

KHAZAN SINGH (DEAD) BY LRS.

v.

UNION OF INDIA

JANUARY, 2002

[K.T. THOMAS AND S.N. PHUKAN, JJ.]

Land Acquisition Act, 1894—Sections 18, 20 and 26.

Reference made by Collector to Civil Court—Dismissed for default—Correctness of—Held, non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default—Civil Procedure Code 1908 : Order 9, Rule 9 & Section 151.

Land of the appellant was acquired under the provisions of the Land Acquisition Act, 1894 and an award was passed by the Collector. Not satisfied with the award, appellant filed an application under Section 18 of the Act for making a reference to Civil Court. Accordingly Collector made the reference. Civil Court dismissed the reference for default. In the meanwhile appellant died and his legal heirs filed an application for restoration of reference as per Order 9 Rule 9 and Section 151 of the CPC. It was rejected by Civil Court and High Court. Hence this appeal.

Allowing the appeal, the Court

HELD : Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Land Acquisition Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default. [433-F]

Joseph v. Government of Kerala, (1991) 2 Kerala Law Times 69 and Jogi Sahu v. Collector, AIR (1991) Orissa 283, approved.

Abdul Kareem v. State of M.P., AIR (1964) MP 171; Munda v. Oraon, AIR (1970) Patna 209 and Sanai v. State, AIR (1974) Patna 176, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 667 of 2002.

From the Judgment and Order dated 23.7.2001 of the Delhi High Court in F.A.O. No. 354 of 2001.

B Ms. Suruchii Aggarwal for the Appellants.

N.N. Goswami, Ms. Neera Gupta and D.S. Mehra for the Respondents.

The Judgment of the Court was delivered by

C THOMAS, J. Leave granted.

D Can the reference made by a Collector under Section 18 of the Land Acquisition Act, 1894, (for short 'the Act') be dismissed for default? A Civil Court dismissed the reference for default of the claimant as he failed to be present when the matter was taken up. He made an unsuccessful bid to have the reference restored to the file. The High Court also did not help him as per the impugned order.

E Appellants are the legal heirs of one Khazan Singh. Certain area of land belonging to the said Khazan Singh was acquired under the provisions of the Act and an award was passed by the Collector (Land Acquisition Officer) on 16.7.1984, fixing the compensation payable to the land owners. As Khazan Singh was not satisfied with the amount fixed by the Land Acquisition Officer he moved an application under Section 18 of the Act for making a reference to the Civil Court. The Land Acquisition Officer, acting on the said application made the reference. It was pending before the Court of a District Judge. On **F** 29.9.1997 the Additional District Judge dismissed the reference on the premise that "neither the applicant nor his counsel appeared in the Court on the said date".

G In the meanwhile Khazan Singh died and the present appellants filed an application quoting Order 9 Rule 9 and Section 151 of the Code of Civil Procedure, ('Code' for short) for restoration of the reference. The Additional District Judge rejected the said petition on the ground that there was no sufficient cause for the absence of the appellant or his counsel on 29.9.1997.

H Appellants thereafter filed an appeal before the High Court. The learned Single Judge of the High Court dismissed the appeal, mainly on the ground that absence of the appellant and his counsel has not been satisfactorily

explained, and also on the ground that there was unexplained delay in moving the application for restoration. It is said judgment of the High Court which is now being challenged in this appeal. A

Section 18 of the Act empowers a person interested in the land to move by a written application to the Collector requiring that the matter be referred for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. If the application for reference is in order the Collector is bound to make a reference of it to the Court. Section 20 of the Act enjoins on the Court to "proceed to determine the objection". The Court shall after holding such inquiry as may be necessary pass an award. Section 26 of the Act reads thus: B C

"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. D

(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." E

The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default. F

It appears that various High Courts have taken the aforesaid view in a number of decisions: *Abdul Kareem v. State of M.P.*, AIR (1964) MP 171; *Munda v. Oraon*, AIR (1970) Patna 209; *Sanai v. State*, AIR (1974) Patna 176; *Joseph v. Government of Kerala*, [1991] 2 Kerala Law Times 69 and *Jogi Sahu v. Collector*, AIR (1991) Orissa 283. G

In *Joseph v. Govt. of Kerala*, (supra) Paripoornan, J. (as he then was) H

A speaking for a Division Bench has made reference to two earlier decisions of single Judges one by the same High Court and the other by the Karnataka High Court which held the same view.

B In *Jogi Sahu v. Collector*, AIR (1991) Orissa 283 Pasayat, J. (as he then was) further held that an application for restoration of the reference can be entertained under Section 151 of the Code albeit the same was filed quoting order 9 Rule 9 of the Code.

C In the result, we allow this appeal and set aside the order passed by the Additional District Court on 29.9.1997 by which the reference was dismissed for default. The said District Court will now proceed to answer the reference in accordance with the law and pass award as envisaged in Section 26 of the Act. Appeal is disposed of accordingly.

S.K.S.

Appeal allowed.