

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M.S.K. JAISWAL

A.S.No.1850 of 2003

ORDER: (V. Ramasubramanian, J)

Aggrieved by the direction of the reference Court under Section 30 of the Land Acquisition Act, 1894 to disburse the compensation amount only to respondents 7 and 9 to 12, the legal representatives of the 1st respondent before the reference Court has come up with the present appeal.

2. Heard Mr. N. Vasudeva Reddy, learned counsel for the appellants. All the respondents have been served with notice, but they have not entered appearance.

3. The land of an extent of Ac.0.11 guntas in Nandimalla village, was acquired and an award bearing No.3 of 1994 was passed on 20-06-1994 fixing the compensation at Rs.7,736/-.

4. At the instance of the 1st respondent before the Reference Court, a reference under Section 30 of the Act was made by the Land Acquisition Officer. In the reference, notices were issued to the 1st respondent before the Reference Court as well as to other respondents. During the pendency of the reference, the respondents 1, 2 and 8 before the Reference Court died. Respondents 9 to 12 were brought on record as legal representatives of the 2nd respondent before the Reference Court.

5. Unfortunately, the 1st respondent before the Reference Court at whose instance alone a reference was made, died during

the pendency of the reference, but his legal representatives failed to come on record within time.

6. If one of the rival claimants had been a claimant in the Original Petition and he had died, the petition would have abated. But due to rival claims it was the Land Acquisition Officer, who sought a reference under Section 30 of the Act and as a consequence, he was the petitioner. Therefore, it was the responsibility of the Land Acquisition Officer, subject, however, to the intimation on the part of the learned counsel, who appeared for the 1st respondent, to have brought on record the legal representatives of the 1st respondent before the reference Court. But it was not done.

7. If one of the respondents in a case dies and his legal representatives are not brought on record, the case would abate against that respondent. The result of it would be that the petition or appeal, as the case may be, would stand dismissed as against the deceased person, for the failure of the petitioner or the appellant to bring on record the legal representatives of the deceased person. Therefore, the only course of action that was open to the Reference Court was to dismiss the reference as against the 1st respondent and to proceed to adjudicate the merits of the rival claimants. But unfortunately the Reference Court went on a premise that the claim of the 1st respondent would abate. The question of abatement of the respondent's claim would not arise in such cases.

8. A useful reference to Order 22 Rule (4) of the Code of Civil Procedure may be made in this regard. A detailed procedure is stipulated under Rule (4) of Order 22 as to the procedure to be followed in the case of a death of one of the several defendants or the sole defendant. Under sub-rule (3) of Rule (4) of Order 22, if no application is filed by the plaintiff (or the petitioner as the case may be) within the time prescribed by law, the suit shall abate as against the deceased defendant.

9. In other words, it is the reference against the 1st respondent by the Land Acquisition Officer that could have abated and not the claim of the 1st respondent. But the reference Court proceeded on a wrong impression that the claim of the 1st respondent got abated. The Reference Court went on the premise that a reference under Sections 30 and 31 of the Act is like an inter pleader suit. In other words, the Reference Court thought that the 1st respondent before the Reference Court could be treated as a plaintiff. But that approach is not correct, since the reference was made by the Land Acquisition Officer. The finding of the Reference Court that the Government has nothing to do with the enquiry, is not correct. The Government may have to maintain neutrality, but to say that they have nothing to do with the enquiry, is not correct view.

10. After holding that the claim of the 1st respondent before the Reference Court got abated, the reference Court proceeded to examine one witness on the side of the rival claimants and decided the case *ex parte*. Such a procedure, in our view, is not fair and

proper. Therefore, the award of the Reference Court requires to be set aside and the matter remanded back.

Accordingly, the appeal is allowed and the award of the Reference Court is set aside. The matter is remanded back to the Reference Court for a fresh disposal by impleading the appellants herein as parties. There will be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M.S.K. JAISWAL, J

Date: 14-06-2017

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