
(1995) 02 AHC CK 0098
In the Allahabad High Court
Case No : Civil Revision No. 535 of 1989

Tijiya	Vs	APPELLANT
Bhaggu & Anr.		RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 2(ii)
Land Acquisition Act, 1894 — Section 18, 30, 54

Citation : (1995) 02 AHC CK 0098

Hon'ble Judges : D.S.Sinha, J

Final Decision : Dismissed

Judgement

D.S.Sinha, J.—Heard Sri R. P. Tiwari, learned counsel for the, applicant, at length and in detail.

2. Smt. Tijiya, the applicant, invokes the jurisdiction of this court under Section 115 of the Code of Civil Procedure, 1908, hereinafter called the Code, for setting aside the order, dated 10th February, 1989 passed by the Addl. District Judge, Jhansi in Misc. Case No. 122 of 1988 between Tijiya and Bhaggu and another arising out of proceedings under the Land Acquisition Act, 1894, hereinafter called the Act.

3. In lieu of acquisition of plots No. 237 and 243 situate in village Koti Kanchanpur, tahsil and district Jhansi, under the Act, Bhaggu and Bhaiya Lal, the opposite parties, were awarded compensation of Rs. 7314 and 7640 respectively by the award, dated 18th April, 1987. After the award was given Smt. Tijiya, the applicant, put forth claim for compensation on the ground that she, being the owner of the acquired land, was entitled to compensation and not Bhaggu and Bhaiya Lal, the opposite parties. It is not disputed that before the award was given the applicant had not participated in the acquisition proceedings in any manner. Treating the claim of the applicant to be a dispute regarding apportionment of amount of compensation, the Land Acquisition Officer referred the matter to court under Section 30 of the Act. The court has, by means of the

impugned order, affirmed the award of the Land Acquisition, Officer, dated 18th April, 1987.

4. The Stamp Reporter of this court has, vide report, dated 16th May, 1989, expressed the view that instant revision is incompetent. The view of the Stamp Reporter is contested. The question, in the forefront, that calls for determination, therefore, is whether the revision is maintainable.

5. It is elementary that the revisional power under Section 115 of the Code can be invoked only where no appeal lies against the impugned order, and this leads to investigation whether the impugned order passed by the court in proceedings under Section 30 of the Act is appealable.

6. Section 54 of the Act provides for appeals in proceedings before the court. It reads thus:

"Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

A bare perusal of Section 54 of the Act leaves no room for doubt that an appeal lies to the High Court against the award or any part of the award rendered by the court under the Act.

7. Reference of the dispute regarding the entitlement of the persons to whom the compensation under the Act is payable is contemplated under Sections 18 and 30 of the Act, Section 18 entitles any person interested who has not accepted the award to, by written application to the Collector, require the matter to be referred for determination of the court, his objection regarding measurement of the land, the amount of compensation, the persons to whom compensation is payable or the apportionment of the compensation among the persons interested. This provisions confers a right upon the person interested to require the Collector to make a reference to the court with regard to the measurement of the land, amount of the compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested. On fulfilment of the conditions specified in Section 18, the Collector is bound to make a reference to the court.

8 Section 30 of the Act empowers the Collector, after the amount of compensation has been settled under Section 11, to make a reference to the court for decision of the dispute arising in respect of apportionment of the compensation or any part thereof or as the person to whom the same or any part thereof is payable.

9. Where the reference is made either under Section 18 or under Section 30 of the Act, the Court has power to vary or reverse the award giving rise to the reference and the decision of the court so varying or reversing the award shall be deemed to be award of the court having the force of a decree within the meaning of Section 2 (ii) of the Code, and an appeal therefrom shall lie under Section 54 of the Act. Seeing in the light of the above position, it has to be held that the order impugned herein is appealable under Section 54 of the Act. The provision of Section 115 of the Code, therefore, cannot be invoked for challenging the impugned order in view of the express prohibition contained therein against the exercise of revisional jurisdiction where an appeal lies.

10. The report of the Stamp Reporter, in the opinion of the court, is legally sound. It is upheld and objection thereto is repelled. The revision is, therefore, held to be not maintainable.

11. Sri Tewari learned counsel for the applicant, made feeble attempt to assail the impugned order on merits also. But, in view of the fact that the revision is held to be not maintainable, it is unnecessary to examine and evaluate the submissions of Sri Tewari.

12. In the result, the revision fails and is hereby dismissed.

Revision dismissed.