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**Court : Karnataka**

**Decided On : Jul-14-1976**

**Reported in : AIR1977Kant9; ILR1976KAR1267**

**Judge : D.S. Tewatia and ;M.K. Srinivasa Iyengar, JJ.**

**Acts : [Land Acquisition Act, 1894](#) - Sections 18, 53 and 26(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 141**

**Appellant : Pullamma and ors.**

**Respondent : The Additional Special Land Acquisition Officer, Bangalore and ors.**

**Advocate for Def. : K. V. Narayanappa, Adv. and ;N. Venkatachala, Addl. Government Adv.**

**Advocate for Pet/Ap. : M.R. Ramakrishna, ;H. Munivenkatappa, ;P. Raghavendra Rao, ;M. Dasappa, ;C.S. Shanthamallappa, ;T.V. Govindraj Iyengar and ;M.V. Raghunathachar, Advs.**

**Judgement :**

**Tewatia, J.**

1. These two sets of cases, viz., M. F. As, 767/74, 79, 131, 188 and 243 of 1975 and C. R. Ps. 1442/74 and 475 and 984 of 1975 though arise in different sets of circumstances, but involve a common question of law and hence would admit of determination by a common judgment.

2. The short question that falls for determination in these cases is, as to whether the provisions of Rules 8 and 9 of Order IX of the Code of Civil Procedure are applicable to reference proceedings before the Civil Court of original jurisdiction launched under S. 18 of the Land Acquisition Act (Central Act 1 of 1894) (hereinafter referred to as the 'Act').

3. Before proceeding with the consideration of the legal point aforesaid, it would be desirable, at this stage, to take note of a few relevant facts which can be stated thus:- After references had been made under Section 18 of the Act by the Collector and the Court was seized of the matter, at one stage or the other of the said proceedings, the claimants absented themselves which led to the dismissal of the concerned references in default. The claimants applied to the Court under O. IX, R. 9 read with Section 151 of the Code of Civil Procedure for the restoration of the respective references and for the setting aside of the order dismissing the same in default. The reference Court rejected those applications on the ground that the provisions of Order IX, Rule 9 being inapplicable to reference proceedings, the same were consequently not maintainable.

4. By way of sample, one such order is reproduced below:-

'This is an application to set aside the ex parte order of dismissal dated 12-11-1973 in L. A. C. No. 26 of 1970. Arguments were heard on the maintainability of the petition under Order 9, Rule 9, Civil Procedure Code.

2. The point for determination is whether the application r/w Order 9, Rule 9, Civil Procedure Code is maintainable.

3. The High Court of Karnataka in M. S. Ramaiah v. Special Land Acquisition Officer, (1974) 1 Kant LJ 231 = (AIR 1974 Kant 122) held that an application under Order 9, Rule 9, Civil Procedure Code, is not maintainable. His Lordship observed

that the remedy for the petitioners is to prefer an appeal against the order of the dismissal and that they cannot maintain an application under Order 9, Rule 9, Civil Procedure Code. In view of the finding of the Hon'ble High Court, I hold that the present petition is not maintainable and the same is hereby dismissed.'

(Vide Misc. 185 of 73 on the file of the Court of the Second Additional Civil Judge, Bangalore City).

5. Some of the claimants challenged such orders directly in the High Court while others approached the District Judge. Such of them as had approached the District Judge by way of appeal met with no better fate as the District Judge concurring in the view that had been taken by the original court dismissed the appeals. This led them to challenge the said orders in revision in this Court, and that is how these two sets of cases are before this Court.

6. Opposition to the application of the provisions of Rules 8 and 9 of Order IX of the Code of Civil Procedure to reference proceedings under Section 18 of the Act rests primarily on two grounds-

(1) That reference proceedings are not in the nature of civil proceedings and thus, strictly speaking, there being no plaintiff or defendant before the Court, provisions of Order IX Rules 8 and 9 would not be attracted to reference proceedings and the other ground stems from the construction of the provisions of Section 26(1) of the Act.

7. According to the respondents, the only construction that can be put on the provisions of Section 26 is that reference proceedings once launched must culminate in an award. In other words that reference proceedings do not admit of termination by any order, which is not in the nature of an award. On the strength of the aforesaid construction it is being contended that it was not open to the Court, which was seized of the reference to dismiss the reference in default. It was also, in the alternative, contended that the order of dismissal in has to be construed as an award. Pursuing further this contention it was urged that once such an order is treated as an award, the court which passed it became functus officio and for that reason became incompetent to entertain any application of the kind for reviving the

reference.

8. Since the reference court, in support of its view, had placed reliance contended that default itself amounting to on a single Bench decision of this Court in *N. S. Ramaiah, v. Special Land Acquisition Officer*, (1974) 1 Kant LJ 231 =(AIR 1974 Kant 122) so these matters were referred to a larger Bench and that is how they are before us.

