

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Review/LR/10198/2008/Chittorgarh.

M/s Grasim Industries Limited Unit Aditya Cement Sava Shambhupura
Tehsil & Distt. Chittorgarh.

...Petitioner.

Versus

1. Nanda son of Bhajja Dangi resident of Medi Ka Amrana Tehsil &
Distt. Chittorgarh.
2. Bundi-Chittorgarh Keshetriya Gramin Bank Branch Shambhupura,
Chittorgarh.

...Non-petitioners.

S.B.

Dr. G.K. Tiwari, Member

Present:-

Shri Purna Shankar Dashora, counsel for the petitioner.

Shri Sohanpal Singh, counsel for the non-petitioner No.1.

Shri Ajit Singh Rathore, counsel for the non-petitioner No.1.

Ex-parte proceeding against the non-petitioner No.2.

Date: 17 January, 2012

J U D G M E N T

This review petition, under section 86 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act'), is directed against the impugned judgment dated 3.9.2008 of learned Single Bench of this court passed in appeal No. 3136/2003.

2. Briefly stated, the facts leading to the review petition are that the petitioner-appellant filed an application under section 89 of the Act before Additional District Collector Chittorgarh for determination of the compensation in respect of the disputed land which fell in the mining area, but is recorded in the khatedari right of the non-petitioner-respondent. The petitioner filed this application before Additional District Collector Chittorgarh on the ground that mining lease of the land under consideration was issued to the petitioner by the Mining Department of the State Government. The non-petitioner-respondent appeared before Additional Collector and submitted his reply; thereafter he remained absent from the hearing. Therefore, Additional Collector passed an ex-parte judgment dated 5.8.1997 determining the compensation of the disputed land at Rs. 4,33,992/-. The non-petitioner did not accept the amount of the compensation so determined; so Additional Collector referred the matter to the District Judge Pratapgarh

Camp Chittorgarh who ordered for depositing of the amount in the court by his order dated 2.3.2003. Subsequently the non-petitioner filed an appeal under section 75 of the Act before Revenue Appellate Authority Chittorgarh after a period of six years. Revenue Appellate Authority condoning the delay in filing the appeal allowed the appeal and quashed the judgment dated 5.8.1997 of Additional Collector Chittorgarh and remanded the case to Additional Collector for re-hearing and re-decision. Aggrieved against the impugned judgment dated 28.5.2003 of Revenue Appellate Authority, the petitioner-appellant preferred second appeal under section 76 of the Act before this court. The learned Single Bench of this court dismissed the appeal by the impugned judgment dated 3.9.08 which is sought to be reviewed by the petitioner.

3. I have heard the learned counsels of both the parties.

4. The learned counsel for the petitioner submitted in argument that the learned Single Bench of this court without looking into the record has given an erroneous finding that no notice was given to the non-petitioner and he was denied opportunity of hearing; whereas the non-petitioner was not only personally served upon with the notice but he appeared before the court and submitted the reply; so this mistaken notion of the learned Single Bench is an error apparent on the face of record. It was also argued that the non-petitioner in his reply has categorically stated that his compensation should be determined taking into consideration all the improvements made on the land and he should also be employed in the service of the petitioner. Thus the main grievance of the non-petitioner is confined to only adequate determination of the compensation. Not only this, he has also submitted a separate application with the request to make a reference to the compensation case to the District Judge for adequate computation of the compensation. In such a situation when the dispute is limited only to the amount of compensation no appeal lies under section 75 of the Act and only course open to the non-petitioner is to approach the competent civil court for determination of the compensation in light of the provision of section 89(4) of the Act. The learned counsel stated that there is not only error of fact but there is error of law also. This court has misconceived law and dismissed the appeal ignoring the material facts available on the record. The learned counsel cited AIR 1969 (Kerala) 186, 2006 RBJ

345, AIR 2005 (SC) 592, 2006 AIR (SC) 75 and 2005 RRD 08 in support of his contention. He further pleaded that Revenue Appellate Authority condoned the delay of six years without any sufficient reason. Under Article 125 of the Limitation Act period of limitation should be counted from the date of judgment/ decree when notice is duly served upon the non-petitioner. But in the given case Revenue Appellate Authority has counted the period of limitation from the date of knowledge which is apparent error of fact and law. Therefore, the learned counsel requested for allowing the review as well as second appeal with setting aside of the impugned judgment of Revenue Appellate Authority dated 28.5.2003.

5. Opposing the contentions of the petitioner, the learned counsel for the non-petitioner replied that Additional Collector Chittorgarh has passed the order dated 7.2.1996 on the order sheet that notice should be issued to the non-petitioner once again in the interest of justice; but this order of Additional Collector was never complied with. Therefore, Revenue Appellate Authority rightly remanded the case for giving opportunity of hearing to the non-petitioner. It was further argued that the scope of review is very limited according to 2005 (1) RRT 545 and there is no error apparent on the face of record necessitating review of the impugned judgment of learned Single Bench which has rightly dismissed the appeal vide the impugned judgment dated 3.9.2008. Therefore, this review should be dismissed.

6. I have given thoughtful consideration to the rival contentions, perused the impugned judgment and gone through the material on record.

