
(1972) 03 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 383 to 387 and 389 of 1970

India Fire Bricks and Insulation Co. Ltd.

APPELLANT

Vs

Rasik Lall Vora and Others

RESPONDENT

Date of Decision : 31-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 30

Citation : AIR 1972 Patna 496

Hon'ble Judges : N.L. Untwalia, J; Akbar Hussain, J

Bench : Division Bench

Advocate : K.D. Chatterji and Shashi Kumar Sinha, for the Appellant; K.P. Verma, S.C., Mishra and Amar Singh, for the Respondent

Judgement

Untwalia, J.—All these six writ applications have been heard together and are being disposed of by a common judgment, as the facts are similar and the points involved are identical.

2. The case of the petitioner-company is that it has got its factory for manufacture of various type of refractories at village Marar in the District of Hazaribagh. It filed an application for acquisition of land under Part 7 of the Land Acquisition Act 1894 (hereinafter called the Act). After following the prescribed procedure, a notification u/s 4 of the Act was issued on 21-6-1961 for acquisition of 39.77 acres of land. The petitioner-company entered into an agreement with the State Government u/s 41 of the Act on 11-9-1961. The petitioner-company was liable for payment to the State Government for the entire cost of acquisition including any enhancement of compensation that may be made by the Civil Court in a legal and proper reference u/s 18 of the Act. The case of the petitioner-company further is that notices u/s 9 of the Act were issued and 13-10-1961 was fixed as the date for filing of the claims. On that date seven claims and objections were filed by seven sets of persons. Their names are:--

1. Umesh Narain Singh,

2. Shri Shyam Narain Singh, 3. Shri Durlabhji Koteche,
4. Shri Govindrao Keitty Nair,
5. Shri Rainniklal Das,
6. Shri Rashiklal Vore,
7. Shri Iswar Prasad Agarwala,

Out of them Nos. 1, 2, 4, 5 and 6 are respectively, Respondent No. 1 in C. W. J. C. Nos. 389, 387, 386, 385 and 383. Ishwar Prasad Agarwala is Respondent No. 2 in C. W. J. C. No. 384 of 1970, in which his brother is Respondent No. 1.

3. It is further stated in the writ application that a petition was filed on behalf of the petitioner-company for withdrawal of the land acquisition proceeding but most of the persons interested objected to this. Eventually an award was made on 27-11-1963 for a sum of Rs. 1,16,227,57. The petitioner-company was directed to deposit Rs. 1,41,172.33 being the amount of the award, interest, establishment and contingent expenditure.

4. The case further runs like this; One Shri N. B. Banerjee, by filing an application before the Land Acquisition Authorities on 7-5-1963, claimed that he was entitled to the compensation money in respect of 27.50 acres out of the acquired land measuring 39.77 acres. After making of the award Banerjee filed an application before the Collector on 2-1-1964 (the date 21-1-1964 in paragraph 14 of the petition C. W. J. C. 389 of 1970 seems to be a mistake) for reference to the Civil Court. A notice was issued by the District Land Acquisition Officer, Hazaribagh requiring the parties to produce evidence before him, a copy of which is Annexure "3" to this writ application. According to the petitioner's case, on 23-1-1963, the date mentioned in the notice, "the concerned opposite party in all the cases and Shri Banerjee were heard by the learned District Land Acquisition Officer. The prayer of Shri Banerjee was accepted and eventually on 1-7-1967 a reference was made to the District Judge of Hazaribagh u/s 30 of the Act. The references were registered as L. R. Nos. 105 to 116 of 1967. On 21-2-1968 an application by way of rejoinder to the claim of Shri Banerjee was filed by respondent No. 1 in all the cases, a true copy of their application is Annexure "6" to the writ application. It seems, under some confusion that application was forwarded to the District Land Acquisition Officer whereupon he wrote a letter dated 16-4-1968, a copy of which is Annexure "7", to the District Judge, Hazaribagh. The letter is not very clear, but it purports to say that the reference u/s 30 may be treated as u/s 18 of the Act. The cases in which no claim has been made u/s 18 of the Act could not be entertained. It would appear from the order dated 17-4-1968 of the learned District Judge of Hazaribagh that he also did not clearly understand that letter and stated in the order Annexure "5" --"A letter has been received from the District Land Acquisition Officer to the effect that L. R. Case Nos. 107 to 111 and 113 to 116/67 may be treated as References under Sections 18 and 30 L. Act". Upon this, the order made by him

