

SMT. AMBEY DEVI
v.
STATE OF BIHAR AND ANR.

MARCH 12, 1996

[K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

Land Acquisition Act, 1894 : Sections 4(1), 12, 18, 20, 23, 26, 30, and 53.

Code of Civil Procedure, 1908 : Order 1 Rule 10.

Land acquisition—Compensation—Enhancement claimed by co-sharer without seeking reference—Permissibility of—Claimant a co-sharer laying claim for 1/4th share of compensation—Award—Apportionment of compensation into 1/4 by each co-owner—Compensation received by parties—Reference by one of the parties—Enhancement of compensation by Reference Court—Claim by co-sharer for enhanced compensation at par with other claimants as granted by Reference Court without making any reference application—Held not permissible—Reference application by one co-sharer cannot be treated as one by all co-sharers—Power of Civil Court to enhance compensation—A valid reference is condition precedent for exercise of power—Procedure prescribed under Sections 18 and 30 of Act being inconsistent with Order 1 Rule 10-a co-owner cannot be impleaded as a necessary party in the absence of a reference—Section 53 of the Act held inapplicable to the facts of the case.

CIVIL APPELLATE JURISDICTION : Civil appeal No. 2166 of 1980.

From the Judgment Order dated 21.9.76 of the Patna High Court in Appeal from Original Decree No. 281 of 1967.

S.N. Misra, Deba Prasad Mukherjee, Manish Verma and Abhilekh Verma for the Appellant.

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment of the Division Bench of the Patna High Court made in Appeal from Original Decree No.

220 and 221 of 1957 dated September 21, 1976. The only question that arises in this appeal is : whether one of the co-sharers can claim enhancement of the compensation without seeking reference under Section 18 of Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') in a reference at the instance of one of the co-sharers.

The admitted facts are that 25 acres of land being a portion of Plot No. 400 of Khata No. 92 in village Behea in Shahbad District (renamed Bhojpur) was acquired under Section 4(1) of the Act for public purpose. Publication of the notification under Section 4(1) was made on September 14, 1957. In the enquiry under Section 11 made by the land Acquisition Officer the appellant had laid her claim for 1/4th share of the compensation along with other co-owners. It is also found as a fact that in the award made by the Collector, he apportioned the compensation into 1/4th share to each of the co-owners the compensation was received by the respective parties, one of co-owners sought for reference to the Civil Court under Section 18 which was made. The Court had enhanced the compensation. Thereafter, the appellant filed the appeal claiming enhancement of the compensation in respect of her land on par with other co-owner. That claim was rejected by the High Court holding that the appellant has not made any application under Section 18 after the award was made by the Collector on January 6, 1958 and, therefore, she is not entitled to the enhanced compensation. Thus, this appeal by special leave.

The learned counsel for the appellant contended that under Section 53 of the Act, the procedure prescribed under CPC is applicable to the proceedings of the Civil Court unless they are inconsistent with any of the provisions contained in the Act. Since Order 1, Rule 10 CPC requires impleadment of all necessary and proper parties, the appellant being a necessary party to the proceedings, she is entitled to the same compensation as was awarded to the other claimants. We find no force in the contention. The scheme of the Act is inconsistent with CPC regarding the entitlement to claim compensation under the Act. The CPC provides only the procedural format to adjudicate the dispute. After the award was made under Section 11, the Land Acquisition Officer was required to issue notice under Section 12 to the parties. As contemplated under Section 30 of the Act, the appellant is entitled to receive the compensation either under protest or without protest. When the compensation is received under protest under sub-section (1) of Section 18, the application in writing has

to be made within the limitation prescribed under Section 18(2) to the Land Acquisition Officer objecting to either extent of the land, classification, value of the land or apportionment of the compensation and upon receipt thereof reference to Court would be made. Thereunder the applicant shall be required to state the grounds on which he/she objects to the compensation etc. Valid reference is a pre-condition for the civil Court to adjudicate the objections raised in the reference application. In this case, it is found by the High Court that the appellant had not made any application under Section 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down under Section 23 of the Act, would arise only when a valid reference has been made under Section 18 within the prescribed limitation. The jurisdiction of the Court is founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimant.

We accept the finding of the High Court that the appellant had not made any application under Section 18, though the appellant has asserted that she did make an application but no evidence has been placed before the High Court or in this Court. Thus, it is difficult to accept that such an application was in fact made before the Land Acquisition Officer within the limitation prescribed under Section 18(2) of the Act. Accordingly, we hold that the appellant had not filed any application, as required under Section 18(1) read with Section 18(2) of the Act. Section 53 does not apply to the facts of the case. The procedure prescribed under Section 18 and 30 is inconsistent with the procedure prescribed under Order 1, Rule 10 CPC. Order 1, Rule 10 CPC would apply to implead a necessary or proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties who may be bound by the decision. That question does not arise since inconsistent procedure has been prescribed under the Act. As held earlier, making an application in writing under sub-section (1) and within the limitation prescribed under sub-section (2) of Section 18 are conditions precedent for the Land Acquisition Officer to make a reference under Section 18; only on its receipt, under Section 20 Civil Court jurisdiction to issue notice and thereafter to conduct enquiry, as contemplated under the Act. At that stage, the procedure of trial etc., as contemplated under the CPC, would apply and Section 53 of the Act would become applicable. It is an admitted position that the co-owner filed an application and had sought reference under Section 18 in respect of his share only. So, it is, as a fact, claims for compensation in

specie and was paid towards 1/4th share to the claimants. By no stretch of imagination, the application under Section 18(1) by one of the co-sharers would be treated as one made on behalf of all the co-shares. Accordingly, we hold that the appellant is not entitled to lay any higher compensation pursuant to an award made by the reference Court under Section 26 at the instance of one of the co-owners.

The appeal is accordingly dismissed but in the circumstances without costs.

Appeal dismissed.