

(2008) 05 DEL CK 0206

In the Delhi High Court

Case No : Writ Petition (C) No's. 6316, 6686, 6695, 6889, 6890, 6891, 6892, 6898, 6899, 6900, 6959, 8117-8120, 8122, 8166, 8179, 9035 of 2007, 1213, 1228, 1229 and 1375 of 2008

Ishwar Singh and Another

APPELLANT

Vs

Land Acquisition Collector (SW)

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 11(1), 17(1), 18, 23

Citation : (2008) 103 DRJ 519

Hon'ble Judges : T.S. Thakur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : B.S. Maan and Sanjay Rathi, Jai Prakash, for the Petitioners in 6316, 6686, 6695, 6889, 6890, 6891, 6892, 6898, 6899, 6900, 6959, 8117, 8118, 8119, 8120, 8122, 8166, 8179, 9035 of 2007, Ankit Jain, W.P.C 1213, 1228, 1229, 1375 of 200, for the Appellant; Sanjay Poddar, H.P. Sahu, Ramesh Ray for the LAC Gaurav Sarin, Charul Sarin and Yatinder Chaudhary for the DDA, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—In these petitions under Article 226 of the Constitution of India, the petitioners assail the legality of an award No. 1/2007-08 made by the Collector, Land Acquisition primarily on the ground that the Collector has not, while determining the compensation payable to the land owners, conducted an enquiry in terms of Section 11 of the Act or properly applied his mind to the material available on record. The respondents have appeared to oppose the petitions and raised a preliminary objection to the maintainability thereof. It is contended on their behalf that the petitioners have, during the pendency of these writ petitions, got proper references made to the Civil Court u/s 18 of the Land Acquisition Act, 1894 for determination of the compensation payable to them. The question whether and if so what enhancement in the amount awarded by the

Collector is deserved by the petitioners therefore falls for consideration in the said references making it unnecessary for a writ court to examine the same issue in parallel proceedings. Two issues that, therefore, fall for consideration of this Court are:

(a) Whether the Collector had, in the instant cases, conducted a proper enquiry in terms of Section 11 of the Land Acquisition Act and made an award after due and proper application of mind to the material available on record.

(b) Whether this Court ought to interfere with the award having regard to the fact that the question of quantum of compensation payable to the petitioners already stands referred to the Civil Court for adjudication.

2. Time now to state in brief the factual background in which the above questions fall for determination:

3. A preliminary notification dated 4th November, 2004 notified a large extent of land measuring nearly 2000 bighas for the public purpose of building what is described as "Sub City Dwarka Phase-II". A declaration u/s 6 of the Act followed on 31st October, 2005. The Award No. 1/2007-08 dated 6th August, 2007 made by the Collector held the land owners entitled to compensation @ Rs. 15.70 lacs per acre relying upon a notification issued by the Government fixing the minimum price for agricultural land at the said rate. Aggrieved by the award, the petitioners have filed the present writ petitions as noticed earlier in which their primary grievance is that the Collector had, while determining the amount of compensation and making the award, neither held any enquiry as envisaged by Section 11 of the Act nor applied his mind to the objections and the claims made by the petitioners-land owners. The petitioners in particular referred to a notification dated 16th October, 2000, a copy whereof has been produced as Annexure-P6 to the writ petition in support of the submission that the Collector had, in ignorance of the same, proceeded to determine the amount of compensation on the assumption that the land in question continued to be agricultural land. The notification referred to above had, however, changed the land use which implied that the land in question had acquired non-agricultural potential. It was contended by Mr. Mann that the Collector fell in palpable error in ignoring the notification and proceeding on an assumption which was not justified in the light of the change brought about by the notification. It was also contended by Mr. Mann that the Collector was duty bound to hold a proper enquiry into the claims of the land owners while determining the compensation and that the absence of any such enquiry clearly showed that he had failed to discharge his statutory functions in tune with the spirit underlying the legislation. Reliance in support was placed by Mr. Mann upon the decision of the five judges bench of the High Court of Andhra Pradesh in Repaka Bhyaravamurthy v. Muppidi Venkataraju 2001 (2) LACC 379. Reliance was also placed by Mr. Mann upon the judgment of the Supreme Court in Mathura Prasad Rajgharia and Others Vs. State of West Bengal, and Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, in support of

his submission that the Collector was duty bound to hear the land owners in support of their objections before making his award u/s 11.

