

DATE: 31st JULY, 2018

ORAL JUDGMENT :

1. Heard.
2. Admitted. With the consent of the parties, First Appeal is taken up for final hearing.
3. The legal heirs of one Mahadeo Mali, who died on 24.07.2006, have applied for their impleadment in the First Appeal. The record shows that and it is not disputed that the land of Mahadeo Mali was acquired by notification under section 4 dated 11.05.2000. Mahadeo Mali accepted the compensation under protest and he submitted reference which was forwarded by the Collector on 03.05.2008. Meanwhile, the claimant had died. The reference court in a group of matters decided the reference of deceased claimant by judgment dated 05.07.2013. It is axiomatic that such judgment could not be valid and binding. Learned advocate for the legal heirs submits that they have no dispute with regard to the order passed in land reference against their wishes. Aggrieved by the decision of the reference court, the Acquiring Body has preferred the present Appeal No. 2951 of 2017. There was

delay and it has been condoned. The learned advocate Mr. Mali relies on *Khazan Singh Vs. Union of India* AIR 2002 (SC) 726 in which case, *Khazan Singh* has preferred land reference to the Collector, and thereafter, *Khazan Singh* died. The LAR was dismissed on the ground of absence of the party and his counsel. The application for restoration of reference was rejected for want of sufficient cause. It was observed that once the reference was moved taking objection to the measurement of the land on account of the compensation, the Collector is bound to make reference. Section 28 empowers the court to proceed to determine the objection by holding such inquiry in such manner. It was held that if the party to whom notice is served by the Civil Court is not participating in the inquiry, it will be at the risk of the party because the award would be detrimental to the party concerned. But non-participation could not confer jurisdiction on the Civil Court to dismiss the suit for default. The Apex Court set aside the order of dismissal for default and remitted the matter for passing the award.

4. Reliance was placed by learned advocate for the applicant on the judgment in *Collector Land Acquisition*,

Thein Dm Project Vs. Sunit Sharma 2006 CJ (J&K) 38 in which matter, the claimant had passed away in 1997 and award passed by District Judge without impleadment of the legal representative of the deceased stood vitiated. The issue was raised whether Order 22 CPC would be applicable to the reference matter or not. Referring under Section 51 and 59 of Land Acquisition Act, it was held that rigours of abatement of the proceedings under Order 22 CPC will not be applicable to the reference proceedings. In case of death of the person on the reference has been made, it becomes the duty of the Collector to supply the court the names and addresses of the legal representatives of the deceased claimant to enable the court to issue fresh notices to them. It was the duty of the court to substitute the legal representatives irrespective of question of limitation.

5. Learned AGP for the State submits that there is enormous delay of 4184 days. None is present for the Acquiring Body.

6. In the factual scenario, the points for my determination are whether the order of reference court is legal and valid and whether legal representatives need to

be brought on record.

7. When the notices under section 4 and 6 are published, it is the intention of the Government to acquire the land for public purpose. The land Acquisition Officer has to hold inquiry as per section 11 of Land Acquisition Act, and after giving opportunity to the parties, he has to pass the award. Accordingly, in the present case, the award was passed. As per section 12, the award passed by the Land Acquisition Officer shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested. If the person whose land is acquired is not happy with the compensation awarded by the acquiring authority, he can file written application to the Collector requiring the matter to be referred by the Collector for determination of the court with regard to the objection to the measurement of the land or the amount of the compensation for the persons to whom it is payable for apportionment of the compensation among the person for

distribution. Once the application is moved by the aggrieved person within time as contemplated under section 18, then it is the duty of the Civil Court to determine the compensation amount as per the market rates at the relevant time. It is the obligation of the State to pay the just and reasonable compensation along with all other statutory benefits for the land acquired as per Land Acquisition Act.

8. From the very nature of the proceedings of land acquisition, reference under section 18, the same cannot be abated, and it is the responsibility of the State to get the market value of the land fixed by the court after giving due opportunity to the persons aggrieved by the acquisition. In case, such person is dead, his legal heirs should be brought on record and they should be given opportunity of hearing.

9. In the present case, learned advocate for the applicant submits that the legal heirs have no objection for the award passed by the reference court. However, technically, the said award was passed in absence of the concerned person Mahadeo Mali. Neither he nor any legal heirs were on record. His advocate on death of the client seized to have any authority, the reference court has decided the reference

in such circumstances. The contention that if the legal heirs are not disputing the award, the same is not a nullity cannot be accepted. Proceeding against a dead person is nullity and is not valid in the eyes of law. It is true that if the legal heirs of Mahadeo Mali agree to the award, they shall be entitled to the same rate as is provided to the other claimants under the same award in case their lands are of similar quality and similarly situated, but merely because the applicants are not disputing the award passed in favour of their deceased father, it cannot become legal order.

10. At the same time, I agree with the learned advocate for the applicants that the provisions of Order 22 of regarding abatement cannot be made applicable to the land references. Considering the situation, it is necessary to set aside the award as against deceased Mahadeo Mali and relegate the parties to the same status as was existing at the time of death of Mahadeo Mali. It will be open for the legal heirs to submit before the reference court that they agree to the award passed in favour of other legal heirs and after following the due procedure, the reference court may pass the same award in the name of legal heirs or may

decide the matter differently as per the provisions of law, but the reference will not be dismissed in default and shall be decided on merits. In the situations, the appeal filed by the Acquiring Body against the judgment and order, is nullity and is not maintainable. Hence, the appeal deserves to be disposed of with direction to issue full court fees to the acquiring body and the decision of reference court so far as the acquisition of land of Mahadeo Mali is concerned, LAR No.405 of 2008 deserves to be quashed and the legal heirs of Mahadeo Mali deserves to be brought on record with the direction to the reference court to proceed with the reference from the state as it was on the death of Mahadeo Mali. Accordingly, the First Appeal is disposed of as not maintainable at present. The judgment and Award in LAR No.405 of 2008 as against Mahadeo Mali are set aside on the ground that those are nullity and the present applicants are permitted to join in the said proceedings with the said reference in accordance with the provisions of law.

11. Reference court shall permit them to join without raising any issue of limitation and shall decide the claim reference according to the provisions of law.

12. The amount deposited by the Acquiring Body shall be refunded to the Acquiring Body.

13. In view of above, the Civil Application and Appeal stand disposed of.

(A.M.DHAHALE, J)

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