
(1973) 02 BOM CK 0006
In the Bombay High Court
Case No : A.F.O.D. No. 42 of 1962

Indrayanibal and Another

APPELLANT

Vs

The Collector of Nagpur and Another

RESPONDENT

Date of Decision : 06-02-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1)

Citation : AIR 1974 Bom 58 : (1974) ILR (Bom) 546

Hon'ble Judges : Masodkar, J;Malvankar, J

Bench : Division Bench

Advocate : L.K. Khambonkar, for the Appellant; V.D. Chandande and M.L. Vaidya, for the Respondent

Judgement

Masodkar, J.—This appeal is directed against the judgment passed by the Civil \ Judge, Senior Division, Nagpur rejecting the claim of one Mahadeo a/o Mahavir Vaishya, since deceased, and represented by his legal representatives on record, made upon a reference u/s 18(1) of the Land Acquisition Act,1894.

2. The property that was acquired was a house bearing Nos. 291, 291/12 and 292/2, owner and possessed by said Mahadeo. The acquisition was for purposes of Nagpur Corporation and for the improvement of Itwari Bhaji Market. Section 4 notification was issued on March 16, 1955, followed by Section 6 notification issued on October 19, 1955. The possession of the property is admittedly taken on December 15, 1964.

3. Before the trial Court, the claimant sought to recover Rs. 19,000/- for the land and house and an additional claim of Rs. 14,000/- account of loss of rent at the rate of Rs.40/- per month for a period of 30 years. He further claimed expenses that he would be required to incur for changing his residence and business. Upon evidence, the trial Judge came to the conclusion that the claimant was not entitled to a higher compensation than was awarded by the Land Acquisition Officer, the same being Rs. 7,545/- That included the value of the land and a house in the sum of Rs. 6,561.25/- and, by adding 25% u/s 23(2), a sum of Rs.

984.19.

4. The learned trial Judge did not award any amount on account of the claim made for the loss of earnings u/s 23(1), fourthly, and the claim for reasonable expenses incidental to the change of residence and place of business u/s 23(1), Fifthly, Both these claims were negatived.

5. In this appeal, therefore, when is urged is that the findings reached by the learned trial Judge, with respect to the matters u/s 23(1), Fourthly and Fifthly, are liable to be set aside. The other part of the decree is not challenged.

6. Now for the purpose of establishing the claim under clause Fourthly of Section 23(1), what has to be seen is whether there is any evidence to show that any damage was sustained to the property, moveable or immovable, left with the claimant or to his earning. It is candidly conceded on behalf of the appellant that there is no evidence to suggest any loss of earnings of claimant. If that is the position, the Court cannot be asked to conceive of damages under clause Fourthly.

7. However, the learned counsel submits that a reasonable measure should form part of the award in such matters. He relies on a reported decision in *The Collector Vs. Daulat Ram and Another*,

8. That case does not on any manner help the decision of the present controversy. As we have seen in this case, there is absolutely no evidence to show what was the loss with respect to earnings that the claimant suffered. There is mere statement that he was earning Rs. 100/- per month, being a petty dealer having a shop and residence at the place acquired. There is no evidence nor even a statement on oath that because of this acquisition his earnings had deflated in any manner. In the case before the Judicial Commissioner. Himachal Pradesh, there was overwhelming evidence that acquired were carrying on business and there was no evidence to the contrary. There was further evidence that the claimants were compelled to shift their business to some other place. The circumstances were that the whole of the land was acquired for the purpose of construction of Bhakra Reservoir. Under these circumstances and the evidence which consisted of not less than nine witnesses, the learned Judicial Commissioner held that this satisfied the requirements of clause Fourthly, and thought that six months' income be awarded as compensation for the injurious affection upon the business of the claimant. We cannot apply the principle of that case without any evidence that was available on record.

9. In the present case, there is no plea nor any proof as to damages likely to be suffered. It is well settled that in the matters of injuries sustained by persons claiming personal damages, there must be both pleading as well as proof. The law has been succinctly put Lord Goddard in *British Transport Commission v. Gourley* (1955) 3 All ER 796. The learned Lord observed:

"In an action for personal injuries, the damages are always divided into two main

parts. First, there is what is referred to as special damage which has to be specially pleaded and proved..... Secondly, there is general damage which the law implies and which is not specially pleaded....."