is -- "Write a letter to the L. A. O. requesting him to send separate reference u/s 18 L. Act with respect of the lands under requisition, by 1-6-1968 when put up for further orders". Thereupon fresh references were made by the Land Acquisition Officer purporting to be at the instance of various respondents, in these cases, wherein ground of objection stated is" awarding of inadequate compensation and a claim of higher compensation. These new reference cases were numbered as 60 to 68 of 1968. Eventually all the reference cases were transferred to the Additional Subordinate Judge, Hazaribagh, who has been impleaded as Respondent No. 3 in all the writ applications. There land reference case Nos. 60 to 68 of 1968 have been renumbered as 270 to 278 of 1969. The petitioner's grievance is that the reference cases instituted later in the year 1968 for adjudication in regard to the amounts of compensation are unwarranted by law and have been made long after the expiry of period of limitation. Since the petitioner-company is not a party to the reference cases and ultimately it will have to bear the burden if the quantum of compensation is increased, it has approached this Court for quashing those references in exercise of the powers of this Court under Articles 226 and 227 of the Constitution of India.

5. No counter-affidavit has been filed on behalf of any of the respondents in any of the cases. The facts, therefore, do not seem to be in dispute. It would appear that the objection which was pressed by Shri Banerjee before the Land Acquisition Officer was to claim compensation determined by him in respect of the portion of the land acquired. He did not raise any objection as to the quantum of compensation. The awardees did not raise any objection as to the quantum of compensation. Reference was made by the Collector u/s 30 of the Act for apportionment of the compensation awarded. In those reference cases rejoinder petitions were filed by the various awardees on 20-2-1968 and 21-2-1968. History of their respective title to contest the claim of Shri Banerjee was recited in Paragraphs 1 to 17. In paragraph 18, it was stated that the Opposite Party had full title and possession over the land sought to be acquired and the award had rightly been prepared in his name. Then in paragraph 19 it was stated thus:--

"That the award has been prepared at an absurdly low figure and the opposite party is entitled to reasonable compensation both under law and equity for which requisite prayer has already been made before the Land Acquisition Officer."

The prayer in the rejoinder petition was to reject the prayer of Shri Banerjee and further to order for payment of adequate compensation to the Opposite Party in the interest of justice. Somehow or the other this petition seems to have been forwarded to the Land Acquisition Officer whereupon the letter Annexure "7" was written. The learned District Judge then directed him to make separate reference u/s 18 of the Act and then the references on the question of compensation were made. There is nothing to show that any of the respondents had made any prayer before the Land Acquisition Officer for awarding higher compensation. The statement to that effect in Paragraph 19 is not correct. It is further contradicted

by Annexure "4", a petition filed by Umesh Narain Singh, respondent in C. W. J. C. 389 of 1970, on behalf of all for speedy payment of the compensation money. This petition is dated 21-8-1964. In Paragraph 1 of the petition it is stated that the land had been acquired for the petitioner-company. The position, therefore, is clear that the reference cases were pending in the Court of the District Judge on reference being made by the Collector for apportionment of the compensation money. The references were expressly u/s 30 of the Act. They may be treated as reference u/s 18 of the Act because Shri Banerjee had put forward his claim before the Land Acquisition Officer prior to the making of the award and had filed a petition for making a reference. Therefore the references made could be treated as references made u/s 18 of the Act as to the persons to whom the compensation is payable or the apportionment of the compensation among the persons interested. There was no reference and could not be any for determining the amount of compensation. On the basis of the rejoinder petition filed in the Court of the District Judge in the year 1968, no reference could be asked for or made u/s 18 of the Act in regard to the amount of compensation. The whole thing seems to have proceeded under confusion, misapprehension and mistakes both in the Court of the learned District Judge as also of the Land Acquisition Officer. The respondents cannot take advantage of the illegal and invalid reference made later for determination of the quantum of compensation,

6. It has been held by the Supreme Court in K. Kankarathnamma and Others Vs. State of Andhra Pradesh and Others,

"In a reference u/s 30 of the Act for the apportionment of compensation amount among the claimants, the Court has no jurisdiction to go behind the award of the Land Acquisition Officer and redetermine the quantum of compensation".

If the earlier references are treated as references u/s 18 of the Act at the instance of Shri Banerjee, the scope of those references still must be confined to the question of apportionment of the compensation money. The scope cannot be enlarged so as to take within its sweep the question of determination of the amount of compensation. In this connection reference may be made to a decision of the Privy Council in AIR 1930 64 (Privy Council) wherein at page 65 column 2 Sir George Lowndes delivering the Judgment on behalf of the Board has said--

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider any thing beyond it".

On a parity of reasoning, if the objection was as to the apportionment of the compensation money or the person to whom it is payable, the reference must be confined to that and the court has no power to determine the amount of

compensation in such a reference. The Judicial Committee of the Privy Council reiterated this view in AIR 1939 133 (Privy Council) , when Lord Porter observed at p. 137 column 1--

"But the Act does not require particulars to be given, it requires only the grounds of objection to be given, and by "grounds" their Lordships think is meant such of the four grounds mentioned in Section 18(1) as are relied upon. The same view as to the meaning of the word "grounds" appears to have been entertained by their Lordships" Board in (AIR 1930 64 (Privy Council)), and no further particulars are required in order to comply with the terms of the sub-section."

Following the decision of the Privy Council in AIR 1930 64 (Privy Council) , a Bench of the Calcutta High Court in Secretary of State Vs. Shyamapada Banerjee, took the same view. Placitum (a) may be usefully quoted--

"The Jurisdiction of the Court on a reference by the Collector is a special jurisdiction. If the only objection is to the amount of compensation, that alone is the matter referred to, and the Court has no power to determine or consider any thing beyond what is referred. The question of title to the land acquired is therefore not relevant in a reference on the question of the amount of compensation only, because in an inquiry as to the amount of compensation only the question is how much more the claimant is to get and how much more is the Government to pay. The only question is the additional amount of compensation. It does not involve the determination of question of the right to claim or the liability to pay any additional compensation. AIR 1930 64 (Privy Council) , Rel. on."

7. It is thus abundantly clear that in reference case Nos. 105 to 116 of 1967 the question as to the amount of compensation could not be gone into. The District Judge had no power to call for a reference u/s 18 of the Act. On the petition filed before the District Judge on 21-2-1968 no such reference could be made. It was much beyond time and hence land reference case Nos. 60 to 68/270 to 278 of 1968-69 were invalid. A reference in this connection may be made to a Bench decision of this Court, to which I was a party, in Ramdeyal Singh Vs. State of Bihar, wherein it was held that the Land Acquisition Court can refuse to answer and determine the question referred to it on an application filed beyond time u/s 18 of the Act. Learned counsel for respondent No. 1 in various cases and respondents 1 and 2 in C.W.J.C. 384 of 1970 pressed an argument on the basis of the decision of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, that the said respondents had no knowledge of the award and hence the period of limitation did not start running against them. The argument is devoid of any substance and must be rejected. Firstly, there is nothing to show that any application u/s 18 of the Act was ever filed before the Collector by any of those respondents. Without that application there could be no reference u/s 18 of the Act. Secondly, on the material on record, to which I have already made reference viz., Annexures "4" and "6", it is clear that the awardees had knowledge of the award when it was made. There is

nothing to show that they had no knowledge of the award for a period of about four years and a half. In my opinion, therefore, entertaining the later reference cases by the Court is wholly without jurisdiction and those references must be quashed.

8. In the result C. W. J. C. 389 of 1970 is allowed and Land Reference Case Nos. 60, 61, 62/270, 271, 272 of 1968-69 are quashed. C. W. J. C. 387 of 1970 is allowed and Land Reference Case No. 63/273 of 1968/69 is quashed. C. W. J. C. 386 of 1970 is allowed and Land Reference Case No. 65/275 of 1968/69 is quashed. C. W. J. C. 385 of 1970 is allowed and Land Reference Case No. 66/276 of 1968/69 is quashed. C. W. J. C. 384 of 1970 is allowed and Land Reference case No. 68/278 of 1968/69 is quashed. C. W. J. C. 383 of 1970 is also allowed and Land Reference case No. 67/277 of 1968/-69 is quashed. It may be mentioned here that in regard to Case No. 64/274 of 1968/69, C. W. J. C. 382 of 1970 is still pending. Since that was not ready it has not been listed for hearing with these cases. In the circumstances, we shall make no order as to costs in any of the writ applications.

Akbar Hussain, J.

9. I agree.