
(2000) 09 DEL CK 0037

In the Delhi High Court

Case No : Regular First Appeal No's. 334/89, 48, 109, 586 of 1990, 310 and 358 of 1992, 26 and 740 of 1993 and 95 of 1997

Mani Dass Sharma and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Citation : (2000) 7 AD 1181 : (2000) 88 DLT 52 : (2000) 55 DRJ 619

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Om Prakash, for the Appellant; Mr. Sanjay Poddar and Mr. Rakesh Kumar, for the Respondent

Judgement

Devinder Gupta, J.—These appeals filed u/s 54 of the Land Acquisition Act, 1884, (hereinafter referred to as "the Act") pertain to determination of the amount of compensation payable for acquisition of land situate in village Mandawali Fazalpur. Common questions arise for determination and, Therefore, the same are being disposed of by a common judgment.

2. Under the general notification issued on 13.11.1959 u/s 4 of the Act Land situated in village Mandawali Fazalpur was also notified for being acquired for public purpose, namely, Planned Development of Delhi. Declaration u/s 6 of the Act was issued on 12.7.1966. Collector, Land Acquisition made and published his award No. 983. Feeling dissatisfied with the amount of compensation offered, reference were sought by the claimants. The same were answered by reference Courts separately by various awards. Still feeling dissatisfied with the decision rendered by the Reference Court in which the fair market value of the land has been assessed at Rs. 6,000/- per bigha, awarded on the basis of the determination of compensation awarded with respect to neighbouring village Karkardooma, some of the claimants filed appeals for further enhancement. In the meanwhile, appeals for further enhancement in the amount of compensation preferred earlier were decided by this Court. One of the said appeals is R.F.A.

311.74, decided on 11.4.1991 and reported Kesho Dass Vs. Union of India and Another, . In the said decision fair market value of the land situated at village Mandawali Fazalpur has been assessed at Rs.8,064/- per bigha as on 13.11.1959. Relying upon the decision of this Court in Kesho Dass is case (supra) the Reference Court answered some of the references holding the claimants therein entitled to compensation at the rate of Rs.8,064/- per bigha as on 13.11.1959.

3. In those cases in which the Reference Court has held the claimants entitled for compensation at a rate lesser than the one awarded in Kesho Dass's case (supra), the impugned decisions of the Reference Court deserves to be modified holding the claimants entitled to compensation at an uniform rate of Rs.8,064/- per bigha for acquisition of their property by the same notification, for the same purpose and situated in the same village village Mandawali Fazalpur since in the matter of compensation there ought not to be any discrimination. Otherwise also it is not shown that the acquired land belonging to these claimants was in any manner inferior to the one which was subject matter in Kesho Dass's case (supra).

4. The next question for determination is about the interest payable u/s 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967. The Reference Court by the impugned judgment, which is subject matter of RFA. 95/1997, has held the appellant entitled to interest at the rate of 6% p.a. on the market value of the land u/s 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967 with or rider that there be no overlapping in the payment of interest u/s 28 and Section 4(3) of the 1967 Act. This part of the condition that there will be no overlapping in the payment of interest is under challenge by the claimants on the ground that the same is contrary to law and the decision of Supreme Court in Civil Appeal No. 7721 of 1995 Mamleshwar Prasad (Dead) by L.Rs. and others Vs. Union of India and others. decided on 24.8.1995.

5. We have considered the submissions made by Shri Om Prakash on behalf of the appellants and Mr. Poddar appearing for the respondent. The Apex Court in Mamleshwar Prasad's case (supra) considered the submission on behalf of the claimants therein that for the period beyond three years referred to in subsection (3) of Section 4 of the Land Acquisition (Amendment and Validation) Act, 1967 the person interested is entitled to interest as provided by subsection (3) of Section 4 of the 1967 Act apart from and in addition to the interest, which is payable either u/s 34 or u/s 28 of the Act. It was also urged that there can be no question of the person interested being deprived of the interest payable u/s 4(3) of 1967. Act in the event of interest u/s 34 also being paid for the same period. Right given under subsection (3) of Section 4 of the Land Acquisition (Amendment and Validation) Act, 1967 is independent of the right to interest under any other provision of the Act. Considering the submissions made on behalf of the claimants and interpreting the provisions of subsection (3) of Section 4 of 1967 Act, the Supreme Court accepted the submission of learned

counsel for the appellant and held that the person interested shall be entitled to interest u/s 4(3) of 1967 Act from the date on which three year period from the date of Section 4 notification expired up to the date of tender or payment of compensation awarded by the Collector. Even if interest is paid for the said period under any other provision of the Act, right of the person interested for interest u/s 4(3) of 1967 Act shall not be defeated.

6. On a bare reading of subsection (3) of Section 4 of the Land Acquisition (Amendment) and Validation) Act, 1967 and on the ratio of the decision in Mamleshwar Prasad's case (supra) we are of the view that it is for a definite period for which interest would become payable under subsection (3) of Section 4 of 1967 Act. The said period being from the date of expiry of three years of the date of notification u/s 4 of the Act to the date on which the amount of compensations awarded by the Collector is tendered or paid and such interest would also be payable on the market value as determined by the Reference Court or in appeal by the High Court or by the Apex Court in further appeal filed u/s 54 of the Act.

7. R.F.A. No. 310 of 1992 and R.F.A. No. 26 of 1993 have been preferred by Union of India. Only question for consideration therein is the award of additional amount u/s 23(1-A) of the Act at the rate of 12% p.a. on the market value from the date of notification u/s 4 of the Act to the date of award of the Collector on the date of taking over of possession of the land whichever is earlier. Needless to add that since the award of the Collector in these cases being prior to the date of enforcement of Land Acquisition (Amendment) Act 68 of 1984 the claimants will not be entitled to the additional amount. We may also refer to the decision of Supreme Court in K.S. Paripoornan Vs. State of Kerala and Others, . Allowing of the benefit u/s 23(1-A) of the Act by the Reference Court as such is bad and is liable to be set aside.

8. Consequently, the appeals are allowed to the extent aforementioned holding the fair market value of the land at Rs.8,064/- per bigha. In addition, the claimants will also be entitled to solarium and interest on the enhanced amount of compensation as per the award of the Reference Court. Claimants will also be entitled to interest u/s 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967 at the rate of 6% p.a. on the market value of the land from the date of expiry of three years of notification u/s 4(1) of the Act to the date of tender or payment of compensation awarded by the Collector. Wherever the Reference Court has not allowed interest u/s 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967, by our decision the claimants will be entitled to such interest on the amount as enhanced by the Reference Court or by this Court. Claimants, however, will not be entitled to additional amount u/s 23(1-A) of the Act. The claimants will also get proportionate costs of appeal.