

(1989) 02 AHC CK 0038
In the Allahabad High Court
Case No : First Appeal No. 524 of 1980

New Okhla Industrial Development Authority (NOIDA) Dist. Ghaziabad APPELLANT

Vs

Ram Bal and another RESPONDENT

Date of Decision : 02-02-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 41 Rule 33, 96
Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 11, 12, 16, 18, 18(2)

Citation : AIR 1991 All 68

Hon'ble Judges : S.H.A. Raza, J;K.C. Agarwala, J

Bench : Division Bench

Advocate : U.S. Avasthi, for the Appellant; Suraj Pal Singh, N.C. Rajvanshi and J.S. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—On 30th April, 1976, the State of U.P. made a notification u/S. 4(1) of the Land Acquisition act for acquisition of land covered by this appeal, situate in village Chhalers Bangar No. 1, Pargana Dadri, Tehsil Dadri, district Ghaziabad, proposing to acquire 589 Bigha 6 biswa 14 biswansis of land for the New Okhla Industrial Development Authority, Ghaziabad, for planned development of industries. This was followed by a Notification u/S. 6 dated 1-5-1976. The possession of the land was taken on 21-7-1976.

2. Out of the land acquired, the respondent Ram Bal had 9 bigha 18 Biswa 10 Biswansis. He preferred his claim before the Special Land Acquisition Officer, who gave award No. 3 on 28-3-1977. He allowed compensation at the rate of Rs. 10,200/- per bigha, which was calculated at the circle rate of 2.56. For the other land, compensation was awarded at the rate of Rs. 7210.94 per bigha. Thus, in this way, compensation was allowed to Ram Bal at two different rates for different parts of land. The total amount awarded was Rs. 82,620/- plus solatium

and interest.

3. Ram Bal moved an application under S. 18 of the District Judge and urged that the valuation assessed by the Special land Acquisition Officer was not correct, and that the land should have been valued at the rate of Rs. 10/- per square yard. The reference was contested by the State on the ground that the compensation was just and the claim made through the application u/S. 18 by Ram Bal was excessive.

4. The learned District Judge by the judgment dated 22-8-1980 allowed the application and awarded compensation at the rate of Rs. 57,030/- per bigha. Over and above that, he awarded solatium at the rate of 15 per cent and interest at the rate of 6 per cent per annum.

5. Aggrieved by the aforesaid judgment u/S. 18 of the Land Acquisition Act, the New Okhla Industrial Development Authority hereinafter referred to as the NOIDA) has preferred this appeal u/S. 54 of the Land Acquisition. Act impleading Ram Bal as respondent No. 1 and the State of U.P. as respondent No. 2, which has been described as pro forma respondent.

6. A preliminary objection was raised by the learned counsel for the respondent that the appeal at the instance of NOIDA was not maintainable u/S. 54 of the Land Acquisition act, and, as such, the same was liable to be dismissed on this ground.

7. We have heard counsel for the parties and are of the view that the objection raised has no substance, and that the appeal cannot be dismissed on its basis. An award given by the Collector u/S. 11 of the Land Acquisition Act has been made final by S. 12 of the said Act, which provides that the award filed in the Collector's office shall be final and conclusive evidence as between the Collector and the persons interested. S. 18 of the said Act confers right to move an application for making of reference to the District Judge. The application has to be made before the Collector requiring him to refer the same for the determination of measurement of land, amount of compensation, the persons to whom it is payable or the apportionment of compensation amongst the persons interested.

8. Sub-sec. (2) of S. 50 of the Land Acquisition Act provides :

"In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference u/S. 18."

9. S. 18 itself provides that an application for reference can be made only by a person to whom compensation has been awarded. This is on the principle that the Collector awarding compensation is since the agent of the State and makes

an offer for the Land acquired to the person from whom it has been taken, the State cannot demand reference claiming that compensation awarded is excessive, and that the same is liable to be reduced. The local amendment made by the State of U.F., however, has added sub-sees. (3) and (4) to S. 18 after sub-s. (2) specifying the grounds on which even the reference can be claimed by the Collector, i.e. on the ground that the same is excessive.

10. S. 54 of the Land Acquisition Act confers right of appeal against the award passed u/S. 18. It provides,

"Subject to the provisions of the Code of Civil procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceeding under this Act....."

11. Learned counsel for the respondent contended that as a company or local authority has been given the right only to adduce evidence u/ sub-s. (2) of S. 50, and not even to file an application for making of a reference in the event of the award of the special Land Acquisition Officer being excessive, this court should hold that the Company or corporation or the local authority, for whose benefit the land is acquired, has no right of appeal.

12. For the argument advanced, learned counsel for the respondent placed reliance on Santosh Kumar and Others Vs. Central Warehousing Corporation and Another, . In this case, the question was not as to whether an appeal could be filed by a Corporation for whose benefit the land was acquired, u/ S. 54 of the Land Acquisition Act. The controversy raised was whether the Company could not challenge the amount of compensation by means of a writ petition in view of the bar contained in sub-s. (2) of S. 50. The Supreme Court held :

"Apart from fraud, corruption or collusion the amount of compensation awarded by the Collector u/S. 11 of the Act may not be questioned in any proceeding by the Government or by the Company or local authority at whose instance the acquisition is made. S. 50(2) and S. 25 lead to that inevitable conclusion."

