

**SAMAIRA AGARWAL & ORS. VS. SPECIAL
LAND ACQUISITION COLLECTOR & ANR.**

Mr. Aniruddha Chatterjee

Mr. Vikas Baisya

Mr. Saptarshi Kr. Mal

..for the petitioners

Mr. Subhabrata Datta

Mr. Debashis Sarkar

..for the opposite party no.2

Despite service none appears on behalf of the opposite party no.1.

This revisional application arises out of an order dated May 23, 2011 passed by the learned Additional Special Land Acquisition Judge and 9th Additional District Judge, Alipore in LRA Case No. 15/10(V).

The petitioners are aggrieved because the learned Court rejected the reference made by the Collector on the ground that the L.A. Collector could not have made reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) for adjudication of title.

Mr. Subhabrata Datta, learned Junior Government Advocate submits that this revisional application is not maintainable. According to him, the rejection of L.A. Case was an award as contemplated

under Section 26 of the said Act and the award should be treated like a decree of a Civil Court and an appeal shall lie under Section 54 of the said Act. Mr. Datta relies on the decisions of **Jagdish Vs. Land Acquisition Officer, reported in 2019 SCC OnLine MP 4908 and Pokhar Singh vs. State of Haryana reported in (1981) 1 ILR Punjab & Haryana 440.**

According to Mr. Datta, in both the cases the application under Section 18 of the said Act was rejected by the learned L.A. Judge and the Court held that such rejection of an application under Section 18 of the said Act was appealable under Section 54 of the said Act.

Mr. Chatterjee, learned Advocate appearing on behalf of the petitioners submitted that the order impugned was not an award as contemplated under Section 26 of the said Act as there had been no decision on merits. He invited the attention of this Court to the provision of Sections 18,26,30 and 54 of the said Act and submitted that in this case, the learned Court held that the Collector could not have referred the application under Section 18 for adjudication of title by the L.A. Judge. Thus, the order impugned not being one on merits, either rejecting the application without interference with the award passed by the L.A. Collector or enhancing the award etc, the revisional application was maintainable and the order was not an appealable

one. He submitted that had the said application been rejected either on the ground of limitation or on the ground that the calculation made by the L.A. Collector was proper, the order would be an appealable order as submitted under Section 54 of the said Act.

Having considered the rival contentions of the parties on the point of maintainability of the revisional application, the provisions of Sections 18 and 26 are required to be considered and the same are quoted below:

“18. Reference to Court- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interest.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or with six months from the date of the Collector's award, whichever period shall first expire”.

“ 26. Form of awards.(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908)”.

Section 18 enables any person interested who has not accepted the award, to apply in writing to the Collector for the matter to be referred to the Court for the determination of the objection with regard to the measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Thus, adjudication of a reference would have to be on the following points :-

- a) Measurement of the land;
- b) Amount of compensation;
- c) The persons, whom it is payable;
- d) Apportionment of the compensation amongst the persons interested.

If the declaration in this case would have been on the above points or on the point of non-maintainability of the application for being time barred, the same would have fitted into description of the award in terms of Section 26 of the said Act.

Section 26 provides a form in which an award is to be made and the amount awarded should be specified in terms of Section 23(1) of the said Act. Section 26(2) provides that an award shall be deemed to be a decree and the statement of the grounds of every award would be a judgement within the meaning of the Code of Civil Procedure.

There is no quarrel with the proposition that an award is appealable. The components of an award are provided under Section 23 of the said Act. Thus, unless there is an adjudication on the basis of the provisions of Sections 23 and 26, the same would not be an award. If the application under Section 18 is dismissed on merits, without any interference the same would also be an award, inasmuch as, in such a case the award of the L.A. Collector would be upheld by the Court and the award already in existence would not be interfered with. The order of the L.A. Collector merges with the order of the Court and hence becomes an award and thus appealable.

In this case, the L.A. Judge refused to exercise his jurisdiction vested under the law by holding that the reference was made because the L.A. Judge was called upon to decide the title. This is an error apparent on the face of the record and the order impugned is revisable one.

On the merits of the case, it appears from the application under Section 18 of the said Act that the contention of the petitioners were that the award was declared in the name of two dead persons, namely, Anilakhya Basu and Sunilakhya Basu, who did not have any right, title and interest in respect of the acquired land and on the contrary, the petitioners were the persons entitled to such compensation. Sections 18 and

30 of the said Act clearly provides that a dispute as to the person to whom the award should be payable could also be referred by the Collector to the L.A. Judge at the instance of persons interested.

In both the decisions cited by Mr. Datta the decision of the learned L.A. Judge was on merits. In Jagdish (Supra) the learned L.A. Judge held that the award passed by the L.A. Collector was correct insofar as, the calculation and apportionment was concerned and no interference was called for in the reference. Against this dismissal the question arose whether the order was appealable or revisable and the Hon'ble High Court of Madhya Pradesh held that the refusal to enhance an award by rejection of the Section 18 application on merits was an appealable order.

The decision in Pokhar Singh(Supra) is also not applicable as the Section 18 application being time barred was rejected. This is also a decision on merits. As such, the Punjab and Haryana High Court held that the order was appealable.

Thus, the revisional application succeeds.

The order impugned is quashed and set aside.

L.R.A. Case No. 15/10(5) is restored to its original file and number. The learned Court below shall proceed with the hearing of the said LRA case in accordance with law.

This Court has neither gone into the merits of the case and nor the entitlement of the petitioners to get the compensation and leaves it entirely to the learned Court below to decide the issue on merits.

As this matter has been pending for a long time, the learned Court below is directed to expedite the hearing of the said proceeding.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

