SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Asher Ali Vs. Sukhna Seikh (deceased by LR's) and Ors.

Asher Ali Vs. Sukhna Seikh (deceased by LR's) and Ors.

SooperKanoon Citation : sooperkanoon.com/139711

Court : Guwahati

Decided On : May-14-1991

Judge : B.P. Saraf, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 9; Land Acquisition Act, 1894 - Sections 30

Appeal No. : Second Appeal No. 102 of 1983

Appellant : Asher Ali

Respondent : Sukhna Seikh (deceased by LR's) and Ors.

Advocate for Def. : K.K. Mahanta, Govt. Adv. and L.P. Sarma, Adv.

Advocate for Pet/Ap. : B.C. Das, Adv.

Disposition : Appeal dismissed

Judgement :

B.P. Saraf, J.

1. The question of law for determination in this appeal is whether a person claiming a portion of the compensation awarded by the Collector in land acquisition proceedings under the Land Acquisition Act of 1894, hereinafter referred to as 'the Act', is entitled to file a civil suit to establish his claim.

2. The facts of the case as far as material for determination of this question are as follows. A plot of land measuring 3 kathas was acquired by the Government for construction of National Highway. The plot belonged to late Sanaton Seikh who died leaving two sons, namely, Gangar Seikh and Panimal Seikh Gangar Seikh and Panimal Seikh also died. The successors of each one of them had 50% interest in the said land. The acquisition compensation was determined by the Collector at Rs. 10,143/-. The whole of the amount of compensation was paid by the Collector to defendants 4 and 5 who were the successors of one of the sons of late Sanaton Seikh on 22-7-67 on furnishing of an indemnity bond by them, despite protest from the successors of the other son Gangar Saikh. It appears that the successors of Gangar Seikh who later filed the suit which has given rise to this appeal made repeated demands before the Sub-Divisional Officer, Barpeta for payment of half share of compensation to them. No action having been taken in that regard a suit was filed for recovery of their share of compensation against the State of Assam, Sub-Divisional Officer, Land Acquisition Officer and the successors of late Panimal Seikh. The suit was contested by the private defendants (defendant Nos. 4, 5 and 6) jointly on the ground inter alia, that the suit was not maintainable. Their further case was that the land acquired by the Government belonged to them and not to the plaintiffs.

3. The trial Court arrived at a finding that the plaintiffs had interest over half of the land acquired by the Government and accordingly they were entitled to half of the amount of compensation awarded by the Collector. In regard to maintainability of the suit, the trial court observed that from documents marked as Exhibits 3 and 4, it was evident that the predecessors-in-interest of plaintiffs late Sukhna Seikh has made representation before the Sub-Divisional Officer, Barpeta for getting half share of the compensation awarded for the land acquired by the Government. The representation was not finally disposed of by the Sub-Divisional Officer nor any reference was made under Section 30 of the Act. It was further observed that it was not clear from the records whether any notice under Section 9 of the Act was served on the plaintiffs or not. The trial court held that as the dispute between the parties was over apportionment of the amount of award given by the Collector, the civil suit was maintainable. The trial court, in view of the aforesaid findings, held that the plaintiffs were entitled to half share of the amount of compensation and

accordingly decreed the suit on contest for Rs. 5,071.50. The findings of the trial court on both the counts were affirmed by the learned District Judge. The decree was affirmed and the appeal was dismissed. The defendant No. 4 has filed the second appeal before this court.

4. The only ground on which the orders of the courts below have been assailed is that the suit of the plaintiffs claiming a portion of the compensation awarded by the Collector was not maintainable in view of the provision contained in Section 30 of the Act. Section 30 of the Act provides:

'When the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.'

5. From a bare reading of Section 30 it is clear that this section deals with dispute as to the apportionment of the amount of compensation settled under Section 11 or as to the persons to whom it is payable. Power has been conferred on the Collector under this section to refer such a dispute to the decision of the court. No time limit has been prescribed for making such a reference. It can be made at any time. The power to make a reference is, however, discretionary. As observed by Shah J. (speaking for the majority) in Grant v. State of Bihar, AIR 1966 SC 237 (at 243), the Collector is, under Section 30, not enjoined to make a reference; he may relegate the person raising a dispute as to apportionment or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award. This observation of the Supreme Court itself, to my mind, is clear enough to show that the civil court has jurisdiction to entertain a suit filed by a person claiming a portion of the compensation awarded by the Collector in land acquisition proceedings.

6. The question, however, may also be examined from another angle i.e. exclusion of the jurisdiction of the civil Court in regard to dispute arising out of the proceedings under the Land Acquisition Act. The broad proposition regarding the jurisdiction of the civil court or the ouster of jurisdiction are well settled by now by a catena of decisions of the Supreme Court and this Court. It is well accepted

proposition of law that the civil court has jurisdiction to try all suits of civil nature except those expressly or impliedly barred. So far as the exclusion of jurisdiction is concerned, it is equally well-settled that such exclusion is not be readily inferred. It must be explicit or clearly implied. Even in cases where the jurisdiction of the Civil Court is excluded there are circumstances under which a Civil Court may entertain a suit. So also, the mere fact that a special statute provides for certain remedies does not by itself necessarily exclude the jurisdiction of the Civil Court to deal with the case brought before it in respect of some of the matters covered by the same statute (see Tara Shankar Chakraborty v. Union, (1991) 1 Gau 43, 48). As held by the Supreme Court in Raja Ram Kumar Bhargav v. Union of India, AIR 1988 SC 752, if a pre-existing right in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Court's jurisdiction, then both the common law and the statutory remedies might become concurrent remedies leaving upon an element of election to the persons of inherence. The Civil Court's jurisdiction is also not excluded in cases where the provisions of a particular Act has not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

7. In the light of the well-recognised legal propositions, the relevant facts of the case may now be examined. The claim for a share of compensation in the instant case was made by the predecessors of the plaintiffs. A number of orders were passed in that connection directing the defendants, to whom the whole awarded amount had already been paid, to refund the amount. The dispute was not adjudicated upon nor any reference was made to the Court under Section 30 of the Act. That is evident from the following order passed by the Sub-Divisional Magistrate (S.D.O.) on 27-5-67:

'Asked the parties to refund the money and payments should be made after respective share is decided in a Civil Court.'

8. A reading of this order clearly goes to show that the parties were relegated to agitate the dispute in the suit before the Civil Court. The parties filed the civil suit to get an adjudication of their title over the land acquired by the Government and

their right to get half of the compensation awarded by the Collector. It is difficult in such a situation to hold that they were not entitled to do so. The Civil Court, definitely had jurisdiction to entertain the suit.

9. A perusal of Section 30 of the Act also makes it absolutely clear that this section itself contemplates adjudication of dispute in regard to apportionment etc. by the Court. It simply provides a simpler procedure of reference by the Collector himself. The object is to save the parties from unnecessary expenditure and wastage of time in filing a separate suit for the purpose. By any interpretation, from this provision, exclusion of jurisdiction of the Civil Court cannot be implied.

10. In the light of the foregoing discussion, I am of the clear opinion that a person claiming a part of the compensation awarded by the Collector in land acquisition proceeding under the Land Acquisition Act, 1894 is entitled to file a civil suit. This view of mine also gets full support from the ratio of the decisions of the Punjab Chief Court in Chandu Lal v. Ladli Begam, (1919) 49 Ind Cas 657 : (AIR 1919 Lah 411), Lahore High Court in Bago v. Roshan, AIR 1926 Lah 321 and Patna High Court in Md. Imram v. Mohammad Jafar Momin, AIR 1972 Pat 482; State of Bihar v. Banarsi Devi, AIR 1973 Pat 146 and Sarjug Rai v. Maheswari Devi, AIR 1975 Pat 192.

11. In view of the aforesaid conclusion I do not find any merit in the appeal and the same is dismissed.

12. Under the facts and circumstances of the case, I make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com