
(2016) 03 AHC CK 0228
In the Allahabad High Court
Case No : First Appeal No. 804 of 2002

Jal Sansthan, Agra

APPELLANT

Vs

Krishna Kumari

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 6

Citation : (2016) 6 AllWC 5787 : (2016) 118 ALR 73 : (2016) 133 RD 265

Hon'ble Judges : Sudhir Agarwal and Rakesh Srivastava, JJ.

Bench : Division Bench

Advocate : P.C. Jain and J.K. Srivastava, Advocates, for the Appellant; R.N. Sharma and A.K. Mishra with R.K. Misra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal and Rakesh Srivastava, JJ.—Heard Shri P.C. Jain, learned counsel for appellant. None appeared on behalf of respondent although this appeal has been called in revised. Hence, we proceed to decide appeal ex parte.

2. This appeal under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as "Act 1894") has arisen from award/judgment dated 30.07.2002 passed by Sri Musharraf Husain, 13th Additional District Judge, Agra, adjudicating Land Acquisition Reference (hereinafter referred to as "LAR") No.203 of 1993, determining market value of acquired land at the rate of Rs. 1,56,000/- per bigha (Rs.51.57 per square yard). Court below has also directed that claimant-respondents shall be entitled for payment of solatium at the rate of 30% of market value, 12% additional compensation and interest for various periods, as per provisions of Act, 1894.

3. At the instance of Jal Sansthan, Agra (hereinafter referred to as "appellant"), proceedings for acquisition of 80 bighas, 4 biswa and 15 biswansi land in Village Baipur Muslim, Tehsil and District-Agra for construction of a new Water Works were initiated by State Government by publishing a notification under Section 4

(1) of Act, 1894 on 24.10.1988. Notification under Section 6 (1) was published on 24.6.1989. Possession of acquired land was taken on 16.08.1990. Special Land Acquisition Officer (hereinafter referred to as "SLAO") made award on 9.8.1991 determining market value of acquired land at the rate of Rs. 36666.67 per bigha (i.e. Rs. 12.12 per square yard), besides 30% solatium, 12% additional compensation and interest at the rate of 9% from the date of compensation till one year, thereafter, at the rate of 15% till actual payment is made.

4. In present case, claimant-respondents have purchased some part of acquired land, disputed in present appeal, vide sale-deed dated 7.1.1991 from erstwhile owners of Shri Prem Prakash, Sri Jai Prakash and Sri Ravindra Kumar. It is admitted by parties that land in Khasra Nos.1079, 1080, 1081, 1092, 1098, 1099, 1100, 1104 and 1109 was earlier owned by Shri Prem Prakash, Sri Jai Prakash and Sri Ravindra Kumar, who had executed a sale-deed in favour of Sri Krishna Kumari, Sri Maheshchand, Sri Pradeep Gupta and Shri Mahidhar. Subsequently, Sri Maheshchand Gupta transferred by sale, half of his share in land in question to Smt. Shashiprabha Sharma vide sale-deed dated 19.08.1992. Earlier sale-deed dated 07.01.1991 was executed before award dated 9.8.1991 and subsequent sale-deed dated 19.08.1992 was executed after the said award.

5. Claimants-respondents^{1, 2, 3 and 5} made application dated 24.11.1993 before Collector for making reference under Section 18 of Act 1894 to District Judge, Agra for determination of market value under Section 23 of Act, 1894. Now it has been adjudicated by Additional District Judge, Court No.13, Agra vide award/judgment dated 30.07.2002, impugned in this appeal.

6. Referring to fact that respondents were not owners of property when it was acquired but have subsequently purchased the same when process of determination of compensation was pending before Collector, it is contended that any sale-deed executed after possession of land is taken by Government, would be void and it shall not result in conferring title upon purchaser for the reason that once acquisition proceedings have commenced and possession is taken by Government, acquired land vests with the Government, free from all encumbrances, and Government becomes owner. The only right left with land owner whose land has been acquired is to receive compensation. Therefore, sale-deed executed in respect of land acquired by Government and possession taken, will not be a valid transaction. It is contended that receiving of compensation is nothing but a "right to sue" and by execution of sale-deed by erstwhile owners, no transfer could have been done, as it is barred by section 6 (e) of Transfer of Property Act, 1882 (hereinafter referred to as "Act, 1882") and if such a transaction is void, claimant-respondents, being subsequent purchasers have no right to seek enhancement of claim founded on a void documents, reference itself was not maintainable, hence, impugned award/judgment is liable to be set aside.

7. In our view, there are three points for determination, which need adjudication

in this appeal:

(i) Whether respondents had no right to seek enhancement of compensation being purchasers of acquired land after acquisition notifications and sale-deeds executed between original land owners and respondent subsequent purchasers, are void ab initio for all purposes including claim for receiving compensation/enhanced compensation?

(ii) Whether market value of acquired land could not have been claimed at a higher rate by respondents than consideration for which respondents purchased land from erstwhile owners?

(iii) Whether market value determined by Reference Court is just, valid or excessive and unreasonable?

8. Now coming to first question, the issue can be decided by considering nature of sale-deeds whether it was only a right to sue or there was a transfer of an existing right permissible under Section 6 of Act, 1882. Nature of claim for compensation or enhanced compensation came to be considered before three Judges Bench in case of *Mrs. Khorshed Shapoor Chenai etc. v. Assistant Controller, Estate Duty*, AIR 1980 SC 775, wherein certain lands owned by Rashid Shapoor Chenai were acquired by two sets of Notifications published on 19.6.1961 and 13.1.1962, respectively and another on 1.11.1963 and 1.2.1964. In first set of acquisition proceeding, Collector made award determining compensation on 31.1.1963 but under second set of acquisition proceeding notification under Section 6 could be published, Rashid Shapoor Chenai died on 4.11.1963. Award was made on 12.3.1965 and 19.3.1965. In earlier acquisition proceedings, compensation awarded by Collector was received by Rashid Shapoor Chenai in his life time but in respect of later award, compensation was received by his widow Mrs. Freny Chenai and his son Shapoor Rashid Chenai. Mrs. Freny Chenai on death of Rashid Shapoor Chenai, filed account of properties for purpose of estate duty on 26.12.1963, which was completed by Assessing Authority on 29.3.1966. He took value of acquired land as determined by Collector for purposes of compensation. Shapoor Rashid Chenai son of Rashid Shapoor Chenai also died on 7.5.1965. His widow also filed account of properties and Assessing Authority completed estate duty also on 30.12.1966. He adopted value of land acquired as per determination made by Collector. In the mean time, heirs of Rashid Shapoor Chenai had already made an application for determination of compensation by District Judge by making Reference under Section 18 and Reference was adjudicated on 6.3.1967 wherein market value was enhanced substantially. Matter was taken by Government in appeal to High Court. Estate duty authorities having information of enhanced compensation awarded in Reference, issued notices for reopening of assessment. These notices were challenged in High Court, who dismissed the petition and, thereupon, matter came to Supreme Court. One of the contentions was that heirs of deceased Rashid Shapoor Chenai in making reference only exercised a right to sue for further compensation and it was merely a hope or a chance that

compensation might be enhanced. It was not an asset or property or duty at that time, hence, question of escaped assessment does not arise. This contention was rejected by High Court as well as Supreme Court. It relied on an earlier decision in *Lakshmi Kant Jha v. Commissioner of Wealth Tax, Bihar and Orissa*, (1973) 90 ITR 97, wherein Zamindari estate was acquired by Government under Bihar Land Reforms Act, 1950 and it was held that right to receive compensation against such estate is a right related to property. Compensation was property and constituted an asset for purpose of physical statute. It is said that under Act, 1894, lands where forcibly acquired, payment of compensation is a condition precedent. In our view, compensation may defer but land owners despite losing land, would have a right to receive compensation and this compensation is a "property". Court also held, whether compensation determined by Collector is final or in any litigation i.e. reference under Section 18, it is enhanced, both constitute one and an individual right. It cannot be said that right to receive compensation is confined to what is determined by Collector and enhanced compensation would amount to "extra compensation", which is nothing but a right to sue. Court observed as under:

"Upon acquisition of his lands under Land Acquisition Act, the claimant has only one right, which is, to receive compensation for the lands at their market value on the date of the relevant notification and it is this right, which is quantified by the Collector under Section 11 and by the Civil Court under Section 26 of the Land Acquisition Act".

9. Court also observed that once Collector made award, it cannot be said that right to receive compensation is ceased. It survives, if award is not accepted or compensation is received under protest. Right to receive compensation must be regarded as having survived and kept alive, which claimant prosecutes in Civil Court. Court further observed as under:

"It is impossible to accept the contention that no sooner the Collector has made his award under Section 11 the right to compensation is destroyed or ceases to exist or is merged in the award, or what is left with the claimant is a mere right to litigate the correctness of the award. The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in Civil Court. That is why when a claimant dies in a pending reference his heirs are brought on record and are permitted to prosecute the reference"

(Emphasis added)

10. This very question specifically came up for consideration before this Court also in *U.P. Avas Evam Vikas Parishad v. Kanak and others*, 1999 ALL. L.J.153. A similar argument was raised therein on behalf of U.P. Avas Evam Vikas Parishad. Rejecting the same and referring to Section 6 of Act, 1882, Court held that property of any kind can be transferred but a mere right to sue cannot be transferred. Then referring to judgment in *Mrs. Khorshed Shapoor Chenai*

(supra), Court said in para 31, as under:

"In view of the discussions made above we hold that the sale deeds whereby the respondent-claimants once have acquired property rights in the land acquired and the right to receive compensation, did not envisage transfer of mere right to sue, transfers of property in the acquired land are not of champertous nature, hit by the provisions of Section 6 of the Transfer of Property Act and Section 23 of the Indian Contract Act."

(Emphasis added)

11. It is true that subsequently a Division Bench of this Court in *Agra Development Authority v. State of U.P.*, 2004 RCR(Civil) 60, has taken a view that claim of compensation cannot be transferred as it amounts to only right to sue and for this purpose, it relied on in *Ellis v. Torrington*, 1920 (1) KB 399, *Basanta Kumar Das v. Nagendra Nath Pal*, AIR 1932 Calcutta 719, *Ganga Din and another v. Piyare*, AIR 1929 Allahabad 63 (1), *Jagannath Marwari v. Kalidas Raha*, AIR 1929 Patna 245, *Ram Dayal and others v. Mukat Manohar and another*, AIR 1937 Allahabad 317, *Moti Lal v. Radhey Lal and others*, AIR 1933 Allahabad 642, *Sri Iswar Gopal Jew v. Globe Theaters Ltd.*, AIR 1947 Calcutta 200 and *Manmatha Nath Mullick v. Sheikh Hedait Ali and others*, AIR 1932 Privy Council 32. This Court in *Agra Development Authority* (supra) held that transferees of original claimants have no right to get compensation as a mere right to sue cannot be transferred. Unfortunately, we find that earlier binding authority of Supreme Court in *Mrs. Khorshed Shapoor Chenai* (supra) and Division Bench judgment of this Court in *U.P. Avas Evam Vikas Parishad* (supra), have not been noticed though the judgment in *Agra Development Authority* (Supra) is much subsequent to aforesaid precedents, which were binding upon subsequent Division Bench judgment. It appears that in ignorance of aforesaid earlier judgments, holding otherwise, this Court took a contrary view in *Agra Development Authority* (supra). That being so, it is a judgment per incurium.

12. At this stage, we have also examined Section 6 of Act 1882 as also judgments referred to in *Agra Development Authority* (supra) and find that in none of the authorities cited therein, issue with respect to "compensation" under Land Acquisition Act, 1894, was involved.

13. In *Ellis v. Torrington* (supra), by a lease-deed dated 24.10.1898, certain premises were let out for a period of nineteen years. House was let by one E.T. Johnson to F. Voelklein. All three leases contained onerous covenants to repair the premises and to keep them and yield them up in good repair. Sub-under-lease became vested by assignment in defendant. Plaintiff, who had been a tenant to defendant of same premises, sought to claim damages for breach of lessee's covenants therein that assignment was free from objection on the ground of maintenance or champerty. The right of action on the covenants being so connected with enjoyment of property has to be more than a bare right to litigate, as held therein.

14. In *Ganga Din and another (supra)*, plaintiff purchased certain zamindari rights and mesne profits, payable to defendant no.1, who was vendor. This Court held that transfer of mesne profit is not a mere right to sue and can be transferred under Section 6 of Act 1882. This Court refers the view otherwise taken by District Judge in appeal and held as under:

"A person who is entitled to a property in possession of a trespasser is entitled not only to property but to profits of which, he has been improperly deprived. Profits rightfully belong to owner of land and it is not accurate to say that profits are payable merely by way of damages."

15. In *Jagannath Marwari (supra)*, a Division Bench of Patna High Court held where a person purchases a tank and brings a suit by virtue of a covenant running with land, it cannot be said that what was transferred, was a mere right to sue. Court held that word "mere" implies that the transferee acquires no interest in the subject of transfer other than the right to sue. It relied on its earlier decision in *Jai Narain Pandey v. Kishun Dutt Missir*, AIR 1924 Pat.551 wherein decision in *Gregg v. Bromley*, (1912) 3 KB 474, was followed. Court held as under:

"The question was whether the subject matter of the assignment was, in the view of the Court, property with incidental remedy for its recovery or was a bare right to bring an action either at law or in equity".

16. Citation of Calcutta High Court decision i.e. *Monmatha Nath Dutt v. Matilal Mitra*, AIR 1932 Calcutta 719, we find is not correct citation inasmuch as decision reported in AIR 1932 Calcutta 719 titled as *Basanta Kumar Das v. Nagendra Nath Pal*.

17. In *Moti Lal v. Radhey Lal (supra)*, this Court explaining Section 6 (e) of Act, 1882 held as under:

"A claim to cover an ascertained amount is an actionable claim and can be validly transferred but a claim for unliquidated damages for breach of contract, after the breach, is not an "actionable claim" within the meaning of Section 3 (e) of Act, 1882."

18. In *Ram Dayal v. Mukat Manohar (supra)*, this Court held that right to sue for breach of contract is not a property as defined in Section 2 (d) of Provincial Insolvency Act, 1920, hence, nontransferable under Section 6 (e) of Act, 1882.

19. In *Manmatha Nath Mullick v. Sheikh Hedait Ali (supra)*, Privy Council held that Section 6 (e) not applicable. In that case therein mortgagor leased mortgaged property and lessee agreed to pay Government dues or be responsible to lessor in damages. Lessee defaulted and mortgagee who purchased properties in auction sale under a previous mortgagee's decree paid dues. Mortgagor had also assigned his rights against lessee to purchaser mortgagee. A suit was filed by mortgagee against lessee for amount of dues paid. It was pleaded that assignment was invalid under Section 6 (e). It was held

that it was not a mere right to sue but a claim for a definite sum of money which lessee was bound by his contract with lessor to repay him. This would be an actionable claim to which Section 130 of Act, 1882 would apply. The failure of lessee to fulfil this obligation did not give rise to a claim of damages but to a claim for reimbursement of precise sum which landlord had disbursed to meet the obligation and this claim being property as signed can be decreed.

20. In *Sri Iswar Gopal Jew v. Globe Theaters Ltd.* (supra), it was held that an action for damages in tort is not assignable.

21. Therefore, decisions relied by Division Bench in *Agra Development Authority* (supra), we find, were rendered in different facts and conditions. Courts had no occasion to consider question as to whether right to receive "compensation" on acquisition of land by State, is property or not is it assignable under Section 6 of Act, 1882. This issue was already decided by Supreme Court in *Mrs. Khorshed Shapoor Chenai* (supra) and by a Division Bench of this Court in *U.P. Avas Evam Vikas Parishad v. Kanak and others* (supra), but both these judgments went unnoticed by subsequent Division Bench. Since there is a divergence opinion in two Division Bench of this Court and in that view of the matter, we could have referred the matter to larger bench, but no useful purpose would be served since the issue stands covered by a Supreme Court judgment, which is binding on us hence we follow the same.

22. We are also fortified by another Division Bench judgment delivered by Hon"ble Ashok Bhushan, J (as His Lordship then was) in *Food Corporation of India v. Kailash Chand and others*, 2014 (1) ADJ 379 (DB), wherein a similar dispute was raised and Court said :

"It is settled proposition of law that any transfer of land after issuance of notification under Section 4 (1) by the owner of the land is void as against the State and such transferee cannot be allowed to challenge acquisition of the land. However, there are series of the decisions of the Apex Court taking the view that such transferees step into the shoes of owner and is entitled to claim compensation."

23. Court relied on the decisions in support of aforesaid proposition on *Union of India v. Shiv Kumar Bhargava and others*, (1995) 2 SCC 427; *U.P. Jal Nigam, Lucknow through its Chairman and another v. Kalra Properties (P) Limited, Lucknow and others*, (1996) 3 SCC 124; *V. Chandrasekaran and another v. Administrative Officer and others*, (2012) 12 SCC 133 and *Rajasthan Industrial State Development Corporation v. Sobnath Scindhiya Corporation Housing Society*, (2013) 5 SCC 427.

24. In aforesaid judgment, Division Bench also took note of the decision in *Agra Development Authority v. State of U.P.* (supra) and *U.P. Avas Evam Vikas Parishad v. Kanak and others* (supra) and having seen dichotomous views in two decisions observed in para 31 that in normal course matter would have been referred to larger Bench but since there is already an authority of Apex Court in

Mrs. Khorshed Shapoor Chenai (supra), no useful purpose will be served and proceeded to decide the matter on merits by following the proposition that subsequent purchaser has right to claim compensation, which includes quantification of compensation by claiming enhancement on a reference under Section 18 of Act, 1894.

25. Moreover, time and again, Courts have held that once a notification under Section 4 (1) is published, it is a notice to everyone that land is needed for public purpose to be acquired, and thus, no encumbrance should be created on such land. Any alienation of land after publication of notification under Section 4 (1) would not bind the Government or beneficiary under acquisition and land would stand transferred free from all encumbrances but subsequent purchaser has only right to claim compensation since that is the only interest in land, which his predecessor-in-title had.

26. Issue regarding subsequent purchasers and their rights have been considered in various authorities of Supreme Court may be noticed herein.

27. This question came to be considered before Supreme Court in U.P. Jal Nigam v. Kalra Properties Pvt. Ltd., 1996 (3) SCC 124, where it observed in para 3 of judgment, as under:

"3. ... It is well-settled law that after the notification under Section 4 (1) is published in the gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property."

28. In Sneh Prabha v. State of U.P., 1996 (7) SCC 426, the Court said:

"5. It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries etc. Therefore, any alienation of land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, titles and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."

29. In Ajay Krishan Shinghal etc. v. Union of India and others, 1996 (10) SCC 721, the Court in para 13 of judgment referring to its earlier decisions in State of U.P. v. Smt. Pista Devi and others, AIR 1986 SC 2025; Gian Chand v. Gopala and others, 1995 (2) SCC 528 ; Mahavir and Anr. v. Rural Institute, Amravati and another, 1995 (5) SCC 335 and Laxmi Engineering Works v. P.S.G. Industrial Institute, 1995 (3) SCC 583, held that it is a settled proposition that after Notification under Section 6 is published, property under acquisition cannot be transferred and any such transaction is void. The subsequent purchaser at the

best can only claim compensation of acquired land claiming interest in the land which his predecessor-in-title had.

30. In *Star Wire (India) Ltd. v. State of Haryana and others*, 1996 (11) SCC 698, Court reiterated the aforesaid exposition of law. The aforesaid authorities were followed in *Meera Sahni v. Lieutenant Governor of Delhi and others*, 2008 (9) SCC 177 and in para 21 of judgment, Court said as under:

"21. In view of the aforesaid decisions it is by now well settled law that under the Land Acquisition Act the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation."

31. Thus, submission that a subsequent purchaser has no right for all purposes including compensation has no merit inasmuch as right to receive compensation is right to property assignable under Section 6 of Act, 1882. Hence, sale-deed executed by erstwhile owners to subsequent purchasers may not create any encumbrance on acquired land but would be valid so as to transfer right to claim compensation from erstwhile land owners to subsequent purchasers.

32. First question, therefore, answered against appellant.

33. Then coming to second question, market value has to be determined on the date of notification under Section 4. In the present case, it was published on 24.10.1988. Relevant exemplars placed before court below to show market value on the said date have to be examined. Learned counsel for appellant contended that in 1991-92 when erstwhile owners sold their lands to respondents at a lesser rate, it cannot be said that market value in 1988 was higher. A document executed between parties whether amounts to free sale or not, has to be examined by authority, who is under obligation to determine market value. Erstwhile owner's sale-deed dated 7.1.1991 and 19.8.1992 are on record. It was clearly mentioned therein that vendors have no claim or title over land and possess only a right to claim compensation, which was not received. It is further stated that they have lot of problem in pursuing the matter for compensation and for that reason they are transferring their right to claim compensation to vendors. In both sale-deed, similar assertions have been made. It, thus, cannot be said that aforesaid sale-deed shows a free and true consideration of acquired land and should have been relied to determine market value. These documents have rightly been ignored by court below. The question² thus is also answered against the appellant.

34. Now coming to last question, we find that Reference Court has found that acquired land has been allotted for development and in fact it was placed in a better condition than the land for which acquisition was made and compensation awarded vide another award dated 18.6.1991. Findings recorded by Reference Court read as under:

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"In brief, it is established from appreciation of aforesaid evidence that land of Bainpur; which was acquired along with those of villages Dehpora, Mohammedpur, Lakhanpur and Sunari for Sikandara Housing Scheme of Agra Development Authority; had same quality, utility and potential for building construction as that of land acquired in this context. Rather, quality, fertility, utility, geographical condition and overall potential for development of disputed land was certainly better than land acquired through award being Paper No.21C/1. Since disputed land is part of Bainpur Mustkil's land, some part of which was acquired through award being Paper No.21C/1, it also leads to an inference that both lands were situated at a little distance from each other; which means both the mandatory conditions are found to be entirely present in this case, thereby making 21C/1 a basis for determining compensation. In reference to other objections of the opposite parties that in this acquisition, award dated 18.06.1991 took place much after notification u/s 4 dated 21.10.1988, it will be sufficient to say here that award dated 18.06.1991 has been rendered solely on the basis of sale deed executed on 09.08.1988. Hence, I am satisfied and of opinion that award dated 18.06.1991 (Paper No.21C/1) provides proper guidelines, materials and evidence to this court for determining compensation in present context."

(English translation by Court)

35. Having said so, Reference Court still has allowed 10% deduction. Rate under award dated 18.6.1991 comes to Rs. 63.35/per square yard, which then stood reduced to Rs. 57.35/per square yard. Court, thereafter, awarded compensation at the rate of Rs. 1,56,000/- per bigha.

36. Despite repeated query, learned counsel for appellant could not show as to what errors have been committed by Court below in relying on aforesaid award and, that too, after allowing substantial deduction of 10% by Reference Court.

Therefore, in our view, Reference Court has already expressed a considered view in favour of appellant and, hence, no further deduction or reduction to the market rate, determined by Reference Court is permissible by this Court.

37. All aforesaid questions, therefore, are answered against appellant.

38. No other point has been argued.

39. Appeal lacks merit.

40. Dismissed with costs.