

SUSHIL KUMAR SEN

v.

STATE OF BIHAR

March 17, 1975

[A. N. RAY, C.J., K. K. MATHEW AND V. R. KRISHNA IYER, JJ.]

Practice—Appellate court holding order on review not maintainable—Effect of.

The appellant's land was acquired and the Land Acquisition Officer awarded compensation at the rate of Rs. 14/- per *katha*. The appellant applied for reference under s. 18 of the Land Acquisition Act and on 18-8-1961 the Additional District Judge held that he was entitled to compensation at Rs. 200/- per *katha*. The respondent State applied for review of the judgment under O.47, r.1, C.P.C. On 26-9-1961 the Additional District Judge allowed the application for review and reduced the compensation to Rs. 75/- per *katha*. The respondent filed an appeal to the High Court purporting to be against both the decrees dated 18-8-1961 and 26-9-1961 but in fact was only against the latter, and the appellant filed a cross appeal challenging the maintainability of the review petition before the Additional District Judge. The High Court held that the Addl. District Judge was wrong in entertaining the review, but on merits the High Court dismissed the appeal of the respondent as well as the cross appeal of the appellant thereby maintaining the compensation awarded at the rate of Rs. 75/- per *katha*.

Allowing the appeal to this Court,

HELD : It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. When the respondent filed the appeal before the High Court it could not have filed an appeal against the decree dated 18-8-1961, because, that decree had already been superseded by the decree dated 26-9-1961 passed on review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed on review. When the High Court held that the lower court was wrong in allowing the review it should have allowed the cross appeal. Since the decree passed on 18-8-1961 awarding compensation at the rate of Rs. 200 per *katha* had been revived and come into life again, and no appeal was preferred by the respondent against that decree, that decree had become final. [943 G-944 A-C]

Per Krishna Iyer, J :

[While the appeal has to be allowed, Parliament may consider the wisdom of making the judge the ultimate guardian of justice by a comprehensive, though guardedly worded, provision where the hindrance to rightful relief relates to infirmities, even serious, sounding in procedural law. In the present case, almost every step a reasonable litigant could take was taken by the State to challenge the extraordinary increase in the rate of compensation awarded by the civil court but the omission to attack the increase awarded in the High Court resulted in procedural law dominating substantive rights and substantial justice.] [944 F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1252 of 1970.

From the judgment and decree dated 16th February, 1968 of the Patna High Court in Appeal for Original Decree No. 81 of 1962.

P. K. Chatterjee and Rathin Das, for the appellant.

D. Goburdhan, for the respondent.

The Judgment of A. N. Ray, C.J. and K. K. Mathew, J. was delivered by Mathew, J. V. R. Krishna Iyer, J. gave a separate Opinion.

MATHEW, J.—The appellant was the owner of 3.30 acres—roughly equal to 7 *bighas*, 17 *kathas* and 14 *dhurs*—of land. The land was

- A acquired under the provisions of the Land Acquisition Act. The Land Acquisition Officer by his award dated 12-10-1957 gave compensation at the rate of Rs. 14/- per *katha* for the land. The total compensation including the value of trees and other improvements came to Rs. 6,775.22p. The appellant was dissatisfied with the award. He filed an application before the Land Acquisition Collector for referring the matter to the District Court under s. 18 of the Land Acquisition Act
- B claiming compensation for the lands at the rate of Rs. 500/- per *katha*. The case was referred and the Additional District Judge, Purnea by his judgment dated 18-8-1961 found that the appellant was entitled to compensation for the land acquired at the rate of Rs. 200/- per *katha* and also made certain other modifications in the amount of compensation under the other heads. On 22-8-1961, the respondent, the State of Bihar, filed an application for review, under Order 47, Rule 1, of the
- C Civil Procedure Code, of the judgment dated 18-8-1961 on the basis of discovery of new and important evidence as regards the market value of the land which was not available to it in spite of the exercise of due diligence. The learned Additional District Judge allowed the application for review and passed fresh judgment on 26-9-1961 reducing the compensation for land from Rs. 200/- to Rs. 75/- per *katha*. Thereafter the respondent filed Appeal No. 81 of 1962 in the High Court of
- D Patna. The Memorandum of Appeal stated that the appeal was being preferred against the decrees dated 18-8-1961/26-9-1961, but the grounds taken in Memorandum of appeal as well as the court fee paid would show that the appeal was only against the decree dated 26-9-1961 awarding compensation at the rate of Rs. 75/- per *katha* and not against the decree dated 18-8-1961 awarding compensation at the rate of
- E Rs. 200/- per *katha*. The appellant filed a cross appeal challenging the maintainability of the review petition filed by the respondent before the Additional District Judge as also the order passed thereon by him allowing the petition and vacating the decree dated 18-8-1961. The appeal and the cross appeal were disposed of by the judgment of the High Court dated 16-2-1968. The High Court found that the Additional District Judge went wrong in entertaining the review and vacating the judgment and decree dated 18-8-1961 but, nevertheless, it considered
- F the appeal filed by the respondent on merits and dismissed the appeal and cross appeal thereby maintaining the compensation awarded for the land at the rate of Rs. 75/- per *katha* by the judgment and decree dated 26-9-1961 of the Additional District Judge. This appeal, on the basis of a certificate, is directed against the decree of the High Court.

- G It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one (see *Nibaran Chandra Sikdar v. Abdul Hakim*⁽¹⁾, *Kanhaiya Lal v. Baldev Prasad*⁽²⁾, *Brijbaso Lal v. Salig Ram*⁽³⁾ and *Pyari Mohan Kundu v. Kalu Khan*⁽⁴⁾).

- H The respondent did not file any appeal from the decree dated 18-8-1961 awarding compensation for the land acquired at the rate of

(1) A.I.R. 1928 Calcutta 418.

(2) I.L.R. 28 Allahabad 240.

(3) I.L.R. 34 Allahabad 282.

(4) I.L.R. 44 Calcutta 1011.

Rs. 200/- per *katha*. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated 18-8-1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated 26-9-1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on 18-8-1961 awarding compensation for the land at the rate of Rs. 200/- per *katha*, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again.

The High Court should have allowed the cross appeal; and dismissed the appeal, which was, and could only be against the decree passed on 26-9-1961 after the review. We therefore set aside the judgment and decree passed by the High Court and allow the appeal. The effect of this judgment would be to restore the decree passed by the Additional District Judge on 18-8-1961. We make no order as to costs.

KRISHNA IYER, J.—I concur regretfully with the result reached by the infallible logic of the law set out by my learned brother Mathew J. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. In the present case, almost every step a reasonable litigant could take was taken by the State to challenge the extraordinary increase in the rate of compensation awarded by the civil court. And, by hindsight, one finds that the very success in the review application and at the appellate stage has proved a disaster to the party. Maybe, Government might have successfully attacked the increase awarded in appeal, producing the additional evidence there. But maybes have no place in the merciless consequence of vital procedural flaws. Parliament, I hope, will consider the wisdom of making the Judge the ultimate guardian of justice by a comprehensive, though guardedly worded, provision where the hindrance to rightful relief relates to infirmities, even serious, founding in procedural law. Justice is the goal of jurisprudence—processual, as much as substantive. While this appeal has to be allowed, for reasons set out impeccably by my learned brother, I must sound a pessimistic note that it is too puritanical for a legal system to

- A sacrifice the end product of equity and good conscience at the altar of processual punctiliousness and it is not too radical to avert a breakdown of obvious justice by bending sharply, if need be, the prescriptions of procedure. The wages of procedural sin should never be the death of rights.

B V.P.S.

Appeal allowed.