
(2008) 04 AHC CK 0222
In the Allahabad High Court

Dayal Das

APPELLANT

Vs

Collector and State of Uttar Pradesh

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Income Tax Act, 1961 — Section 164
Land Acquisition Act, 1894 — Section 35, 37

Citation : (2008) 6 AWC 5758

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

S.U. Khan, J.—The first appeal is directed against judgment/award/decreed dated 29.07.1978 given by District Judge, Mirzapur in L.A. Reference No. 77 of 1975 (Dayal Das v. Collector, Mirzapur) under Sections 35 to 37, Land Acquisition Act. Through the impugned judgment, total amount of about Rs. 70,000/- was awarded along with 6% per annum interest. Thereafter, review petition was filed before the District Judge, which was allowed in part on 19.09.1979 and compensation was enhanced to Rs. 103492.22. Appellant was not satisfied even by that order, hence he filed the aforesaid revision against the said order contending that a higher amount should have been awarded. Against the order passed on review State also filed F.A. No. 141 of 1980 (converted into F.A.F.O. No. 582 of 1987), which was dismissed as abated on 14.03.2002.

2. 34.5 bighas of appellant's land was temporarily acquired u/s 35-(1), Land Acquisition Act for construction of the approach road to the railway over head bridge at Baraunha on 23.12.1970 and as in terms of Section 35(2), Land Acquisition Act, parties could not arrive at any agreed compensation, hence u/s 35(3) reference was made to the court (application for the said purpose was given on 21.04.1972).

3. Sections 35 to 37 of Land Acquisition Act are quoted below:

35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists: (1) Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of moneys, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

36. Power to enter and take possession, and compensation on restoration: (1) On payment of such compensation, or on executing such agreement or on making a reference u/s 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to persons interested therein:

Provided that, if the land has become permanently unfit to be used to the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. Difference as to condition on land: In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the collector shall refer such difference to the decision of the Court.

4. For the loss of use of the land in dispute, the learned District Judge awarded compensation of Rs. 200/- per bigha per year. The compensation was assessed for three years for 34 bighas 10 biswas of land, which comes to Rs. 6900/- per year, total amount Rs. 19700/-. It was contended by the appellant before the District Judge that as against legal requirement of the three years, land was returned after seven years. The learned District Judge opined that he had no jurisdiction to award damages for more than three years as u/s 35, Land

Acquisition Act land could be acquired only for three years. The fact that the land was retained for more than three years is evident from the Paper No. 88(ga-3), (page 96 of paper book) which is a letter of Special Land Acquisition Officer, Varanasi, dated 05.06.1976. Through the said letter, Executive Engineer, P.W.D., Mirzapur was directed to handover possession in case the land was not required any more.

5. In my opinion, even though u/s 35, acquisition can be temporary acquisition and can be only for three years, however, if possession has illegally been retained for more than three years, then State cannot deny its liability to pay damages on the ground that its possession was unauthorized for that period. State must behave like a model litigant. If damages are payable for permissible possession, then it is all the more essential to pay damages for unauthorized occupation.

Accordingly, I hold that appellant was entitled to damages for seven years.

6. As far as quantum of damages awarded by the District Judge is concerned, learned Counsel for the appellant has argued that they are on the lower side. It has further been argued that in the adjoining land, appellant was having his brick-kiln and land in dispute was being used for providing shelter to the labour and for drying the bricks and after being deprived of the land in dispute, appellant had to close the brick-kiln. No evidence has been led that after the appellant was deprived the use of the land in dispute, it was not possible for the appellant to run the brick-kiln even on smaller scale or that appellant made any effort to search alternative land for the ancillary use connected with brick-kiln, i.e. providing shelter to the labour and drying the bricks. As the land in dispute is not alleged to have been used for the main purpose of brick kiln hence theory of remoteness of damages is applicable. Appellant himself filed several documents pertaining to income tax assessment. The documents are copy of the assessment order for the assessment year 1959-1960 on Page-40 of the Paper Book; copy of order u/s 164 of the Income Tax Act, 1961 for the assessment year 1964-1965 on Page 44 of the Paper Book; copy of assessment order dated 22.02.1967 for assessment year 1966-1967 on Page-46 of the Paper Book; assessment order dated 28.12.1971 for assessment year 1967-1968 on Page-59 of the Paper Book; assessment order dated 28.12.1971 for assessment year 1968-1969 on Page-52 of the Paper Book, assessment order dated 14.03.1972 for assessment year 1969-1970 on Page-56 of the Paper Book, assessment order dated 04.03.1972 for assessment year 1968-1969 on Page-59 of the Paper Book, assessment order dated 07.02.1972 for assessment year 1969-1970 on Page-63 of the Paper Book, assessment order dated 21.03.1973 for assessment year 1970-1971 on Page-67 of the Paper Book; assessment order dated 24.03.1973 or assessment order for the same assessment year 1970-1971 on Page-71 of the Paper Book.

