide in writ proceedings.

The Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, held that the making of an application of reference within the time prescribed by proviso to Section 18(2) of the Act is a sine qua non for a valid reference by the Collector. It was further held that the Civil Court has jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to Sub-section (2) of Section 18 of the Act and if it finds that it was so made, decline to answer the reference.

The respondent - Land Acquisition Officer, as noticed above, by a creptic order rejected the application without considering any of the relevant aspects adverted to supra. Accordingly, this Court is of the considered opinion that the writ petitioners need to be afforded an opportunity of establishing the requisite facts before the Civil Court which is competent to decide the reference u/s 18 of the Act as also the competence of the Reference made to it u/s 18 of the Act.

Further strong reliance was placed on the decision of the Division Bench of this Court in Govind Venkata Reddy v. K. Krishna Rao and Anr. 1981(2) APLJ 396 and the Division observed at paragraph 11 as follows:

Thus, the Land Acquisition Act indicates a clear cut scheme on the question at

issue, viz., where conflicting claims to the land acquired or to the compensation payable, are preferred before the Collector (Land Acquisition Officer). He may choose either to decide the matter himself or to refer the same to Civil Court. If he chooses to follow the first alternative, he will determine the area of the land, the amount of compensation, and also the persons who, according to him, are entitled to compensation, and pass an award incorporating his decision on all these three questions. In such a case, the only remedy of the person aggrieved by the award is to ask for a reference u/s 18, within the period of limitation prescribed therein. If such an application is made, the Collector is bound to make a reference, notwithstanding his decision on the applicant's claims, and he is also bound to deposit the amount in the court. But where he chooses to adopt the second alternative, he will determine the area of the land, the quantum of compensation and then make a suo-motu reference u/s 30 of the Act to Civil Court, to decide the conflicting claims of the claimants before him. In such a case also, he has to send the amount of compensation determined by him, to the Court. Besides the above, a person who was not present or represented before the Collector during the award enquiry, has a right to raise a dispute as to apportionment, or with respect to the right to receive the compensation, before the Collector, after the passing of the award. But, in such a case, the Collector may, or may not make a reference, having regard to the facts and circumstances of the case; and if the Collector refuses to make such a reference the only remedy of the person concerned would be to institute a suit to establish his claims and contentions". In *Sangubhotla Venkatramaiah Vs. Kalu Venkaswamy and Others*, , the Full Bench of this Court while dealing with exclusion of the jurisdiction of the civil Court from entertaining the suit of a civil nature, observed at paragraph 6 as follows:

The exclusion of the jurisdiction of a Civil Court from entertaining a suit of a civil nature may be expressed or implied. Where a special Tribunal is created by an Act of Legislature for the purpose of determining the rights created by the statute and finality is given to the orders of the Tribunal, the jurisdiction of the Civil Court must be considered to be excluded with regard to those matters. But where the subject matter of the suit falls outside the exclusive jurisdiction of the special Tribunal or where the relief sought in the suit is one which the special Tribunal is incapable of granting, the jurisdiction of the Civil Court is not ousted merely because the question which has to be incidentally but necessarily decided is a question within the competence of the special Tribunal.

In *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, while explaining when the jurisdiction of the civil Court to entertain a suit can be said to be barred observed at paragraph 12 as follows:

The question about the exclusion of the jurisdiction of the civil courts to entertain civil actions by virtue of specific provisions contained in special statutes has been judicially considered on several occasions. We may in this connection refer to two decisions of the Privy Council. In *Secy. of State v. Mask and Co.* 67 Ind App 222

at p. 236 : AIR 1940 PC 105 at p. 110 the Privy Council was dealing with the effect of the provisions contained in Section 188 of the Sea Customs Act (VIII of 1878). The relevant portion of the said section provides that every order passed in appeal under this section shall, subject to the power of revision conferred by Section 191, be final. Dealing with the question about the effect of this provision the Privy Council observed that it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. Lord Thankerton who delivered the opinion of the Board, however, proceeded to add that "it is also well-settled that that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect. On the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles or judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order and makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute. In what cases such a plea would succeed it is unnecessary for us to decide in the present appeal because we have no doubt that the contention of the appellant that on the merits, the decision of the assessing authority was wrong, cannot be the subject-matter of a suit because Section 18A clearly bars such a claim in the civil Courts.

