

Saddu and ors. Vs. the State of Madhya Pradesh.

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Court : Madhya Pradesh Jabalpur

Decided On : Aug-27-2010

Judge : Krishn Kumar Lahoti ; S.C. Sinho, J.J.

Acts : [The Land Acquisition Act, 1894](#) - Sections 18, 26 ;

Appeal No. : W.P. No.11372/2010, W.P. No.11373/2010 And W.P. No.11374/2010.

Appellant : Saddu, and ors.

Respondent : The State of Madhya Pradesh.

Advocate for Def. : Shri Sudesh Verma, Govt Adv.

Judgement :

1. This order shall decide W.P. No.11372/2010, W.P. No.11373/2010 and W.P. No.11374/2010 in which controversy involved is identical.

In W.P. No.11372/2010 an order dated 19.06.2009 passed by the reference Court in Reference Case No.636/2007 is challenged.

In W.P. No.11373/2010 an order dated 11.08.2008 passed by the reference Court in Reference Case No.1077/2007 is challenged.

In W.P. No.11374/2010 an order dated 04.12.2008 passed by the reference Court in Reference Case No.1338/2007 is challenged.

2. All the three cases were dismissed by the reference Court on the ground that petitioner herein failed to make payment of process fee. Looking to the common controversy involved in these cases all the cases are disposed of by this order. For the convenience the facts are taken from W.P. No.11372/2010.

3. This petition is directed against an order dated 19.06.2009 by II Additional District Judge, Khandwa in Reference Case No.636/2007 by which reference petition filed by the petitioner was dismissed because of non-payment of process fee for the service on non-applicants No.3 and 4 who were impleaded in the year 2008 by the petitioner himself. The court below observed that in spite of various opportunities, the process fee was not paid and the petitioner had not taken any steps for service on the respondents. Shri Sudesh Verma, learned Government Advocate very fairly stated that because of non-payment of process fee, the reference application could not have been rejected. That reference under Section 18 of the Land Acquisition Act are the special proceedings which cannot be dismissed in default. He has placed reliance to a judgment of the Apex Court in the case of Khazan Singh (Dead) by L.Rs. vs. Union of India reported in 2002(2) M.P.L.J. 2 = (2002) 2 SCC 242 and submitted that the matter may be remanded back to the reference Court for adjudication of the case in accordance with law.

4. From the perusal of the record, we find that a reference was made by the Collector under Section 18 of the Land Acquisition Act in which two parties were impleaded at the instance of the petitioner in the year 2008. For service on the aforesaid parties, no process fee was paid by the petitioner in spite of various opportunities. The reference Court on considering this aspect that in spite of various opportunities and lapse of long time, no steps were taken by the petitioner, for the payment of process fee, for the service of aforesaid respondents, dismissed the reference application for the said default.

5. The Apex Court in Khazan Singh (supra) considering the question held thus:

"6. Section 18 of the Act empowers a person interested in the land to move by a written application to the Collector requiring that the matter be referred for determination of the court, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the

apportionment of the compensation among the persons interested. If the application for reference is in order the Collector is bound to make a reference of it to the court. Section 20 of the Act enjoins on the court to "proceed to determine the objection". The court shall after holding such inquiry as may be necessary pass an award. Section 26 of the Act reads thus:

"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.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2 clause (2) and Section 2 clause (9), respectively, of the Code of Civil Procedure, 1908."

7. The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."

The Apex Court considering the aforesaid provision held that reference application cannot be dismissed because of the default.

6. The controversy involved in this case is covered by the judgment in the case of Khazan Singh (supra). In view of the aforesaid, the impugned order is not sustainable in law and it is set aside, the matter is remanded back to the reference Court to restore the file of Reference Case No.636/2010 and proceed in the case. Considering the facts of the case, there shall be no order as to costs.