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IN THE HIGH COURT OF ORISSA AT CUTTACK

MFA Nos.1 & 2 of 2016

Birendra Patel and another

....

Appellants

Ms. S. Mohanty, Advocate

-Versus-

***Land Acquisition Officer-ADM
(Rehabilitation and Resettlement)
MCL and others***

....

Respondents

Mr. P.K. Muduli, AGA

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK**

**ORDER
05.04.2022**

R.K. Pattanaik,J

1. Instant appeal in MFA No.1 of 2016 is at the behest of the Appellants set in motion under Section 20(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (here-in-after referred to as 'the Act') assailing the legality and judicial propriety of the impugned order dated 30th August, 2016 passed in T.C. No.15 of 2014 by the learned PTT, CBA (O)-cum-District Judge, Dhenkanal (in short 'the Tribunal') for having declined to pass an award of compensation in terms of Section 17 of the Act in respect of the acquired property.

2. The Appellants in MFA No.2 of 2016 have questioned the correctness of the impugned order dated 30th August, 2016 passed

in T.C. No.16 of 2013 by the Tribunal for having rejected their prayer to pass an award of compensation as per Section 17 of the Act in respect of the subject for which compensation stated to have been wrongly allowed in favour of Respondent Nos. 2 to 9.

3. Both the appeals, since involve same parties and common question of law, have been clubbed together for disposal by the following order.

4. Heard Ms. S. Mohanty, learned counsel for the Appellants and Mr. P.K. Muduli, learned AGA for the State. However, none represents other Respondents.

5. According to Ms. Mohanty, the appellants and other Respondents are the successors-in-interest of the recorded tenant of Khata No.29 measuring an Ac.22.30 dec. situated in Mouza- Garjanbahal having acquired it under a registered gift deed bearing No.471 of 1953. It is pleaded that the recorded owner, who is the common ancestor of both the parties, executed and registered a Will on 30th July, 1995 bequeathing Ac.19.30 dec. out of Ac.22.30 dec. in favour of the Appellants with a stipulation therein that Appellant No.1 shall receive Ac. 3.52 dec. and rest Ac.15.78 dec. to be divided in two equal shares between him and Appellant No.2 and after the death of their father, mutated it in their names and obtained RORs in respect of Khata Nos.87/142 and 87/143 (Anenxure-5 series). As further pleaded by the Appellants, the Government of India exercising power under Section 4(1) of the Act issued notification showing its intention to cover the suit land in the prospect coal areas and

accordingly, notified it under Section 7(1) and then under Section 9(1) of the Act declaring all rights over the same as having vested absolutely and finally, notification under Section 11 thereof was issued vesting rights of the acquired land on MCL with effect from 17th November, 1991.

6. It is pleaded that though the property in question was acquired but no compensation was paid notwithstanding the fact that title in respect thereof had been acquired by virtue of the Will. Initially, MCL evaded paying compensation since the land acquired was not required for the purpose but it was dismissed and the Government also rejected its motion for de-notification and ultimately, as further pleaded by the Appellants, on the orders of the Supreme Court in SLP No.6933 of 2007, compensation was directed to be disbursed through a Claim Commission, which, thereafter, issued notice in individual cases and invited objections, where after, they could learn that not only the awarded compensation to be low but also partly allowed in favour of the Respondents. It is revealed that the Appellants and the Respondents filed objections (Annexure-8 and 9 respectively) in response to the notice (Annexure-7). As it also appears from the pleading, since nothing precipitated therefrom, some of the respondents then approached the Claim Commission in respect of Ac.3.52 dec. which had been exclusively awarded in favour of Appellant No.1 which was, however, not acceded to by order dated 1st October, 2013 (Annexure-11) and similarly, the Appellants moved the Commission for variance of the award vis-à-vis Ac.15.78 dec. contending that besides having exclusive rights

under Annexure-4, they being the recorded tenants, the compensation in that respect should be paid to them which was rejected by order dated 7th March, 2014 (Annexure-12). It is lastly pleaded that after the aforesaid orders under Annexure-11 & 12, the Appellants and Respondents approached the Tribunal praying for compensation in terms of Section 17 of the Act. The Tribunal under Annexure-1 dismissed the motion made by the Appellants and allowed the claims of the Respondents. In fact, Appellant No.1 was paid compensation in respect of the gifted property measuring Ac. 3.52 dec. by the Claim Commission but for the residual Ac.15.78 dec., the names of Respondents featured in the recipient list for which the Appellants had to knock the doors of the Tribunal praying to disburse the compensation so awarded in favour of the Respondents. As earlier mentioned, the Tribunal dismissed the claim of the Appellants but allowed that of the Respondents by impugned order dated 30th August, 2016 (Annexure-1) which is currently under challenge before this Court.

