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HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 15 of 2018

- Purshottam Agrawal S/o Jainarayan Agrawal, R/o Subhash Chowk, Raigarh, Tahsil And District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh
- Bajrang Agrawal S/o Jainarayan Agrawal, R/o Subhash Chowk, Raigarh, Tahsil And District Raigarh, Chhattisgarh
- Vimla Agrawal S/o Jainarayan Agrawal, R/o Subhash Chowk, Raigarh, Tahsil And District Raigarh, Chhattisgarh
- Smt. Nirmala D/o Jainarayan Agrawal, R/o Subhash Chowk, Raigarh, Tahsil And District Raigarh, Chhattisgarh

---- Appellants

Versus

- Executive Engineer Kelo Pariyojana, Survey Division, Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
- The Land Acquisition Officer And Sub Divisional Officer (Revenue) Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh
- State Of Chhattisgarh Through The Collector, Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh

---- Respondents

For Appellants	: Shri Hari Agrawal, Advocate
For Respondent/State	: Shri Lav Sharma, P.L.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Justice Smt. Rajani Dubey

Order on Board by Smt. Rajani Dubey, J.

12/07/2018

Challenge in this appeal filed under Section 54 of the Land

Acquisition Act, 1894 is to the award dated 05.08.2017 passed by the First Additional District Judge, Raigarh in Misc. Civil Suit No. 32/2013 whereby the court below has dismissed the reference made by the appellants.

2. Brief facts of the case are that land of the appellant situated at Khasra No. 124/1,124/3,124/4 & 124/5 admeasuring 0.137 hectares each, Patwari Halka No. 15 in village Lakha, district Raigarh has been acquired by the respondent/authority under the provisions of Land Acquisition Act for the purpose of Kelo Dam Project and against which the appellants were awarded a meager compensation of Rs. 7,05,030/-.

3. Contention of the counsel for the appellants is that from the perusal of the revenue records, which clearly shows that the aforesaid lands are situated in the main road and as such the value of the land will be Rs. 15,86,229/- each which has been wrongly calculated by the respondents holding the said lands to be located at a distance of 20 Km. from the main road. He further submits that after the award passed by the Land Acquisition Authority, the appellants made an application for reference under Section 18 of the Act and sought reference from the District Court and in reply the respondents have admitted that the said amount of compensation was paid holding that the lands are located at a distance of 20 km. from the main road.

4. Counsel for the appellants submits that the impugned award passed by the court below is perverse and not sustainable under the law. He further submits that the court below has erred in law by passing the impugned award after following the provisions under

Order 17 Rule 3(a) CPC instead of following the provisions of Rule 3(b) read with Rule 2 of the Order 17 CPC. He further submits that the impugned award is contrary to what has been held by this Court in the matter of **Shanti Devi and Others Vs. Ashik Ahmad Kuraisi & Others** reported in **2010 SCC Online Chh 229:(2011) 99AIC 393**.

5. In the present case, we find that on 22.6.17, appellants/paintiffs have filed the application under Order 17 Rule 1 CPC which was rejected by the trial court and fixed the matter for evidence of the respondents. Thereafter by the impugned order dated 5.08.2017, the learned court below dismissed the reference made by the appellants/plaintiffs. The Apex Court in the matter of **Mohan Das & Others Vs. Ghisia Bai and Others** reported in **AIR 2002 SC 2436** has held that :

“3. In the present case what we find is neither the plaintiff-appellant nor his witnesses were present on 7th May 1994. Therefore, the case has to be dismissed under Order XVII Rule 2. Even Rule 3 itself provides that if the parties or any of them absent, the Court shall proceed to decide the suit under Order XVII Rule 2. In view of the said legal position, we are of the view that the view taken by the Court below was erroneous and deserves to be set aside. We, therefore, set aside the judgment under appeal and sent the case back to the trial Court to decide the matter in accordance with law.”

In the matter of **Shanti Devi & others Vs. Ashik Ahmed Kuraisi and Others**, this Court has also taken similar view.

6. The Court below after hearing the parties, framed issues and granted opportunity to the appellants for leading evidence but the appellants failed to lead evidence and subsequently on 22.06.2017

when the case was fixed for their evidence, application under Order 17 Rule 1 CPC was moved by the appellants which was rejected by the court below and the right to lead evidence was closed and on 05.08.2017, the reference made by the appellants was dismissed.

7. Thus, in view of the legal position, we are of the opinion that the court below had taken erroneous view and therefore the impugned award deserves to be set aside. Accordingly, the impugned award is set aside and the case is remitted to the trial court to decide the matter in accordance with law. Appeal is allowed in part.

8. Counsel for the appellants has placed reliance on the decision of Apex Court in the matter of **Surender Singh Vs. State of Haryana & Others** reported in **(2018) 3 SCC 278** and prayed for refund of court fees and argued that this case may also be remanded to the trial court so that the appellants court fees be refunded to them.

9. So far as the refund of court fees is concerned, the facts of the present case are different to those in the decision which has been cited by the counsel for the appellants and in view of that, they are not entitled to get back the court fee paid by them. Accordingly, the prayer is rejected.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge