

A THE STATE OF BIHAR AND ANR.

v.

NILMANI SAHU AND ANR.

OCTOBER 7, 1996

B [K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

*Code of Civil Procedure, 1908:*

C *Ss.151 and 152—Amendment of decree—Compensation—awarded by Land Acquisition Officer under Land Acquisition Act for land alongwith trees standing thereon, became final upto the stage of appeal u/s. 54 of Land Acquisition Act before the High Court—Application filed for correction of decree passed by High Court—Single Judge allowing the application and awarding much higher compensation—Held, the view taken by Single Judge is most atrocious—The decree granted by reference court stood upheld and became final in appeal u/s. 54 of the Act—In amendment of the decree the High Court could not go behind the order and correct the valuation—High Court grossly erred in reconsidering the matter and coming to a fresh conclusion as to the number of the trees and value thereof under the guise of correcting arithmetical mistake—Order of Single Judge of the High Court is set aside.*

*Land Acquisition Act, 1894 :*

F *S.23(1)—Compensation for land acquired with trees standing thereon—Valuation of trees as determined by Land Acquisition Officer confirmed by reference court, and High Court in appeal u/s. 54—Application for correction of decree—Single Judge of High Court allowing the application and awarding much higher compensation—Held the Single Judge committed gross error in reconsidering the matter and coming to fresh conclusion as to the number and the valuation of the trees under the guise of correcting arithmetical mistake.*

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13223-24 of 1996.

H From the Judgment and Order dated 28.11.94 and 31.8.95 of the Patna High Court in F.A. No. 45/80 and L.P.A. No. 133 of 1995.

B.B. Singh for the Appellants. A

S.B. Upadhyay for the Respondents.

The following Order of the Court was delivered :

Delay condoned. B

Leave granted.

We have heard learned counsel on both sides.

These appeals by special leave arise from the order of the Division Bench of the High Court of Patna in LPA No. 133 of 1995 dated November 28, 1994. C

The admitted facts are that notification under Section 4(1) of the Land Acquisition Act, 1894 was published on December 10, 1964. A large extent of land admeasuring 43.14 acres was acquired together with the trees standing thereon. The Land Acquisition Officer in his award dated April 3, 1979 determined the value of the trees at Rs. 2466. On reference under Section 18, the civil Court upheld the valuation given to the trees by award and decree dated March 27, 1980. In furtherance thereof, the appellants have paid the compensation together with solatium and interest thereon on September 6, 1991, i.e., a sum of Rs. 15,000 and odd and it was accepted by the respondents. When an appeal was filed against the reference Court's award and decree, the High Court, in the first instance, had adjudged the valuation of the trees and recorded the finding, considered the question in paragraph 23 and had held that the contention that the compensation for the value of trees fixed was meagre and unsustainable. At that time, the claim was not less than Rs. 14 lacs and odd. In support thereof, a self procured letter addressed by a merchant was brought on record and pressed for consideration of the value for trees. The High Court had considered it and rejected the evidence as not reliable and, therefore, it was held that "It can be safely said that it was a procured document. Then again, the report of the Kanungo who had gone to see the land, show that incorrect information about the number of the trees was given. As a matter of fact, on one of the occasions he had noticed that main part of the land was submerged under water. The number of trees supplied to him was found to be highly exaggerated. This officer independently verified the number of those trees for which the compensation was payable. In jungle, it is a matter or common experience a large number of plants grow which H

A in fact, are useless, save and except the same at best can be used for fuel. Under these circumstances, it cannot be accepted. In the circumstances, value of the trees given by the respondent-State, has got to be accepted." The order thus has become final. An application came to be filed under Sections 151 and 152 CPC to correct the decree. The learned single Judge after considering the evidence afresh came to the conclusion that the value

B of the trees was Rs. 25,30,919.50 and computed together therewith solatium and interest at Rs. 76,21,630.30. When an appeal was filed, the Division Bench had held that since it is an amendment of the decree, LPA would not lie and accordingly it dismissed the appeal.

C We find force in the finding of the Division Bench that an appeal would not lie against the amendment of the decree and it is only a revisable; since the learned single Judge had amended the decree in appeal, a revision to the Division Bench would not lie. The view taken by the Division Bench cannot be faulted. However, the question is: whether the learned single Judge was right in correcting the decree and directing payment of

D the aforesaid amount of Rs. 76,21,630.30 by way of order under Section 151 and 152 of CPC. We find that the view taken by the learned single Judge, Justice R.K. Dev, with due respect, if we can say so, is most atrocious. It is an admitted position that the valuation of the trees and the quantification

E was done by the Land Acquisition Officer at Rs.2,466. On reference, after adduction of evidence, the Reference Court confirmed the same. When regular appeal was filed under Section 54 of the Act, the High Court had gone into the question and did not accept the number of trees and value thereof; it accordingly confirmed the award of the reference Court. In other words, the decree of a sum of Rs. 2,466 granted by the reference

F Court stood upheld and became final. The question is: in an amendment of the decree, could the High Court go behind the order which had become final and correct the valuation, as stated earlier, to the tune of sum of Rs.25,39,919.50? The High Court obviously in gross error in reconsidering the matter and came to fresh conclusion as to the number of the trees and value thereof under the guise of arithmetical mistake. The learned Single

G Judge, therefore, was wholly wrong in his conclusion as to the amount above referred to for correction of the decree.

The appeals are accordingly allowed and the order of the learned single Judge stands set aside. No costs.