Smt. Sangeeta Bai More and Others Vs The Collector (ADM), Land Acquisition and Others

Court: Calcutta High Court

Date of Decision: July 23, 2007

Acts Referred: Land Acquisition Act, 1894 â€" Section 11, 12(2), 17, 18, 19

Citation: (2008) 1 CALLT 33 : (2008) 1 ILR (Cal) 1

Hon'ble Judges: Nadira Patherya, J; Jayanta Kumar Biswas, J

Bench: Division Bench

Advocate: Roshan George, for the Appellant; M. Tabraiz, for First Respondent and H.R. Bahadur and A.S. Zinu for Second to Sixth Respondents, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.
This is an appeal filed u/s 54 of the Land Acquisition Act, 1894 questioning the award of the District Judge,

Andaman and Nicobar Islands, Port Blair dated April 13, 2007 made in L.A. Case No. 04 of 2003 that was initiated on the basis of a reference

made by the collector, apparently, u/s 30 of the Land Acquisition Act, 1894. The award u/s 11 was made by the collector on October 25, 2002.

2. The land for acquisition whereof the Section 4(1) notification, followed by a notification u/s 17, was issued on July 11, 2002 was originally

owned by one Vitoba More. He died long ago and was survived by his wife (Dhan Dei), only son (Ram Chander), and five daughters (Subadra

and Ors.). Ram Chander died in 1984 and he was survived by his mother, wife (Sangeeta) and six children. On Ram Chander"s death, Sangeeta,

with her mother-in-law and six children, applied for mutation of the property in question, and we are told that Subadra and her sisters

unsuccessfully contested the mutation proceedings. In 1985 the competent authority mutated the property in favour of Sangeeta, her six children,

and her mother-in-law who died in 1990.

3. Subadra and her sisters never appeared before the collector. Sangeeta with her children appeared, and the award was made in favour of

Sangeeta, her six children, and her dead mother-in-law. As persons interested in the land and claiming an interest in the compensation, Subadra

and her sisters made certain representation to the Lt. Governor. They did not make any application before the collector u/s 30 of the Land

Acquisition Act, 1894 claiming, as heirs of Vitoba and Dhan Dei, shares of the compensation. The collector, however, noticed the situation, and

consequently decided to refer the dispute to the decision of the Court.

4. Before the district judge, the parties contested the reference by filing their respective written statements. The district judge decided the reference

on the basis of the pleadings of the parties who chose not to adduce any oral evidence. With respect to a prayer for increasing the amount of

compensation made by Subadra and her sisters, the district judge did not record any findings. He, however, turned down the contention raised by

the appellants that in the absence of an application u/s 18, the collector was not competent to make any reference u/s 18. He answered the

reference in favour of Sangeeta and her sisters holding that as daughters of Vitoba they were entitled to get their respective shares of the

compensation.

5. Counsel for the appellants has argued that in the absence of an application filed by any one u/s 18, the collector was not competent to make a

reference under that section. In support of his contention he has relied on an unreported decision of this Court dated June 15, 2005 given in FAT

No. 001 of 2005 {The Collector v. Smt. V. Clmmpawathii. We find that the confusion has arisen because of mistakes committed by the collector

and the district judge. The admitted position is that no one ever filed any Section 18 application before the collector. Hence there was no reason

for the collector to make a reference to the Court u/s 18, which he actually did not, though he referred the dispute in the form of his statement u/s

19.

6. A reference u/s 18 could be made by the collector only on the basis of an application submitted by any person who was aggrieved by the

award, and who either participated in the acquisition proceedings or was served with a Section 12(2) notice. Sangeeta and her children did not

submit any application u/s 18, since they were satisfied with the amount of compensation. Subadra and her sisters did not either file any Section 18

application. They were rather not entitled to file one, since they had neither participated in the proceedings before the collector, nor had been

served with any Section 12(2) notice.

7. Hence we are of the view that the collector was wrong in sending his statement u/s 19 and the district judge was wrong in holding that the

reference u/s 18 was a valid one. These things collectively form nothing but a nullity. However, we do not think these mistakes are sufficient to

interfere with the impugned award. The district judge did not increase or decline to increase the amount of compensation considering the reference

as one u/s 18. He rather decided, and quite rightly, the dispute as to apportionment.

8. The award of the district judge dealing with the dispute as to the persons to whom the amount of compensation settled u/s 11 was payable has

been assailed by the appellants on four grounds: (1) The reference was bad, since Subadra and her sisters did not apply u/s 30; (2) Since the land

had been mutated in their favour, Subadra and her sisters, previously inheriting land and other properties from Vitoba, were not entitled to get any

part of the compensation; (3) Subadra and her sisters had knowledge of the acquisition proceedings, and hence they were not entitled to get any

benefit of Section 30; and (4) The district judge decided the reference without recording any oral evidence.

True it is that Subadra and her sisters, though had knowledge of the proceedings, did not submit any application to the collector u/s 30. But in our

considered view that did not make the reference made by the collector bad. The collector possessed the requisite power to make a reference in

exercise of his discretion, if he was of the view that a dispute existed as to the persons to whom the compensation was payable. It is apparent from

his decision to make the reference that the dispute raised by Subadra and her sisters claiming share of the compensation as persons interested in

that had been brought to his notice. Hence we hold that though no application was filed by Subadra and her sisters u/s 30, the collector was

competent to make the reference.

9. We do not find any merit in the contention that the revenue records showing the fact of mutation of the land in favour of Sangeeta and her

children were to be treated as decisive pieces of evidence. As is known, revenue records, and especially records relating to mutation of immovable

properties, do not create or extinguish one"s title to the properties concerned. By simply getting their names mutated, Sangeeta and her children

did not acquire any title to the property. The mutation records did not either extinguish the right, title and interest acquired by Subadra and her

sisters in the property by operation of the law of inheritance. That they inherited some other properties as heirs of Vitoba is no ground to say that

they should not get their shares of the compensation.

10. Initially it seemed to us that perhaps the district judge was not right in making the award without recording any oral evidence. But once we

examined the matter closely, we found that should not be considered a ground to treat the award as bad. Before the district judge and also before

us it has not been disputed that Subadra and her sisters were Vitoba"s daughters. All properties left by Vitoba were to be inherited by Dhan Dei

(Vitoba"s wife), Ram Chander {Vitoba"s only son), and Subadra and her sisters (Vitoba"s five daughters), according to provisions of the Hindu

Succession Act, 1956. This being the admitted position we do not see what difference, if any, the oral evidence, if adduced, could have made in

the case. Once the foundational fact emerged as undisputed, in our view, the district judge was justified in giving the final award in the reference.

11. For these reasons we do not find any merit in the appeal, which is accordingly dismissed. There shall be no order for costs in it. The

departments shall draw, prepare, and complete the decree at once. Records of the reference case, if were called for, shall be sent down to the

Court of the district judge immediately.

Nadira Patherya, J.

12. I agree.