
(2006) 09 DEL CK 0184

In the Delhi High Court

Case No : Writ Petition (C) No. 11770 of 2006 and CM 8871 of 2006

K.K. Jindal

APPELLANT

Vs

Land Acquisition Collector (N-W)

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 10, 17(1), 17(3A), 18, 4

Citation : (2007) 98 DRJ 703

Hon'ble Judges : Mukul Mudgal, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Sumit Bansal, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—On 15.1.2004, a notification was issued u/s 4 of the Land Acquisition Act, 1894 ('Act') notifying the land ad-measuring 4 bighas and 4 bids was in Village Saleempur Majra, Madipur, Delhi, of which the petitioner was 50% owner, for the public purpose of a primary school. On 5.3.2004, a declaration u/s 6 of the Act was issued and, simultaneously, a separate notification was issued u/s 17(1) of the Act directing the Land Acquisition Collector (North-West) ('LAC') to take possession of the land. Thereafter notices u/s 9 and 10 of the Act were issued.

2. The petitioner filed a response to the said notices under Sections 9 and 10, claiming compensation for the land at Rs. 84,000/- per sq. m., along with other statutory benefits. On 19.4.2004, the petitioner was issued a cheque in the sum of Rs. 67,99,561 towards the 80 per cent compensation of the land as required u/s 17(3A) of the Act. The rate at which this amount was calculated was Rs. 3696/- per sq. m. However, this was done prior to the making of the Award, and on an approximation of the compensation payable.

3. On 3.3.2006, the LAC issued an Award in which he assessed the market value

of the land at Rs. 1,595/- per sq. yd., and determined the total compensation at Rs. 89.90 lakhs. The apportioned share of the petitioner was determined at Rs. 44,95,035.24.

4. Since the compensation determined to be payable by the award was less than the compensation already paid in terms of Section 17(3A) of the Act, a notice was issued on 7.6.2006 to the petitioner requiring him to refund the excess amount to the tune of Rs. 23,04,526/-. The petitioner was asked to deposit the said excess amount within 21 days of the receipt of the notice.

5. On 20.7.2006, the petitioner filed this writ petition seeking the following reliefs:

(a) issue a writ of certiorari thereby quashing the award No. 28/2005-06 in respect of land measuring 4 Bighas 4 bids was in the village Saleempur Majra, Madipur, Delhi; and

(b) issue a writ of mandamus thereby directing the respondent authority to re-determine the award after hearing the petitioner and on the basis of evidence and instructions issued by the L&B Department, Govt. of NCT of Delhi, in relation to the acquisition proceedings finalized pursuant to the directions passed by the Hon"ble High Court dated 28/04/2005 in Writ Petition (Civil) No. 1161/1988, titled as Udai Singh v. UOI and Ors.; and

(C) issue a writ of prohibition prohibiting the respondent from recovering the compensation, which has been paid to the petitioner on the estimated 80% of the total compensation till the final adjudication of the present writ petition; and

6. From a reading of the writ petition, it appears that the petitioner was aware of the existence of an alternative remedy u/s 18 of the Act in respect of these very reliefs, but sought to offer an Explanation in para 26 to the effect that "the remedy provided u/s 18 of the Land Acquisition Act of objecting to the Award is not an efficacious remedy to the petitioner.

It is contended that the jurisdiction of the High Court under Article 226 of the Constitution is not excluded particularly where the Court comes to a conclusion that "the principles of natural justice have been violated or the procedure required for decision have not been adopted or that the authority has acted in violation of the fundamental rights

7. Mr. Sumit Bansal, the learned Counsel for the petitioner urged that this Court should overrule the preliminary objection of the learned Counsel for the respondent to the maintainability of this writ petition on the ground of the existence of an alternate statutory remedy. According to Mr.Bansal the LAC had willfully ignored certain statutory instructions issued by the Land and Building Department, Government of NCT of Delhi in compliance with certain directions issued by this Court on 5.5.2005 in CWP.No. 1161/1988. He also contended that where the amount of compensation paid in terms of Section 17(3A) was itself higher, it is inconceivable in the final award, the amount payable could be any

lesser than the said amount.

8. The petitioner has placed reliance on several judgments of the Hon'ble Supreme Court to urge that the remedy under Article 226 is not a bar. None of the decisions relied upon by the petitioner deals with a case concerning land acquisition proceedings where the relief sought in the writ petition was one which could be granted u/s 18 of the Act. Of the judgments sought to be relied upon by the counsel for the petitioner, there is only one which deals with an Award made under the Act. A Division Bench of the Madhya Pradesh High Court in *Smt. Saroj Kumari Vs. The State of Madhya Pradesh and Others*, quashed an Award in a writ petition under Article 226 after finding that the notices under Sections 9 and 10 of the Act had not indicated that the petitioners in that case were to keep their evidence ready in support of the claim statements. It was found that the procedure followed by the Land Acquisition Collector was contrary to fair play and had 'resulted in denial of natural justice'. We fail to see how the said decision can come to the aid of the petitioner here. We find that in response to the notices u/s 9 and 10 of the Act, the petitioner did file claims which have merited consideration in the Award dated 3.3.2006. In the circumstances, the decision in *Saroj Kumari's case (supra)* can have no application here. On the other hand, we find that there are decisions to the effect that where there is a remedy provided under the Act for challenging the inadequacy of the compensation awarded, the aggrieved claimant should first exhaust the statutory remedy before rushing to the High Court with a writ petition under Article 226. (See, for e.g., *Ganesh Nayak v. Land Acquisition Collector* 65 CWN 908 and *Rabindra Kumar Basu v. S.K.Banerjee* 63 CWN 851)

9. The petitioner here is, in effect, seeking an enhancement of the compensation awarded by the LAC by the Award dated 3.3.2006. The petitioner is thus aggrieved by the denial to him of the rate of compensation claimed by him on the basis of certain instructions said to have been issued by the Land and Building Department. We fail to see how the petitioner is precluded from raising this very plea before the Reference Court which will deal with his application u/s 18 of the Act. It may be noticed that in this writ petition the petitioner has not challenged the notice dated 7.6.2006 requiring him to refund the amount paid in excess of the compensation determined by the Award. However, that should not preclude the petitioner, if he so chooses, to apply to the reference court for an interim relief in relation to the said demand notice. The reference court, in our view, has the necessary powers u/s 53 of the Act to deal with such an application and grant a stay of recovery of the demand pending the decision in the reference petition and conditional upon the petitioner sufficiently securing the said amount till the disposal of the reference either by furnishing adequate security or a bank guarantee. We do not wish to say anything more on this aspect because it is entirely up to the Reference Court, if and when approached by the petitioner, to pass appropriate orders in accordance with law. We Therefore hold that the present writ petition is not maintainable at this stage without the petitioner having first exhausted the statutory remedy available to him under the Act.

10. Accordingly, the writ petition is dismissed with no order as to costs. The interim order dated 24.7.2006 stands vacated.