
(2007) 02 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 975 of 2001

Dewas Development Authority

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 11, 12, 13A, 18, 18

Citation : (2007) 3 MPLJ 386

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Piyush Mathur, for the Appellant; L.R. Bhatnagar, Government Advocate for Respondents No. 1 and 2 and N.K. Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.

This order shall also govern disposal of W.P. No. 974/2001, Dewas Development Authority v. State of M.P. and two others. But for the sake of reference, the facts of W.P. No. 975/2001 are mentioned hereinbelow.

Petitioner has filed this petition invoking the jurisdiction under Article 226/227 of the Constitution of India challenging the modified award Annexure P/6 dated 30-8-2000 passed by the Land Acquisition Officer, Dewas modifying the original award dated 4-8-1990 on the application preferred by Respondent No. 3 under Sections 23(1)(a) and 23(2) of the Land Acquisition Act, 1984 (hereinafter called as "the Act").

Petitioner is the Development Authority established under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam and known as Dewas Development Authority (hereinafter called as "Authority"). The Authority has prepared a scheme u/s 50 of M. P. Nagar Tatha Gram Nivesh Adhiniyam and accordingly the

acquisition of the land was made within the city of Dewas. The notification u/s 4 of the Land Acquisition Act was published on 12-7-1988 and thereafter the final declaration u/s 6 of the Act was issued on 5-8-1988. On completion of the acquisition proceedings the Land Acquisition Officer, Dewas has passed the award on 4-8-1990 determining the market value, interest and solatium as specified under Sections 23 and 28 of the Land Acquisition Act. Surprisingly after about ten years of passing of the award an application u/s 23(1)(a) was moved by Respondent No. 3 on 24-5-2000 for correction in the award dated 4-8-1990 which was allowed by the order impugned Annexure P/6 dated 30-8-2000, wherein for payment of certain amount of the solatium as well as the amount of interest has been directed. Learned counsel appearing for the petitioner submits that once the award is passed, the compensation has been determined by the Land Acquisition Officer u/s 23 then as per Section 11 of the Act it becomes absolute and the Land Acquisition Officer shall become functus officio, for the award already passed by him. It is said that recourse u/s 23(1)(a) and Section 23(2) of the Act is not available to Respondent No. 3 and the Land Acquisition Officer is having no authority to entertain such application to pass the modified award.

Therefore, the order Annexure P/6 dated 30-8-2000 is illegal, without jurisdiction and is liable to be quashed.

On the other hand Respondent No. 1 has filed their return inter alia contending that as per Section 23(1)(a) and 23(2) of the Act confers discretion to the competent authority in the matter of grant of interest and solatium, to discharge the statutory obligation in favour of the Respondent No. 3, however, the modified award as passed on 30-8-2000 is in conformity to the powers vested with the Land Acquisition Officer u/s 13-A of the Act. It is further urged by him that u/s 23 of the Act amount of compensation is required to be determined by way of passing the award having two integral parts. First for determination of the market value on consideration of certain facts as per Section 23(1). Second on such determination of market value the Land Acquisition Officer, is required to determine the amount of compensation by adding the interest and solatium as per Section 23(1)(a) and 23(2) of the Act. However, it is urged that order to grant of solatium and interest is the statutory obligation of State, thus modified award has rightly been passed, by him, and interference by this Court is not permissible.

Respondent No. 3 has filed his separate return, raising the preliminary objection, of not availing the remedy of appeal, as per Section 54 of the Act, by challenging the modified award passed by the Land Acquisition Officer. However, it is said that this petition is not entertainable, because the petitioner is having efficacious alternative remedy available to them. Accordingly it is urged that the petition filed by the petitioner is liable to be dismissed. On merits also Respondent No. 3 has said that the notification u/s 4 of the Act was issued on 12-7-1988, thereafter the final declaration u/s 6 of the Act was issued on 5-8-1988 and the possession was taken over on 20-4-1990. The original award was passed on

4-8-1990 by the Land Acquisition Officer. The petitioner has made the payment of compensation on various dates, details thereof is available from the calculation of the modified impugned award. However, the final payment of compensation has been made to the petitioner on 10-5-1995. It is urged by him that the application u/s 23(l)(a) and 23(2) of the Act was submitted for correction of the award dated 4-8-1990 because the amount of the solatium and interest, which is the statutory obligation under Sections 23(l)(a) and 23(2) of the Act was not duly paid to him on the amount of compensation determined for the well, house, other land and trees. It is further stated in the application that the amount of the interest on the amount of compensation awarded by the Respondents No. 1 and 2 is payable as per Section 23(l)(a), and Section 34 of the Act which was not paid properly, therefore, the application submitted by him has rightly been entertained by the Land Acquisition Officer and modified award has rightly been passed as per Annexure P/6 dated 30-8-2000. In view of the aforesaid submissions it is urged that the order passed by the Land Acquisition Officer modifying the earlier award dated 4-8-1990 is in conformity to the provisions of law, therefore, interference under Article 227 of the Constitution of India is not permissible.

After hearing learned counsel appearing for the parties, first of all, the preliminary objection of maintainability of the petition raised by the learned counsel for Respondent No. 3 is required to be dealt with here. In view of the undisputed facts, it is apparent that after issuing the final declaration, under the Act on 5-8-1988, the award has been passed by the Land Acquisition Officer on 4-8-1990. No reference was made, as per Section 18 of the Act. Thus, the award passed by the Land Acquisition Officer has become absolute in view of the provisions of Section 11 of the Act and the payment of compensation has been made to the Respondent No. 3 according to such award. The impugned modified award dated 30-8-2000 Annexure P/6 has been passed on the application submitted by Respondent No. 3 as per Annexure P/4 u/s 23(l)(a) and 23(2) of the Act, whereby the modified calculation of the award of compensation has been prayed for by the Respondent No. 3 asking additional amount of solatium as well as interest. Bare reading of Section 54 of the Act indicates that the appeal may be filed against the award or from any part of the award of the Court and from any decree, to the High Court and against the order of the High Court to the Apex Court subject to the provisions of Section 110 of Code of Civil Procedure, 1908. In the facts of the present case on determination of compensation by the Land Acquisition Officer, no reference was made u/s 18 of the Act to the Court. The award passed by the Land Acquisition Officer has become absolute as per Section 11 of the Act and as per the embargo put up u/s 11 of the Act the Land Acquisition Officer has become functus officio to such award. However, the recourse of Section 54 of the Act is not available to the petitioner in the facts of the present case. In that view of the matter the preliminary objection as raised by Respondent No. 3 with respect to non-filing of appeal and having efficacious alternative remedy available to petitioner is not tenable, hence rejected.

Now the question of invocation of the powers of Respondent No. 2 in exercise of the power u/s 13-A of the Act and to pass the order impugned Annexure P/6 dated 30-8-2000 on the application of Respondent No. 3 is required to be advert here. In the present case after issuing the final declaration u/s 6 of the Act, the possession was taken over by Respondent No. 3. The Land Acquisition Officer has passed the award undisputedly on 4-8-1990 as per Annexure P/3. After going through the award, it is apparent that Respondent No. 2 has determined the compensation as per Section 23(1), and also granted interest as per Section 23(1)(a) and the amount of solatium as per Section 23(2) of the Act, to the Respondent No. 3. Thus, it is apparent, by original award Respondent No. 2 has directed for payment of the additional amount of interest and solatium on the amount of market value. As per Sections 11 and 12 of the Land Acquisition Act such award has become absolute because no reference was made u/s 18 of the Act by Respondent No. 3. After finalisation of the award passed by the Land Acquisition Officer, correction if any, can be made in accordance with the provisions of Section 13-A of the Act, Section 13-A is relevant, therefore required to be reproduced hereinbelow:

13-A. Correction of clerical errors, etc. - (1) The Collector may, at any time but not later than six months from the date of the award or where he has been required u/s 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority;

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under Sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrears of land revenue.

After passing of the award and finalisation thereof as per Sections 11 and 12 of the Act, no application u/s 23(1)(a) and 23(2) of the Act is entertainable before the Land Acquisition Officer, for correction of the award. Section 23(1)(a) and 23(2) merely specifies, the payment of additional amount of solatium and interest on the market value of the land, payable to concerned person. However, Sections 23(1)(a) and 23(2) do not specify any procedure for filing the application, as is moved in the present case vide Annexure P/4. Under the proceedings of the Act for modifying the award the recourse u/s 28-A of the Act is also available. However, the other relevant provisions of Section 28-A of the Act is also required to be noticed, hence re-produced hereinbelow:

28-A. Re-determination of the amount of compensation on the basis of the award of the Court.- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, Sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this Sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under Sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and made an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under Sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18.

The perusal of Section 28-A of the Act indicates that the powers of re-determination of the compensation has been conferred to the Collector on the application of any interesting party on the contingency if the party concerned is able to demonstrate that from the same acquisition proceedings the similarly situated persons have been awarded the different amount of compensation for which he is entitled too. However, the recourse as specified u/s 28-A is available to the party concerned to get the same benefit, at par to the similarly situated persons who has not opted for the reference u/s 18 of the Act on re-determination by Land Acquisition Officer. Thus, Section 13-A confers the power to the Collector/Land Acquisition Officer for correction of any clerical, arithmetical or any other mistake in the award but Section 28-A confers the powers of re-determination. The action of the Collector or the Land Acquisition Officer, making the correction in the award u/s 13-A of the Act, has been restricted by limitation through legislative embargo of six months fixing outer limit from the date of the award. But for the purpose of Section 28-A for re- determination it is three months from the date of the award passed in favour of other person by the Court in excess to the amount awarded by the Collector, in favour of aspirant person.

In the facts of the present case and on going through the contents of the application Annexure P/4 submitted by the Respondent No. 3, it is apparent that

the Land Acquisition Officer/Collector was prayed, therein for correction of the award and for rectification of the mistake. Such an application can only be treated and considered, as the application u/s 13-A of the Act. The application does not indicate that, Respondent No. 3, has applied for re-determination of compensation, because no such documents has been filed by him. However, the application Annexure-P/4 submitted by Respondent No. 3, can safely be conceived as the application u/s 13-A of the Act, which is filed by him after more than nine and half years.

In view of the discussion made hereinabove, and in the facts of the present case, it is apparent that only the provisions of Section 13-A of the Act may be invoked by Land Acquisition Officer either on his own motion or on the application submitted by the party concerned. But such power cannot be invoked after expiry of the period of six months from the date of passing of the award. Thus it indicates that for the purpose of correction arithmetical or for any other type, the maximum period of six months is available for invocation of the power u/s 13-A of the Act, to the Collector, from the date of the award and not otherwise. In the present case the award was passed on 4-8-1990 and the application was moved on 24-5-2000. It is also relevant to note here that the entire compensation was paid on 10-5-1995. However, the application of Respondent No. 3, if any, may be filed only upto 4-1-1991 within the period of six months from the date of the award; then only the Collector may pass the modified award under the power of Section 13-A of the Act. In the present case the application for modifying the award has been submitted by the petitioner after about nine years and nine months, therefore, such application was not entertainable in view of Legislative embargo. Thus modified award passed by the Collector/Land Acquisition Officer on 30-8-2000 Annexure P/6 entertaining such application, is illegal and without authority of law. In view of the foregoing discussion, it is apparent that once the application, itself is not entertainable after expiry of the six months, the modified award passed on 30-8-2000 Annexure P/6 is illegal, therefore, liable to be quashed.

On going through the original award passed on 4-8-1990, it is apparent that the Land Acquisition Officer/Collector has discharged, its statutory obligation by awarding the interest u/s 23(1)(a) and solatium u/s 23(2) of the Act. It is not a case in which the statutory obligation has not been discharged while passing the original award by the Land Acquisition Officer/Collector; As per petitioner, payment of compensation has been realized by the Respondent No. 3 from him in instalments, thus full and final payment was delivered upto 10-5-2005 after about 5 years from the date of award. In such circumstances as per the terms of the original award passed by the Land Acquisition Officer on 4-8-1990 and as per the provisions of Section 34 of the Act petitioner is entitled to receive the interest as levied under Sections 23(I)(a) and 34 of the Act, to which Respondent No. 3 is entitled to receive. However, the Respondent No. 3 is at liberty to move the appropriate application along with the statement of the calculation of the interest before petitioner, asking the amount of the interest as per original award of the

Land Acquisition Officer dated 4-8-1990, and the same shall be considered and decided by him within three months. If the amount of interest is found payable to Respondent No. 3 as per the award dated 4-8-1990, the same be paid within one month from the date of adjudication of application, otherwise Respondent No. 3 is at liberty to apply for execution before the Land Acquisition Officer.

In view of the foregoing discussion, this petition is allowed with the aforesaid observations and the modified award dated 30-8-2000 Annexure P/6 passed by the Land Acquisition Officer is set aside. In the facts and circumstances of the case parties are directed to bear their own costs.

Petition allowed.