
(2011) 05 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 78 of 2005

Jagnnath and Another

APPELLANT

Vs

District Judge, Tonk and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 34, 4(1), 54, 5A

Citation : (2012) 2 RLW 1385

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Advocate : J.P. Goyal, with Manisha Surana and Sandeep Jain, for the Appellant;
Ajeet Bhandari for RIICO, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This appeal has been filed against the judgment of District Judge Tonk dated 30.9.2003 passed in Reference Application Case No. 157/1997 whereby the reference applications of the applications filed u/s 18 of the Central Land Acquisition Act, 1894 (Rajasthan amendment 1987) (in short "the Act") were dismissed against the award of the Land Acquisition Officer (Sub Divisional Officer) Tonk dated 19.8.1996 in case No. 2/1994. The facts have been set out in the impugned judgment and hence I am not repeating the same here except wherever necessary.

2. The facts in brief are that by the Notification dated 15.9.1994 of the Deputy Secretary Industries (Group-1), Government of Rajasthan, their intention of acquiring land for the public purposes for developing industrial area for RIICO in village Roopwas, Tehsil Niwai District Tonk measuring 371 Bighas and 10 Biswas of land. The Notification was also published in two local News papers dated 15.12.1994. The appellants submitted objections before the Land Acquisition Officer (Sub Divisional Officer) Tonk but the Land Acquisition Officer without hearing the appellants sent the report u/s 5A of the Act to the State Government through the Collector Tonk. On satisfying with the report of the Land Acquisition

Officer, Tonk, the Deputy Secretary Industries (Group-1) of the Government of Rajasthan issued Notification u/s 6 of the Act and published the same in the Raj Gazette dated 7.11.95 and the same was also published in two local news papers. The Land Acquisition Officer issued notice u/s 9(1) of the Act to the khatedars/land holders. The khatedars submitted their consent to the Land Acquisition Officer that their land is surrounded by National Highway No. 12 and as per the rates applicable to Sitapura Sukhpuria land acquired for RIICO may be made applicable to them. Some of the objectors stated that the market value of the land is presently, 6,00,000 per bigha. The Land Acquisition Officer notified 6.2.96 for information to notify the award. Their objections were invited upto 13.2.1996. The Land Acquisition Officer sent its report to the Government including the objections. The Land Acquisition Officer on the basis of the report of the Sub Registrar Niwai passed the award dated 19.8.96.

3. The award of the Land Acquisition Officer was mainly based on the report of the Sub Registrar Niwai and an award of Rs. 1,33,10,576/- was passed acquiring 371 Bigha and 10 Biswas land in village Roopwas.

4. Aggrieved against the award dated 19.8.96 the appellants preferred reference application before the District Judge Tonk u/s 18 of the Act. After receiving the notice of the Reference Application, the respondents 3 to 5 filed their written statement on 27.3.98.

5. The DJ framed 9 issued in the reference application. The appellants and the respondent RIICO produced evidence and documents in support of its case.

6. After hearing the arguments, the DJ, Tonk rejected this reference application along with other 10 reference applications vide his order dated 30.9.2003. Aggrieved against the order of the DJ on the reference application, the appellants filed this appeal u/s 54 of the Act claiming that they have not been given the value of the land as per the market value and the provisions of the Land Acquisition have not been followed in letter and spirit.

7. Heard learned counsel for the appellants and the learned counsel for the RIICO.

8. Before proceeding further it would be necessary to have a look at the judgment of the Apex Court in Executive Engineer, Karnataka Housing Board Vs. Land Acquisition Officer, Gadag and Others, wherein it has been held as under:

5. We may deal with the last submission first. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation (publication of notification u/s 4(1) of the Land Acquisition Act, 1894 - "the Act" for short) notification, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing

buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value. A "willing seller" refers to a person who is not acting under any pressure to sell the property, that is, where the sale is not a distress sale. A willing seller is a person who knowing the advantage and disadvantages of his property, sells the property after ascertaining the prevailing market prices at the fair and reasonable value. Similarly, a willing purchaser refers to a person who is not under any pressure or compulsion to purchase the property, and who, having the choice of different properties, voluntarily decides to buy a particular property by assessing its advantages and disadvantages and the prevailing market value thereof. Of course, unless there are indications to hold otherwise, all sale transactions under registered sale deeds will be assumed to be normal sales by willing sellers to willing purchasers. Where however there is evidence or indications that the sale was not at prevailing fair market value, it has to be ignored.

9. The crux of the judgment of the Apex Court is that the standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation (publication of notification u/s 4(1) of the Land Acquisition Act, 1894.

10. In the instant appeal the Land Acquisition Officer on the basis of the report of the Sub Registrar Niwai passed the award dated 19.8.96. The award of the Land Acquisition Officer dated 19.8.96 reads as under:

11. It is clear from the award of the land Acquisition Officer, that it is based on the basis of the report of the Sub Registrar Niwai as per the Index maintained by him on the date of issue of the Notification u/s 4(1) of the Act.