9. Dealing first with the second ground on which opposition to the application of provisions of Rules 8 and 9 of Order IX, Civil Procedure Code is based, it may be observed at the very outset that if the view is accepted that reference proceedings do not admit of termination before the reference court except by way of an award, then, it may lead to very harsh results. By way of illustration, one may take a case where a claimant on his way to attend reference proceedings is arrested by the police and is thus prevented from being present in court when the reference is called and the reference is dismissed in default, then, if such an order is treated as an award, the only remedy open to the claimant Would be to get it set aside by going in appeal. That would entail, depending on the magnitude of the claim for compensation, expending of lot of money by way of payment of ad valorem court fee etc. The appellate court, no doubt, in a case like the one involved in the aforesaid illustration, would invariably accept the appeal and set aside the award of the court below. But justice had been obtained at such high cost when a similar objective could have been achieved at practically no cost if the provisions of Rules 8 and 9 of Order IX, Civil Procedure Code were held to be applicable to reference proceedings, for, then, in that case, an application under Order IX Rule 9 would have done the trick if the complainant had valid reason for his absence from the Court.

10. Further, the construction that has been sought to be put on the provisions of Section 26 of the Act is also not warranted by the very provision itself. The relevant portion of Section 26 reads as follows:

'26. Form 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.'

A bare perusal of the provisions aforesaid would show that what it envisages is that an award if made shall be in the form indicated therein, that is, an award shall conform to the norms indicated in the aforesaid provision. This provision does not create any compulsion for the court which is trying a reference that it has to pass an award come what may, and is prevented from passing any other order.

11. On behalf of the respondents, reliance was placed for the construction that is sought to be put on the relevant provisions of Section 26 of the Act, on a Single Bench judgment of this Court in Ramiah's case (AIR 1974 Kant 122) (Supra) and on the decision of the Madhya Pradesh High Court in Abdul Karim v. State of Madhya Pradesh, : AIR 1964 MP171 as also on the Patna High Court decision in S. S. Sahai v. State, : AIR1974 Pat176 .

12. In M. S. Ramiah's case (AIR 1974 Kant 122) (Supra) the proposition that the provisions of Order IX, Rule 9 were not applicable to reference proceedings was not contested at all and the learned Chief Justice assumed that the provisions of Section 26 of the Act left no discretion to the Court to pass any order other than the one that amounts to an award. As already observed, this approach, with great respect to the learned Chief Justice, is neither warranted by the provisions of Section 26, nor, if adopted, likely to advance the cause of justice. It is a well-known principle of construction of Statutes that if two views are possible, then, the one which promotes justice should find favour with the Courts.

13. In Abdul Karim's case : AIR 1964 MP171 (Supra) the question involved was whether the provisions of Order XXII, Civil Procedure Code were applicable to reference proceedings. On the assumption that the provisions of Section 26 of the Act left no choice to the reference court to dismiss the reference, it was held that once a reference is made, the court had to render an award and the proceedings could not be dismissed for any reason whatsoever, for that it would tantamount to a refusal to award compensation for land compulsorily acquired under the Act.

14. In Sahai's case : AIR1974 Pat176 (Supra), a Division Bench of the Patna High Court relied on the aforesaid decision of the Madhya Pradesh High Court for holding that land acquisition reference could not be dismissed for default of appearance of the claimant, that Order IX, Rule 8 despite Section 141 of the Civil Procedure Code and Section 53 of the Act would not apply to such a case and that the Court had to make an award even in the absence of any evidence. The learned Judges of the Patna High Court however, made one concession that a dismissal order could be recalled by the reference Court in exercise of its inherent jurisdiction under Section 151.

15. Our reasons for indicating our respectful dissent from the view taken by the Madhya Pradesh High Court and the Patna High Court are the same as already indicated while considering the Single Bench Judgment of our own High Court in Ramaiah's case (Supra).

16. The matter is not res integra. In the decision of the Gujarat High Court in A. Abbas Bhai v. Collector, Panch Mahals, : AIR1967 Guj118 , Bhagwati. J. (as he then was) had occasion to consider the view taken by the Madhya Pradesh High Court in Abdul Karim's case (Supra). While dealing with the question as to whether the provisions of Order XXII, Civil Procedure Code are applicable to reference proceedings he differed from the view of the Madhya Pradesh High Court in Abdul Karim's case : AIR 1964 MP171 (Supra) and observed that the nature of a reference under Section 18 of the Act is not such that it must necessarily result in the making of an award by the Court in the sense of determining the amount of compensation for the land. His further observations on this point are instructive and can be noticed with advantage.

'The reference is not different from an ordinary civil proceeding in which the applicant who is in the position of a plaintiff objects to the amount of compensation offered in the award of the Collector and claims additional compensation. If the applicant fails to appear at the hearing of the reference, the reference must by force of Order 9, Rule 8 which is made applicable by Section 53 be dismissed for want of appearance like any other civil proceeding and in the same way if the applicant does not produce evidence in support of the objection the reference

must be dismissed just as any other civil proceeding would be dismissed for want of evidence in support of the claim.'