13. In that case, the Collector gave the award u/S. 11 determining the compensation proposed to be paid. As against the same, the person whose land was acquired filed an application seeking reference u/S. 18 for enhancement. The Central Ware Housing Corporation, for whose benefit the land was acquired, was also aggrieved by the amount of compensation determined by the Collector and sought a reference to the Collector. The Collector rejected the request for making a reference as was sought by the Central Ware Housing Corporation holding the same to be barred by the Proviso to sub-s. (2) of S. 50 of the Land Acquisition Act. Thereupon, the Corporation filed a writ petition under Art. 226 of the Constitution in the High Court of Madhya Pradesh. The High Court set aside the award itself and determined compensation at a reduced rate. As against that order given under Art. 226 of the Constitution, erstwhile owners of the land filed an appeal before the Supreme Court under Art. 136.

14. The Supreme Court allowed the appeal holding that it was not permissible for the company or the local authority to invoke the jurisdiction of the High Court under Art. 226 of the Constitution to challenge the amount of compensation, when S. 50(2) expressly bars the Company or the local authority at whose instance the acquisition was made for demanding a reference. This decision of the Supreme Court is clearly distinguishable.

15. In the instant case, the question is whether the appeal u/S. 54 of the Land Acquisition Act is maintainable by the NOIDA. The controversy before us is not for seeking a reference u/S. 18. This does not specify as to by whom an appeal against an award given u/S. 18 could be filed. S. 54 is subject to the provisions of the CPC applicable to appeals from original decrees. This indicates that whosoever may be entitled to file an appeal u/S. 96 Civil P.C. against a judgment and decree has a right u/S. 54 also to file an appeal against an award. U/S. 96 of the Civil P.C. any person who is aggrieved by a judgment and decree can prefer an appeal even if he is not a party. What he is required to demonstrate is that he would suffer (sic) by the judgment impugned by means of the appeal. It is not for being able to file an appeal u/ S. 96, one is not required to establish that he was a party in the proceedings in which the judgment was pronounced or given against him.

16. In *Gaurdhan Housing v. Behari Lal* 1980 ACJ 345 (FB), the question referred to the Full Bench was whether an appeal lay at the instance of the corporation, for whose benefit proceedings were taken under the land Acquisition Act, against the judgment and decree of a District Judge in reference u/ S. 18 of the said Act. The Full Bench answered the question in the affirmative laying down that by leave of the court an appeal will lie at the instance of the Corporation for whose benefit the proceedings had taken place under the Land Acquisition Act.

17. Apart from many other decisions, one of them which was relied upon is *Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd.*, . In this case, the Supreme Court held that a person who was not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment. The Full Bench was followed by a Division Bench of our court in *National Thermal Power Corpn. Vs. Raghunath Pd. and Others*, . The Division Bench held :

"Where the land is acquired for the benefit of a Corporation and the amount of compensation is payable by it, such a person is an interested person, entitled to take part in proceedings before the District Judge in reference u/S. 18 and to file appeal u/S. 54 before the High Court against the judgment of the District Judge."

These two decisions conclude the controversy in favour of the appellant.

18. Reliance had also been placed on a decision reported in *The Andhra Pradesh Agricultural University, Rajendranagar Vs. Mahmoodunnisa Begum and Another*, , wherein the Full Bench held that the person for whose benefit land has been acquired could not be a person claiming under the Government and, as such,

was not entitled to file the appeal. This Full Bench has been considered in *Gaurdhan House v. Behari Lal* (supra) and distinguished.

19. We are bound by the law laid down by the Full Bench of our Court. The Full Bench held that the Corporation or the local authority for whom the land is acquired is a person interested under S. 3(b) of the Land Acquisition Act. An appeal may be filed by a person aggrieved by the same. Such a person is also described as person aggrieved. There is not much of difference in the two phrases, "person interested" and "person aggrieved" for the purpose of finding out whether a Corporation or local authority, for whose benefit the land is acquired is entitled to file an appeal or not. The expression "person aggrieved" has been defined in Halsbury's Laws of England, Volume 3, Paragraph 939, as follows :--

""Person aggrieved" means a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something it is not sufficient that he has lost something which he would have obtained if a different order had been made."

20. *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel* , on which reliance had been placed by the respondent, is of no help or assistance to the argument canvassed before us. The Municipal Corporation, which filed the appeal before the Supreme Court, was held to have no right to do so, as the Corporation was found to be not aggrieved by the order. This case is, therefore, clearly distinguishable.

21. In *Indo Swiss Time Limited Vs. Umrao and Others* , an application for impleadment made under O. I, R. 10, C.P.C. in the proceedings under S. 18 of the Land Acquisition Act was rejected, against which the controversy had been taken to the Punjab and Haryana High Court. The High Court held in the Full Bench that the only right given to a Company under S. 50(2) was to appear and adduce evidence for the purpose of determination of the amount of compensation and for the exercise of that right there was no right in such a company which could entitle it to ask for being impleaded as a party under O. I, R. 10, C.P.C. The controversy before us is not about the impleadment of the Corporation or the Company, but about the maintainability of the appeal filed at its instance. We have referred to above the decisions of our Court which have laid down the law affirmatively upholding the right of such a body to file an appeal.

22. In the instant case, we further find that the State of U.P. has been impleaded as a pro forma respondent and under the CPC if the Court thinks at the time of hearing that relief could be given to the State it can do so under Order XLI, Rule 33, C.P.C. The Court would not hesitate to make use of the power conferred by Rule 33 in appropriate cases. In the present case, for what we have said above, to meet the objection of the respondent about the maintainability of the appeal,

we further grant leave to the appellant to file the appeal, which was orally prayed for by Sri U. S. Awasthi, learned Counsel for the appellant.

23. We, consequently, overrule the objection and hold that the appeal was maintainable. We direct the appeal to be listed for final hearing.

24. Order accordingly.