
(2011) 04 PAT CK 0123

In the Patna High Court

Case No : First Appeal No's. 328 and 329 of 2001

Vinod Prasad and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28(A), 28(A)1, 28(A)2, 28(A)3

Citation : (2011) 4 PLJR 277

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—Both the first appeals have been filed by the land holders-Sahoo, J. Appellants against the common judgment dated 17.2.2001 passed by Sri Madan Gopal Prasad, the Land Acquisition Judge-cum-Sub Judge-I, Sitamarhi in Land Acquisition Case No. 1 of 1993 and Land Acquisition Case No. 2 of 1993 dismissing the reference case.

2. The admitted facts may be briefly stated that award No. 28 dated 17.2.1984 was prepared for Rs. 5941.79 paise for 31 decimal in Land Acquisition Case No. 1 of 1993. Likewise in Land Acquisition Case No. 2 of 1993 award No. 38 was prepared for Rs. 28750.58 paise for 1 acre 50 decimal on 17.2.1984. The possession of the lands which were acquired for Bagmati Project was taken on 5.6.1984. The original clamant Sitaram Prasad received the compensation under protest. Sitaram Prasad died and his legal representatives are the Appellants in both the appeals. The Appellants did not file application u/s 18 of the Land Acquisition Act for reference for enhancement of the compensation. However, the other awardee namely Birendra Prasad whose land was also acquired for the same purpose by the same notification and who was co-sharer of the Appellants filed application for reference to the Land Acquisition Judge and before the Land Acquisition Judge his case was numbered as L.A. Case No. 52 of 1986/ 149 of 1986. The said L.A. Case was allowed by the Land Acquisition Judge by terms of

judgment dated 7.12.1991 and the compensation was enhanced by fixing the prevalent market value of the land at Rs. 1700/- per decimal. When the Appellants came to know about the said judgment of the Land Acquisition Judge in both the cases the Appellants filed application u/s 28-A of the Land Acquisition Act for re-determination of the amount of compensation on the basis of the award of the Court. The Land Acquisition Officer referred the application to the Land Acquisition Judge and the Land Acquisition Judge by this impugned judgment dismissed both the applications filed u/s 28-A of the Land Acquisition Act. Against this judgment the present appeals have been filed.

3. The learned Counsel Mr. Khatim Reza appearing on behalf of the Appellants in both the appeals raised a short question of law in these appeals and submitted that the appeals can be decided on this question of law alone. According to the learned Counsel on an application u/s 28-A of L.A. Act the Collector was duty bound to hold an enquiry under Sub-Section 2 of Section 28-A and make an award. He had no authority to refer the application under Sub-Section 1 of Section 28-A to the Court unless award is made by him and the applicant filed an application under Sub-Section 3 of Section 28-A praying for referring the application to the Court on the ground that he has not accepted the award made under Sub-Section 2.

4. On the other hand, the learned A.C. to G.P.-6 Mr. Pankaj Kumar submitted that the Appellants participated before the Court in the proceeding and, therefore, the point submitted by the Appellants is not available to them.

5. In view of the above contentions of the parties, the points arises for consideration in these appeals is, as to whether the Collector without making award under Sub-Section 2 of Section 28-A of the L.A. Act could have referred the application filed under Sub-Section 1 of Section 28-A to the court and whether the Land Acquisition Judge could have decided the application and whether the impugned judgment and award are sustainable in the eye of law.6. Section 28-A of the Land Acquisition Act reads as follows:

28-A. Re-determination of the amount of compensation on the basis of the award of the Court.-(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, Sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court: Provided that in computing the period of three months within which an application to the Collector shall be made under this Sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded. (2) The Collector shall, on receipt of an application under Sub-section (1), conduct an inquiry after

giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.(3) Any person who has not accepted the award under Sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

