(2005) 04 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : CIA No. 36 Of 2000

Collector, Land Acquisition — APPELLANT

Vs

Mohan Lal — RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Land Acquisition Act, 1990 — Section 11, 18, 35

Citation : (2005) JKJ 156 Supp

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : A.H.Qazi, Advocates appearing for the Parties

Judgement

1. Notification under subsection (1) of Section 4 of the Land Acquisition Act, 1990 (Svt.) (hereinafter referred to as the Act), was issued vide No.

AC/LA/51316 dated 26.10.1995 for acquiring land measuring 4 kanals 12 marlas comprising of khasra No. 349/315 situate at village Patrara,

Tehsil Rajouri required for public purpose, namely, construction of 1.6 MVA/33/11 KV Receiving Station by the Power Development

Department. No objection was received from any interested person. Another Notification under Section 6 read with section 7 of the Act was

issued. The owner put his claim that he may be awarded compensation @ Rs. 45,000/ per kanals, however, the learned Collector, taking into

consideration the location of the land, the commercial potential as well as the agriculture produce, recommended Rs. 40,000/ as tentative

compensation per kanal with 15% Jabrana to the District Collector, Deputy Commissioner Rajouri, for approval. The District Collector did not

approve the recommendations of the Collector and recommended the rate of Rs. 24,000/ per kanal. The Collector, on the basis of said direction, assessed the compensation @ Rs. 24,000/ per kanal with 15% Jabrana.

2. However, the land owner was not satisfied with the award, as such, he applied for reference under Section 18 of the Act and claimed

compensation @ Rs. 80,000/ per kanal. The Collector referred the matter to the District Judge, Rajouri for determination of the value of the land.

The District Judge, Rajouri issued noticed to the Collector who filed objections by alleging that rate of Rs, 24,000/ in question was fixed by the

competent authority with Jabrana @ 15%. It was also pleaded by the Collector that the land has no commercial value as claimed by the land

owners which was said to be Rs. 45,000/ per kanal during the acquisition proceedings. However, in the application dated 08.11.1996 moved by

respondent for making reference under Section 18 of the Act, he demanded Rs. 80,000/ per kanal. It was further pleaded that during the process

of acquisition the land owner has stated that value of the land is Rs. 45,000/ per kanal, which is evident from his application dated 8.11.1996, as

such, the demand of Rs. 80,000/ per kanal was not genuine. The learned District Judge, after recording the evidence of the parties, assessed the

value of the land as Rs, 42,000/ per kanal with 15% Jabrana. The land owner was also held to be entitled to interest @ 4% from the date of

issuance of notification till final realization of the award amount, against which the State through Collector has preferred the present appeal.

3. Learned AAG Mr. A.H. Qazi, has assailed the findings of the District Judge, Rajouri on the ground that there was no evidence before District

Judge on the basis of which compensation of acquired land has been assessed @ Rs. 42,000/ per kanal. He submitted that the learned Collector

after assessing the compensation tentatively under Sub Section 1 of Section 11 of the Act, referred the matter to the District Collector for

approval, who had been authorized to approve the tentative assessment but the District Collector did not agree with the recommendations and on

the basis of report of Tehsildar and subordinate staff, he recommended the rate @ Rs. 24,000/ per kanal and in pursuance of the said direction,

the Collector passed the award assessing the value of the land @ 24,000/ per kanal. He further submitted that there was no evidence before the

District Judge on the basis of which the compensation of the acquired land had been assessed @ Rs. 42,000/ per kanal. He also contended that the District Judge has not taken into consideration that the land is not located on the roadside nor has the potentiality of commercial value. He

further submitted that the Collector has assessed the tentative compensation erroneously which has weighed with the learned District Judge while

passing the impugned judgment. He submitted that the District Collector is the competent authority to approve or not to approve the tentative

assessment made by the Collector.

