

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 22 of 2023

1. Shri Chandra Kumar Chettri,
Aged about 60 years,
S/o Lt. Shiba Kumar Chettri,
R/o Chujachen, Rongli, Pakyong District,
Sikkim-737106.
2. Smt. Phumtsung Lepcha,
Aged about 68 years,
D/o Late Dawa Namgay Lepcha,
R/o Chalisey, Rongli, Pakyong District,
Sikkim-737106.

..... Petitioners

Versus

Smt. Kipu Lepcha,
W/o Late Chutup Bhutia,
R/o Chujachen Markang,
P.O. & P.S. Rongli,
Pakyong District,
Sikkim-737106.

.....Respondent

Application under Article 227 of the Constitution of India.

Appearance:

Mr. Sajal Sharma, Ms. Shreya Sharma, Ms. Puja Kumari Singh and Ms. Roshni Chettri Advocates for the Petitioners.

Mr. Jorgay Namka, Senior Legal Aid Counsel with Ms. Phu Doma Bhutia, Junior Legal Aid Counsel for the Respondent.

Date of Hearing : 21.06.2024.

Date of Judgment : 21.06.2024

J U D G M E N T (O R A L)**Bhaskar Raj Pradhan, J.**

1. The question raised before this Court in this application under Article 227 of the Constitution of India (the application) relates to a challenge to the impugned Order dated 04.04.2023 passed by the learned Principal District Judge in a reference under section 3H of the National Highways Act, 1956 (the NH Act).

2. The land on which a dispute is sought to be raised by the petitioner no.1 is a land which is recorded in the name of the father of the respondent. It is the same land which has been acquired after following the procedure prescribed under the NH Act. After the proceedings under section 3A, 3B, 3C, 3D, 3E, 3F was over, the amount payable as compensation under section 3G of the NH Act was also determined. The amount so determined was deposited by the Central Government with the Competent Authority as required under section 3H(1) of the NH Act. The Competent Authority thereafter issued a communication dated 18.08.2021 to the father of the respondent to collect the compensation. Thereafter, the petitioner no.1 approached the District Collector on 08.09.2021 requesting him to release the entire compensation amount for acquisition of

land to him. Pursuant thereto, on 12.05.2022 the District Collector referred the dispute to the Principal District Judge under section 3H (4) of the NH Act stating that during the disposal of the compensation to the father of the respondent the petitioner no.1 had raised the dispute which could not be settled.

3. While this proceeding under the NH Act was on before the Competent Authority who was the District Collector, Gangtok it transpires that on 09.03.2021 the petitioner no.1 approached the Sub-Divisional Magistrate, Rongli stating that the land was in his possession from 01.11.1995 as per mutual transaction between the landowners and him having paid the value of the land and entering into an agreement. Although it was stated therein that documentary proof in support of the transaction was enclosed, the records does not reflect any such documentary proof. The application under Article 227 of the Constitution of India also does not annex these documents.

4. It also transpired that a parallel proceeding took place before the Sub-Divisional Magistrate, Rongli after the passing of the award dated 05.05.2021 by the Competent Authority. However, the Sub-Divisional Magistrate, Rongli

concluded that the matter could not be settled amicably and advised the parties to approach the competent court.

5. The questions therefore, which falls for determination is whether the petitioners had the locus to raise the dispute and whether the dispute could have been raised by the petitioners after the determination of the compensation payable to the father of the respondent.

6. The answers to both the questions above are in the negative. The petitioner no.1 has failed to establish his locus to raise the dispute with regard to the concerned immovable property as he was a stranger to it. The petitioner no.2 who seeks to claim interest in the land through a sale deed did not make any such claim in the proceedings before the Competent Authority under the NH Act. The petitioners also could not have raised the dispute after the proceedings under the NH Act for acquisition of land was over and the Competent Authority had already determined the amount of compensation payable to the father of the respondent as the owner of the land.

7. The Competent Authority under the NH Act is the jurisdiction of District Collector and not the Sub-Divisional Magistrate.

8. Besides conflicting statements, without any supporting documents, made by the petitioner no.1 before the Sub-Divisional Magistrate in his communication dated 09.03.2021 and the communication dated 08.09.2021 to the District Collector as referred to above he has produced an unregistered General Power of Attorney dated 21.08.2021 by which the petitioner no.2 has authorised the petitioner no.1 to collect the compensation money from the acquisition of the schedule property by NHIDCL and for matters connected therewith including representing the petitioner no.2 in legal proceedings.

