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IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

C.M.A. No.1207 of 2008

Between:

Polamreddy Venkata Ramana Reddy and another

.... Petitioners

And

Special Deputy Collector-cum-Land Acquisition
Officer, Telugu Ganja Project, Nellore.

....Respondent.

Date of Order pronounced on : 20.02.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

VENKATA JYOTHIRMAI PRATAPA, J

***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ C.M.A No.1207 of 2008

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.... Petitioner

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Officer, Telugu Ganja Project, Nellore.

....Respondent.

! Counsel for the Petitioners : Sri P. Sridhar Reddy,

Counsel for the Respondents: G.P. for Land Acquisition.

<Gist :

>Head Note:

? Cases referred:

- 1) (2002) 2 SCC 242
- 2) AIR 1991 NOC 98
- 3) 2015 (5) ALL MR 690
- 4) (1996) 5 SCC 701
- 5) AIR 1991 Ori 283

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.1207 of 2008

JUDGMENT:-

1. Claimants Nos.,6 and 7 in L.A.O.P.No.57 of 1990 moved the instant Civil Miscellaneous Appeal under Order 43 Rule 1 of Civil Procedure Code, 1908 (for brevity 'the Code, 1908') impugning the Order dated 13.08.2004 in I.A.No.14 of 1998 on the file of the learned Senior Civil Judge, Gudur, filed under Order 9 Rule 9 r/w Section 151 of the Code, 1908 seeking to restore the L.A.O.P. to file.

2. Heard the submissions of Sri P. Sridhar Reddy, learned counsel for the Appellants/Claimant Nos.,6 and 7 and the learned Government Pleader appearing for the respondent. Perused the material on record.

3. Bereft of unnecessary details, the facts leading to preferring this appeal in brief are as follows:

3.1. The lands of the Appellants/Claimant Nos.,6 and 7 were acquired by the Government for the purpose of Kandaluru Reservoir under Telugu Ganga Project at Tamancherla Village.

3.2. The claimants received the compensation amount under protest.

3.3. Thereupon, the Special Collector, Land Acquisition, made a reference of the matter to the Court under Section 18 of the Land Acquisition Act (for brevity 'the Act') which culminated into L.A.O.P.No.57 of 1990 on the file of learned Senior Civil Judge, Gudur (hereinafter referred 'Reference Court').

3.4. Notices were issued to the claimants. Though the claimants appeared through an Advocate before the Reference Court, they failed to file the claim petition.

3.5. After hearing the learned Government Pleader, the learned Judge answered the reference by forfeiting the right of the claimants to file their claim petition.

3.6. Thereafter, the Claimants Nos., 6 and 7 filed I.A.No. 14 of 1998 under Order 9 Rule 9 r/w 151 of the Code, 1908 seeking to set aside the ex parte Order passed against the claimants dated 28.01.1997 and to permit them to file their claim statements to contest the petition by restoring the O.P.

3.7. While so, the learned Government Pleader reported no Counter on the said I.A.

4. Enquiry-finding:

4.1. The Claimant No.6 was examined as PW.1.

4.2. The learned Judge dismissed I.A.No.14 of 1998 stating that the Court answered the reference on merits after hearing the learned Assistant Government Pleader and as the matter was disposed of on merits, the petition under Order 9 Rule 9 of the Code, 1908, is not maintainable, advised the claimants to prefer an appeal against the said Orders.

Grounds of Appeal:

5. Aggrieved by the impugned Order, the Claimant Nos., 6 and 7 approached this Court on the grounds that:

5.1. The claimants on acquisition of their land by the Government, have settled down at various places, consequently, they could not contact their counsel to prosecute proceedings.

5.2. They were paid meager compensation by the Government.

5.3. The Order cannot be said to have been passed on merits in absence of claimants and therefore, it shall be treated as an ex parte order as per Order 17 Rule 2 of the Code, 1908.

5.4. No prejudice would be caused to the Government if the petition is restored and disposed of on merits.

5.5. The reference Court shall have to dispose of the matter on merits and;

5.6. The Hon'ble Apex Court observed that the Courts should not have hyper technical approach while dealing with applications to set aside the ex parte orders and liberal approach should be adopted.

Arguments advanced at the Bar

6. Learned counsel for the Claimant Nos., 6 and 7 in elaboration to what has been stated in the grounds of appeal would contend that the learned reference Judge cannot pass any order on merits in the absence of the party and contra pleadings and that the Reference court had erroneously dismissed the application for restoration of the petition to its original number, despite the Government reported no counter.

