

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17-1-2019

Judgment delivered on 31-01-2019

FA No. 36 of 2000

- Steel Authority of India Ltd., registered office, Ispat Bhawan, Lodhi road, New Delhi.

---- Appellant.

Versus

1. State of Madhya Pradesh (Now CG) through Collector, Bilaspur (CG).
2. Sub Divisional Officer (Revenue), District Bilaspur, CG.
3. U.K. Mishra, s/o. Shri M.L. Mishra, Tah. Bilha, District Bilasur, present address Nutan Colony, H-1, Sarkanda, Bilaspur (CG).
4. Mrs. Krishna Mishra, w/o. U.K. Mishra, House No.H-1, Nutan Colony, Sarkanda, Bilaspur (CG).

---- Respondents

For appellant : Mr. Ashish Surana, Advocate.
For respondent/State : Mr. Raghavendra Verma, GA.
Other respondents : None.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 17-11-1999 passed by the First Additional District Judge, Bilaspur in Civil Suit No. 7-A/97 wherein the said court dismissed the suit filed by the appellant for declaring the award illegal granted by the Sub Divisional

Officer as per sub-clause (iv) of Section 247 of the MP/CG Land Revenue Code, 1959 (for short, the Code, 1959) in favour of respondents No. 3 and 4 to the tune of Rs.1,57,938/- and for granting injunction to recover the amount of said award.

2. As per plaint averment of appellant/plaintiff, respondent No.4 Mrs. Krishna Mishra is a Bhoomi Swami of Khasra No. 271/1 area 1/03 acres situated at village Bodri. The appellant company had been carrying on mining operations on the land acquired in the year 1976. These lands were neighbourhood of the land of plaintiff/respondent No.4. However, land of the respondent No.4 was not acquired. The said respondent made a complaint that her land has been damaged due to mining operation carried on by the appellant. Respondent No.3 made an application on behalf of respondent No.4 before the Tahsildar, Belha, which was registered as Revenue Case No. 57-A/74/95-96 and enquiry was made by the Nayab Tahsildar in the said case and a report thereof was submitted on 30-5-1995 wherein it was stated that the land was lying without cultivation for the last 20-25 years. It is also stated that because of storing of the minerals adjacent to the land in question a small portion of the mineral was slipped into the said land. Later-on, the

Sub Divisional Officer passed an award dated 16-6-1997 for an amount of Rs.1,57,938/- as mentioned above under Section 247(4) of the Code 1959.

3. Learned counsel for the appellant would submit that the Sub Divisional Officer has no jurisdiction to make award of compensation to persons in case their rights are infringed by occupation or disturbance of the surface of such land. It is obvious that compensation can be awarded only to those persons whose lands have been acquired and whose rights are infringed by occupation or disturbance by the surface of such lands. As the land of respondent No.4 is not acquired, no compensation can be granted, therefore, finding arrived at by the trial Court is not sustainable. He placed reliance on the decision of Hon'ble supreme Court in the matter of **S.N. Sundersen & Co vs. State of M.P and another, reported in AIR 1963, 213.**
4. On the other hand, learned counsel for the respondent supporting the judgment and decree passed by the trial Court would submit that the finding of the trial Court is based on factual and legal aspect of the matter and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. To dwell with the issue, Sections 247 (3) and 247 (4) of the Code 1959 may be read as under:

“247(3) – If the Government has assigned to any person its right over any minerals, mines or quarries, and if for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (10(2) should be exercised, the Collector may, by an order in writing, subject to such conditions and reservations as he may specify, delegates such powers to the person to whom the right has been assigned.

Provided that no such delegation shall be made until notice has been duly served on all persons having rights in the land affected, and their objections have been heard and considered.

247(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the

Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub Divisional Officer, or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894.”

7. It is not in dispute that respondent No.4 is owner of the land in question. Adjoining land is acquired for the purpose of mining. From the evidence of Umakant Mishra (DW/1) of respondent No.3, it is established that mineral dolomite was dumped in his land and same was dumped by the appellant. After enquiry it was found that the land was used by the appellant and there was infringement of the right of respondent No.4 by the appellant.
8. From the evidence of spot inspection report (Ex.P/4), it is established that the land in question was used for dumping the minerals and land was used as route for going to loading site of the mineral. It is also established that adjoining land has been acquired and the land in question was interfered by the appellant that is why application was filed before the Collector, Bilaspur. Though Kalaram Sahu who deposed before the trial Court as PW/1 that he was not

called before preparation of the report by the Tahsildar as per Ex.P/4, but the fact remains that the said report is not rebutted by this witness. The report was not challenged before the higher authorities and therefore it attained finality. The award passed by the Sub Divisional Officer was not challenged in reference as per provisions of Section 18(1) of the Land Acquisition Act, 1894 (for short, "the Act, 1894"). It is deposed by Kalaram Sahu (PW/1) that award is challenged before the Collector, but it appears that same is not interfered with. Section 247(4) of the Code 1959 provides that if award is not acceptable, then it can be challenged as per provisions of the Act, 1894. When there is specific provision for challenging the said award, the appellant ought to have proceeded against the award under the said provision, but that is not done. The trial Court elaborately discussed the entire evidence and came to conclusion that there is nothing on record to show that the authority under Section 247 (4) of the Code 1959, had proceeded the case without jurisdiction and there is nothing to question the amount of award, civil suit is barred as per provisions of the Act, 1894.

9. After re-assessing the oral and documentary evidence, this court has no reason to substitute contrary finding because

finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material. Considering all the facts and evidence on record, this court is of the opinion that the case law cited by learned counsel for the appellant is clearly distinguishable from the facts of the present case. The ground raised by the appellant is not sustainable.

10. Accordingly, decree is passed against the appellant and in favour of respondents as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of respondents through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju