
(2011) 07 UK CK 0214
In the Uttarakhand High Court
Case No : A.O. No. 246 of 2011

Harbhajan Singh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Land Acquisition Act, 1894 — Section 18, 18(1), 23, 23(1), 26

Citation : (2012) 2 UC 1005 : (2011) 2 UD 230

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—Heard.

2. Grounds are sufficient to condone the delay in filing the appeal.

3. Delay is condoned. Delay condonation application is disposed of.

4. Learned Counsel for the Respondents have submitted that this appeal may be heard finally as on today without calling for the original record as the point involved there is a legal issue.

5. Heard learned Counsel for the parties on merits of appeal.

6. This appeal is directed against the order dated 30-11-2010 passed by the Additional District Judge/III F.T.C. Haridwar in Land Acquisition Case No. 77 of 2006, Harbhajan Singh v. State of Uttaranchal and others, whereby the learned Reference Court while deciding the reference has set aside the award passed by the Special Land Acquisition Officer, Haridwar (for short the S.L.A.O.) and directed him to determine the compensation afresh on the basis of sale deed mentioned in the order.

7. Briefly stated, the facts giving rise to the present appeal are that land measuring 67.251 Hectare of village Salempur Mahdood, Paergana Roorkee

(Haridwar) was acquired by the State Government under the provisions of the Land Acquisition Act (for short the Act), out of which some land of the land-owner/claimant Harbhajan Singh was also acquired, after issuance of Notification u/s 4 followed by Notification u/s 6 of the Act and after completion of other formalities. Ultimately, the S.L.A.O. has passed the Award dated 28-12-2005 and the market value of the acquired land was determined @ Rs. 8,97,190-19 P. per Hectare.

8. Being dissatisfied by the compensation determined by the S.L.A.O., the land-owners made an application to the Collector, who in turn, made a reference u/s 18 of the Act for determination of the compensation to the civil Court. The reference was registered as Land Acquisition Case No. 77 of 2006, Harbhajan Singh v. Uttaranchal State and others. Ultimately, the case was heard and decided by the Additional District Judge/III F.T.C. Haridwar.

9. The claimant-Appellant claimed compensation at the rate of Rs. 3000/- per Sq. Mt. for the land under acquisition.

10. The learned Reference Court framed necessary issues on the basis of the pleadings of the parties and after hearing both the parties has recorded its finding on each of the issues, but instead of determining the compensation, the learned Reference Court has remitted the matter to the S.L.A.O. to pass the award afresh by its judgment and order dated 30-11-2010.

11. I have perused the impugned order. A reference to the relevant provisions of the Act is necessary.

12. Sub-section (1) of Section 18 of the Act reads as under:

18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

13. Section 26 of the Act reads as under:

26. Form of awards.- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of Sub-section (1) of Section 23, and also the amount (if any) respectively awarded under each of the other clauses of the same Sub-section together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, Clause (2) and Section 2, Clause (9), respectively, of the Code of Civil Procedure, 1908(5 of 1908).

14. From a perusal of Section 26 of the Act, it is clear that the Reference Court

has to decide the reference in the manner of a civil suit and every award passed by the Reference Court is a judgment and decree passed by a Civil Court.

15. It is also pertinent to mention here that the matters to be considered in determining compensation by the reference court are mentioned in Section 23 of the Act and in determining the market value of the land at the date of the publication of the notification u/s 4(1) is relevant besides other matters.

16. In the case at hand, the learned Reference Court appears to have lost sight of the provisions of the Act and has treated the reference court like a court of appeal or revision. There is no such provision in the Land Acquisition Act empowering the Reference Court to remit the matter for determination of compensation to the S.L.A.O. again. The learned Reference Court has clearly committed a manifest error of law in not determining the compensation itself and by not passing the award as per provisions of Section 26 of the Act. It was not open to the Reference Court to remand the case to the S.L.A.O. like a court of appeal. The impugned judgment and order dated 30-11-2010 passed by the Reference Court cannot be sustained and has to be set aside. The appeal deserves to be allowed.

17. The appeal is allowed. The impugned order dated 30-11-2010 passed by the Reference Court is set aside. The matter is remanded to the Reference Court to decide the reference afresh in accordance with law after giving opportunity of hearing to all the parties and in the light of the observations made above. Both the parties may adduce further evidence in the case if they so like and the evidence already adduced by the parties on record shall also be considered .