12. The DJ Tonk vide its order dated 30.9.2003 decided the reference applications Nos. 147/1997 to 169/1997 (in all 23 reference applications) and rejected the same. The appellants in these misc. appeals only have challenged the order of the DJ dated 30.9.2003 passed in reference applications Nos. 146, 147, 150, 152, 154, 159, 160, 163, 164 and 168 of 1997 on the ground that they have not been paid the sufficient amount of compensation as per the market value and the provisions of the Act have not been followed in letter and spirit.

13. This appeal related to reference application No. 157/1997. It was stated by the appellants that the compensation was not given to them as per the market value. It has been admitted by the appellant Jaggnath in his cross examination that he produced the Ex. 4 to 7 registered sale deed, but he does not know as to who has sold the land to whom. He stated that his land is 6-7 Kms. away from the Vanasthali Railway Station. The uncertified map shows that his land is away from National Highway about 2230, 2105, 2540, 2660, 2110 feet. The arguments of the learned counsel for the appellants cannot be accepted as the value of the land was determined on the basis of the report of the Sub Registrar, Niwai and the determined compensation have also been paid to the appellants.

14. The DJ in relation to issue No. 1, in reference application gave the following findings:

15. I have gone through the findings given by the DJ in the order dated 30.9.2003, in relation to reference application. In my opinion the findings given by the DJ on issue No. 1 in the reference application is just and proper. It may be mentioned that the Land Acquisition Officer in its award clearly stated that before passing the award, sent the same for approval by the State Government, a report was called from the Sub Registrar Niwai and the Sub Registrar Niwai vide letter dated 12.10.95 in relation to village Roopwas informed the rate of Index from the record as follows:

The Land Acquisition Officer on the basis of the report of the Sub Registrar gave the award and the same cannot be said to be unjustified. The DJ in the detailed order came to the findings that the documents produced by the appellants were not related to the land pointed out by the appellants. I am in agreement with the findings arrived at by the DJ and the Land Acquisition Officer and the same cannot be said to be unjustified. I have also gone through the arguments raised by the appellants in the appeal and after considering the same in my opinion the order passed by the DJ in the reference application is just and proper in the eye of law. The appellants have collected the award money and on consideration of the dispute raised by them in the reference application and in this appeals do not survive. The award money was based as per the market value at that time based on the report of the Sub Registrar Niwai. Thus the arguments raised by the learned, counsel for the appellants in this appeal are devoid of merit and hence rejected.

16. Similarly on issues Nos. 2, 4, 5 and 8, the DJ gave the following findings:

17. I have gone through the findings given by the DJ on issues No. 2, 4, 5 and 8 in relation to reference application and in my opinion the findings are just and proper. The DJ in its order discussed each and every point with reasons. The findings arrived at by the DJ on issues No. 2, 4 and 5 against the appellants and in favour of the respondent RIICO and finding on issue No. 8 in favour of the RIICO cannot be said to be unjustified. The Forest Department officials and RIICO officials, all with detailed report calculated the amount and the same cannot be said to be unjustified. Thus the award of the Land Acquisition Officer and the findings of the DJ on issues No. 2, 4, 5 and 8 in the reference application stand confirmed. The arguments raised by the appellants in this appeal cannot be accepted and it cannot be said that the provisions of the Act have not been complied with by the Land Acquisition Officer in passing the award.

18. On issues No. 3 and 6, the DJ gave the following findings:

19. I have gone through the findings arrived at by the DJ on issues 3 and 6. The issues No. 3 and 6 were rightly decided against the appellants. The appellants are not entitled to any compensation u/s 34 of the Act. The solatium and Compensation were also granted to the appellants within one year of the date of

taking possession. The appellants are also not entitled to 9 per cent interest within one year and after that 15% interest. The findings arrived at by the DJ on these issues are just and proper. The appellants have already received the compensation as awarded in the award. The arguments raised by the appellants in this appeal are devoid of merit and thus rejected. The Land Acquisition Officer passed the award after following the provisions of the Act.

20. I have also gone through the finding of the DJ on issue No. 7, which was to be proved by the respondent RIICO. It is true that the compensation awarded in the award has been received by the land owners. The RIICO has not been able to point out any provision in the Act that after receiving award money the land owners/applicants are not entitled to challenge the award before the reference court. Thus this issue was decided in favour of the appellants.

21. I have also gone through the findings on issue No. 9 by the DJ. The DJ in regard to issue No. 9 rightly observed that only issue No. 7 was decided in favour of the appellants and other issues have been decided against them and hence, the appellants are not entitled for any relief of amending the award. For the reasons and the findings mentioned above, this misc. appeal deserves to be rejected and are hereby rejected. The award of the Land Acquisition Officer dated 19.8.1996 and the common order dated 30.9.2003 passed by the DJ on reference application No. 157 of 1997 stands confirmed. The appellants are not entitled to any relief. In the facts and circumstances of the case the parties are directed to bear their own costs.