

**CRA No.970/2016**

**28.07.2016**

Shri T.C. Jain, learned counsel for the appellant.

Shri Anand Soni, learned counsel for respondent.

**ORDER**

Heard.

This appeal filed under Section 17 of M.P. Vishesh Nyayalya Adhiniyam, 2011 (hereinafter called ' the Act') read with rule 10(7) of M.P. Vishesh Nyayalya Niyam, 2012 (hereinafter referred to as 'the Rules') is directed against the order passed by learned Special Judge, Indore appointed under the Act, dated 22.06.2016 in special case No.08/14.

Relevant facts of the case are that the present appellant is facing the proceeding before Special Judge under Section 13 of the Act for confiscation of his property. He filed his statement of defence when the matter reached at the stage of final argument. He filed an application under rule 10(7) of the Rules for contesting valuation of his properties which were the matter of confiscation proceedings before the Special court. It was stated in the application that valuation by the prosecuting agency consisting three members committee of Engineers from Public Works Department of State Government was done in arbitrary manner, and therefore, he now wants to contest the valuation of the property.

Learned Special Judge observed in the impugned order that in the defence statement of the appellant, there was no mention of the fact that the appellant proposes to contest the valuation done by the prosecuting agency. It was further observed that when the case reached at the stage of final argument, this application is filed only to linger on the matter and on this premise, learned Special Judge dismissed the application.

Counsel for the appellant submits that appellant has right to contest the valuation done by the prosecuting agency. He had been given this right by rule-10 of the Rules itself. However, the only fault on his part was that the fact that he wanted to contest the valuation done by the prosecuting agency was not mentioned in his defence statement, and therefore, the moot question to be decided in this appeal, according to him, is whether in this case, he forfeited his right to contest the valuation report or he may be permitted to do so to safeguard his interests and rights in the property.

Counsel for the State vehemently opposed the application. According to him, the scheme given in rule 10 of the Rules is very clear if the appellant wanted to contest the valuation submitted by the prosecuting agency, he should have mentioned this in his defence statement only in his statement he can be permitted to contest the valuation report of his properties when such prayer was made in his defence statement. Now, when reply had already been filed by the State, he cannot be permitted to contest the valuation

and if permitted valuable rights accrued to the State shall be lost.

I have gone through the impugned order and have also taken into consideration the rival contentions of both the counsel. Sub-rules 1 to 7 of rule-10 provides as under :-

**“10. Authorised officer to follow summary procedure – (1) On receipt of application under Section 13 read with Section 14 of the Act, the authorised officer shall immediately issue notice to the person affected.**

**(2) If the person affected responds to the notice and appears before the authorised officer either in person or through his legal representative, he shall be furnished with the copy of the application filed under Section 13 alongwith all the enclosures. The authorised officer shall allow 30 days time to file his statement in defence. If for good and valid reasons, to the satisfaction of the authorised officer, the person affected does not file his statement of defence, he may allow a further period of 15 days within which he shall have to file his statement of defence.**

**(3) If the person affected does not file his statement of defence within the prescribed period of 30 days or within extended period of 15 days, it shall be presumed that he has no defence to put forward and then the authorised officer shall be free to adjudicate the proceeding instituted before him.**

**(4) If the person affected submits his statement in defence, a copy of the same shall be made available to the Special Public Prosecutor conducting the proceeding before the authorised officer who shall have the opportunity to reply to the same.**

**(5) The Special Public Prosecutor shall have to**

**reply within a maximum period of 15 days from service of statement of defence upon him.**

**(6) If the Special Public Prosecutor fails to submit his reply within 15 days, the authorised officer may for good or valid reasons allow a further period of 15 days for filing the reply, failing which the authorised officer shall proceed to adjudicate the proceeding as if the prosecution has no reply to submit.**

**(7) If the person affected proposes to contest the valuation of the property, the authorised officer may take assistance of such State Government agency or Central Government agency or any other officer or person technically qualified as he may deem fit and proper.**

**(8).....”**

It is apparent that in the rule it is expected that the appellant should have expressed his intention to contest the valuation done by the authorised agency. However, such provision cannot be mandatory. If in opinion of the trial judge, there are some inherent defects in the valuation report submitted by the prosecuting agency which raised a doubt that due to these defects proper valuation was not done, such opportunity should be given to the accused. In criminal case just decision is the basis, and therefore, when in opinion of the learned Special Judge it is just and fair to give an opportunity to the appellant to contest the valuation done by the prosecuting agency it must not be refused merely on the ground that on an advice given by the counsel, he did not mention his intention to do so in his defence statement. He should not be deprived of his right to

adduce his defence in proper manner.

In this view of the matter, the order passed by learned Special Judge is set-aside. The matter is remanded back with a direction to the applicant and the trial judge to give one single opportunity to the appellant and the State to show how he finds valuation done by the prosecuting agency improper and after taking into consideration the averments made by him and the reply filed on behalf of prosecuting agency, if any, the Special Judge should decide whether such opportunity is necessary for just decision of the case.

With such observation and direction, this appeal stands disposed of.

**(Alok Verma)**  
**Judge**

Chitranjan