
(2006) 02 MP CK 0016
In the Madhya Pradesh High Court
Case No : First Appeal No. 249 of 1999

Kamal Kant Shrivastava and Others	Vs	APPELLANT
State of M.P. and Another		RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 15
Land Acquisition Act, 1894 — Section 11, 18, 23(1A), 23(2), 28

Citation : (2006) 4 MPLJ 317

Hon'ble Judges : R.S. Jha, J; Dipak Misra, J

Bench : Division Bench

Advocate : Ramesh Kumar Shrivastava, for the Appellant; M.L. Jaiswal, for Board and Swadesh Verma, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

In this appeal preferred u/s 54 of the Land Acquisition Act, 1894 (for brevity "the Act") the appellants as legal representatives of the original owner, namely, Ramratanlal Shrivastava have called in question the pregnability of the award dated 11-1 -1999 whereby the Reference Court has determined the quantum at the rate of Rs. 18,000/- per acre in respect of the acquired land in question.

The facts which are necessary to be stated are that a notification u/s 4(1) of the Act was issued by the State of Madhya Pradesh for the purpose of acquisition of the land admeasuring 5.84 acres situated at Ward No. 7 Bina Itava. It is relevant to state here that the beneficiary, namely, M.P. Electricity Board had entered into correspondence with the predecessor-in-interest and others for indicating the price so that the Board could take steps for acquiring the land. One Anand Kumar agreed to sell the land at the rate of Rs. 17,800/- per acre to the Board. The possession of the land was taken over on 21-11-1980. After the notification was issued u/s 4(1) of the Act steps were taken by completing the formalities and eventually the award was passed u/s 11 of the Act. As far as Anand Kumar was

concerned the Land Acquisition Officer passed an award at the rate of Rs. 17,800/- per acre. Similar amount was awarded in favour of Ratanlal Shrivastava. Ratanlal Shrivastava accepted the award under protest. On the basis of the reference applicable by Ratanlal and others, the Land Acquisition Officer referred the matter to the Civil Court u/s 18 of the Act.

In the application preferred u/s 18 of the Act an application was filed stating that the land owner should be awarded compensation on the basis of valuation per square foot. The grievance was also agitated with regard to non-granting of solatium and interest. The Reference Court on the basis of evidence fixed the rate at Rs. 18,000/- per acre. In addition the Reference Court allowed the interest at the rate of 12% per annum from the date of taking over the possession till the date of payment. The Reference Court declined to grant solatium as envisaged under Sections 23(2) and 28 of the Act. Being dissatisfied with the aforesaid award the present appeal has been filed. Be it noted, no appeal has been preferred by Anand Kumar.

Questioning the correctness of the award, Mr. Ramesh Kumar Shrivastava has raised the following contentions:

- (a) Reference Court has fallen into grave error by awarding compensation of acreage basis though there are contemporaneous sale-deeds as per Exs. P-34 to P-40 indicating square foot price.
- (b) The Court below has not taken into consideration the fact situation as a result of which the effect potentiality has been totally brushed aside.
- (c) The Land Acquisition Officer as well as the Reference Court has not taken into consideration the report submitted by the Revenue Inspector and the report of the SDO which would go a long way to show that the area adjacent to the acquired land was sold on the basis of per square foot.
- (d) The Reference Court has gravely erred by not granting solatium and interest though the same is statutorily payable.
- (e) The appellants are entitled to interest on the entire awarded amount including the solatium as the whole sum shall be regarded as an amount of compensation for the purpose of grant of interest under the Act.

Mr. M.L. Jaiswal, learned Senior Counsel for the beneficiary, M.P. Electricity Board and Mr. Swadesh Verma, learned Government Advocate for the State have contended as follows:

- (i) The contentions raised by the learned Counsel for the appellants which are founded on the contemporaneous sale deeds should be ignored inasmuch as some of them have been executed by Ramratanlal himself. All the sale-deeds have been executed after the land owner has been given notice by the Board for taking possession in the year 1977.
- (ii) The land which has been sold was small chunks of land and when a big area

of land is acquired, price relating to small parcels of land should not be taken into consideration.

(iii) The land in question is agricultural land and there is ample evidence on record that there has been no diversion and hence, fixing the price on the basis per square foot is unacceptable and non-allowable.