4. I have perused the record and given my thoughtful consideration to the contentions raised.

5. Before considering the contention raised by the learned AAG, it will be appropriate to notice the relevant provisions of Section 11 of the Act,

which reads as under:

77. Enquiry and award by the Collector; (1) on the day so fixed or on any other day to which the inquiry has been adjourned, the collector shall

proceed to inquiry into the objections, (if any) which

(a) any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the

land at the date of publication of the notification under subsection (1) of section 4 and into the respective interest of the persons claiming the

compensation:

(b) the Head of the Department or his nominee has stated pursuant to notice given under section 9A; and shall tentatively assess the compensation

which in his opinion should be allowed for the land.

(2) Where the amount of compensation tentatively assessed under subsection (1) exceeds (the amount specified by the Government by notification.

The collector shall refer the record of the case alongwith the statement of the tentative assessment of compensation for approval of the Revenue

Minister or an officer specially empowered by him in this behalf.

(3) In a case referred by the Collector under subsection (2) the Revenue Minister or an officer empowered by him in this behalf shall, after

considering the report of the collector and after making such further inquiry as may be necessary, determine the proper value of the property to the

acquired and communicate it to the collector and the value so determined shall form the basis of compensation to be allowed for the land.

(4) The collector shall thereupon make an award under his hand of

(i) the true area of the land;

(ii) the compensation payable for the land, and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose

claims, he has information, whether or not they have respectively appeared before him.

(5) An award made in contravention of the directions of the revenue Minister or an officer specially empowered by him in this behalf with respect

to the value of the land shall be void

6. A bare perusal of the above provisions shows that the Collector has to tentatively assess the compensation of the acquired land under sub

section (2) of the Act and thereafter refer the same for the approval of Revenue Minister or an officer specifically empowered by him in this behalf.

On receipt of the tentative assessment the Revenue Minister or an officer empowered by him in this behalf shall, after considering the report of the

Collector and after making such further enquiry as may be necessary to determine the proper value of the property acquired, may communicate the

same to the Collector. The intention of the Legislature is clear that if the District Collector did not agree with the tentative compensation assessed

than he will further enquire himself or through any other agency and will pass an order of assessment for the property to be acquired. But the

District Collector has no power to disagree with the tentative assessment made by the Collector without holding an enquiry. It is not the

whim/choice of the District Collector to enhance the compensation or to reduce the same but there must be some evidence before the District

Collector on the basis of which he can disagree with the tentative assessment of the Collector.

7. In the instant case it is alleged that District Collector, who has been authorized to approve the tentative assessment of the land acquired has not

held any inquiry himself but it is alleged that he has made the assessment on the basis of report of the Tehsildar and subordinate staff. The appellant

has not produced on record the report of the Tehsildar nor he has been examined in evidence. On the other hand respondent has examined M.B.

Bhat, Assistant Commissioner (Revenue) Rajouri who stated that he had visited the land site, which is located on the roadside. He also admitted

that portion of the land which is adjoining the road could be utilized for the construction of shops. At the time of acquisition of land he was

Tehsildar of the area. He further admitted that after acquisition of the land, prices have gone high. So from the evidence of the Tehsildar itself that

the acquired land has the commercial potentiality, it can easily be said that the subject land can be used for the construction of shops and other

commercial purposes, therefore, I am of the view that the District Judge has not committed any legal error in awarding the compensation @

42,000/ per kanal. However, learned District Judge has committed legal error in awarding the interest from the date of notification. Interest has to

be awarded in terms of Section 35 of the Act, which reads as under:

Payment of interest when the amount of such compensation is not paid or deposited or before taking possession of the land, the collector shall pay

the amount awarded with interest thereon at the rate of (four per centum) per annum from the time of so taking possession until it shall have been

so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is

taken, interest at the rate of ten per centum shall be payable from the date of expiry of the said period of one year on the amount of compensation

or part thereof which has not been paid or deposited the date of such expiry.

8. The claimant, under law, is entitled to 4% interest per annum from the date of taking over of possession of the land by the Collector.

For the reasons mentioned above, this appeal is dismissed with the modification that respondent is held entitled to interest @ 4% per annum from

the date of possession of the land has been taken by the appellant.

9. The parties to bear their own costs. Record to sent back to the court concerned.