7. Learned counsel for the Appellants contended that the decision of the Tribunal is against the weight of evidence on record and hence, contrary to law and therefore, impugned order under Annexure-1 is required to be interfered with and set aside. It is strongly urged that the Tribunal illegally refused to order compensation in favour of the Appellants accepting the Will dated 13th July, 1995 on the ground that its validity cannot be a subject matter of adjudication, while exercising jurisdiction under the Act. It is contended that the Tribunal should have taken cognizance of

the Will, when no one ever challenged it except before the Tribunal and erroneously held that the beneficiary would have to approach the Civil Court for the said purpose as provisions of the Indian Successions Act are not applicable. It is also contended that the Tribunal acted illegally by rejecting the mutation recordings in the names of the Appellants on the ground that the same do not create any title despite the fact that compensation had already been allowed on that basis in respect of Ac.3.52 dec.

8. The Appellants have questioned the impugned order under Annexure-1 primarily on the ground that the Tribunal did have the powers to consider the genuineness of the Will. In fact, both the parties to the proceeding urged before the Tribunal that it should submit a finding on the validity of the Will. The reliability of the Will was controverted on the ground that the testator was not in a fit state of mind in the year 1995 to execute the same prior to which he was completely bed ridden, ill and suffering from various old age ailments and the Appellants by impersonation managed to obtain it purportedly executed on 13th July, 1997.

9. Ms. Mohanty, learned counsel for the Appellants would contend that the Tribunal has all the trappings of a Civil Court in view of Section 14(8) of the Act and therefore, it did have jurisdiction to examine the genuineness of the Will. In fact, Section 14(8) Act envisages that the Tribunal in the proceedings before it shall have all the powers which a Civil Court has while trying a suit under the Code of Civil Procedure, 1908 in respect of the matters described

therein. On a careful reading of the above provision, it would convey that for the purpose of determining compensation, the Tribunal shall exercise the powers under sub-section (8) of Section 14 of the Act and follow the procedures in certain matters which, however, does not mean that it shall have the jurisdiction to determine the validity of the Will and consequentially, right title and interest of the parties, which can only be adjudicated upon by a Civil Court having competent jurisdiction.

10. As per Section 9 of the Code of Civil Procedure, 1908, a Court shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or by necessary implication barred. In the instant case, no Civil Court shall have jurisdiction in respect of any of the matters which the Government of India or the competent authority or any other person is empowered by or under the Act to determine in view of Section 26 of the Act. In other words, all matters which are to be dealt with under the Act cannot be raised before a Civil Court as its jurisdiction is expressly barred under Section 26 of the Act. In case of any question with regard to validity of a document for which objection is raised, or declaration of title, it has to be tried by a Civil Court and for that purpose, the Tribunal cannot usurp jurisdiction. In fact, the powers which are normally lie with a Civil Court while trying suits have been made available to the Tribunal by virtue of Section 14(8) of the Act only for the limited purpose of determining compensation and not to decide legality or otherwise of a Will and for that matter, right, title and interest of the parties