7. From the above papers it is clear that there were two brick-kilns, one by the name of M/s Dayal Das and Company, Station Road, Mirzapur and other by the

name of M/s Bhim Singh and Company, Station Road, Mirzapur. Appellant Sri Dayal Das had share only in the brick-kiln run under the name and style of M/s Dayal Das. In the other, brick-kiln run by the name of M/s Bhim Singh and Company, Dayal Das had no share. In the assessment orders, income of Dayal Das has not been shown to be more than Rs. 15,000/- per year.

8. In my opinion, as according to the own case of appellant, brickkiln was not situate over the land in dispute and it was being used only for ancillary purpose connected with the brick-kiln and as in the assessment orders income of Dayal Das from brick-kiln is shown to be Rs. 10,000/- to Rs. 15,000/- per year, hence award of damages @ Rs.200/- per bigha per year, i.e. about Rs. 7,000/- per year for loss of the use of the land/ usufruct was quite reasonable.

The other point argued is regarding cost of filling the pits caused by taking earth by the State/ P.W.D.

9. The learned District Judge held that appellant was entitled to an amount of Rs. 2250/- per bigha for filling up the land in dispute. It was further found that land had been dug upto the depth of 3 feet.

It has vehemently been argued by learned Counsel for the appellant that the earth had been dug from the land in dispute upto the level ranging from 9 feet to 18 feet in depth. However the learned District Judge after perusal of entire evidence rightly concluded that even when possession was taken by the State, there were deep pits in the land in dispute for the reason that occasionally earth was taken out from the land for preparing bricks by the appellant. In this regard the most important piece of evidence/admission of appellant is his own objection to the award filed before land Acquisition Officer. In the said objections it was categorically stated that Public Works Department instead of digging the earth up to the depth of 2 feet dug it upto the depth of 4 feet.

10. Before the court below as well as this court strong reliance was placed by the learned Counsel for the appellant to a letter written by Prithviraj, Land Acquisition Officer to Executive Engineer P.W.D. Mirzapur, dated 8.12.1972. In the said letter it was stated that on the request of the appellant he visited the acquired land and found that on one spot earth had been dug upto the depth of 8 feet. The learned District Judge rightly held that the said letter referred only to one spot. It is quite possible that at some place earth may have been dug to a deeper level and at other places to a lessor level. However learned District Judge had awarded the uniform rate for 3 feet for the entire land. Accordingly I do not find least error either factual or legal in the finding that 3 feet deep earth from the entire acquired plot was dug.

11. As far as cost of filling the earth is concerned, appellant had stated that Rs. 27,000/- per bigha was required for the said purpose. In the objections appellant claimed only Rs. 3,000/- per bigha as cost of filling up the earth upto the depth of two feet. Before the court below an amendment was sought claiming damages at the rate Rs. 13,250/- per bigha for filling up the earth to the death of two feet.

Learned District Judge rightly held that claimant could not claim more than what he claimed before S.L.O. The learned District Judge determined the rates for filling up the earth on the basis of rates fixed for the said purpose by Public Works Department at the relevant time i.e. 1973. According to the said rates for filling up earth upto the depth of two feet in one bigha cost of Rs. 10007/- was required. Engineers of Public Works Department also deposed to that effect. However, learned District Judge granted higher amount for filling up the earth for two reasons. Firstly in the rates of P.W.D. cost of earth was not included and secondly in the said rates it was presumed that earth would be brought from a distance of 30 feet while in respect of land in dispute, learned District Judge held that earth would have to be brought from a distance of at least one kilometre. Accordingly learned District Judge held that Rs. 15000/- per bigha would be required for filling up earth upto two feet and accordingly for three feet depth Rs. 2250/- per bigha was awarded.

I fully agree with the finding of the learned District Judge in this regard.

12. Through order passed on the review petition learned District Judge awarded the damages of cost of filling up of the earth for the entire acquired land of 34 bigha 10 biswa. In the earlier judgment in respect of an area of 5 bigha 12 biswa no amount in respect of these items had been awarded on the ground that the said area of 5 bigha 12 biswa was afterwards permanently acquired.

In my opinion learned District Judge rightly awarded cost of filling earth and damages for the said area of 5 bigha 12 biswa also.

13. Accordingly finding of the court below in respect of rate of damages and cost of filling earth and depth upto which earth was dug by P.W.D. are confirmed. However, the impugned judgment is modified to the extent that the damages awarded by the court below for three years should be awarded for full seven years, the period for which land in dispute was retained by the P.W.D. Area of the land multiplied by 200 and then by 7 ($34.5 \times 200 \times 7$) comes to Rs. 48300/-. Accordingly appellant is entitled to an additional amount of Rs. 27600/- which is the figure arrived at by multiplying 34.5 by 200 and then by 4 (4 is the figure of years for which no damages were awarded by the court below).

14. Accordingly, First Appeal is allowed in part and it is held that appellant is entitled to additional amount of Rs. 27600/- alongwith interest at the rate awarded by the court below.

15. Revision is dismissed as abated as no substitution application to bring on record legal representative of sole applicant was filed.