4. On behalf of the respondents, Mr. Poddar on the other hand contended that the nature of the award proceedings held by the Collector were administrative and the net effect of the said proceedings culminating in an award was the making of an offer to the land owners. In case the land owners were dissatisfied with the amount, they were free to take resort to a reference u/s 18 of the Act for a proper and more satisfactory determination of the market value of the land by the civil court. This remedy the petitioners had already resorted to with the result that references had already been made by the Collector to the Civil Court. The details of these references were not, however, immediately available with Mr. Poddar for being placed on record. What was contended by him was that references in most of the cases have been made and that wherever the same had not so far been made, the Collector would have no difficulty in making such references so that the case of each one of the petitioners for enhancement of compensation which was the essence of these proceedings was examined by the Civil Court for a proper determination of the amount payable to them.

5. We have given our careful consideration to the submissions made at the bar and perused the record. We shall take up the questions formulated earlier ad seriatim for discussion:

Re Question No. 1

6. Section 11 of the Land Acquisition Act, 1894 provides for an enquiry into measurements, values and claims of the land owners and the making of an award by the Collector. Sub-section 1 of Section 11 inter alia stipulates that the Collector shall, on the date fixed for that purpose, proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8 and into the value of the land on the date of publication of the notification u/s 4(1) and into the respective interests of the persons claiming compensation. The said provision further obliges the Collector to make an award under his hand indicating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment thereof among the persons known or believed to be interested in the land of whom or of whose claims, he has information, regardless whether or not they have appeared before him. Since the answer to the question turns on a true and correct interpretation of Section 11(1), we may for ready reference extract the same:

11. Enquiry and award by Collector. - (1) On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land and at the date of the publication of the notification u/s 4, sub-section (1), and into the respective interests of the persons claiming the compensation, and

shall make an award under his hand of--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the appointment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

7. A plain reading of the above would show that the Collector is under an obligation to hold an enquiry into the objections, if any filed by any interested person, regardless, whether the said objections relates to measurements of the land or the value thereof as on the date of the publication of the preliminary notification. The use of the word "shall" leaves no option for the Collector except to make an enquiry into the above aspects and to make an award in regard to the three distinct matters enumerated in sub-section 1 (supra). The question however is as to what is the nature of the function which the Collector discharges in the process of making of the award and whether an enquiry and due and proper application of mind can be said to be essential requirements of a satisfactory discharge of the obligation cast upon the Collector by Section 11(1). Three distinct aspects hold the key to the above questions. The first is the use of the words "Collector shall proceed to enquire" in sub-section 1 of Section 11. The said expression, in our opinion, leaves no room for the Collector to avoid the holding of an enquiry if objections are filed by an interested person, whether such objections relate to measurements of the land or the value thereof. It follows that in the matter of making an award u/s 11, the functions of the Collector are of a quasi judicial nature, not only because of the statutory nature of the duty cast upon the Collector but also the reason that the Collector has to adopt a judicial approach while dealing with the objections raised before him in the course of enquiry. The Collector may not be required u/s 11(1) to write a detailed judgment or order as is done by a Court called upon to make an order which measures up to the requirements of a judgment known to or delivered by the courts in this country but the least which he is required to do is to apply his mind to the objections and deal with the same, no matter briefly. It is also in our opinion fairly evident from the scheme of the Act generally and Section 11(1) in particular that the nature of the functions discharged by the Collector is quasi judicial. That is because the end result of the exercise undertaken by him affects the civil rights of the owners inasmuch as the owner is except in cases u/s 17(1) obliged to give up the possession of the land under acquisition the moment the compensation determined by the Collector is tendered to him. From the point of view of the land owner, determination of the amount of compensation by the land owner, therefore, is a matter of moment which in turn requires the Collector to act judicially and make an award after due and proper application of mind. The duty to act judicially and to determine the issues after consideration and discussion of the material available on record or any other material which the Collector may find relevant arises from the nature of the duties enjoined upon

the Collector.

8. In Mathura Prosad's case (supra), the Supreme Court declared that the Land Acquisition Officer performs a statutory duty while awarding the amount of compensation u/s 11 and that in assessing the compensation, he is bound to exercise his judgment as to the correct basis of valuation. The Court observed:

The Land Acquisition Officer in awarding the amount of compensation u/s 11 is performing a statutory duty, and in assessing compensation is bound to exercise his judgment as to the correct basis of valuation, and his judgment cannot be controlled by an agreement between the parties interested.

9. Similarly in Repaka Bhyravamurthy's case (supra), Hon'ble Justice S.B. Sinha, CJ, as his lordship then was, speaking for the larger bench of the Andhra Pradesh High Court declared that the Collector, while preparing an award, exercises a quasi-judicial function and that the enquiry was not confined to awarding of compensation only in favour of persons who are before him but may even include apportioning the compensation among all the persons known or believed to be interested in the land under acquisition. The Court observed:

The Collector, while preparing an award exercises a quasi-judicial function. Section 11 of the Act enables the Collector to make an enquiry as regards the persons interested in the land. He is not bound to award compensation only in favour of persons who are before him. He may, subject to the result of the enquiry, pass an award apportioning the compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

10. There is, in the light of the above pronouncement, no difficulty in holding, that while making an award, the Collector discharges a quasi-judicial function under the Statute and that in the very nature of the powers exercisable by him and the implications of such exercise vis-a-vis the land owners, it becomes necessary that Collector applies his mind to the material on record and determines the amount of compensation having regard to the matters made relevant by Section 23 of the Act and those that have to be excluded from consideration in terms of Section 24 thereof.

11. Coming then to the award made in the instant cases, the land owners had filed their claims before the Collector in which they had demanded compensation based on the non-agricultural potential which the land under acquisition had acquired on account of extensive developments in the close vicinity thereof. The objections extensively dealt with these developments and asserted that on account of the proximity of the land under acquisition to the Bijwasan Railway junction as also the metro line in Dwarka and the Dwarka residential scheme already completed by the DDA, the claimants were entitled to claim compensation at a rate not less than Rs. 70,000/- per yard. The objections asserted that the DDA had itself sold/auctioned land in the vicinity of the land owned by the petitioners @ Rs. 48,000/- to Rs. 1 lakh per sq. yd. In the

supplementary objections filed by the petitioners, the petitioners had relied upon the sale of a plot of land by DDA in favour of M/s Manish Buildwell Pvt. Ltd. and asserted that the value of the land in question was in the neighbourhood of Rs. 7 Crore per bigha.

12. In the award made by the Collector, the objections filed by the land owners have been noticed by the Collector and the extent of land acquired from each of the owners indicated, but there is no discussion in the award of the said objections. The discussion as to the objections raised by the land owners is confined to the following paragraph appearing in the award:

Market Value

The market value of land under acquisition is to be determined with reference to the date of notification U/s 4 of the Land Acquisition Act, 1894, which is 4/11/04 in the instant case. For determination of the market value of land the indicative price fixed by the Govt. of NCT of Delhi for agricultural land in Delhi @ Rs. 15,70,000/- Lakh per acres as conveyed by the Dy. Secy. (LA), Land & Building Deptt. Vide letter No. F.9(20)/80/L&B/LA/6704-12 dated 9/08/2001 is taken into consideration. Notices u/s 50(2) were issued to DDA & their consent has been received by letter No. F9(Bamnoli)99/Tehsildar(W)NL/DDA/12i dated 4.12.2006. Accordingly the market value of the land under acquisition is determined as Rs. 15,70,000/- (Rupees Fifteen Lakh Seventy Thousand Only) per acre hence the market value comes to a tune @ Rs. 3,27,083.33 (Rupees Three Lakh Twenty Seven Thousand Eighty Three Rupees Thirty Three Paise Only) per bigha in block "A". I am of the considered opinion that market value of land classified as block "B" should be at least 10% less than the market value of land of block "A" and accordingly market value @ Rs. 2,94,375.00 (Rupees Two Lakh Ninety Four Thousand Three Hundred Seventy Five only) per bigha @ Rs. 14,13,000 per acre) in block "B". In addition to the market value the land owner will be entitled for other benefits as per provisions of the Land Acquisition Act, 1894.

13. A reading of the above would show that the Collector has proceeded to determine the market value on the assumption that the land in question was agricultural land. It is further evident from the above that the Collector has adopted the minimum price of Rs. 15,70,000/- per acre fixed by the Government in terms of notification dated 9th August, 2001. There is no mention much less any discussion in the award as to why the claim made by the land owners that the land in question had acquired non-agricultural potential was not acceptable. No reference is made to any sale deed nor any sale statistics have been obtained by the Collector from the concerned registering authority. The proximity of the land in question to the areas that are already developed in the neighbourhood has also escaped the attention of the Collector. The Collector has also remained oblivious of the fact that the land use was changed in terms of the notification dated 16th October, 2000. Suffice it to say that except relying upon the notification issued three years before the preliminary notification in the instant case and placing implicit reliance upon the same, the Collector has done nothing.

The Collector has not even cared to add escalation over the minimum price fixed in the said notification for the period intervening the said notification and the preliminary notification of over three years. All this goes to show that the approach adopted by the Collector has not been focused nor the treatment given to the subject satisfactory. Since the nature of the duty enjoined upon the Collector u/s 11 was statutory and since the exercise of the power by him was quasi-judicial, the Collector ought to have examined the objections raised by the land owners, briefly dealt with them in arriving at his conclusions and taken into consideration all the circumstances that were relevant to a proper, true and correct determination of the market value of the land. The award made by the claim does not show awareness of the officer concerned about the nature of duty assigned to him u/s 11 or the requirements underlying a proper discharge of the same. The award cannot therefore carry much conviction and falls short of the requirements of law. Our answer to question No. 1 is accordingly in the negative.

Re Question No. 2

14. The Act provides an effective remedy for the determination of the true market value of the land acquired from the land owners by way of a reference to the Civil Court u/s 18 thereof. That remedy is the most effective remedy for determination of the mixed question of law of fact as to what was the fair market value of the property under acquisition on the date of the issue of the preliminary notification. The determination of the said question, there is no gainsaying, depends on the appreciation of the evidence which the parties would adduce in relation to the market value of the land prevailing in the area by reference to judicially recognized norms for such determination. Since the land in the instant cases has, according to the petitioners, non-agricultural potential, any dispute regarding the true market value of the same would necessarily require production of evidence of comparable sales in the vicinity during the relevant period. It is only on the basis of any such evidence that the Civil Court would eventually be able to determine the amount payable towards compensation to the owners. In fairness to Mr. Mann, we must mention that he did not dispute that the remedy by way of references to the Civil court was indeed the appropriate and the most effective remedy available for determination of the fair market value of the land acquired from the petitioners on the date of the preliminary notification. It is also common ground that the process of determination of the market value has been set into motion by the petitioners by seeking a reference to the civil court and that the Collector has already made the references, in most, if not, all the cases. Mr. Mann, all the same, argued that even when references have been made by the Collector at the instance of the petitioners, this Court could examine the validity of the exercise undertaken by the Collector in these cases at least for purposes of laying down guidelines for the collectors to follow in future in dealing with such issues. We have examined those aspects while dealing with question No. 1 above and broadly indicated the nature of the functions which the Collector discharges and how the Collector has, in the instant cases, failed to keep the legal norms in view. That does not

however mean that we must necessarily quash the award made by the Collector and direct a fresh exercise to be undertaken. We say so for two precise reasons. Firstly because once the petitioners have themselves approached the Collector and sought a reference to the civil court and once the references have been made, the issue regarding the compensation payable to the owners is pending adjudication before the civil Court. Regardless of what the Collector has determined to be payable, the Civil Court would be free to determine the true compensation payable for the land in question. In that sense, therefore, the invalidity, if any, attached to the award made by the Collector would recede into the background. The petitioners would, based on the determination made by the civil court, be entitled to recover the amount actually payable to them. The fact that the order passed by the reference court would be appealable before this Court makes the said process all the more meaningful and effective in comparison to the present writ proceedings where the court may set aside the award but will not be able to determine the compensation actually payable.

15. Secondly because interference with the award would result in nullifying the references that have already been and are presently pending before the civil court. The petitioners have not challenged the said orders nor could perhaps the same be challenged because the orders of references have been made at their instance. Keeping in view the fact that the civil court's determination is what will eventually prevail, we consider it unnecessary to put the clock back and direct the Collector to make a fresh award. Our answer to question No. 2 is therefore in the negative.

16. In the result, these writ petitions fail and are hereby dismissed but in the circumstances without any order as to costs. We, however, make it clear that in case the Collector has not already made the references to the civil court in the case of each one of these writ petitioners, he shall do so expeditiously in which event, the civil court concerned shall expedite the trial and disposal of the said references in accordance with law.