

(2012) 04 BOM CK 0125

In the Bombay High Court

Case No : Civil Revision Application No. 84 of 2012

Venkat Karle

APPELLANT

Vs

The State of Maharashtra and The Executive Engineer, Minor
Irrigation Division, Latur

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2, 2(2), 2(9)
Land Acquisition Act, 1894 — Section 23(1), 26, 26(2), 53, 54

Citation : (2012) 4 ALLMR 826 : (2013) 1 BomCR 644 : (2012) 4 MhLj 350

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : N.V. Gaware, holding for . Mr. G.K. Sontakke, for the Appellant; K.M. Suryawanshi and Mr. P.P. More, Asst. Government Pleader for respondent nos. 1 and 2 and Mr. Amol D. Shinde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Borde, J.—These Revision Applications are tendered against judgment and award passed by the Extra Jt. Civil Judge, Senior Division, Latur on 1st August, 2011 in a group of Land Acquisition References. Agricultural lands belonging to the applicants - original claimants came to be acquired for irrigation project of village Kalkot, Tq. Chakur. After following procedure prescribed under the Land Acquisition Act, the Land Acquisition Officer passed an award and determined amount of compensation payable to the claimants. The claimants received amount of compensation and proceeded to file individual Reference Applications claiming enhancement in amount of compensation. The claimants led evidence before the reference Court. The reference Court, on consideration of material placed before the Court, found that the claimants - applicants herein are not entitled to receive enhancement in amount of compensation. It was also found by the reference Court that the Reference Applications were presented beyond the prescribed period of limitation. The reference Court, therefore, proceeded to reject the Reference Applications.

2. Here is a case where the claimants before the reference Court placed evidence in support of their claim before reference Court. The evidence presented by the claimants in the form of oral testimony of witnesses as well as documentary evidence was considered by the reference Court. The reference Court did not find it appropriate to direct enhancement in the amount of compensation. The reference Court found that the Reference Applications were presented beyond prescribed period of limitation and as such, rejected the reference applications.

3. Considering facts of the case, I am of the opinion that the Civil Revision Applications presented by the claimants questioning legality and validity of the decision rendered by the reference Court are not maintainable and appropriate remedy is to present First Appeal as prescribed by Section 54 of the Land Acquisition Act. A reference can be made to the judgment in the matter of *Kawadu Bansod Vs. State of Maharashtra and Another*, . In the said decision, it is observed by the learned single Judge of this Court in paragraph 7 of the judgment that :

adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced compensation is given or not. But in that event the Court should consider the material on record, even if the party is absent and has failed to adduce evidence. Unless the material on record is considered the order cannot be said to be an adjudication. In the instant case the ground given for the dismissal of reference by the Civil Court is that the applicant (present revision petitioner) remained absent and did not adduce any evidence to show that a proper compensation was not paid to him and that he is entitled to more compensation than paid. The above order clearly shows that the reference was dismissed only for the reason of failure of the applicant (present revision petitioner) to adduce evidence. Thus the material on record is not considered by the Civil Court, It is not considered as to how the compensation awarded by the Land Acquisition Officer was correct. So the order cannot be taken to be an adjudication and therefore the same cannot be treated to be an award. The order passed by the Civil Judge, Senior Division, Yavatmal also cannot be treated to be a dismissal of the reference in default. The learned counsel for revision petitioner submitted that the case could not be dismissed in default also.

In paragraphs 8 and 9 of the said judgment, it was observed thus :

8. On the point as to what should be the form of award and the duty of the court when the claimant is absent or if present fails to adduce evidence, the learned counsel for revision petitioner cited, *M.S. Ramaiah and Ors. v. Special Land Acquisition Officer*, AIR 1974 Karnataka 122, This case lays down that when a reference is made to the Court (Civil Court), it is its duty to determine the amount of compensation payable for the land or lands acquired; the Court has no jurisdiction to refuse to determine the amount of compensation even where the claimant remains absent or where he is present, fails to adduce evidence; the Court further has to apply its mind and make an award and cannot blindly confirm the award of the Land Acquisition Officer. The case further annunciates

that the award which the Court passes must be in the form of a judgment containing the statement of the grounds for the award. Where the claimant remains absent or does not produce evidence, it is not open to the Court to dispose of the reference stating that the claim of the claimant is dismissed or that the reference is rejected. This case is also on the point that the reference cannot be dismissed in default.

9. As already stated above an appeal against the order of the Civil Court lies to the High Court against the award as is laid down in Section 54 of the Land Acquisition Act. The observations made above would reveal that the judgment and order of the Civil Judge Senior Division, Yavatmal in the above mentioned case cannot be regarded to be an award. So no appeal would lie. Then the question would arise as to what remedy is available to the claimant/applicant. In this connection the learned counsel for revision petitioner placed reliance on the provision of Section 53 of the Land Acquisition Act which reads as below :

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act.