7. Perusal of the impugned judgment dated 3.9.08 of this court reveals that the appeal was decided with its dismissal mainly on the ground that the non-petitioner-respondent Nanda was not given any notice for hearing before Additional Collector Chittorgarh and thus the principle of natural justice was violated. But perusal of the court file of Additional Collector Chittorgarh shows that the non-petitioner-respondent Nanda was not only personally served upon with the summons/ notice but also he personally put in his appearance before the court of Additional Collector and submitted reply to the notice issued to him under section 89 of the Act. In this reply dated 14.9.1995 submitted

to Additional Collector, the non-petitioner objected to the under-valuation of his land and non-inclusion of the cost of well, a house, trees and other improvements made on the disputed land in the amount of compensation. He further categorically stated in the reply that he should not be given any further notice and the matter of compensation should be suitably decided taking into account his objections. Thus, it is clearly established that the non-petitioner-respondent was duly served upon with the notice; and not only did he personally appear before the court of Additional Collector but also submitted an unambiguous reply. Thus it cannot be said that the non-petitioner was denied opportunity of hearing in violation of principle of natural justice. Ostensibly, on the face of record, it is an apparent error of fact to hold that he (non-petitioner No.1) was neither issued notice nor was given opportunity of hearing; whereas on the contrary he was not only served upon with the notice but he appeared before the concerned court and submitted his reply.

8. Not only is there an error of fact apparent on the face of record as stated above, there is manifest error of law also. The main grouse of the non-petitioner-respondent who was appellant before Revenue Appellate Authority, was about inadequate amount of compensation as is obvious from his reply to the notice issued to him by Additional Collector. After determination of the compensation by Additional Collector vide his judgment dated 5.8.1997, the non-petitioner submitted another application dated 17.12.1999 to Additional Collector with a request to make a reference of the matter of compensation to the concerned civil court of jurisdiction, as the amount of compensation was not determined to his satisfaction. This application of 17.12.1999 is readily available on record of the Additional Collector. In such a situation the only option left before the courts below was to refer the matter to the District Judge under Section 89(4) of the Act as requested by the non-petitioner; but ignoring these material facts available on record and misconstruing the law learned Single Bench of this Court passed the impugned judgment dated 3.9.2008. In this regard, I am placing reliance on the pronouncement made by Hon'ble High Court of Kerala in the case of Thadikulangara Pylee's son Pathrose Vs. Ayyazhiveetil Lakshmi Amma's son Kuttan as reported in AIR 1969 (Kerala) 186 in which

Hon'ble High Court of Kerala has categorically held that "phrase error apparent on the face of record appearing under Order 47 Rule 1 of the Civil Procedure Code is not limited to errors of fact but extends to error of law as well." Thus, the impugned judgment, to my mind, suffers from the error of law also, besides errors of fact.

9. It is worthwhile to observe here that the learned Single Bench of this Court ignored the material facts which were available on the record, as the application of the non-petitioner who sought reference of the case to the competent civil court, was left unheeded and unattended. The demand of the non-petitioner to hike the compensation amount cannot be met by a revenue court in appeal. It squarely falls within the jurisdiction of competent civil court. Therefore, no purpose would be served in entertaining any appeal against such a demand which is about enhancement of the compensation. This material fact about the said application which is manifestly available on record, has been ignored by the learned Single Bench of this Court. In such a situation, review of the impugned judgment can be carried out in light of the judgment of the Supreme Court pronounced in the case 'Rajinder Singh Versus Lt. Governor Andman & Nicobar' as reported in 2006 AIR (SC) 75, wherein the Hon'ble Apex Court has unambiguously held that "an order passed without deciding many important issues and by ignoring material on record is a clear case of an error apparent on the face of record and non-consideration of the relevant documents."

10. As is evident from the above discussion, the relief sought by the non-petitioner-respondent cannot be provided by the revenue court in terms of enhancement of the compensation. Nonetheless two appeals have been filed in the revenue courts disregarding the relief sought and provision of law. Apparently, while passing the impugned judgment the learned Single Bench misconstrued the law and did not direct the affected party and the court below to make a reference for the appropriate determination of the compensation as is demanded by the non-petitioner. Hon'ble Supreme Court in the case of 'Board of Control for Cricket India Vs. Neta Ji Cricket Club' as reported in AIR 2005 (SC) 592 has held that a review is maintainable on misconception of law or fact by the court. In the instant review under consideration the

learned Single Bench has misconstrued the provision of law and acted under the misconception of law.

11. In view of the foregoing discussion, I deem it a fit case to carry out review of the impugned judgment, as it suffers not only from the error apparent on the face of record but there has been an error of law also and it has been passed ignoring the important material facts available on the record. Therefore, the review is allowed and the impugned judgment dated 3.9.2008 is rescinded.

12. Dwelling upon the merit of the case, it would not be out of place to mention here that the relief sought by the non-petitioner-respondent who was appellant before Revenue Appellate Authority was only for enhancement of the amount of compensation as determined by the Additional Collector vide his judgment dated 5.8.1997; and aggrieved against this judgment of Additional Collector, the non-petitioner has also submitted a written representation to make a reference of the judgment of Additional Collector to the competent civil court for enhancement of the compensation. As such this court is not competent to meet the demand of the non-petitioner and hike the amount of compensation. Therefore, the appeal No. 3136/03 is allowed and the judgment dated 28.5.2003 of Revenue Appellate Authority Chittorgarh is set aside. However, the non-petitioner-respondent is free to act under section 89(4) of the Act for enhancement of his amount of compensation before the competent civil court.

Pronounced.

(Dr. G.K. Tiwari)
Member