

CASE NO.:
Appeal (civil) 4424 of 1997

PETITIONER:
Orissa Industrial Infrastructure Dev.Ltd.
RESPONDENT:
Supai Munda & Ors.

DATE OF JUDGMENT: 05/12/2003

BENCH:
S.N. VARIAVA & H.K. SEMA

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO. 9564 of 2003
SPECIAL LEAVE PETITION (C) NO. 19869 OF 1997

SEMA, J

Leave granted in Special Leave Petition (C) No. 19869 of 1997.

These two appeals have been preferred against the judgment and order dated 19th February, 1997 passed by the High Court. Civil Appeal No. 4424 of 1997 has been preferred by Orissa Industrial Infrastructure Development Corporation and the appeal arising out of SLP) 19869 of 1997 has been preferred by the State of Orissa. Since both the appeals arise out of the common judgment of the High Court, they are being disposed of by this common order.

Facts of this case illustrate a classic example as to how the concerned authority subjugated and suppressed the rights of the illiterate rustic tribal villagers of far flung area from the madding crowd and coerced them to accept the price fixed by the concerned authority despite their protest.

The facts of the cases may be briefly recited. For brevity we are taking the facts from Civil Appeal No. 4424 of 1997.

The State Government acquired private land in village Gadpur under Sukinanda Tehsil in the District of Jajpur, Orissa for development of an integrated industrial complex. Notification under Sections 4(1) and 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 13.7.90. In the said Notification land comprising Acre 0.65/5 Kadi belonging to respondent No. 1 (contesting respondent) was also acquired along with other land owners. Declaration under Section 6 of the Act was issued on 12.6.91. The Award under Section 11 of the Act was passed on 25.7.92. Notice under Section 12(2) of the Act was issued to the respondent-claimant on 27.7.92. An agreement was allegedly entered into between the State and the land owners on 6.8.92 on the basis of which the payment of compensation was made on that date, allegedly on the agreed terms.

From the record it appears that the 1st respondent orally protested as to the sufficiency of the amount of compensation awarded and wanted to have his protest recorded but the authority reprimanded him that if any protest or objection was recorded the amount of compensation would not be paid and the same would be deposited in the Treasury. It is alleged that the 1st respondent being an illiterate tribal person was coerced to receive the compensation amount without having recorded any protest. It is also alleged that the notice under Section 12(2) of the Act was not received by the respondent. The 1st respondent, thereafter, preferred an application under Section 18 of the Act for reference for determining higher compensation by regd. A.D. on 17.9.92 to the authority and the same was received on 18.9.92. On 8.12.92, the Land Acquisition Officer declined to refer the application

under Section 18 of the Act to the competent civil court. Aggrieved by the said order, the respondent filed civil revision petition before the High Court. By order dated 11.9.95, the High Court disposed of the revision petition by setting aside the order dated 8.12.92 and directed the Land Acquisition Officer to re-hear the question of maintainability of the application under Section 18 of the Act after affording an opportunity of hearing to the 1st respondent by adducing evidence. The Land Acquisition Officer, thereafter, heard the matter afresh and rejected the application by order dated 15.12.95 which has been again set aside by the High Court on revision being preferred by the respondent herein.

By the impugned order, the High Court directed the authority to send the reference to the appropriate civil court within a period of one month from the date of receipt of the order.

We have heard learned counsel for the parties at length. Two main contentions have been raised before us: -

(a) Reference under Section 18 is not maintainable being barred by limitation; and

(b) When an Award is made under Section 11(2) of the Act, no reference can be made under Section 18 of the Act as the same is barred by proviso to Sub-section 2 of Section 31 of the Act.

Limitation
It is undisputed that the Award was made on 25.7.92. The alleged agreement was entered into between the authority and the respondent herein on 6.8.92 and the compensation amount was also paid on 6.8.92. As already noticed the application for reference under Section 18 of the Act was sent by registered post on 17.9.92 and the authority received the same on 18.9.92. Notice under sub-section 2 of Section 12 of the Act was sent on 27.7.92. The High Court has dealt with this question elaborately and arrived at the conclusion that if the period is reckoned from the date of posting of the application i.e. 17.9.92, the application was filed within 42 days of the receipt of payment. It is undisputed that the application was received on 18.9.92. Therefore, there was only one day's delay. Section 18 of the Act prescribes the procedure for reference to court and provides that every application for reference 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; and (b) in other cases, within six weeks of the receipt of the notice from the Collector under sub-section 2 of Section 12 or within six months from the date of the Collector's award, whichever period shall first expire. In the present case clause (b) is attracted because the 1st respondent was not present, or represented before the Collector at the time he made his award. Therefore, notice under sub-section 2 of Section 12 was sent to the respondent herein on 27.7.92. It was returned on 29.7.92, said to be after proper service. The evidence on record shows that one Supai Gagrai had put his signatures on the bottom of the notice and received the notice. The name of the respondent herein is Supai Munda. The respondent has denied to have received the notice. It is his say that he is an illiterate person and cannot put his signatures. This will clearly demonstrate that the respondent herein has not received the notice under Section 12(2) of the Act personally. If that is so, the notice upon the respondent was not duly served. The contention of the appellants on this ground, therefore, fails.

