(1986) 03 OHC CK 0013

In the Orissa High Court

Case No : Misc. Appeal No. 520 of 1983

Government of India APPELLANT

Vs

Raja Soubhagya Chandra Dev RESPONDENT

Date of Decision : 10-03-1986

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 13, 13(4), 14(4), 14(5), 17
Coal Bearing Areas (Acquisition and Development) Rules, 1957 — Rule 7, 7(4)

Citation : AIR 1987 Ori 71 : (1986) 62 CLT 158 : (1986) 1 OLR 454

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : B.B. Ratho, K.C. Misra and M.K. Misra, for the Appellant; R. Mohanty and Alekh Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—This is an appeal u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (in short ''the Act'').

2. On 4-7-1970, notification bearing No. S. O. 2401 was issued u/s 4(1) of the Act by the Central Government being notice of its intention to acquire 9.34 acres of land with 224 trees of the respondent in Khata No. 89 of Talcher town in several plots. Section 4(1) requires the notification in the official gazette. However, the record of the Tribunal does not disclose the date of publication of the notification in the official gazette. Some time after this notification, a declaration of acquisition was issued u/s 9 of the Act bearing No. S.O. 3347 dated 16-9-1972. Although Sub-section (2) of Section 9 requires the declaration to be published in the official gazette, the date of such publication is not found from the record of the Tribunal.

3. On 14-2-1980, the Deputy Chief (Revenue), C.C.L., Ranchi, intimated the Tribunal constituted u/s 14(2) of the Act that a dispute as to the adequacy of the amount of compensation payable for acquisition has arisen between the Central

Government and the respondent. This was received by the Tribunal on 2-6-1980 and was registered as Tribunal Case No. 4 of 1980. Notice was issued to the respondent to file written statement in support of his claim on 17-7-1980 and information was issued to the Central Government to appear. The respondent filed objection to the amount offered. The appellant filed a rejoinder to this objection. Respondent examined himself as P.W. 1 and appellant examined one of its employees as O.P.W. 1. The Tribunal determined the just compensation to be Rs. 17,372.40 paise. It directed 15% extra on the total compensation for compulsory acquisition and 5% interest u/s 17(3) of the Act. Aggrieved by the award, this appeal has been preferred.

4. The Act is a special statute. The authorities thereunder are creatures of the statute. The statutory authorities including the Tribunal constituted u/s 14(2) of the Act are to act not only within the limitations prescribed under the statute but also in the manner provided therein. Observance of procedure is hall mark of authenticity. The statute requires publication of the notification u/s 4(1) and the declaration u/s 9 of the Act in the official gazette. Without such publication, the action is not valid. Moreover, the market value of the land acquired is to be determined as on the date of publication of the notification u/s 4(1) in the official gazette as provided u/s 13(4). It was the duty of the Tribunal, therefore, to give a clear finding on the date of publication of the notification in the official gazette. The Tribunal not having given this finding, the order is liable to be set aside since the basis of determination is not available.

5. The Tribunal has observed the procedure in this case more in its breach. Section 14 and Rule 7 deal with the manner in which the compensation is to be determined. The power of the Tribunal has also been incorporated in Sub-section (8)of Section 14 by amendment. Section 14 and Rule 7 read as follows :

Section 14. "Method of determining compensation.-- (1) Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is fair amount of compensation.

(5) The Tribunal shall, after hearing the dispute, make and award determining the amount of compensation which appears to it to be just, and specify the

person or persons to whom the compensation shall be paid, and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it things fit.

(7) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to any proceedings under this section.

(8) The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely : --

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) reception of evidence on affidavits;

(iv) Requisitioning any public record from any court or office;

(v) Issuing commissions for examination of witnesses."

Rule 7. "Procedure to be followed by Tribunal :-- (1) The Tribunal shall fix a date and place for the hearing of the matter which it is empowered to decide under the Act and shall inform the parties of such date and place accordingly.

(2) On the date so fixed or any other date to which the hearing may be adjourned, the Central Government and every person interested in the dispute before the Tribunal shall state in writing what in their respective opinions is a fair amount of compensation.

(3) The Tribunal shall afford reasonable opportunity to the parties to adduce such oral and documentary evidence as they desire to adduce and as may be relevant.

(4) The Tribunal shall record the substance of the statement of the parties and the witness, if any."

A bare reading of the two provisions would indicate that the Tribunal gets jurisdiction only when the compensation payable under the Act cannot be fixed by agreement. An agreement envisages offer and acceptance. Therefore, the Tribunal is to be satisfied prima facie on this question. Of course in the absence of any statement by either party that there was an agreement it shall be assumed that there could not be an agreement. Sub-section (4) of Section 14 provides that the Central Government and the person interested are to state what in their respective opinions is a fair amount of compensation. The ordinary procedure available to be followed in a reference under the Land Acquisition Act is not to be followed in a proceeding before the Tribunal under the Act. There is no claimant or objector in such cases. The parties may be expressed as first party and second party. The first order of the Tribunal cleanly envisages that the procedure laid down u/s 14(4) has not been followed. The order reads as follows : --

''Order No. 1 Dt. 2-6-80. Reference received u/s 14(2) Coal Bearing Areas (Acquisition and Development) Act, 1957, against Raja Soubhagya Chandra Dev Birawar Harichandan, who challenges the adequacy of compensation.

Register.

Issue Notice to the O.P. (claimant) to appear in person or through pleader and file written statement in support of his claim before this Tribunal on 17-7-1980.

Also inform the referencer to appear in person or through his counsel on the date fixed."

Section 14(4) read with Rule 7 makes it clear that the Central Government and the person interested in the dispute before the Tribunal are to state in writing what in their respective opinions is a fair amount of compensation. This has not been done as is revealed from the order.

6. The Tribunal under the Act is to determine the amount of compensation which appears to it to be just as provided under Sub-section, (5) of Section 14. For this purpose Rule 7 provides (that opportunity shall be given to the parties to adduce oral and documentary evidence. Sub-rule (4) of Rule 7 indicates that the enquiry shall be of a summary nature, where substance of the statement of the parties and the witness, if any, is to be recorded.

7. In this case the date on which the market value is to be determined is the date of notification in the official gazette. The date of publication in the official gazette is not known; Accordingly, the respondent was confused to make a statement giving out the market value as in the year 1972. In case the date of publication of the notification in the official gazette would have been made known this confusion would not have been there. The procedure not having been followed, the appellant did not produce the records in its possession wherefrom the just compensation could have been determined since P.W. 1, an employee of the appellant, stated that the sale particulars from the office of the Sub-Registrar were obtained. In case the sale particulars would have been examined, the Tribunal could have determined the compensation on that basis. The Tribunal is not bound by the provisions of the Evidence Act in an enquiry under the Act. Therefore, it could have considered the particulars obtained by the appellant along with other materials.

8. The aforesaid discussion of mine clearly indicates that both the parties have not obtained fair opportunity to adduce evidence and materials before the

Tribunal and the Tribunal has failed in its duty u/s 14(5) to determine the compensation as it would appear to it to be just by the process of judicial determination. The order of the Tribunal on this ground is liable to be vacated.

9. In the result, the award of the Tribunal is set aside and the appeal is allowed. The matter is remitted back to the Tribunal for fresh enquiry giving opportunity to the parties to adduce further evidence. Both parties shall appear before the Tribunal on 7-4-1986 on which date the Tribunal shall fix the place and the date of enquiry. There shall be no order as to costs.