7. On receipt of the said application the Collector was required to hold an inquiry and make an award as provided under Sub-Section 2 of Section 28-A. This provision is mandatory and the Collector could not have refused to exercise the jurisdiction and power vested on him under Sub-Section 2. The Collector has no jurisdiction to refer the application mechanically without making an award to the civil court. The collector can only refer the application only if an application is filed by the applicant under Sub-Section 3 of Section 28-A of the L.A. Act who have not accepted the award made under Sub-Section 2. Admittedly, in the present case, no such award was made under Sub-Section 2 by Collector nor any application was filed by the Appellants under Sub-Section 3 of Section 28-A of the L.A. Act. Therefore, the Collector had no jurisdiction to refer the matter mechanically. The Court acquired jurisdiction only if the reference is valid and within the statutory provision of Section 28-A Sub-Section 3 of the L.A. Act. If the reference is invalid the Court had no jurisdiction.

8. In First appeal No. 547 of 1993 (State of Bihar v. Nathuni Prasad Gupta) decided on 14.2.2011 with First Appeal No. 549 of 1993 (State of Bihar v. Kedar Prasad Choudhary and Anr.) this Court has held at paragraph 14 and 15 as follows:

14. In the present case, it appears that on 27.01.1991, an application was filed before the special Land Acquisition Officer being the collector under the Act for re-determination of the amount of compensation in terms of the judgment and award dated 02.01.1991 in the case of Raghu Nath Shah, L.A Case No. 10 of 1986/109 of 1986. From the records it is found that first of all no action whatsoever was taken for almost one year and thereafter the Collector under the Act mechanically using the form prescribed for reference u/s 18 of the Act had made an endorsement by recording his view that whatever amount of compensation was awarded to the Respondent land holders was sufficient. Such is not the scope of Section 28(2) of the Act, inasmuch as, whenever such an application u/s 28 is filed by the concerned land holder, it has to be first recorded by Collector under the Act as to whether it is within the prescribed period of limitation of three months inasmuch as there is no scope for condonation of delay. Thereafter the Collector under the Act has to hold an inquiry which is also the mandatory requirement of Section 28-A(2) of the Act. The conclusions on the basis of such enquiry are thereafter to be arrived at as to whether the Collector under the Act is satisfied with the claim put forward before him by the concerned land holders and in doing so he will have to necessarily go into the question as to

whether the award in question relied on by the land holders squarely applies to the facts of the case. For doing so, he will have to find and record his satisfaction with regard to similarity in quality of the land acquired for which compensation has already been determined u/s 18 of the Act. All such determination has to be made by a definite speaking order which may enable the concerned land holders to seek reference, inasmuch as, the scope of Section 28-A(3) is limited only to examination by civil court only of those reasons recorded in such order of the Collector under the Act.

15. It has to be made clear that an adjudication u/s 28(3) is not the same as one under Section-18 of the Act. Under Section-18 of the Act while the land holders will have to establish the claim for being awarded compensation at the market value, such would not be the requirement u/s 28-A of the Act where there is already a yard stick set out by the Court while allowing the claim in the earlier award. It affects the award of the Court in one case which is being sought to be enforced by another person who had not sought reference u/s 18 of the Act and therefore the similarity and proximity of the land has to be only gone into while adjudicating any case u/s 28-A of the Act.

9. Admittedly therefore, the Collector in the present case has not followed the mandatory provision of Section 28-A Sub-Section 2 of the L.A. Act. This aspect was not considered by the court below. Since the reference itself was against the mandatory statutory provision the reference itself was bad and, therefore, the Land Acquisition Judge had no jurisdiction to decide the question. In view of the above facts, since the impugned judgment and award is passed by a Court who had no jurisdiction to decide the question, the impugned judgment and award are nonest in the eye of law. It is a case of inherent lack of jurisdiction.

10. In view of my above findings, the impugned judgment and award are liable to be set aside and the matter be sent back to the court below so that the matter may be returned by the Land Acquisition Judge to the Collector concerned for deciding the question according to law under Sub-Section 2 of Section 28-A of the Land Acquisition Act.

11. In the result, both the first appeals are allowed and the impugned judgment and award are set aside and the matter is sent back to the Land Acquisition Judge for returning back the cases to the Collector concerned as soon as possible.

12. In the facts and circumstances of the case, the parties shall bear their own costs.