

(1994) 04 SC CK 0074

In the Supreme Court Of India

Case No : Civil Appeal No. 3909 Of 1994

Laxman Bhaskar Pathara and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Citation : (1995) 2 SCC 744 Supp

Hon'ble Judges : N. Venkatachala, J; K. Ramaswamy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. LEAVE granted.

2. NOTIFICATION under Section 4(1) of the Land Acquisition Act, 1894, for short "the Act", was published in the State Gazette on 7/7/1990 acquiring a large extent of land including 20,000.00 sq. yds. situated in Dahisar Village in Bombay covered by C.T.S. Nos. 1171/A, 1176 and 1183 (part) for public purpose. The Land Acquisition Collector made an Award on 26/10/1992 determining the compensation including the Item Nos. 1171 (part), 1176 and 1183 (part) in which the appellants are the owners and were recorded in the Revenue Records as holders of the lands. He also found on a letter addressed by M/s R.S. Builders, the 4th respondent in this appeal, that they also claimed to be "other persons interested". On that basis, since he was not in a position to apportion the compensation between them made a reference under Section 30 of the Act to the Civil court. The appellants questioned the correctness of the reference in this behalf by filing a writ petition. The division bench of the High court in WP No. 637 of 1993, by order dated 5/4/1993 held that it is difficult to make proper apportionment of the compensation by the Collector, hence he had deposited the amount and made the reference. It also opined that as the names of the persons have been shown as claiming interest in the lands and that since litigation between the appellants and the 4th respondent are pending in the courts, it is not possible for the Collector to decide as to who is entitled to the compensation

or apportionment thereof. Under those circumstances, it was held that the Collector had rightly made a reference under Section 30 of the Act and it is not a case for interference by the court under Article 226 of the Constitution. Thus, this appeal by special leave.

3. IT is now an admitted case that the 4th respondent M/s R.S. Builders did not receive any notice under S. 9 and 10 of the Act, nor made any claim before the Collector except writing a letter on 25/6/1992 to the Collector. Admittedly, the appellants also had no opportunity to contest the claim of the 4th respondent.

4. SECTION 30 of the Act postulates that:

"30. Dispute as to apportionment. When the amount of compensation has been settled under Section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the court."

5. THOUGH controversy regarding the pending litigation between the parties on suit for specific performance of the contract of sale was sought to be addressed before us, we declined to go into that question since it is not, at this stage, desirable for this court to decide the issue. Suffice it to state that it is for the Collector to come to a decision whether there is any dispute as regards the apportionment or entitlement between the appellants and the 4th respondent in respect of the compensation determined by him under Section 11. Necessarily there should exist a dispute and that dispute must be before he decides to make a reference under Section 30 raised in the award enquiry in the presence of the parties and must have an opportunity to meet the respective contentions taken by them before him. Since, admittedly, no notice was issued to the 4th respondent nor the 4th respondent put up any claim for the compensation or apportionment thereof, the Collector was not justified to assume any difficulty in paying compensation or apportionment if he finds such a dispute. Equally, the appellants too had no opportunity to resist any such claim or make their stand clear in that behalf. It is also agreed across the bar that the respondent had not put up any objections to the knowledge of the appellants.

6. HAVING regard to the circumstances and the respective stands taken by the parties, we set aside the award to the extent of making a reference under Section 30 of the Act and direct the Collector to give notice to the appellants as well as to the 4th respondent calling upon them to submit their objections in this behalf and consider their objections and then to take appropriate decision according to law. The Collector is directed to dispose of the objections within a period of two months from the date of the receipt of this order.

7. The appellants are permitted to make an application to the High court for depositing the amount of compensation now lying to the credit of the Prothonotary and Senior Master in any nationalised bank to earn interest thereon.

8. The appeal is accordingly allowed only to this extent, but, in the circumstances, the parties are directed to bear their own costs.