(iv) Self serving evidence and documents cannot be taken aid of while determining the factum of compensation.

(v) The land of Ratanlal is adjacent to Anand Kumar and Anand Kumar has himself offered Rs. 18,000/- per acre and, therefore, proximity has to be taken into consideration in that regard and no interference is warranted.

(vi) Report of Revenue Inspector and recommendation of the SDO have to be considered as recommendations and the same cannot be treated as governing factor for determination of compensation.

(vii) The independent sale deeds which have been brought on record also clearly show that some land were sold at the rate of Re. 1 to Rs. 4 per square foot.

(viii) As Anand Kumar had accepted the award, Ratanlal or his legal representatives cannot call in question the award as it would be conflicting the award.

(ix) The assail by the present claimant is not permissible as the same is barred by the doctrine of res judicata.

Before we advert to the aforesaid rivalised contentions raised at the Bar we are inclined to refer to certain decisions in the field. In the case of Ahmedabad Municipal Corpn., etc. etc. Vs. Shardaben and others, etc. etc., , the Apex Court expressed the view that a burden is always on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable fetching higher market value. It is the duty of the Court to closely scrutinise the evidence, apply the test of a prudent and willing purchaser, i.e., whether he would be willing to purchase in open and normal market conditions of the acquired lands and then determine just and adequate compensation.

In Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another, , Their Lordships expressed the view that the Court must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser and put a question to itself whether as a prudent purchaser it would offer the same price in the open market as is to be determined

In the case of G. Narayan Rao Vs. Land Acquisition Officer, , it was ruled that it must be established, as a fact, that the potential purpose does exist on the date of notification, the prevailing conditions in the market, the existence of the construction of building activities in the neighbourhood and that other lands in the adjacent neighbourhood possessed similar conditions.

In this context, we may refer with profit to the decision rendered in the case of The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, , wherein it has been held that when no sales of comparable land are available where large chunks of land had been sold, even land transaction in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewage, drains, expenses involved information of a layout.

In the case of Kasturi and Others Vs. State of Haryana, , Their Lordships expressed the view that there is a difference between a developed area and an area having potential value.

Recently in the case of Ahad Brothers Vs. State of M.P. and Another, , the Apex Court has expressed the view that though agricultural land had been acquired, yet it was not used for agricultural purpose and the same would go a long way about the potentiality of the land.

We have referred to the aforesaid decisions to show that in certain cases small patches of land may be a governing factor and in some cases it is the large chunk and the potentiality.

First we shall deal with the factum of acceptance of compensation by Anand Kumar. It is worthwhile to mention here that the said Ratanlal had not given anything in writing. Mr. Jaiswal is not able to point out any document to show that there is concession. Quite apart from the above, it would be totally inappropriate in a case of this nature to hold that if a particular awardee accepts the compensation the same would debar other land owners to challenge the award. The doctrine of res judicata is not attracted and hence, we are not impressed by the aforesaid submission of Mr. Jaiswal.

On a perusal of the record, it is noticeable that the land is situated within the Bina Municipality. It is in quite proximity to the Railway Station. There was transfer of land. The sale deeds which are independent and not relatable to Ratanlal would show the price varies between Re. 1/- to Rs. 4/- in that period. The Revenue Inspector had given a report vide Ex. P-59 that land was sold on square foot basis at the rate of Rs. 4/-. It has also come in the evidence that it is an agricultural land and there was no diversion. It is also perceptible about the potentiality of the land because it is in the proximity of Railway Station and there is a transformer of the Board. Ordinarily we would have fixed the price on the acreage basis but keeping in view the facts and circumstances and totality of the case we are inclined to think that it can be fixed at the rate of per square foot basis. We are inclined to determine the price at Rs. 3/- per square foot and deduct 30% towards the development as there has been no diversion. Therefore, the claimants would be entitled to compensation at the rate of Rs. 3/- per square foot out of which 30% would be deducted as has been indicated hereinabove.