7. Per contra, the learned Government Pleader appearing for the respondent would submit that the appeal is devoid of merits and that the Appellants/Claimant Nos. 6 and 7 kept silent for 6 years without filing their claim statements during the pendency of O.P. and made the court to forfeit their right to file the same. Immediately after disposal of the matter, the claimants

approached the Reference Court by filing the restoration petition to drag on the matter. As such, the learned counsel contended that the learned Reference Judge was right in dismissing the I.A. holding that the reference order was passed on merits and advised the parties to file an appeal against such order.

Point for Determination:

8. In the light of rival submissions, the point that would emerge for determination is:

Whether the Order impugned is tenable under law or any interference is warranted while sitting in the appeal?

Analysis & Finding:

9. There is no dispute about the fact that the lands of the claimants along with others were acquired by the Government for foreshore submersion of Kandaleru Reservoir under Telugu Ganga Project situated at Tanamcherla Village. After making a draft notification and enquiry, the respondent herein i.e., the Special Deputy Collector, passed an Award No.133/89-90, dated 12.02.1990. It is also an admitted fact that the claimants herein

received compensation under protest stating that the market value fixed by the Land Acquisition Officer is not just and reasonable. They filed applications to that effect to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act for fixation of fair market value, which got numbered as L.A.No.57 of 90 on the file of the Senior Civil Judge, Gudur, on 23.04.1990.

10. The record further shows the notices were served on the claimants. The claimants entered their appearance through Advocate. It is also a fact that though the matter was adjourned from time to time, the Claimant Nos. 6 and 7 did not choose to file their Statements. While things stood thus, the learned Judge heard the arguments of the learned Assistant Government Pleader on 20.12.1996 and pronounced Judgment confirming the Award passed by the Land Acquisition Officer vide Judgment dated 20.01.1997. The claimants herein after knowing the disposal of the said L.A.O.P.No.57/1990 in their absence approached the Court by filing a petition for restoration of the main petition and to permit them to pursue the matter by contesting the main petition.

11. The relevant extract from the order of the learned Reference court Dt:13.08.2004 dismissing the I.A., is reproduced hereinunder:

“But in the present case that the orders passed on merits on 20.01.1997. So, the above said decision is no way relevant or identical to the facts of the present case. In this case the claimants are not set ex parte and the reference was not dismissed for default. **But, it was passed on merits on hearing the learned Assistant Government Pleader for the Referring Officer and the matter was disposed of on merits.** Hence that this petition is not maintainable under law and at best petitioners/ claimants can be advised to prefer an appeal against the said Orders. Hence, these petitions are liable to be dismissed.”

12. Now, it is pertinent to look into the Order Dt:20.01.1997, which as referred by the learned reference Judge supra, was passed on merits. The same reads as follows:

“This clearly goes to show that the Claimants 6 to 12 have no interest to prosecute the OP, no useful purpose will be served by keeping the OP pending years together. **Hence, there is no other go for this Court except to confirm the Award passed by the Land Acquisition Officer.**

In the result, the Award passed by the Land Acquisition Officer in respect of claimants 6 to 12 is confirmed. The claimants 1 to 5 have settled their claims through compromise. The reference is answered accordingly.”

13. It is indiscernible that taking inference from the fact that the Claimant Nos.,6 and 7 did not choose to file their Statements, the learned Reference Judge opined that it is of no useful purpose to keep the O.P. pending and as such there exists no other option except to confirm the Award as originally passed by the Land Acquisition Officer with respect to Claimant Nos., 6 to 12, since the other Claimants have settled their claim through compromise before the Lok Adalat.

14. Needless to say, for passing any order on merits, the contentious pleadings of both parties are necessary. The claimants in the reference under Section 18 of the Land Acquisition Act are in the status of the plaintiffs as the burden is on the claimants to prove that the Land Acquisition Officer has not considered the correct market value for fixing the compensation. If they fail to establish the same, the petition has to be dismissed. If the claimants succeed in their attempts to demonstrate that the Land Acquisition Officer is not fair in fixing the compensation as per the market value as on the date of notification in that locality, the Court has to consider and enhance the compensation.

15. Here, the learned reference Judge while dismissing the I.A. opined that he disposed of the case on merits, and that the petition itself is not maintainable and has advised the parties to approach the Appellate Court against such order. The Order impugned itself shows the claimants failed to submit their claim statements, evidence much less any document. Apart from that, the counsel did not advance any arguments on behalf of the claimants. The impugned Order is also vivid on the point that after hearing the learned Assistant Government Pleader, the Court disposed of the matter. The learned Reference Judge also expressed his displeasure in disposing of the matter without any discretion stating that no option is left to him except to confirm the Award.

16. It is trite to observe that when once a reference is made under Section 18 of the Land Acquisition Act, 1894, the reference Court is bound to issue notice to all the persons interested in the reference and proceed to determine the reference under Section 20 even if the person at whose instance the reference is made, fails to appear before the reference Court or fails to produce evidence in support of their plan.

17. In **Khazan Singh (dead) by L.Rs v. Union of India**¹, the Hon'ble Apex Court has observed that the non-participation of a party would not confer jurisdiction on the reference Court to dismiss the reference for default and it is impermissible to do the same. Further, in **Mangeelal v State of Madhya Pradesh**² it was held that in a reference made under Section 18, an award has to be made under Section 26 even in case of non-appearance and non-production of evidence in support of petition by the referring party.

18. It is profitable to refer the decision of a Coordinate Bench of Hon'ble Bombay High Court in **Arvind Vyankatrao Tarar v. State of Maharashtra**³, which fit in the factual matrix of the case on hand. It is a matter where an application for restoration of reference was rejected as not maintainable on the ground that the reference was supposedly decided on merits after deciding all issues holding that the applicant and his counsel are absent and as such no evidence was let to substantiate their claim.

¹ (2002) 2 SCC 242

² AIR 1991 NOC 98

³ 2015 (5) ALL MR 690

19. The contention of the claimant/petitioner in **Arvind** (supra) was that the court cannot decide a reference in the absence and the only option left for the court should have been to dismiss the reference for default. On the point of maintainability of the petition filed under Order IX Rule 9 C.P.C., reliance was placed by the petitioner in **Arvind** (supra) on the decision of the Hon'ble Apex Court in **Rajmani v. Collector, Raipur**⁴, wherein it was observed by their Lordships at para 4 as follows;

"Ultimately, it is the duty and power of the court to determine just and adequate compensation on relevant facts and law sitting in the armchair of a prudent purchaser in an open market..... If the award in such circumstances came to be passed after setting aside the claimant ex parte, though an appeal would lie under Section 54 of the Act against such an award, alternative remedy is also available. The appellate court may not be in a position to decide the correctness of the award except again to fall back upon the question whether notice was properly served on the claimant and whether his remaining ex parte is correct in law. That question could equally be gone into on an application filed by the claimant either under Order 9 Rule 9 CPC or under Order 9 Rule 13 or Section 151 CPC. We are of the view that the

⁴ (1996) 5 SCC 701

appropriate provision that would be applicable to the claimant would be Order 9 Rule 9 read with Section 151 CPC. Therefore, he has rightly filed an application though under Order 9 Rule 13 but it could be treated as one under Order 9 Rule 9 read with Section 151 CPC. Section 26(2) of the Act declares that the award is a decree obviously as defined in Section 2(3) CPC and the grounds in support thereof is a judgment under Section 2(9) CPC. The appeal under Section 54 would be dealt with under Order 41 CPC".

(Emphasis supplied)

20. Accepting the contention of the petitioner, the Hon'ble Bombay High Court held that the trial court committed a serious error in dismissing the application as not maintainable instead of deciding the same on merits. In **Jogi Sahu v. Collector**,⁵ Hon'ble High Court of Orrisa held that an application for restoration of reference can be entertained under Section 151 of Code even when the same was filed by quoting Order 9 Rule 9.

21. Similarly, in the present matter on hand, prima facie, the words employed by the learned reference Judge and the manner in which the matter was disposed of itself clearly indicate

⁵ AIR 1991 Ori 283

that it was a disposal of the matter otherwise but not on merits. Such being the case, dismissing of a petition on the point of lethargic attitude of the party is different from that of dismissing a petition saying that it is not maintainable. Learned Judge advising the parties to approach the Appellate Court saying that petition is not maintainable is not tenable under law. Nevertheless, the order impugned reveals that the learned Assistant Government Pleader reported no counter on that petition.

22. The Order impugned clearly manifest non-application of mind to the contents of the Award passed by the Land Acquisition Officer. No whisper is made about the market value of the sale deeds considered as on the date of the notification and possession much less any other sales in the vicinity during the relevant period to scrutinize the sustainability of the Award under law. Though the learned Judge labelled the Order impugned as passed on merits and addressed the parties to tap in appeal remedies, it is purely a technical disposal of a case but not an order in the eye of law.

23. Under these circumstances, it is apposite to set aside the impugned Order and remit the matter to the reference Court with a direction to give an opportunity to the claimants as well as the Land Acquisition Officer to adduce evidence in the case and then to determine the compensation according to law. It is further clarified that this Court has not expressed any opinion about the merits of the L.A.O.P., which shall be decided strictly based on the evidence that may be led by the parties in accordance with law.

24. This Civil Miscellaneous Appeal is accordingly allowed, but, in the circumstances, the parties are directed to bear their own costs.

Miscellaneous petitions pending, if any, shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date : 20.02.2023
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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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