

Union of India Vs. Sis Ram

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Court : Delhi

Decided On : Apr-24-1972

Reported in : AIR1973Delhi53

Judge : Dalip K. Kapur, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 18; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revn No. 89 of 1972, against order of G.R. Luthra, Addl. Dist. J., Delhi, D/- 24.8.1971

Appellant : Union of India

Respondent : Sis Ram

Advocate for Def. : S.S. Shukla, Adv.

Advocate for Pet/Ap. : V.P. Kohli and; R.C. Verma, Advs

Judgement :

ORDER

1. This is a Revision under the Code of Civil Procedure against the decision of the Additional District Judge. Delhi, dated 24th August 1971 passed during the hearing of a reference under the land acquisition Act. 1894 where by the application for a reference under Section 18 of the Act was permitted to be amended. The facts of

the case are little unusual because the original reference petition moved by the respondent Sis Ram to the Land Acquisition Collector has mentioned in the application filed No.38/1 was not included in the acquisition and therefore no reference concerning the same could be made. While stating the situation and extent of the land involved in the reference under section 19(1) of the Act the Collector stated in the note that this land was not being included in the reference as it was not acquired. The reference itself was made by the Collector some time in 1969 and the application under Section 18 praying for a reference to the Land Acquisition Court was made to the Land Acquisition Collector on 24th December, 1968.

2. Before the Additional District Judge the claimant respondent moved an application under Order 6, Rule 17 of the Code of Civil Procedure for an amendment of the reference application on 11th August 1971. i.e. nearly three years after the original application. In this application it was stated that the petitioner had received a notice under Section 9 of the Act concerning the acquisition in which the land in question had been described as khasra No 38/1 and no notice had been served on the claimant with respect to Khasra No.38/2 and hence the claimant had been denied an opportunity to seek a reference with respect to Khasra No. 38/2. It was therefore prayed that the reference petition should be allowed to be amended by substituting Khasra No.38/2 in place of Khasra No.38/1 the mistake in the reference petition having occurred due to an incorrect number having been mentioned in the notice issued to the claimant as not under Section 9 of the Act by the land Acquisition Collector. The power of the Court to make such an amendment was challenged before the Additional District Judge however the amendment has been allowed on payment of Rs.10/- as costs.

3. The order allowing the amendment has been challenged by the Union of India on the ground that the reference cannot be changed by the Land Acquisition Court which is bound by the terms of the reference made under Section 19 of the Act. This proposition is disputed by the respondent and it is also submitted that costs have already been accepted and hence the petitioner is disentitled to challenge the amendment allowed.

4. I have no doubt that the Court is bound by the reference which is made by the Collector. However, the Collector himself has no authority to refuse to make a reference in accordance with the application under Section 18 of the Act moved by the claimant. It was held by the Supreme Court in *Dr. G. H. Grant v. The State of Bihar* 1966 Sc 237 as follows:--

'Again under Section 18 the Collector is bound to make a reference on a petition filed by a person interested.'

There is no doubt that the Collector is a mere functionary in the making of the reference. He is bound to make a reference and he cannot make by changes to the claim put forward by the claimant before him. The difficulty which has arisen in this case is that there was a mistake in the notice served on the claimant which led him to seek a reference regarding the wrong area. Having subsequently learn that the actual field acquired was No.38/2 and not 38/1, it is not surprising that the claimant has asked for an amendment in the reference application. There are two ways of dealing with in this matter. Either it must be held that the award is invalid qua this Khasra or that the amendment should be allowed so that the claimant is enable to get the determination of the compensation under Section 18 of the Act cannot be allowed by the Additional District Judge. Under Section 53 of the Act the Code of Civil Procedure is applicable to proceedings taken before the Court. If the code is not inconsistent with the Act. The Code includes Order 6. Rule 17. For the purpose of proceeding under the Land Acquisition Act section 18 is an enabling section entitling the claimant to seek his remedy before the Court by requiring the Collector is bound to make a reference under Section 19 as held by the Supreme Court. If there is a mistake in the application it can be remedied by an amendment. obviously if the mistake is due to the mistake of the Collector himself in issuing the notice then the mistake can be remedied even at a late state. As the proceedings are now before the Court the reference petition can only be amended by an application made to the Court. I thereforee cannot accept the contention of the petitioner that the reference petition cannot be amended by the Court.

5. I have been referred to an unreported decision of this Court. in which it was held that the court did not have the power to amend a reference. The facts of that case

are not set out in extenso in the judgment and it may be that the amendment was disallowed on the ground that on the fact of that case the amendment could not be allowed and a was without jurisdiction. In a the present case it is the reference application which has been allowed to be amended which is quite different from the reference itself. When the application for reference is allowed to be amended. the amendment dates back to the date of the original application and it is for the Collector now to make a reference in accordance with the amended application. It would thus be necessary that the case be placed before the Collector for making an amended reference in accordance with the amended application.

6. I have also been referred to the judgment in Dr. Sewak Parshad v. Gram Panchayat Raipur Rani. . whether it has been held that when costs have been accepted a party is precluded from challenging an order. The said judgment is based on a series of reported judgment including a judgment of the Supreme court based on the principle that the party cannot approbate and reprobate. It has been uniformly held that if a party takes advantage of an order i. e. costs it is precluded form challenging the order. I thereforee hold that even on this ground the petitioner is not entitled to challenge the order sought to the revised because costs have already been paid to the petitioner in accordance with the impugned order.

7. Thus. I uphold the order sought to be revised on both these grounds. I also make it clear that the amended reference application does not amend the reference it self and such an amendment has to be made by the collector himself under Section 19 of the Act. It will be better if the amended application is placed before the Collector for making proper reference. I thereforee dismiss this Revision Petition with costs. Counsel's fee Rs.50/-.

8. Petition dismissed.