
(2015) 09 AHC CK 0164

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32039 of 2002

Kailash Nath Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11(1), 11(2), 12, 15, 18

Citation : (2015) 9 ADJ 577 : (2015) 113 ALR 371 : (2015) 6 AWC 5851 :
(2016) 130 RD 299 : (2015) 4 UPLBEC 3290

Hon'ble Judges : Krishna Murari and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Manoj Kumar Singh, for the Appellant; V.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. By means of this petition, under Article 226 of the Constitution of India, the petitioners have challenged the order dated 14.3.2002 passed by the respondent No. 2, Special Land Acquisition Officer, Varanasi rejecting the application under Section 18 of the Land Acquisition Act, 1894 (herein after referred to as "Act of 1894") for making a reference to the Court for enhancement of the compensation. We have heard Sri Manoj Kumar Singh, learned counsel for the petitioner and the learned Standing Counsel for the respondents.

2. Facts, in brief, giving rise to the dispute are as under:

The land of the petitioners was subject-matter of acquisition vide notification under Section 4(1) of the Act of 1894 read with Section 15 dated 9.10.2000 for extension of Bawatpur Airport in district Varanasi. Special Land Acquisition Officer entered into negotiation with the land holders in accordance with the provisions of U.P. Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997. On 30.4.2001, the parties entered into agreement that payment of compensation of the land situate in village Mungari shall be at the rate of Rs. 7.00 lacs per acre and that of village

Baikunthpur Karni at the rate of Rs. 6.00 lacs per acre. Plots No. 115 and 182 of the petitioners, which were subject-matter of acquisition, are situate in village Mangari, Tehsil Pindara, District Varanasi. As per agreement between the parties, the petitioners were liable to be paid compensation for the land acquired at the rate of Rs. 7.00 lacs per acre. An award was declared under Section 11(2) of the Act of 1894 in accordance with the agreement arrived at between the parties. Thereafter, the petitioners made an application dated 4.3.2002 under Section 18 of the Act of 1894 for making a reference to the Court for enhancement of the compensation on the ground that plots in dispute were situate adjacent to the National Highway and market and are of commercial use as such they were entitled for compensation at the rate of Rs. 150/- per square ft. Respondent No. 2 vide impugned order dated 14.3.2002 refused to make a reference and rejected the application on the ground that award was declared on the basis of the agreement dated 30.4.2001 arrived at between the tenure holders and the State and the tenure-holders including the petitioners have received their compensation and in view of clause 3 of the agreement since the petitioners agreed to make no other claim except for compensation arrived at in accordance with the agreement between the parties, they are not entitled to make an application under Section 18 of the Act.

3. The sole question which arises for consideration is whether the claimant who has entered into an agreement on the basis of which award has been declared is entitled to seek reference under Section 18 of Act 1894 and Civil Court can determine a higher compensation.

4. Under Section 11(2) of the Act of 1894 the persons interested in the land subject-matter of acquisition can enter into an agreement and an award in terms of the said agreement can be made by the Collector. Section 11(2) reads as under:

"11 (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement."

5. The impugned order records that the tenure holders including petitioners entered into an agreement under the Rules of 1997 in respect of rate of compensation on 30.4.2001 and clause 3 of the agreement contains a stipulation that except for the agreed amount and solatium the land holders will not claim any other sum.

6. It has been urged by the learned counsel for the petitioners that under second proviso to Section 2(31), the petitioners since are objecting the award have right to move application under Section 18 of the Act and the respondent has wrongly and illegally rejected the same. The argument is misconceived. On making an

award either under Section 11(1) or 11(2) of the Act and issuance of notice under Section 12 of the Act, the Collector is enjoined under Section 31(1) to tender payment of the compensation to the interested persons entitled thereto to receive the compensation according to the terms of the award. Second proviso to sub-section 2 of Section 31 provides that "no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18". Thus, the entitlement of land holders or interested persons to make reference to the Civil Court under Section 18 (1) has been conditioned upon non-acceptance of the award. The same becomes further clear from sub-section (1) of Section 18 which reads as under:

"Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court regarding his objection, be it to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

7. The entitlement to seek reference by an interested person would arise only when the amount of compensation is received under protest in writing which would manifest the intention of the owner of non-acceptance of the award. Section 11(2) opens with a non-obstinate clause "notwithstanding anything contained in sub-section (1)". It further provides that if the persons interested in the land agreed in writing on the matters to be included in the award, the Collector may, without making any further enquiry, make an award according to the terms of such agreement.

8. In view of the specific contract made by the petitioners in terms of Section 11(2), they are not entitled to seek a reference and the Civil Court would be devoid of its jurisdiction to go into the adequacy of compensation awarded by the Collector or prevailing market value under Section 4(1) or to grant any other statutory benefits in view of the agreement entered into by the petitioners. Once an agreement was entered into by the petitioners, the question to receive compensation under protest does not arise. So, they will not have any right to seek a reference to the Civil Court under Section 18 of the Act.

9. In view of the above facts and discussions, the application made by the petitioners under Section 18 of the Act for making reference has rightly been rejected and the impugned order does not call for any interference. The writ petition accordingly fails and stands dismissed.