In *Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Others*, , the Apex Court while dealing with this question observed at paragraph 7 as follows:

We are accordingly of the opinion that Section 85 read with Section 70 of the Act does not bar the jurisdiction of the Civil Court to examine and decide the question whether the defendants had acquired the title of statutory owners to the disputed lands under the new Act. In this context it is necessary to bear in mind the important principle of construction which is that if a statute purports to exclude the ordinary jurisdiction of a Civil Court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of

such exclusion. As the Judicial Committee observed in AIR 1940 105 (Privy Council) at p. 110:

It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

In our opinion, there is nothing in the language or context of Section 70 or Section 85 of the Act to suggest that the jurisdiction of the Civil Court is expressly or by necessary implication barred with regard to the question whether the defendants had become statutory owners of the land and to decide in that connection whether the defendants had been in the past tenants in relation to the land on particular past dates. We are also of the opinion that the jurisdiction of the Civil Court is not barred in considering the question whether the provision of the Act are applicable or not applicable to the disputed land during a particular period. We accordingly reject the argument of Mr. Hathi on this aspect of the case. Further reliance was placed on the decision of the Apex Court in *I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd.*, and placed reliance on certain of the observations made in the said decision. The decision of the Bar Council of West Bengal and Others Vs. Miss Ajanta Aughstin, while relying upon the decision of the Apex Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, dealing with statute creating liability not existing at common law but itself providing no remedy, whether the jurisdiction of the civil Court can be said to be barred or not observed that where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed, and it is not competent to the party to pursue the common law remedy.

24. Section 9 of the CPC deals with Courts to try all civil suits unless barred. It is no doubt true that in the case of infringement of a civil right, normally the civil Court would have jurisdiction to entertain a civil suit unless the same is either expressly barred or to be taken to have been barred by clear implication. In all other cases it may have to be taken that the civil Court has jurisdiction to entertain a suit in the event of an infringement of a civil right.

25. The procedure contemplated under the Act and the steps to be taken under the Act as specified by the provisions of the Act being self-explanatory, the same need not be elaborated. On a careful appreciation of the scope and ambit of the Act and the different provisions of the Act, the Apex Court while dealing with similar question observed in *Laxmi Chand case* (5 supra), that the jurisdiction of the civil Court to entertain suits in matters of this nature is excluded. It is needless to say that the said decision is a binding precedent and bound to be followed by this Court.

26. The nature of the relief prayed for in the suit also may have to be looked into in this context. The suit is for declaration and the plaintiff is entitled to recover

fair, adequate and reasonable compensation in respect of the plaintiff's scheduled property and the plaintiff also further prayed for mandatory injunction directing the defendant to make a reference u/s 18 of the Act. These reliefs, in the considered opinion of this Court, cannot be granted by a civil Court in the light of the scope and ambit of the Act. It is needless to say that the remedy of the plaintiff is elsewhere. It is really an unfortunate case where the plaintiff has been fighting this litigation for sufficiently a long time, who had been unsuccessful before the trial Court initially, carried the matter by way of appeal, an order of remand was made by this Court, again he had been successful before the trial Court and due to his misfortune, again the matter had been carried by way of this appeal by the Government. This is the historical background of this litigation.

27. In the light of the facts and circumstances, several of the facts are not in controversy this Court is not inclined to disturb the said findings. However, on the ground that the civil Court cannot entertain a suit of this nature, this Court is inclined to set aside the decree and judgment, may be that when the civil Court itself has no jurisdiction at all, the other findings, if any, recorded may not be of much consequence, though otherwise in equity the claim of the plaintiff may be a justifiable one; since the law prevails over equity, such reliefs inasmuch as cannot be granted by a civil Court and this Court is left with no other option except to set aside the decree and judgment of the trial Court. However, plaintiff is given liberty to pursue appropriate remedies available to him under law and this Court does hope that the observations made by this Court may also be considered in the event of this unfortunate plaintiff invoking the appropriate remedies in accordance with law. POINT No. 4:

28. In the result, it is needless to say that the decree and judgment of the trial Court being unsustainable they are liable to be set aside and accordingly the appeal is hereby allowed subject to the observations specified supra. In the light of the peculiar facts and circumstances, the parties to bear their own costs.