

(2005) 09 CAL CK 0044

Calcutta High Court

Case No: C.O. No. 3447 of 2005

Illa Chowdhury

APPELLANT

Vs

Shyamali Das and Another

RESPONDENT

Date of Decision: Sept. 30, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227
- Land Acquisition Act, 1894 - Section 18, 30

Citation: (2006) 2 CHN 41

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Sudish Das Gupta, Bidyut Kumar Banerjee, Jiban Ratan Chatterjee, Rabindra Narayan Datta, S.K. Majumder, Hare Krishna Haider, Prabhat Kumar Maharaj, Debasis Roy, Sibasis Ghosh and Arun Kumar Ghosh, for the Appellant; Party-in-person and Amlan Das for the opposite party Nos. 1 and 2 and Subroto Mukhopadhyay and Debasis Saha for the opposite party No. 3, for the Respondent

Final Decision: Allowed

Judgement

Subhro Kamal Mukherjee, J.

The land of the petitioner was acquired by the State of West Bengal for construction of housing estate by the West Bengal Housing Board. The petitioner was dissatisfied with the award passed by the Collector. Therefore, she requested the Collector to make a reference u/s 18 of the Land Acquisition Act, 1894 before the learned Land Acquisition Judge.

2. There were other references at the instances of the other owners. All the said references were registered as L. A. Case No. 3 to 35, 38 and 39 of 2001 (V).

3. Shrimati Shyamali Das applied for her addition in the present reference case, inter alia, on the ground that she has been the descendant of Rani Rashmoni and she has

been the administrator of the estate of Rani Rashmoni.

4. Learned Additional District Judge, Fourteenth Court at Alipore, by Order No. 14 dated June 22, 2004, rejected her application for addition of party. The learned Judge, inter alia, held that the petitioner was not a person interested in the proceeding and her remedy, if any, has to be sought for before the Land Acquisition Collector or in the Civil Court.

5. By the judgment dated August 26, 2005, the learned Special Land Acquisition Judge allowed the reference cases and, inter alia, directed enhancement of compensation.

6. On September 12, 2005 Shrimati Shyamali Das and her son applied for setting aside of the judgment of the Land Acquisition Judge passed in the said references with prayers for stay of all further proceedings. They claimed their shares from the compensation money.

7. The learned Additional District Judge, First Court at Alipore entertained the said application for setting aside of the judgment dated August 26, 2005 and directed the office to register the application as a miscellaneous case.

8. Accordingly, the office registered the application as Miscellaneous Case No. 4/2005.

9. By Order No. 114 dated September 12, 2005, the learned Judge directed that the payment with regard to L. A. Case No. 3 of 2001 (V) be kept in abeyance until further order.

10. The records were put up before the learned Judge on September 12, 2005 and the claimant submitted before the learned Judge that the order keeping payment in abeyance would harm her. The learned Judge by Order No. 115 dated September 15, 2005 clarified that the order dated September 12, 2005 would not affect the process of deposit of the compensation amount in Court as required by law.

11. By Order No. 116 dated September 17, 2005 the learned Judge fixed the hearing of the petition on October 6, 2005, but declined to vacate the ex parte interim order of stay granted earlier.

12. It seems that the learned Judge has not applied his judicial mind. An application for recalling of the judgment dated August 26, 2005 passed by the learned Land Acquisition Judge was filed by an outsider and the learned Judge mechanically directed the office to register such application as miscellaneous case. He, also, granted ex parte order of stay. When it was pointed to him that the application was not maintainable, he fixed the hearing to some other day, but declined to vacate the ex parte interim order of stay.

13. It is settled law that if a reference to the Land Acquisition Judge has already been made u/s 18 of the Land Acquisition Act, 1894, the Court cannot add any party under

Order 1 Rule 10 of the Civil Procedure Code. Supreme Court of India in the case of [Sharda Devi Vs. State of Bihar and Another,](#), inter alia, observes that under the Land Acquisition Act the matter goes to the Court only upon a reference made by the Collector and there is no doubt that the jurisdiction of the Court arises solely on the basis of a reference made to it. The Court can adjudicate upon the matter referred to it, but the Court is certainly not invested with jurisdiction to consider a matter not directly connected with it and this is not a matter of mere technicality.

14. In [Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. Vs. Allahabad Vikas Pradhikaran and Another,](#) , the Supreme Court of India observes that it is well-established that the Reference Court gets jurisdiction only if the matter is referred to it u/s 18 or 30 of the said Act by the Collector and the Civil Court has got the jurisdiction and authority only to decide the objections referred to it. The Reference Court cannot widen the scope of its jurisdiction or decide matters, which are not referred to it.

15. Shrimati Shyamali Das applied for her addition during the pendency of the reference case. Her prayer was rejected. The order becomes final.

16. I cannot comprehend as to how she can file an application for recalling of the judgment.

17. The application filed by Shrimati Shyamali Das and her son is an abuse of the process of Court, calculated to obstruct the due course of judicial proceeding and the administration of justice. The Court cannot be mere spectator of its process being abused. This Court has an inherent jurisdiction to strike out the pleadings.

18. The Supreme Court of India in the case of [T. Arivandandam Vs. T.V. Satyapal and Another,](#) , observes that an activist Judge is the answer to irresponsible law suits. The Trial Court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is, also, resourceful enough to meet such men, and must be triggered against them.

19. I am of the firm opinion that the application for recalling of the judgment and order dated August 26, 2005 filed by Shrimati Shyamali Das and her son is wholly misconceived and a mala fide application. The learned Judge ought not to have entertained such application. The application filed by Shrimati Shyamali Das and her son for recalling of the judgment dated August 26, 2005 passed by the Land Acquisition Collector is rejected and consequently, all interim orders are vacated.

20. The revisional application is, thus, allowed with costs assessed at Rs. 2,000/- (Rupees two thousand) only.

21. Mr. Mani Shankar Chattopadhyay, learned Advocate, submits that he has filed an application for addition of party in connection with this application under Article 227 of the Constitution of India under C.A.N. No. 9227 of 2005. As I have disposed of the

main revisional application, the application for addition of parties stated to have filed by Mr. Mani Shankar Chattopadhyay's clients become infructuous and is, accordingly, rejected as infructuos.

22. Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) of this Court be given to the learned Advocates appear in the parties on their usual undertaking.