9. In the communication dated 09.03.2021 to the Sub-Divisional Magistrate (which was filed by the respondent) the petitioner no.1 stated to the Sub-Divisional Magistrate that the property were under his possession w.e.f. 01.11.1995 *“as result of mutual transaction made between the land owners and the undersigned having paid the value of the said land and also by way of entering into an agreement between the concerned parties.”* In contrast in the communication dated 08.09.2021 to the District Collector the petitioner no.1 stated that he had been granted rights to absolutely possess and enjoy the schedule property by late Dawa Namgay Lepcha and subsequently by the petitioner no.2 and that he is still in possession of

the same. *Prima facie* this bald assertion of the petitioner no.1 is against Revenue Order No.1, which is an old law of Sikkim protected under Article 371F of the Constitution of India which does not permit the transfer of property from the petitioner no.2, a Lepcha, to the petitioner no.1 who is not a Bhutia or a Lepcha. Evidently and *prima facie* the purported transfer is also against section 54 of the Transfer of Property Act, 1882 which permits transfer of immoveable property of the value of one hundred rupees and upwards only by a registered instrument. The petitioner no.1 has failed to produce any such registered instrument in the present proceedings. The unregistered General Power of Attorney dated 21.08.2021 was executed after the completion of the entire proceeding under the NH Act for compensation and therefore the petitioner no.1 had no authority to represent the petitioner no.2 during the proceedings under the NH Act before the Competent Authority. Surprisingly the General Power of Attorney did not state that the petitioner no.1 had purchased the property from petitioner no.2 as stated in the letter dated 09.03.2021. Therefore, the petitioner no.1 had no locus to take part in the proceedings under the NH Act.

10. The petitioner no.2 has been conspicuously silent in the proceedings under the NH Act before the

Competent Authority although the pleadings in the writ petition makes it evident that she was aware of the proceeding and the declaration under section 3G of the NH Act declaring the intention of acquiring the concerned land in the name of the respondent's father. Evidently, it was only after the proceedings before the Competent Authority under the NH Act was over that the petitioner no.2 purportedly executed the General Power of Attorney in favour of the petitioner no.1.

11. It appears that before the learned Principal District Judge the petitioners sought to rely upon a sale deed registered on 19.03.1983 (sale deed) between Gyanchey Lepcha and Dawa Namgya Lepcha. A copy of the sale deed reflects that the description of the property earlier written in Nepali in the deed has been struck off and in place plot no.132 and 134 in English has been scribed without the signature of the executant as pointed out by the learned Senior Counsel for the respondent. Although in the writ petition it is asserted that late Dawa Namgay Lepcha had purchased plot no. 132 and 134 measuring 0.82 acres situated at Markang Ward under Chuchachen GPU Rongli from Shri Gyanchey Lepcha vide registered sale deed dated 18.10.1982 it has been empathetically denied by the respondent stating that the sale deed does not

pertain to plot no.132 and 134. There is no pleading in the writ petition stating that this sale deed dated 18.10.1982 was placed before the Competent Authority during the proceedings under the NH Act. There is also no pleading in the writ petition that the petitioner no.2 had raised any objection under the provisions of the NH Act to the acquisition of the concerned property which was reflected as that of the respondent in the declaration under section 3G of the NH Act.

12. The impugned order opined that on a joint reading of sub sections (3) and (4) of section 3H of the NH Act it was evident that reference to the Court is for the purpose of division of the compensation amount between those persons, who according to the Competent Authority, are entitled to the said amount and the Court would not have jurisdiction to go into the dispute of ownership/title of the property and other disputes pertaining to the land so acquired. The reference was returned with the request to comply with section 3H (3) of the NH Act and thereafter if there is any dispute regarding apportionment of the amount, the matter can be again referred to the Court.

13. The learned counsel for the petitioners draws issues with these observations of the learned Principal District Judge. It is his contention that if there is a civil

dispute it ought to be decided by the learned District Judge and the dispute having been raised the reference ought not to have been declined. He relied upon the judgment of the learned Single Bench of the High Court of Kerala at Ernakulam in ***Kaprat Family Trust, represented by its Trustee, Vijayabhanu Kaprat & Anr. vs. Union of India represented by its Secretary, Ministry of Road Transport and Highways and Ors.***¹ and the judgment of the Division Bench of the Bombay High Court in ***Suresh Babu Dupte & Anr. vs. State of Maharashtra & Anr.***².

14. The two judgments referred to by the learned counsel for the petitioners are distinguishable. In ***Kaprat Family Trust*** (supra) it is clear that the petitioners therein had set up a claim of ownership during the proceedings under the NH Act. The Kerala High Court therefore, held that under the NH Act “*it is only when a contest is raised with respect to the entitlement of the owner of a land in being disbursed the amount of compensation under the award relating to it, can the CALA refer the matter to the competent District Court under the provisions of section 3H (4) of the NH Act after being convinced that a dispute arises*”. In ***Suresh Babu Dupte*** (supra) the High Court of Bombay opined that if the dispute with regard to the ownership/title

¹ 2022 SCC OnLine Ker 8650

² 2022 SCC OnLine Bom 6941

exists, then under section 3H (4) of the NH Act, the Competent Authority has to refer it to the Civil Court. On the contrary, in the present case, as seen earlier the petitioners had failed to raise a dispute before the Competent Authority during the proceedings under the NH Act.