involved. On this point, a decision has been placed reliance on by the Tribunal in the case of *Nakula Sahoo and others v. Smt. Durpadi Singh and others* decided on 22nd September, 2015 in W.P.(C) No.8909 of 2004, wherein, it was held that Section 26 of the Act excludes jurisdiction of a Civil Court to entertain a suit or other proceedings in relation to matters referred to in Section 14 of the Act and the language of the provision employed therein is not absolute or all pervasive and the question and issues with regard to right, title and interest and declaration of sale deed as void has to be tried by a Civil Court since the same is not covered under the Act to be decided by the Tribunal. To put it bluntly, the Tribunal has the jurisdiction to consider and examine matters pertaining to the Act but cannot have any power to look into the question vis-à-vis right, title and interest. According to the Court, the conclusion so reached at by the Tribunal to the effect that a decision on genuineness of the alleged Will to be beyond its powers suffers from no legal infirmity. The finding of the Tribunal to the effect that since the Will is certainly to divert and disturb the natural way of succession, the party seeking benefit thereunder shall have to move the Civil Court for a declaration to that effect and till then the interest of all the legal heirs and successors of the recorded owner over the property in question cannot be denied is also perfectly justified and thus, it calls for no interference. The other findings of the Tribunal have not been questioned. In fact, the challenge of the Appellants was primarily directed against the existence of jurisdiction of the Tribunal to decide the genuineness of the Will. In any ways, the

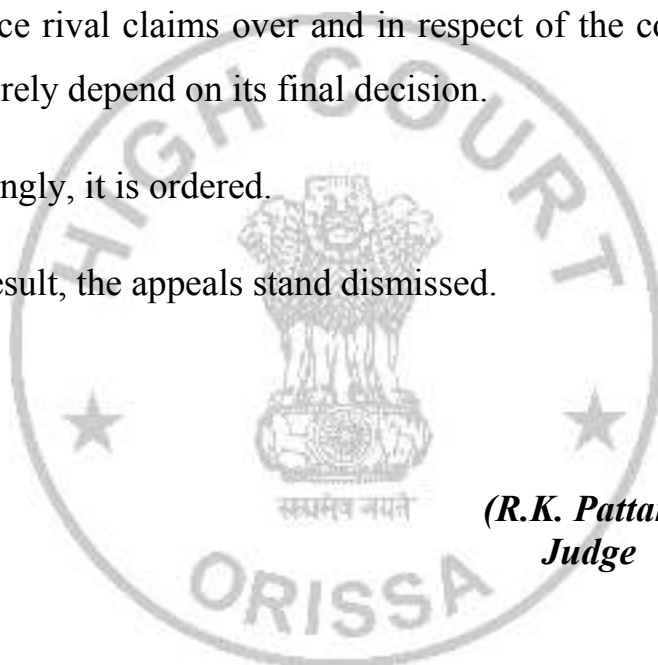
Court finds no any error or illegality on such other findings of the Tribunal vis-à-vis disposal of the property under the Will after vesting but before payment of compensation with reference to a cited law of the Supreme Court in the case of ***V. Chandrasekharan and another v. Administrative Officer and others 2013(1) OLR (SC) 324*** and the effects of mutation recordings in favour of the Appellants.

11.As a matter of fact, this Court by order dated 21st September, 2015 in CMP No.738 of 2014 directed that the entire compensation amount to be kept in fixed deposit in the name the Additional District Magistrate (R&R), MCL (O.P.No.2) therein, disbursal of which shall be subject to the decision of the Tribunal in T.C.No.15 of 2014. For the above, Appellant No.1 had approached the Court, when the Tribunal by order dated 19th June, 2014 rejected their prayer for an *ad interim* order of injunction with respect to the compensation amount and its release by O.P.No.2, where after, the above order was passed. As already concluded by this Court, the Appellants claim over the amount of compensation depends on the legitimacy of the Will in question, determination of which, can only be by a Civil Court having jurisdiction and not the Tribunal. It has been pleaded that some respondents have instituted C.S.No.222 of 2011 challenging the exclusive claim of the Appellants seeking a relief of partition vis-à-vis schedule property morefully described therein which is stated to be pending in the court of Civil Judge (Senior Division), Sundergarh. In that view of the matter, this Court is of the considered opinion that such interim arrangement of

having the compensation amount in fixed deposit as directed by order dated 21st September, 2015 in CMP No. 738 of 2014 should be allowed to continue till disposal of the above suit wherein the Appellants shall have the opportunity to put forth their claim on the strength of the alleged Will dated 13th July, 1995. However, considering the fact that the dispute between the parties is a decade old, the court of Civil Judge (Senior Division), Sundergarh, on being moved by the parties, may expedite disposal of C.S.No.222 of 2011 since rival claims over and in respect of the compensation amount entirely depend on its final decision.

12. Accordingly, it is ordered.

13. In the result, the appeals stand dismissed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice