

(2005) 04 DEL CK 0037

In the Delhi High Court

Case No : LPA No's. 30-33 of 2005

Kanta Devi Mittal and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 23, 23(1A), 23(2), 25

Citation : (2005) 119 DLT 682 : (2005) 83 DRJ 160

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Bhagwat Pershad Gupta, for the Appellant; Sanjay Poddar and Charu Sarin, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—The present appeal is preferred u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') against the decision rendered by the Reference Court in LAC No.296/93 decided on 16.11.2004.

2. In the instant case, Union of India (hereafter for short referred as UOI) issued a notification u/s 4 of the Act on 23.9.68 and thereafter following the procedure as indicated in the Act, Land Acquisition Collector made an award bearing No.26/74-75 on 28.3.1975 granting compensation at the rate of Rs.4,820 and Rs.3,000/- per bigha for category A and B respectively. The reference Court awarded the compensation at the rate of Rs.20,000/- per bigha as claimed by the claimants in response to a notice u/s 9 of the Act.

3. Before us, learned counsel for the appellant contended that the provision contained in Section 25 of the Act as applicable on the date when the reference court made an order was required to be taken into consideration and not necessarily the date of the award made by the Land Acquisition Collector. It is further contended by learned counsel for the appellant that the legislature intended to give benefits to the land losers and Therefore amended various

provisions, namely, Section 23 and Section 28 of the Act. According to learned counsel, in view of the decision of this Court in case of Union of India (UOI) Vs. Rajiv Gupta and Others, , the appellants are entitled to market rate. It is in view of this decision, learned counsel submitted that the court has considered various decisions of the Apex court in arriving at a conclusion and that there is no reason for this Division Bench to take a different view. The claimants are entitled to get the amount of compensation in accordance with the amended provision when the Reference Court considered the matter.

4. It is also contended by the appellant that an application was submitted before the Reference Court on 12.4.2004, inter alia, praying that inadvertently due to a typographical error the market value has been claimed at the rate of Rs.20/- per sq.yd instead of Rs.80 per sq.yd. We put a pointed question to the counsel, whether this refers to the mistake committed in the application made to the Court or with regard to other documents, learned counsel stated that it is required to read in the award as also in the application submitted in response to a notice u/s 9 of the Act. Appellant did not state specifically in the application that he had inadvertently stated Rs.20/- instead of Rs.80/- in the application submitted to the Collector in response to a notice u/s 9 of the Act while claiming the market price. Even he has not stated specifically that the same is required to be read in the award. It is required to be noted that award is a document made by the Land Acquisition Collector and if there is any error then it is for the author to state that he has committed an error in the award. We find no arguments in this behalf in the judgment. Thus admitted position is that before the Land Acquisition Collector, in response to a notice u/s 9 of the Act, amount was claimed at the rate of Rs.20 per sq.yd i.e. Rs.20,000/- per bigha.

5. The Reference Court considering this aspect held that the claimant is entitled to get Rs.20,000/- per bigha with other statutory benefits and it is against this award the counsel has contended before us as indicated hereinabove. Our attention was drawn by the learned counsel to a decision of the Apex Court in K. Kamalajammanniavar (Dead) by Lrs. Vs. Special Land Acquisition Officer, to contend that the benefit is required to be extended in view of the amendment. This decision has been considered by the Apex Court in case of K.S. Paripoornan v. State of Kerala and Ors. 1985 SC 1012 and Therefore we are not referring the decision relied upon in detail. So far as the decision of this Court in case of Rajiv Gupta's case (supra) is concerned, it is required to be noted that in that case, no amount was indicated in the application made to the Collector in response to a notice issued by the Collector u/s 9 of the Act. In para 59 and 63, the Court held as under:-

"59. A bare reading of the provision would show that the statutory rigour has been done away and there is no prohibition in the Court even enhancing the market value in excess of the amount awarded by the Collector or even in excess of the amount of the claim made by the claimants before the Land Acquisition Collector without even explaining that why the claim was made less before the

Land Acquisition Collector.

63. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , it was held that the amended provisions would apply to those cases where awards had not been made by the Reference Court till 30.4.1982. In the instant cases the impugned awards were made after the amended Act had come into force, Therefore, the amended provisions of Section 25 would apply and for that reason that is no force in the submission made by learned counsel for the appellant".

6. It is in view of this it was submitted that the claimant is entitled to the provisions of Section 25 as amended. We may refer to the decision of the Apex Court in case of K.S. Paripoornan Vs. State of Kerala and Others, which is a decision of a Constitutional Bench and binding to this Court. In para 28 and 29, the Apex Court considered its earlier decision in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, . We are only required to note here that the Apex Court has disapproved the view taken in Kamaljammanniavar (supra). In case of Bhag Singh, the Court examined the question of applicability of Section 23 and Section 28 of the Act and the Court pointed out that the same would be made applicable to all proceedings relating to compensation pending on 30.4.1982 or filed subsequent to that date whether before the Collector or before the Court or the High court or the Supreme Court. The benefit is restricted to two Sections only, namely Section 23 and Section 28. In para 60 in case of K.S. Paripoornan v. State of Kerala and Ors., the Court held as under:-

"For the reasons aforementioned it must be concluded that in respect of acquisition proceedings initiated prior to date of commencement of the Amending Act the payment of the additional amount payable u/s 23(1A) of the Act will be restricted to matters referred to in clauses (a) and (b) of sub-section (1) of Section 30 of the Amending Act. Union of India (UOI) and Another Vs. Zora Singh and Others, insofar as it holds that the said amount is payable in all cases where the reference was pending before the reference Court on September 24, 1984, irrespective of the date on which the award was made by the Collector, does not lay down the correct law".

7. So far as the decision in case of the Land Acquisition Officer cum- The Land Acquisition Officer-cum-DSWO, Andhra Pradesh Vs. B.V. Reddy and Sons, is concerned, according to learned counsel for the appellant the same would not be applicable in the instant case as in that case award made by the Land Acquisition Collector and the order of the Reference Court, both were made prior to amendment. While in the instant case according to learned counsel, the date of order being subsequent in so far as the reference Court is concerned, i.e the reference court made an award after provisions contained in Section 25 were amended, the same decision would not be applicable. It is required to be noted that what were the questions raised before the Court and how the Court answered the same is required to be considered by this Court. In para 5 of the

decision we find following 5 questions:-

1. Can the provision of S. 25 of the Land Acquisition Act be construed to be procedural in nature or is substantive?
2. If it is held to be substantive in nature, then can the amended provisions of S. 25 of the Act would apply to a case where the award of the Land Acquisition Collector had been made much prior to the amendment in question?
3. Whether the judgment of this Court in Krishi Utpadan Mandi Samiti's cases can be held to be correctly decided?
4. Whether at all it would be appropriate for this Court to lay down the law and yet not to interfere with the judgment of the Division Bench of Andhra Pradesh High Court with regard to the quantum of compensation awarded?
5. Whether the petition under Art. 32 can be entertained for deciding the validity of unamended provisions of S. 25?"

8. The Court pointed out that on a plain reading it is difficult to hold that it is procedural in nature. On the other hand it unequivocally limits the power of the Court on a reference being made to award compensation, more than the amount claimed by the claimants and less than the amount awarded by the Collector. The court further pointed out "in other words, the substantive right of a claimant who has made a claim to the compensation, pursuant to a notice u/s 9 cannot be more than the amount claimed and under any circumstances, would not be less than the amount which the Land Acquisition Collector has awarded u/s 11, since that award of the Collector is the offer that is made to the claimant". The Court further pointed out in this para "We are unable to accept this submission inasmuch as sub-section 5 of Section 25 contemplates a situation where the claimant for sufficient reason had omitted to make a claim and the Reference Court on being satisfied about the same may permit the claimant to make a claim. But the unambiguous and the clear language of sub-section (1) of Section 25 as it stood prior to the amendment makes it explicitly clear that if the claimant has made a claim pursuant to Section 9, then the court would be incompetent to award any amount exceeding the said claim".

9. The Court examined the provisions contained in Section 23(2) as also Section 30(2) as amended and thereafter the Apex Court pointed out in para 6 as under:-

".....In that view of the matter, question of applicability of the amended provisions of S. 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of S. 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of S. 25 of the Act.

In para 8, the Court pointed out as under:-

".....To the case in hand, it is difficult for us to apply the aforesaid principle. On

the date the land was notified for acquisition under S. 4(1) of the Act, the unamended provision of S. 25 was in force and it was made known to all concerned that the reference Court will have no power to award the amount in excess of the amount claimed by the claimants....."

10. Thus it is in view of this settled position it will not be open for this Court to hold that the claimant is entitled to get more than what he claimed in view of the provisions contained in Section 25 as applicable at the relevant time.

11. Learned counsel for the appellant further submitted that the Court should also examine the matter about the market price. Since on a preliminary question when it is held that the claimants are not entitled to the amount more than what is claimed in response to a notice u/s 9 of the Act in view of the provision as applicable at the relevant time, it would not be proper for this Court to consider the submission, more particularly what was claimed was awarded. It is in view of this, the appeal is required to be dismissed with costs which is quantified at Rs.5,000/-.