Whether reference can be made under Section 18 of the Act when the Award is allegedly made under Section 11(2) of the Act?

To answer this question first it will be relevant to consider whether the Award was made under Section 11 or under Section 11(2) of the Act. Pursuant to an order of 4th September, 2003 passed by this Court, the State Government filed a translated copy of the Award dated 25.7.1992 (shown as 25.8.1992 through inadvertence which has been subsequently corrected as 25.7.1992). Even otherwise the Award was made on 25.7.1992 is not disputed. The copy of the Award dated 25.7.1992 is accompanied by an affidavit dated 12.11.2003 sworn in by Mr. J.K. Das, Advocate on behalf of the appellants in Civil Appeal arising out of SLP) No. 19869 of 1997. The Award of 25.7.1992 was clearly passed in a proceeding under Section 11 of the Act. At the time of the hearing learned counsel for the State,

Mr. J.K. Das, also produced an English version of the Award dated 6.8.1992 said to have been passed pursuant to the agreement dated 6.8.1992. The subsequent Award dated 6.8.1992 is shown to have been passed under Section 11(2) of the Act. We are surprised to note as to how the subsequent Award dated 6.8.1992 was made pursuant to the alleged agreement made on 6.8.1992. We smell the rats. When the Award is made by the Collector under Section 11 of the Act, the proceedings before him stand terminated as soon as the Award is made. The provision of sub-section 2 of Section 11 is attracted only at any stage of the proceedings before the Collector, that is to say, if the Collector has not passed the Award under Section 11 of the Act and the proceedings before him were still subsisting. In the present case, it clearly appears from the Award dated 25.7.1992 itself that it was made under Section 11 of the Act. The claimant Shri Supai Munda (respondent herein) has categorically stated that he received the compensation amount pursuant to the notice under Section 12(2) of the Act, which was issued on 27.7.1992. That statement remains uncontroverted. In our view, therefore, there was no occasion for the learned Collector to have recourse to sub-section (2) of Section 11 of the Act. There can never be two awards - one under Section 11 of the Act and another under Section 11(2) of the Act over the same land acquired.

Before the Land Acquisition Officer, the respondent herein examined himself as witness No. 1; Gourang Ch. Jamuda (co-villager) as witness No. 2; and Ramai Munda as witness No. 3. The respondent-claimant deposed that he received the compensation amount for his land measuring an area Acre 0.65/5 Kadi in Mouza Gadpur by putting his thumb impression on the relevant papers, the contents of which were not explained to him. He further stated that the officer told him that unless he put his thumb impression, the compensation amount would not be paid and the same would be deposited into the treasury. The officer further told him that the compensation amount would not be paid to him if he put objections. Witness No. 2 has deposed that he was present at the camp when the claimant received the compensation amount. He further deposed that the officer did not explain about the contents of the paper when the claimant put his thumb impression on the same. The officer also said that the compensation amount would not be paid to the claimant if he would raise objection. He further deposed that the claimant then put his thumb impression on the paper out of fear. The same is the deposition of witness No. 3. The appellant has not rebutted the statements of witness Nos. 1, 2 and 3 by adducing evidence. The deposition of witness Nos. 1, 2 and 3, therefore, remain uncontroverted. Therefore, the fact that the State Authority coerced the claimant to accept the amount of compensation fixed by them is established by convincing evidence. It is also evidently apparent that the claimant made oral protest as to the sufficiency of the amount of compensation, which has been cowed down by resorting to coercive method.

Learned counsel for the appellants stressed to press the proviso to Section 31(2) of the Act, which provides that the reference under Section 18 of the Act is incapable unless a person has received the compensation amount under protest. This benefit will not be available to the appellants in the present case because, as already noticed, the claimant has received the compensation under duress.

Learned counsel for the appellants has drawn our attention to the observations made by the learned Land Acquisition Officer in his order dated 8.12.92 to the effect that he explained to the respondent the actual market value of the land on the basis of sale statistics. He also observed that the claimant had received the compensation amount without protest. No reliance can be placed on the observations made in the judgment and order dated 8.12.92 inasmuch as the same has been set aside by the High Court by its order dated 11.9.95.

In the facts and circumstances as alluded above, the judgments in State of Gujarat & Ors. v. Daya Shamji Bhai & Ors. (1995) 5 SCC 746; and Ishwarlal Premchand Shah & Ors. v. State of Gujarat & Ors. (1996) 4 SCC 174; relied on by the counsel for the appellants have no relevance on the facts of this case. Consequently, the appeals are dismissed.

The court below is directed to proceed to hear the reference application and dispose it of as quickly as possible, preferably within six

months from the date of receipt of this order as the matter is pending since 1992. It is open to the appellants to urge any grounds as are available to them under law.

Subject to the aforesaid observations, the appeals are dismissed. No order as to costs.

JUDIS