

Vijay Singh and ors. Vs. Vith Additional District Judge and ors.

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Court : Allahabad

Decided On : Apr-26-2004

Reported in : 2004(3)AWC2824

Judge : Arun Tandon, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10; [Land Acquisition Act, 1894](#) - Sections 18

Appeal No. : C.M.W.P. No. 15754 of 1996

Appellant : Vijay Singh and ors.

Respondent : Vith Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.D. Singh and ;Shekhar, Advs.

Disposition : Writ petition allowed

Judgement :

Arun Tandon, J.

1. Heard Sri M. D. Singh 'Shekhar' on behalf of the petitioner and standing counsel on behalf of the respondent Nos. 1 and 2. No body is present on behalf of the respondent Nos. 3 to 5.

2. Twice notices have been forwarded under order of this Court to respondent Nos. 3 to 5. Office reports dated 10th July, 1993 and dated 28th January, 2004, establish that the notices sent to the opposite party Nos. 3 to 5 have neither returned undelivered nor acknowledge due has been received after service. In such circumstances service upon the respondent Nos. 3 to 5 is deemed sufficient in view of the provisions of Chapter VIII, Rule 12 of the Rules of the Court.

3. In respect of plot Nos. 363, 364. 141, 359/1, 359/2, 352/3, 359/4. 359/5, 360, 361M, 363M, 364M and 369 situate in village Jatwara Kalan, pargana Loni tehsil and district Ghaziabad, notification under Section 4(1) of the Land Acquisition Act was published on 9th February, 1962 and possession thereof was taken on 26.5.1963.

4. Special Land Acquisition Officer by means of his award dated 1.2.1962 determined the compensation in respect of the land so acquired.

5. On the application of the petitioner, the matter was referred under Section 18/13 of the Land Acquisition Act to the VIth Additional District Judge, Ghaziabad. (Reference Court). The said reference was registered as L.A.R. No. 26/79. In the aforesaid reference proceedings, an application under Order I, Rule 10, C.P.C. was filed by respondent Nos. 3 to 5 seeking impleadment as one of the parties to the said reference on allegation that the applicants are true owner of the land in question. The application so filed was objected to by the petitioners on the ground that such an application was not maintainable in reference proceedings inasmuch as the applicants were not a party to the proceedings before the Special Land Acquisition Officer nor they had made any application for reference being made for determination of their right of compensation.

6. I have heard counsel for the parties and have gone through the record of the writ petition.

7. It is contended on behalf of the petitioner that the jurisdiction vested in the reference court is circumscribed by the reference made by the Collector. Since the applicants (respondent Nos. 3 to 5) were not a party before the Special Land Acquisition Officer and since they did not make any application for reference being

made on their behalf and further the claim set up by the Opposite Party Nos. 3 to 5 was based on independent title claimed over the land in question, the application filed by them could not have been entertained. The reference court had no jurisdiction to allow any such application. Reliance in that regard has been placed on the judgment of this Court in *Tejdhari and Ors. v. Baul and Ors.*, AIR 1981 All 47. as also upon the judgment of the Hon'ble Supreme Court in *Kothamasu Kanakarathamma and Ors. v. State of Andhra Pradesh and Ors.*, AIR 1965 SC 304.

8. From the record it is established that before the Special Land Acquisition Officer respondent Nos. 3 to 5 did not set up any claim nor they were party in the proceedings in respect of the aforesaid land. It is further apparent from the record that the respondent Nos. 3 to 5 did not make any application for reference being made on their behalf against the award of the Special Land Acquisition Officer. It is also not in dispute that the aforesaid respondent Nos. 3 to 5 have not claimed any right or title in respect of the land in question on the basis of their being legal representative of any party which was before the Special Land Acquisition Officer. The respondent Nos. 3 to 5 have claimed independent right for compensation over the land in question for the first time while filing an application for impleadment under Order I, Rule 10 of the Civil Procedure Code. It is rightly contended on behalf of the petitioner that such an application is legally not maintainable and the reference court has no jurisdiction to entertain any such application.

9. The Hon'ble Supreme Court of India in the judgment in AIR 1965 SC 304, has held as follows :

'The only manner in which the finality of the award of the Land Acquisition Officer can be called into question is by resort to the provisions of Section 18. The jurisdiction of the Court, to redetermine the amount of compensation arises solely on the basis of a reference made to it by the Collector under Section 19. As the absence of such reference results in a lack of inherent jurisdiction the failure of the State to object to the Court determining the amount of compensation, cannot amount to a waiver or acquiescence by the State.'

10. It has further specifically been held by the Hon'ble Supreme Court that whenever jurisdiction is conferred by a Statute and such jurisdiction is given on certain specified terms contained therein, it is universal principle that those terms should be complied with in order to create and raise the jurisdiction and if they are not complied with, the jurisdiction cannot arrive.

11. This Court in the judgment in AIR 1981 All 47, while dealing with practically a similar situation, has held as follows :

'.....The scheme of the Act read as a whole would show that the Act does not contemplate for moving of an application for impleadment by a person who was not party before the Collector and to get his right decided under Section 30. It is the existence of a dispute as to the apportionment which obliges the Land Acquisition Officer to make a defence under Section 30 of the Act. The disputant must be before the Land Acquisition Officer, and once he makes a reference, the civil court has a right to decide the title only of those persons whose claims have been referred to by the Collector..... The power conferred on the Court under Section 30 is only in respect of a matter referred to by the Collector. It is not a court of original jurisdiction entitled to entertain the dispute between the parties on its own. Its jurisdiction is confined to the matter referred.....'

12. In view of the aforesaid settled legal proposition, the reference court has no jurisdiction to entertain any application as filed on behalf of the respondent Nos. 3 to 5. In the facts of the case, the order passed by the reference court dated 8.4.1996 passed in Reference L.A.R. No. 26 of 1979, L.A.R. No. 259 of 1987 and L.A.R. No. 615 of 1991 are hereby set aside.

13. The judgment of the Patna High Court, in AIR 1970 Pat 209, referred to in the order of the reference court is clearly distinguishable and as a matter of fact, has no application in the facts of the present case.

14. Since the reference is pending adjudication before reference court since 1979, it would be appropriate that the said reference be decided at the earliest possible, preferably within a period of six months from the date a certified copy of this order is produced before the Reference Court, in accordance with law.

15. With these observations, writ petition is allowed. No order as to costs.

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