The kind of damage that can be awarded under clause Fourthly, is clearly special damage. The terms of that clause are specific. The claimant must put forth the plea of an injury mentioned therein and further lead evidence to establish the same. No award can ensue without general assumptions or notions of justice and fairplay. We feel that once it is shown that there is no foundation led by any plea or claim no foundation led by any plea or claim no further enquiry is contemplated on this ground in reference proceedings. Therefore it is not possible to accedes to the submission of the appellant that the matter be decided by following general principles to decided that there must have been loss of earnings and compensate the same.

10. However the matter under clause Fifthly, is rather different. It does appear that even before the Land Acquisition Officer a claim was made by the claimant that because of the disturbance he will have to resettle himself and he should be reasonably compensated. That has been disposed of by the Land Acquisition Officer by saying that there is nothing on record to believe that the non-applicant would have to change his residence and business and in case he is so required, what is the probable amount of expenses incidental to such change. Now, when the matter came before the learned trial Judge he disposed of that issue by saying that no such specific claim was made before the Land Acquisition Officer. That does not appear to be the correct statement of fact. The learned trial judge further went on to observe that the omnibus evidence given by the claimant that he would require Rs. 2,000/- cannot be accepted and that he is simply bluffing.

11. Rightly, therefore, this part of the judgment was put under criticism by the learned counsel. The Courts of law should express themselves with all decorum and must confine themselves to the facts of show that the claimant, who had taken the oath, was in any manner bluffing as the learned trial Judge observes. In fact, he had entered the witness -box, and taken an oath. there was no cross-examination to his statement that he was required to go the Allahabad and would require the amount of Rupees. 2,000/- for going and settling there. The observation made by the learned Judge that the claimant was bluffing has, therefore, no basis nor is warranted.

12. That does no, however, mean that only because the statement is made by a witness it should be accepted as ipse dixit. All the surrounding circumstances must be borne in mind and what is permitted under clause Fifthly, is "reasonable expenses incidental to the change of matter has not at all been considered by the learned trial Judge.

13. Now the evidencing this case which cannot be disputed is that the place where the claimant was carrying on his small shop by which he, according to him, earned a net income of Rs. 100/- per month, was in a busy locality of Itwari

in Nagpur town. That shop, was being run for quite a good number of years. He was also residing there. In the cross-examination it was asked to him whether he could carry on the same type of trade in the weekly market. It does appear, that he had, all his goodwill as well as lost to him and he will have to settle himself either in home-town or, as he says, in any other town like Allahabad.

14. Some reasonable award of compensation on that count is very much called for.

15. Now, it is contended on behalf of State by the learned advocate appearing in this appeal, that the evidence is entirely omnibus and should not be acted upon. Similarly, the counsel appearing for the Corporation, the acquiring body, contends that such statements made on oath cannot be accepted for determining agrees with this course for some compensation.

16. As we have seen, the facts of the present case do involve injury on account of disturbance contemplated by clause Fifthly of Section 23(1) of the Act. No doubt, the claimant was a petty dealer and shorn of all exaggerations was earning about Rs. 3/- per day as the net income. Period contemplated by clause Fifthly, is October 19, 1953 till December 15, 1964. Thus taking a reasonable measure, it appears to us that it would be reasonable to award a sum of Rs. 500/- under that head. That should be sufficient to resettle a person of the status of the claimant before us and to restart his small business of dealing in shop as he tells the Court.

17. Giving our anxious considerations, therefore, to all the facets, the appellant is only entitled under clause Fifthly of Section 23(1) to the reasonable expenses that we have assessed in the sum of Rs. 500/- under the facts and circumstances of that additional compensation under sub-section (1) and proportionate 15% under sub-section (2) of Section 23 of the Act.

18. The decree passed by the Civil Judge, Senior Division, therefore, would be modified to the above extent. The appellant will also be entitled to proportionate costs. Rest of the claim of the appellant will be dismissed.

19. Order accordingly.