The Reference Court has not granted solatium and interest thereon. The reasons given by the Reference Court is that the appellant had agreed to sell. We are not impressed by the aforesaid reason. A notification had been issued u/s 4(1) of the Act. Needless to emphasise it is compulsory acquisition. The Board did not purchase the land as such. The question arises for consideration is under these circumstances whether solatium under Sections 23(2) and 28 of the Act would be payable or not. As has been stated earlier the award was passed on 11-1-1999 after the transitory provision u/s 30(2) came into force. In the case of 1995 SCW 1004, wherein a three Judge Bench of the Apex Court after referring to Paragraph 31 of the decision rendered in the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , in Paragraphs 4 and 5 expressed the view as under:

4. This Court thereby clearly held that even in the pending reference made before April 30, 1982 if the Civil Court makes an award between April 30, 1982 and September 24, 1984 Section 30(2) gets attracted and thereby the enhanced solatium was available to the claimants. Since Section 30(2) deals with both the amendment u/s 23(2) and the amendment u/s 23(2) and the amendment to Section 28 of the Principal Act by Section 15(b) and Section 18 respectively by parity of the reasoning the same ratio applies to the awards made by the Civil Court between those dates. The conflict of decisions as to whether Section 23(2) as amended by Section 15(b) of the Amendment Act through Section 30(2) of the transitory provisions would be applicable to the pending appeals in the High Court and the Supreme Court was resolved in the Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., by the Constitution Bench holding that the award of the Collector or the Court made between April 30, 1982 and September 24, 1984 would alone get attracted to Section 30(2) of the transitory provision. The restricted interpretation would not be understood to mean that Section 23(2) would not apply to the awarded decree of the Civil Court pending at the time when the Act has come into force or thereafter. In this case, admittedly the award of the Civil Court was after the Act has come into force, namely, February 28, 1985. 5. Therefore, if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the Court shall direct to pay interest on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court. By operation of the proviso, if such excess or any part thereof is paid into the Court after the date of expiry of a period of one year from the date on which compensation is taken, interest at the rate of 15% per annum shall be payable from the date of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry. Accordingly the appellant is entitled to the enhanced interest @ 9% from the date of taking possession namely, January 15, 1981 and March 11, 1981 respectively for one year @ 9% and thereafter 15% till the date of deposit made by the Collector. Admittedly, the deposit of the enhanced

compensation was made on October 20, 1986 and December 3, 1986, therefore, the interest shall be calculated at the enhanced rates for the aforesaid record.

In this context, we may usefully refer to the decision rendered in the case of Major Pakhar Singh Atwal and others Vs. State of Punjab and others, , wherein the Apex Court granted solatium at the rate of 30% on the enhanced compensation.

In this context, we may also refer with profit to the decision rendered in the case of Arjun Sethi Vs. L.A. Collector, Cuttack and Others, wherein the learned Single Judge after discussing the decisions in the field culled out the principles as under:

(i) If the award of the Collector is after 13-4-1982, the claimant is entitled to all the benefit of the amended Act;

(ii) If the award of the Collector is before 13-4-1982, but the award of the Civil Court in reference u/s 18 of the Act is after 18-4-1982, the claimant is entitled to the benefits u/s 23(2) and Section 28, as amended by the Amending Act, but is not entitled to the benefit u/s 23(1-A) of the Act;

(iii) If the award of the Collector as well as that of the Civil Court u/s 18 of the Act is prior to 18-4-1982, the claimant is not entitled to the benefits of the amended Act in the appeals against such awards.

In view of the aforesaid pronouncement of law, grant of solatium at the rate of 30% is in consonance with the requirement of the statute. Similarly interest u/s 28 of the Act has to be granted.

At this juncture, we think it condign to state whether there should be grant of interest on the whole amount which includes solatium and interest. In this context, we may profitably refer to the decision rendered in the case of Sunder Vs. Union of India, , wherein it has been held as under:

26. We think it useful to quote the reasoning advanced by the Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana v. Kailashwati:

Once it is held as it inevitably must be that the solatium provided for u/s 23(2) of the Act forms an integral and statutory part of the compensation awarded to a land owner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable u/s 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.

In our view the aforesaid statement of law is in accord with the sound principles of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

In view of the aforesaid, the interest is payable on solatium as well as the interest as the same forms a part of the award. The Reference Court should compute the benefits and extend the same to the claimants.

In the result, the appeal is allowed. Parties are directed to bear their respective costs.