17. This takes us to the consideration of the first ground, answer to which, to some extent, is inherent in the observation of Bhagwati, J., quoted above.

18. It is not that reference proceedings have been treated as Civil Proceedings only of late, for these have been so treated almost for a Century and the judgment of the Calcutta High Court in Bhandi Singh v. Ramadhin Roy, ( (1906) 10 Cal WN 991), almost a locus classicus, is in point. The following observations of Ashutosh Mookerjee, J., in a concurring opinion on this point are instructive:-

'The learned vakil for the Appellant, has, however, strenuously endeavoured to take the present case out of the principle deducible from the decisions Just referred to, and he has principally relied upon the circumstance that in the present instance the reference to the court under Section 18 proved ineffectual, be cause the proceedings were dismissed for want of prosecution and there was no adjudication on the merits. This circumstance, however, appears to me to be wholly immaterial. Under Section 53 of the Act I of 894 all the provisions of the Code of Civil Procedure made applicable to proceedings before the Court under the Act except in cases here there may be any inconsistency. It is clear, therefore, that Section 647, Civil Procedure Code, is applicable to proceedings before the Land Acquisition Judge and consequently the provisions of Sections 102 and 103 are also applicable. It has been ingeniously suggested however by the learned vakil for the Appellant that Section 102 by its very terms is in applicable because it speaks of a suit which there is a Plaintiff and a Defendant, whereas in a proceeding upon a reference to the Court under Section 18 there is no plaintiff or Defendant. This argument is obviously fallacious. The party at whose instance the reference is made under Section 18 is virtually the Plaintiff and if the objection relates to the measurement of the land and the amount of the compensation, the Collector is the Defendant, whereas if the question is as to the persons to whom the compensation is payable or its apportionment, the person who disputes the claim of the plaintiff substantially occupied the position of the defendant. When therefore a reference was made under Section 18 at the instance of some of the

present appellants and they did not appear at the time the case was taken up for adjudication, it must be assumed to have been rightly dismissed under Section 102, Civil Procedure Code, and they are precluded by Section 103, Civil Procedure Code from bringing a fresh suit upon the same cause of action.'

19. For the view that the provisions of Order IX of the Code of Civil Procedure are applicable to reference proceedings under the Land Acquisition Act, we seek further sustenance from the observations of Narayana Pai, J., who delivered the judgment for the Bench in Tirukappa v. Kamalamma, (AIR 1966 Mys 1) in proceedings which so far as the application of the provisions of the Code of Civil Procedure are concerned, we consider, analogous to reference proceedings. There the order of dismissal in default was passed in proceedings under Hindu Marriage Act to which proceedings provisions of Section 21 of the Hindu Marriage Act made the provisions of the Code of Civil Procedure applicable in so far as the same could be applicable Referring to the applicability of the provisions of Order IX Rules 8 and 9 to the proceedings under the Hindu Marriage Act, the learned Judge had the following to say which in our view mutatis mutandis apply to reference proceedings as well:-

'The specific provisions of these rules being quite in accord with the general principles followed for generations by courts exercising civil jurisdiction in this country and there being nothing in then) which is to any extent repugnant to any of the provisions or the policy of the Hindu Marriage Act they should be applied by virtue of Section 21 thereof. Indeed the provisions appear to us to be quite just and proper from the point of view of the parties and quite essential from the point of view of due despatch of work of civil courts.'

20. Section 53 of the Act and Section 141 of the Code of Civil Procedure which are in the following terms are clear on the point and leave no scope for any doubt regarding the applicability of the provisions of the Code of Civil Procedure to reference proceedings if these do not come in conflict with any provision of the Act either expressly or by necessary intendment.

Section 53 of the Act.

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

Section 141, Civil procedure Code.

'141. (Section 647). The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction.'

21. As already observed, there is no provision in the Act directly dealing with the situation where a party to the reference absents, nor there is any provision which prevents the court to pass an order of dismissal of the reference for non-prosecution. Thus there being no bar express or implied in the Act to the applicability of any particular provision of the Code of Civil Procedure and the provisions of the Code of Civil Procedure in general being made applicable by the aforesaid two provisions of the Act and the Code of Civil Procedure, we are led to the only conclusion that the view taken by the reference court and the District Judge that the application for the setting aside of the order of dismissal of the reference in default was not maintainable, was not correct.

22. Accordingly, the Misc. First Appeals and the Revision Petitions aforesaid are allowed and the orders of the courts below impugned therein are set aside. The matters in C. R. P. 1442 of 1974 and C. R. P. 475 of 1975 are remitted back to the District Court for fresh decision, and the other matters are remitted back to the reference court which will decide the applications under Order IX, Rule 9, of the Code of Civil Procedure, on merits.

23. Order accordingly