By virtue of the above provision of Section 53 of the Land Acquisition Act the Court under the Land Acquisition Act can be taken to be subject to the revisional jurisdiction of the High Court. Since there is no remedy of appeal and Section 53 provides that provisions of the CPC shall apply to all the proceedings under the Land Acquisition Act, the remedy of revision would be available to the applicant/claimant. In the above view of the matter the present revision is maintainable.

4. In the instant case, it is found that the claimants have adduced evidence before the reference Court and the reference Court has also appreciated the material placed on record while rendering the decision and has recorded reasons in support of the final order. The reference Court has also considered issue of limitation and found that the Reference Applications were presented beyond prescribed period. It is not the case that the Reference Applications were dismissed without considering the material placed on record.

5. Learned counsel appearing for the applicants invited my attention to the provisions of Section 26 of the Land Acquisition Act, which read thus :-

26. Forms of awards.-[(1)] Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub- section, together with the grounds of awarding each of the said amounts. [(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2. clause (2), and section 2, clause (9), respectively of the CPC 1908 (5 of 1908).]

It is contended that since the reference Court has dismissed the Reference

Applications and no enhancement in the amount of compensation has been granted, the judgment of reference Court cannot be construed as an award. Since the judgment rendered by the reference Court cannot be construed as award, Appeal is not maintainable u/s 54 of the Land Acquisition Act.

6. Section 26 of the Land Acquisition Act provides forms of awards whereas, sub-section 2 prescribes that every award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2 clause (2) and section 2 clause (9), respectively, of the Code of Civil Procedure, 1908. Clause 2 of Section 2 defines decree which means formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include - (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Clause (9) of Section 2 defines the judgment as the statement given by the Judge on the grounds of a decree or order. The award made by the Civil Court is the formal and final adjudication which is deemed to be a decree and the statement of the grounds, judgment within meaning of Sections 2(2) and 2(9) of the Code respectively. In this regard, observations of the full Bench in the matter of the State of Madhya Pradesh v. Seth Gowardhandas s/o. Seth Brijmohandas Maheshwari, AIR 1993 Madhya Pradesh 70 can be conveniently referred to, which reads thus :

The reference Court is a principle Civil Court of original jurisdiction and the legislature has thus made a clear distinction between Tribunal and a Court. Secondly, the application of reference made by a claimant and on which reference is made by the Collector is in the nature of a plaint and has the characteristic of a suit which is yet another important ingredient of a decree. Thirdly the award made by the Civil Court is the formal and final adjudication which is deemed to be a decree and the statement of the grounds of award a judgment within the meaning of Sections 2(2) and 2(9) of the code respectively. The award made by the Civil Court partake the character of a decree under the deeming provisions of sub-section (2) of Section 26 of the Land Acquisition Act.

The judgment in the case of State of Madhya Pradesh v. Seth Gowardhandas (supra) has been referred and approved by the Apex court in the decision in the case of Indore Development Authority Vs. Tarak Singh and others etc. etc., . A reference can be made to the judgment in the matter of K.T. Muthuveerappa Pillai v. Revenue Diviisional Officer, Melur, AIR 1931 Madras 26(1). The Division Bench of Madras High Court has laid down that :

Once a proper reference comes before the District Judge, his final order on it is an award whether he gives an additional amount or he gives no additional amount or whether the acquisition officer's award is not upheld for some other reason, and an appeal over such an order is competent.

The learned single Judge of this Court while dealing with the matter in the case of Kawadu Madhav Bansod (supra) has also observed, in paragraph 7 of the judgment, that "the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced compensation is given or not.

7. In view of the discussion as above, I am of the opinion that the contentions advanced by learned counsel for the applicants based on interpretation of Section 26 of the Land Acquisition Act that dismissal of reference application does not amount to an award, is unacceptable. It is to be reiterated that the award passed by the reference Court is equated with a decree by virtue of sub-Section 2 of Section 26 of the Land Acquisition Act, so also the reasons recorded by the reference Court is a judgment within the meaning of Section 2(9) of the Code. By virtue of Section 54 of the Act, Appeal shall lie to High Court against the award passed by the reference Court irrespective of fact whether enhancement in amount of compensation is awarded or not. Thus, in my opinion, the Revision Applications tendered by the applicants are not maintainable and the remedy available is to challenge the decision rendered by the reference Court by preferring appeal u/s 54 of the Land Acquisition Act. Revision Applications are devoid of substance and hence, dismissed.