
(1991) 07 AHC CK 0066

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2390 of 1982

Jagdish Saran Singhal

APPELLANT

Vs

The Collector, Hamirpur and another

RESPONDENT

Date of Decision : 31-07-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 35, 36, 36(2), 37

Citation : AIR 1992 All 40 : (1991) 2 UPLBEC 1092

Hon'ble Judges : N.N. Mithal, J;K. Narayan, J

Bench : Division Bench

Advocate : N.S. Chaudhary, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mithal, J.

By means of this petition, the petitioner has sought a mandamus directing respondent No. 1 to make a reference u/s 37 of the Land Acquisition Act.

2. The relevant facts giving rise to this petition are that certain pieces of land belonging to the petitioner had been temporarily acquired for its use and occupation by the State u/s 35 of the Land Acquisition Act. There was some litigation in respect of compensation payable in respect thereof, which ultimately became final. However, at the time when the land was sought to be handed over to the petitioner, he made an application before the Collector pointing out that some quantity of earth has been removed from the land in question and consequently damage has been caused to it. He, therefore, prayed that a reference under Sec. 37 of the Act be made to the court. This application has been rejected by the Collector by an order dated 16th Nov. 1977, a copy whereof has been filed as Annexure I to the supplementary affidavit.

3. The ground on which the application for making a reference was rejected appears to be that the petitioner had already been granted compensation for the

land and, therefore, was not entitled to any additional compensation. It may be pointed out that on earlier occasion when the reference was made to the Court compensation was awarded as if it was a case of permanent acquisition of land and not merely temporary acquisition where compensation is awarded only for use and occupation of the land during the period of temporary occupation. In the appeal filed by the State the High Court agreed with the State and the appeal was allowed directing the court below to reconsider the reference u/s 36 and determine compensation only in respect of the loss caused to the owner due to its non-occupation and user during the period of temporary acquisition. Surprisingly the learned Standing Counsel has taken a stand now which is quite contrary to the stand of the U.P. State in the appeal.

4. The contention of the petitioner is that while u/s 35 of the Land Acquisition Act the land is acquired only for temporary use and compensation is awarded only in respect thereof while u/s 36 of the Act compensation is awarded in respect of the damages caused to the land during its temporary occupation or use by the acquiring body. He has contended, therefore, that when the land was handed back to him the petitioner has rightly made an application for making a reference to the Collector for determining the damage.

5. We have heard learned counsel for the parties. The main contention of the learned standing counsel is that once the compensation has been awarded to the petitioner, no further compensation is payable to him in respect of the very same land.

6. We find it difficult to accept the submission of the learned standing counsel. Sections 35 and 36 of the land Acquisition Act have different areas of operation. While u/s 35 of the Act the petitioner is entitled to compensation only for its occupation and use by the acquiring body, meaning thereby loss to its owner on account of his deprivation from its user. If he suffers any loss on that account, the same would be payable to him u/s 35 of the Act. Section 36 of the Act on the other hand comes into effect after the temporary occupation of the land has ceased and the State wants to return back its possession to the owners. At that stage if the owner finds that his land has suffered any damage at the hands of the acquiring body during the period of its temporary occupation then the owner may ask for a reference to the court for determining the damages caused to it on account of actions of the acquiring body. The compensation already determined in favour of the petitioner u/s 35 of the Act, how-ever, has no relation or connection with the damages caused to the land on account of its occupation. u/s 35 compensation is paid for loss caused to the owner for having been deprived of its use while under S. 36 compensation is determined for the damage caused to the land during its temporary occupation by the acquiring body. This marked difference in the two provisions was not noticed in passing the impugned order.

7. We are, therefore, clearly of the view that the petitioner was entitled to seek a reference to the court for determining the damage to the land during the course of temporary occupation by the acquiring body at the time when its possession

was returned to him.

8. In view of what has been said above, we find force in the petition. It is accordingly allowed. The respondents are directed to make a reference u/s 37 of the Land Acquisition Act on the basis of petitioner's application dated 16th Sept. 1975 moved u/s 36(2) of the Land Acquisition Act. There will be no order as to costs.

9. Petition allowed.