

CASE NO.:  
Appeal (civil) 7518-7519 of 2004

PETITIONER:  
Jaya Chandra Mohapatra

RESPONDENT:  
Land Acquisition Officer, Rayagada

DATE OF JUDGMENT: 22/11/2004

BENCH:  
N. Santosh Hegde & S.B. Sinha

JUDGMENT:  
J U D G M E N T

[@ S.L.P. (Civil) Nos. 17869-17870 of 2003]

S.B. SINHA, J :

Leave granted.

State of Orissa issued a notification purported to be under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') on or about 10.12.1980 pursuant where to or in furtherance where of inter alia the lands belonging to the Appellant herein were acquired. An award in respect of the said acquisition was passed on 13.09.1981 and possession of the land was taken by the State on 15.09.1981. Being aggrieved by and dissatisfied with the quantum of compensation specified in the Award, the Appellant herein filed an application for enhancement thereof in terms of Section 26 of the Act which was referred to Civil Court by the Collector on 5.12.1989. Although the amount of compensation as regard the value of the land was enhanced by an order dated 27.11.1990 by the Reference Court but the other statutory benefits in respect thereof as contemplated under Sections 23(1A), 23(2) and 28 of the Act were not granted. An appeal against the said order by the State was dismissed by the High Court. The Appellant filed an application for enhancement of payment of solatium @ 30% being MJC No. 43/89 which was allowed by an order dated 21.12.1990.

The Appellant filed an application for amendment for grant of benefit under Section 28 of the Act which was allowed by the Reference Court in terms of an order dated 30th July, 1993. On the same day, the Appellant herein filed another application purported to be under Section 151 read with Section 152 of the Code of Civil Procedure as also Order 47 Rule 1 thereof for review of the judgment and decree as also for necessary clarification therein as regard non-awarding of benefits under Sections 23(1A) and 23(2) of the Act. The said application was opposed by the Respondent herein. The Civil Judge (Sr. Division), Gunupur by reason of a judgment and order dated 8.10.1996 upon consideration of the contentions raised by the parties in details as also the relevant provisions of the Act held:

"I have already discussed above that vide order dated 30.7.93 in MJC No. 14/91 though, in para 3 last sentence it was mentioned that the above decrees were set aside but that is a mistake caused inadvertently because, in para 4 it is clearly mentioned that the above judgment and decree were corrected and in the ordering petition also the word correction has been mentioned by deleting a portion of previous award and in that place

substituting some other words as mentioned in the order and the judgment and the decree dated 27.11.90. In view of the different provisions of Land Acquisition act, mentioned above and relying on the above mentioned decisions, this Court is of the opinion that the petitioner is entitled to an amount of 12% interest p.a. from the date of notification u/s 4(1) of the Act till the date of dispossession. As per the provisions of Sec. 23(1)(A). He is also entitled to solatium @ 30% on the market value of the land in accordance with Sec. 23(2) of the Act and the interest at the enhanced rate, in view of the Sec. 2 of the act as amended by Act. 68 of 1984, as per the decision of our own High Court reported in Vol. 81(1996) CLT page 408 (supra). Hence it is necessary to correct the decree accordingly, exercising power under Sec. 152 CPC and invoking the inherent power under Section 151 CPC the order/ decree is corrected as follows:

The rate of solatium as mentioned in the decree should be corrected as 30% instead of 15%. The portion inserted in the order/ decree as per order dated 30.7.93 be corrected as follows:

The collector is directed to pay interest on such excess amount at the rate of 9% p.a. from the date on which he took possession of the land to the date of payment of such excess and the petitioner is also entitled to interest @ 15% p.a. from the date of expiry of the said period of one year as per Sec. 28 of the Act, 1984 as amended by Sec. 68 of the Act, 1984."

Indisputably, the correctness or otherwise of the said order was not questioned by the Respondent. It, therefore, attained finality. The said amended decree was put in execution by the Appellant which was registered as E.P. 7/1996. An objection in the said proceeding was filed by the Respondent herein purported to be under Section 47 of the Code of Civil Procedure. By an order dated 28.08.1999, the said objection was allowed by the Executing Court holding that as the decree had once been amended the same became final and as such the Reference Court had no jurisdiction to amend the decree further. Aggrieved by and dissatisfied therewith the Appellant herein filed a Civil Revision Application before the High Court which by reason of the impugned judgment and order dated 17.6.2003 has been dismissed holding that the Civil Court had no jurisdiction to pass an order amending the decree as regard grant of benefits under Sections 23(A), 23(2) and 28 of the Act.

