

Ramo and another v. The Collector, Land Acquisition Urban Estate,  
Faridabad and others (J. V. Gupta, J.)

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independent of section 165-A. An accused who habitually commits an offence shall still be convicted under section 165-A, Indian Penal Code. In other words, a person who is immune under section 8, cannot be prosecuted under section 5(3) of the Act. A contrary view taken by the learned Special Judge, Kurukshetra, in the impugned order dated June 4, 1984, cannot be sustained.

(5) In the result, the petition is allowed and the impugned orders of the Special Judge Kurukshetra, dated April 30, 1984, and June 4, 1984, as also the charge framed against the petitioner under section 5(3) (ii) of the Act in *State v. Abhey Singh* are quashed.

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N.K.S.

*Before J. V. Gupta, J.*

RAMO AND ANOTHER,—*Petitioners.*

*versus*

THE COLLECTOR, LAND ACQUISITION URBAN ESTATE,  
FARIDABAD AND OTHERS,—*Respondents.*

*Civil Revision No. 66 of 1977.*

November 28, 1984.

*Land Acquisition Act (I of 1894)—Sections 9, 18 and 53—Code of Civil Procedure (V of 1908)—Section 141—Award given by the Land Acquisition Collector—Reference made under Section 18 for enhancement of compensation—Claimants absenting themselves on the date fixed for their evidence—District Judge dismissing the reference on merits holding that the compensation awarded was fair—Such procedure—Whether valid—Proper course for the court to follow—Stated.*

*Held*, that there is no provision in the Land Acquisition Act, 1894, directly dealing with the situation where a party to the reference absents, nor there is any provision which prevents the Court to pass an order of dismissal of the reference for non-prosecution. Thus, there being no bar, express or implied in the Act to the applicability of any provision of the Code of Civil Procedure and the provisions of the Code in general being made applicable by the provisions of Section 53 of the Act and section 141 of the Code, it cannot be said that the application for setting aside of the order of dismissal

of the reference in default is not maintainable. Where the claimants absent themselves on the date fixed in the case, the proper course for the Court is to dismiss the reference for default of appearance so that the claimants could make an application for restoration of the reference, if so advised. There is no occasion for the Court to hold that the amount of compensation assessed by the Land Acquisition Collector was fair.

(Para 5).

*Petition under section 115 C.P.C. read with Article 227 of the Constitution of India, for revision of the order of the Court of Shri R. I. Lamba, Additional District Judge, Gurgaon, dated 13th October, 1976 affirming the award made by the Land Acquisition Collector and declining the reference Under Section 18 of the Land Acquisition Act.*

R. N. Narula, Advocate, for the Petitioner.

M. Puri, Advocate, for the Respondent.

#### JUDGMENT

*J. V. Gupta, J.—*

(1) This revision petition is directed against the order of the Additional District Judge, Gurgaon, dated October 13, 1976, whereby the award made by the Land Acquisition Collector was affirmed and the reference under section 18 of the Land Acquisition Act, (hereinafter called the Act), was rejected.

2. The Land Acquisition Collector gave the award under section 9 of the Act, for the land acquired which belonged to the petitioners, on June 14, 1972. Reference under section 18 was made on July 20, 1972. The first appearance of the parties before the learned Additional District Judge was on January 9, 1976. However, on June 5, 1976, the date fixed for the evidence, the case was further adjourned to August 11, 1976, for evidence. Meanwhile, on July 17, 1976, the date was changed from August 11, 1976 to October 13, 1976, as the Presiding Officer was not to hold the Court on August 11, 1976. It was stated in the order dated July 17, 1976, that the parties and the counsel be informed of the change of date. On October 13, 1976, no one was present for the claimants-petitioners. The learned Additional District Judge found that the Court notices were ordered to be issued to the learned counsel for the parties and that they had been served with the said notices. Shri S. B.

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Nagar, Advocate, for the petitioners, was served with the Court notice on August 10, 1976 and, therefore, the claimants had ample time to produce the evidence, but none appeared for them for adducing evidence on the issues framed. Instead of dismissing the reference for default of appearance, the learned Additional District Judge proceeded with the case and held that the compensation amount as assessed by the Land Acquisition Officer was fair. Consequently, the reference under section 18 of the Act, was declined.

3. The learned counsel for the petitioners contended that on July 17, 1976, it was directed that the notices be issued to the parties and their counsel. Admittedly no notice was issued to the parties. Only their counsel were informed. The counsel for the claimants did not inform them about the change of the date from August 11, 1976 to October 13, 1976. In any case, argued the learned counsel, at the most, if no one was present on behalf of the petitioners the reference under section 18 of the Act could be dismissed for default of appearance, but could not be dismissed on merits by holding that the award of the Collector was fair. In support of the contention, the learned counsel relied upon *A. Abhasbhai v. Collector, Panch Mandals* (1) and *Pullamma v. Additional Special Land Acquisition Officer, Bangalore*, (2).

4. After hearing the learned counsel for the parties, I find force in the contention raised on behalf of the petitioners.

5. It was held in *Pullamma's case* (supra), that there is no provision in the Act directly dealing with the situation where a party to the reference absents, nor there is any provision which prevents the Court to pass an order of dismissal of the reference for non-prosecution. Thus, there being no bar, express or implied in the Act to the applicability of any provision of the Code of Civil Procedure and the provisions of the Code of Civil Procedure in general being made applicable by the provisions of section 53 of the Act, and section 141 of the Code of Civil Procedure, it cannot be said that the application for the setting aside of the order of dismissal of the reference in default is not maintainable. Under the circumstances, in the present case, the proper course for the learned Additional District Judge was to dismiss the reference for default

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(1) 1967 Gujrat 118.

(2) A.I.R. 1977 Karnataka.

of appearance so that the claimants could make an application for restoration of the reference if so advised. There was no occasion for the Additional District Judge to hold that the amount of compensation assessed by the Land Acquisition Collector was fair.

6. Under the circumstances, the revision petition succeeds and is allowed. The impugned order is set aside and the case is sent back to the District Judge, Gurgaon, for proceeding with the reference in accordance with law. The parties have been directed to appear before the District Judge on 20th December, 1984.

N.K.S.

*Before J. V. Gupta, J.*

PRABHA KHANNA,—*Petitioner.*

*versus*

DR. SATISH CHANDRA GUPTA,—*Respondent.*

*Civil Revision No. 2736 of 1984.*

November 28, 1984.

*Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Section 13(2)(i) first proviso—Tender of rent within fifteen days of the first hearing—Words ‘of the first hearing’ and ‘from the first hearing’—Whether synonymous—First date of hearing—Whether to be excluded in computing the period of fifteen days.*

*Held, that the use of the words fifteen days ‘of the’ first date of hearing, as occurring in the first proviso to section 13(2) (i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 or fifteen days ‘from the first date of hearing, are synonymous and the day of the first date of hearing has to be excluded in computing the period of fifteen days as provided under the first proviso to section 13(2) (i) of the Act.*

(Para 6).

*Petition under section 15(6) Haryana Urban (Control of Rent and Eviction) Act 1973 for revision of the Order of the Court of Shri S. D. Anand, Appellate Authority, Faridabad, date 8th October, 1984 reversing that of the Order of the Court of Shri Raj Kumar, Rent Controller, Faridabad dated 31st March, 1984 setting aside*