
(1999) 03 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3877 of 1998

Radhey Shyam Rath

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-03-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 18, 19, 20

Citation : (1999) 2 RLW 869 : (1999) 2 RLW 1052 : (1999) 2 WLC 727 : (1999) 1 WLN 441

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The case is listed today for admission but with the consent and on the request of the learned Counsel for the parties, it is heard and disposed of finally at the admission stage.

2. The instant writ petition has been filed for quashing the order dated 14-7-98 (Annexure.4) passed by the Collector, Bhilwara, as well as for modification of the impugned Award (Annexure. 1) in terms of the application (Annexure. 2) and also for making a reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

3. The facts and circumstances giving rise to this petition are that under a Scheme known as "Tilaknagar Residential Scheme" approved by the State Government, land acquisition proceedings were initiated by the State Government by issuing the modification dated 9-10-90 u/s 4 of the Land Acquisition Act. 1894 (hereinafter called, "the Act") and thereafter by issuing declaration dated 3-7-92 u/s 6 of the Act. Consequently, one Bigha and 12 Biswas of land belonging to the petitioner was finally acquired and vide award dated 26-8-94 (Annexure. 1), a sum of Rs. 37,600/- was paid to the petitioner as compensation. Being aggrieved of the impugned award, petitioner moved an application u/s 18 of the Act before the Land Acquisition Officer for making a

reference u/s 18 of the Act. The respondent No. 3 rejected the said application vide order dated 14-7-1998 (Annexure. 4) on the ground that the contents of the application were not substantiated by any supporting documents revealing much more value of different items as claimed by the petitioner and the value of the petitioner's land had properly been assessed in the Award made u/s 11 of the Act. Hence this writ petition.

4. The contention of Mr. Sanjeev Johari, the learned Counsel for the petitioner, is that there is an illegality committed by the respondent No. 3 in not appreciating the provisions of Section 18 of the Act in the right perspective. His further contention is that it was obligatory on his part to make a reference on petitioner's application which was filed well within the limitation, but the learned Officer has erred in thrusting upon the jurisdiction on itself.

5. Section 3(c) of the Act defines "Collector" which means the Collector of the district. Section 3(d) of the Act defines a "Court" which means a principal Civil Court of original jurisdiction. The expression "Court" does not include a Collector nor the Collector has been invested with the powers to administer oath or to require a verification and by no stretch of imagination, the Collector can be said to be a Court, or even a Judicial Officer. The award passed by the Collector u/s 11 of the Act is not executable as he is neither a Court nor his award can be said to be a "decree" within the meaning of provisions of the Code of Civil Procedure, 1908. The Collector acts as the agent of the Government as he fixes the price to be paid and helps in taking possession of the land which is acquired. He makes an offer to the tenure-holders by way of an award which is certainly not binding on the land-owners and the latter can ask for a reference u/s 18 of the Act. Moreover, the Government is not bound by the award of the Collector as before taking the possession of the land u/s 16 of the Act, the Government can revoke the acquisition proceedings by resorting to the provisions of Section 48 of the Act. Therefore, the role of the Collector is administrative one. Vide T.K. Parameswara Iyer and Ors. v. Land Acquisition Collector, Palghai and Ors. 1919 (49) Indian Cases 659).

6. While deciding the aforesaid case, the Court relied upon the judgment of the Privy Council in Ezra v. Secretary of State 32 I.A. 93 PC, wherein it has been held that proceedings resulting in award are administrative in nature.

7. In Mohammed Hasnuddin Vs. State of Maharashtra, , the Apex Court observed that while making the award, the Collector makes an offer on behalf of the Government and it is difficult to appreciate that the Government or any other authority, through the Government, would be entitled to question the award apart from fraud, corruption or collusion. Similar view has been taken by the Hon"ble Supreme Court in Santosh Kumar and Others Vs. Central Warehousing Corporation and Another,

8. Thus, the Land Acquisition Collector acts as an agent of the State to acquire the land for public purposes and for companies etc. also as provided under the

Act and acts as a Statutory Authority while making the Award u/s 11 and performing some other functions. He cannot be a final authority for determining the market value of the land.

9. In Mohd. Hasnuddin (supra), the Hon''ble Supreme Court has observed as under:

While it is true that the Collector in making the award u/s 11 acts as an agent of the Government, he in making a reference to the Court u/s 18 acts as a statutory authority. Section 18, Sub-section (1) of the Act entrusts to the Collector the statutory duty of making a reference on the fulfilment of the conditions laid down therein. The Collector, therefore, acting u/s 18, is nothing but a statutory authority exercising his own powers under the Section....

The word "require" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference u/s 18 of the fulfilment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference u/s 18 is, thus, circumscribed by the conditions laid down therein....

10. In State of Mizoram Vs. Biakchhawna, , the Hon''ble Supreme Court has held that the scheme of the Act envisages that on making an application u/s 18, making a reference u/s 18 of the Act in the manner prescribed u/s 19 to the Court is mandatory. Similarly, in Officer on Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, , the Hon''ble Supreme Court observed as under:

The question emerges: whether the LAO/Collector acts as a Court? Section 3(d) defines "Court" to mean the principal civil court of original jurisdiction or a principal judicial officer within any special local limits appointed thereunder to perform the functions of the Court under the Act. "Collector" has been defined in Clause 3(c) to mean the Collector of district and includes a Deputy Commissioner etc. appointed by the appropriate Government to perform the functions of the Collector under the Act. He is variously called the Collector/LAO. It would, thus, be clear that the Act made a distinction between the Collector and the Court. The Collector/LAO performs the statutory functions under the Act including the one making the award u/s 11 and referring a written application made u/s 18(1) of the Act to the Court and complies with Sections 19 and 20 of the Act. The dichotomy of the Collector and the Court cannot be lost sight of.

11. Thus, if the land-holder has complied with the conditions mentioned in Section 18 of the Act, the Collector has no option but to make a reference to the Court for proper adjudication/assessment of the market value of the land.

12. In the instant case, the Land Acquisition Officer (respondent No. 3) has recorded the finding of facts in impugned order that the value of petitioner's land has properly been assessed @ Rs. 5,00,000/- per Bigha and moreover, for other constructions etc., no evidence has been produced before him. In view of the above, the grounds for rejecting the application of the petitioner for making a reference u/s 18 of the Act, are untenable and cannot be sustained in the eyes of law. Respondent No. 3 was duty-bound to make a reference as the petitioner had fulfilled all the conditions mentioned in the provisions of Section 18.

13. Thus, the petition succeeds and is allowed. Respondent No. 3, the Land Acquisition Officer, is directed to make a reference u/s 18 of the Act within a period of one month from the date of filing a certified copy of this order by the petitioner before him. There shall be no order as to costs.