15. In *Vinod Kumar & Ors. vs. District Magistrate Mau & Ors.*³ the Supreme Court examined a case in which the High Court had taken a view that the District Magistrate is competent to look into the legality and validity of the order passed by the Special Land Acquisition Officer under section 3G (5) of the NH Act. The Competent Authority vide its award passed under section 3G of the NH Act had determined the compensation to be paid to the landowners who were parties before the Supreme Court for the acquired land. The dispute had been raised regarding apportionment of the compensation between themselves and the appellant therein. The Supreme Court opined that in accordance with the legislative scheme i.e. section 3H (3) of the NH Act the Competent Authority is required to determine the shares of the landowners in the compensation. On examination of section 3H of the NH Act the Supreme Court held:

³ (2023) SCC OnLine SC 787

“23. *The scheme of the Act, 1956 and the statutory provisions referred to above makes it very clear that once any land is acquired under the Act, 1956, the competent authority is obliged to pay an amount by way of compensation. There is a procedure which has been prescribed under Section 3G of the Act, 1956. Sub-clause (5) of Section 3G makes it abundantly clear that if the amount determined by the competent authority under sub-section (1) or sub-section (2) of Section 3G is not acceptable to either of the parties, the amount will have to be determined by the arbitrator who may be appointed by the Central Government on the strength of an application by either of the parties. Section 3H provides that the amount determined towards compensation under Section 3G will have to be deposited by the Central Government in accordance with the rules. It is only after such amount is deposited by the competent authority that the possession of the land can be taken. Sub-clause (4) of Section 3H talks about apportionment of the amount. The language of sub-clause (4) of Section 3H is plain and simple. It provides that if any disputes arises as to the apportionment of the amount or any part thereof, the competent authority is obliged to refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.*

24. *In the case on hand, the High Court seems to have completely misread the provisions of the Act, 1956. It fell into error as it failed to apply the well settled principle of law that for construing a legal provision, the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision state. If the provision is unambiguous and from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statute. The other rules of construction are called into aid only when the legislative intent is not clear.*

25. *It may be mentioned in the aforesaid context that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation, for example, the mischief rule/purposive construction, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. The language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistakes. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency.*

26. *There is a fine distinction between determining the amount to be paid towards compensation and the*

apportionment of the amount. The legislature has thought fit to confer powers upon the Principal Civil Court of original jurisdiction to determine the dispute arising as to the apportionment of the amount. There is a reason, why the legislature has thought fit to confer such power to the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction is land is situated. We shall try to explain hereinafter.

27. The question of apportionment of compensation is not free from difficulties. In apportioning the compensation, the Court has to give to each claimant the value of the interest which he has lost by compulsory acquisition. So stated, the proposition may appear simple, but in its practical application numerous complicated problems arise in apportioning the compensation awarded. The difficulty experienced is due to the nature of a variety of interests, rights and claims to land which have to be valued in terms of money. The compensation awarded for compulsory acquisition is the value of all the interests which are extinguished and that compensation has to be distributed equitably amongst persons having interest therein and the Court must proceed to apportion the compensation so that the aggregate value of all interests is equal to the amount of compensation awarded. But in the valuation of competing interests, which from its very nature is dependent upon indefinite factors and uncertain data, considerable difficulty is encountered. Indisputably, in apportioning compensation the Court cannot proceed upon hypothetical considerations but must proceed as far as possible to make an accurate determination of the value of the respective interests which are lost. The Court must, in each case, having regard to the circumstances and the possibility of a precise determination of the value having regard to the materials available, adopt that method of valuation which equitably distributes the compensation between the persons entitled thereto. [See : Dossibai Nanabhoy Jeejeebhoy v. P.M. Bharucha, (1956) 60 Bom LR 1208]

28. Thus, the only general principle one could state is that apportionment under sub-clause (4) of Section 3H of the Act, 1956 is not a revaluation but a distribution of the value already fixed among the several persons interested in the land acquired in accordance with the nature and quantum of the respective interests. In ascertainment of those interests, the determination of their relative importance and the manner in which they can be said to have contributed to the total value fixed are questions to be decided in the light of the circumstances of each case and the relevant provisions of law governing the rights of the parties. The actual rule for apportionment has to be formulated in each case so as to ensure a just and equitable distribution of the total value or compensation among the persons interested in the land.

29. *In the circumstances referred to above, the legislature thought fit to assign such function to none other than the Principal Civil Court of original jurisdiction.*

.....”