Mr. Janaranjan Das, learned counsel appearing on behalf of the Appellant would submit that having regard to the fact that an application for amending the decree was allowed by an order dated 8.10.1996 which attained finality, the Executing Court and consequently the High Court committed a serious error in passing the impugned judgment.

Mrs. Kirti Renu Mishra, learned counsel appearing on behalf of the Respondent, on the other hand, supported the impugned judgment contending that the question raised at the bar stands settled by a decision of this Court in Bai Shakriben (Dead) by Natwar Melsingh and Others Vs. Special Land Acquisition Officer and Another [(1996) 4 SCC 533].

By reason of the Land Acquisition Act, 1894 the benefits specified therein became available to the owners of the land if the proceedings in relation to grant of or enhancement of compensation were pending before

the Collector or Reference Court between 30.4.1982 to 24.9.1984. It is not in dispute that a proceeding was pending during the aforementioned period.

In law, there is no bar in filing applications for review successively if the same are otherwise maintainable in law. The Civil Court herein admittedly had not granted to the Appellant the benefit of solatium at the rate of 30% of the amount of enhanced compensation as also the additional amount and interest as contemplated under the Amending Act of 1984. To the said benefits, the Appellant was entitled to in terms of Section 23(1A), Section 23(2) as also Section 28 of the Act. It is one thing to say that the omission to award additional amount under Section 23(1A), enhanced interest under Section 28 and solatium under Section 23(2) may not amount to clerical or arithmetical mistake in relation where to an executing court will not be entitled to grant relief but it is another thing to say that the grant thereof would be impossible in law even if the Reference Court on an appropriate application made in this behalf and upon application of its mind holds that the statutory benefits available to the claimant had not been granted to him and pass an order in that behalf by directing amendment of decree. In a case of former nature, an executing court may not have any jurisdiction to pass such an order on the ground that it cannot go behind the decree, but in law there does not exist any bar on a Reference Court to review its earlier order if there exists an error apparent on the face of the record in terms of Order 47, Rule 1 of the Code of Civil Procedure. Such a jurisdiction cannot be denied to the Reference Court. The Act 68 of 1984 is a beneficial statute and, thus, the benefits arising thereunder cannot ordinarily be denied to a claimant except on strong and cogent reasons.

In Bai Shakriben (supra), the award was passed on 19.5.1980 and the Reference Court passed an order and decree under Section 26 of the Act on 20.8.1983. The State carried the matter in appeal but the claimants did not.

The Court in the aforementioned situation held that the Executing Court had no jurisdiction to amend the decree on the ground that it could not go behind the decree. Unfortunately, in the said case the distinction between an order of amendment of the decree passed by the court which passed the decree and the executing court had not been canvassed.

In Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad and Another [(2003) 6 SCC 255] a question arose before a three-judge Bench of this Court as to whether the benefits of 1984 Amending Act were available to the claimants in relation to the acquisitions made under U.P. Avas Evam Vikas Parishad Adhiniyam, 1965. This Court, while holding that such benefits are available, granted such reliefs holding:

"26\005Once the High Court had held that the amending Act of 1984 was applicable for the grant of compensation, it appears that some clerical error crept into the judgment of the High Court in not awarding additional compensation. In fact, in accordance with the conclusion at which we have arrived, the claimants are also entitled to the additional compensation under Section 23(1-A) of the Land Acquisition Act. Further, the claimants are also entitled to interest at the rate of 9 per cent for the first year and 15 per cent for the subsequent years\005"

Furthermore, in this case the aforementioned order dated 8.10.1996 has attained finality by reason whereof the original decree stood amended. The Executing Court in view of the decision in Bai Shakriben (supra) itself could not have gone behind the decree. The Executing Court, thus, proceeded to pass the impugned judgment on a wrong premise. The Executing Court keeping in view its limited jurisdiction could not have gone into the question as to whether the Reference Court was correct in passing the order dated 8.10.1996 amending the decree or not. The Executing Court

did not have any jurisdiction to go into the said question. A decree passed by a competent court of law can be suitably amended. A decree, so amended on an application filed by the claimant for review thereof, becomes final. If the State was aggrieved by and dissatisfied therewith, it could have taken the matter by filing an appropriate application before the High Court. But keeping in view of the fact that the said order was allowed to attain finality, the court could not have permitted the State to reagitate the said question before the Executing Court by filing an application under Section 47 of the Code of Civil Procedure or otherwise. In a case of this nature, the principle of estoppel by records shall come into play.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The Executing Court is hereby directed to proceed in terms of the amended decree. The appeal is allowed with the aforementioned directions. No order as to costs.

JUDIS