“33. *We are of the view that when it comes to resolving the dispute relating to apportionment of the amount determined towards compensation, it is only the Principal Civil Court of original jurisdiction which can do so. Principal Civil Court means the Court of the District Judge.*

34. *Our final conclusion is as under : - If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.”*

[Emphasis supplied]

16. In the present case the following dates are relevant. On 03.11.2020 notification under section 3A of the NH Act was issued declaring the Central Government’s intention to acquire various lands including the concerned land. On 26.02.2021 the notification under section 3D of the NH Act was issued declaring that the Central Government would acquire the land of the respondent’s father. On 08.03.2021 public notice as contemplated under section 3G (4) of the NH Act was issued seeking claims from “persons interested in the land to be acquired.”

On 05.05.2021 the award was passed determining the amount of compensation payable to the land declared to be acquired. On 18.08.2021 the Competent Authority issued a notice to the father of the respondent asking him to collect the compensation amount as determined. The petitioners failed to approach the Competent Authority during the entire period till the issuance of notice dated 18.08.2021 by the Competent Authority to the father of the respondent. More specifically the petitioners did not object to the acquisition under section 3C of the NH Act as “person interested in the land” or; claim as “person interested in the land to be acquired” when public notice was issued on 08.03.2021.

17. On close scrutiny of the provisions of the NH Act it seems quite clear that the NH Act has been enacted to provide declaration of certain Highways as National Highway and for matters connected therewith. The NH Act provides for power to acquire land in public interest for public purpose and therefore, evidently the NH Act must operate as contemplated therein. Time therefore is of essence in these proceedings. When a law requires that a certain thing must be done in a certain way it must be done in that way and in no other. After the determination of the compensation amount payable and the issuance of the

notice dated 18.08.2021 to the father of the respondent to collect the compensation the petitioners could not have turned the clock around and raise a dispute regarding their “interest in land” under the provisions of section 3H sub sections (3) and (4) of the NH Act which relates to claims by “person interested in the amount deposited” and “apportionment of the amount”. The language of sections 3C and 3G which uses the phrase “person interested in the land” is not the same as the language of section 3H (3) which uses the phrase “person claims to be interested in the amount deposited” and “apportionment of the amount” as used in 3H (4) of the NH Act. The argument sought to be raised by the learned Counsel for the petitioners that the dispute regarding “interest in land” could be raised at the stage of section 3H (3) and (4) even if the petitioners had failed to raise any objection during the proceedings under the NH Act by reading the phrase in section 3H (3) i.e. “person claims to be interested in the amount deposited” to mean the same as “person interested in the land” is clearly against the principles of interpretation of statute. As the Supreme Court has held in **Vinod Kumar (supra)** where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. The language employed in a

statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistakes. The presumption is that it intended to say what it has said.

18. The jurisdiction of the Principal Civil Court of original jurisdiction under section 3(H) (4) of the NH Act is a limited jurisdiction to decide on the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable. This provision is made for a different purpose than that of a civil court deciding a civil dispute in a civil suit.

19. This Court is therefore, of the view that the impugned Order to the extent that it refused to determine the reference made by the District Collector was correct. It is also evident that all the facts had not been placed before the learned Principal District Judge at the time of the reference. The second portion of the impugned Order by which the learned Principal District Judge returned the reference and requested the District Collector to comply with the provisions of section 3H(3) of the NH Act and if there be any dispute regarding apportionment of the amount, the matter may be referred to him again may not be correct since the Competent Authority had already determined the amount of compensation payable to the

“person interested in the land” i.e. the father of the respondent without any objection from the petitioners.

20. The impugned Order is therefore, modified in exercise of the power under Article 227 of the Constitution of India. This Court is also of the view that the reference made by the District Collector was misconceived, wrong and incorrect as there existed no dispute regarding apportionment of the amount of compensation which required to have been examined by the Civil Court in the proceeding under section 3H (4) of the NH Act. The reference made by the District Collector is set aside. Resultantly, the jurisdictional District Collector is directed to proceed as per law for release of the compensation as determined. However, the compensation amount determined or the concerned land shall not be released to the respondent for a period of one and half months from the date of this judgment. Keeping in mind the fact that the petitioner no.2 seeks to rely upon a registered sale deed to make a claim with regard to the concerned property, liberty is granted to the petitioner no.2 to approach the civil court for appropriate reliefs as per law subject to the laws of limitation and other equities, if so advised within the said period of one and half months. In such an event, needless to say, the respondent shall have the right to raise all such

objections that she can raise including contesting the validity of purported sale deed.

21. The application under Article 227 of the Constitution of India is dismissed.

22. A copy of this judgment shall be forwarded to the learned Principal District Judge, East Sikkim, at Gangtok.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**
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