

(1986) 11 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Appeal No. 2729 of 1983

Ram Krishan Sharma and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-11-1986

Acts Referred:

Citation : (1987) 31 DLT 128

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : B.P. Gupta and Ratan Lal, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) Agricultural land bearing No. 1281/259 measuring 5 bighas situated at village Kilokri which was owned by Shri Indraj was acquired by the respondent by notification u/s 4 of the Land Acquisition Act dated 13th November 19th 1963, By Award No. 1626 dated 17th September 1963 compensation @ Rs. 4000.00 per bigha was awarded. Aggrieved by this assessment of compensation Shri Indraj filed an application for enhancement of compensation and also prayed that the awarded compensation be paid which he would be willing to accept under protest. The compensation @ Rs. 4000.00 per bigha was received by Indraj on 4th August 1964, however on the receipt it was not mentioned by him that he was receiving it under protest. When the reference u/s 18 of the Land Acquisition Act was filed by Indraj the Land Acquisition Collector refused to forward the same to the Additional District Judge, Delhi on the ground that the compensation was received without protest by Shri Indraj Later on Shri Indraj died and the petitioners being the sons of late Shri Indraj and claiming to be the only legal heirs of Indraj have now filed the present petition and seek that the reference for enhanced compensation be considered. The petitioners have also challenged the order of the land Acquisition Collector dated 1st February 1965 which was passed in response to the representation dated 9th September 1964.

(2) Learned counsel for the petitioner States that though it is true that on the receipt the protest was not noted, a separate application, in this regard. was made by late Shri Indraj on 4th August 1963 which was on the record of the Land Acquisition Collector. However, since no notice was given by the Land Acquisition Collector to the person who had received the compensation it could not be brought to the notice of the Land Acquisition Collector that the protest was in fact lodged and, Therefore, the Land Acquisition Collector erred in refusing to refer the case to the Additional District Judge. Learned counsel further submitted that other persons from the same village whose land had been acquired under the same notification have been given compensation @ Rs. 26000.00 per bigha and the petitioners are entitled to get the same compensation. Learned counsel referred to various decisions of the Supreme Court as well as of this Court in respect of the contention that equal compensation should be given to persons whose land has been acquired under the same notification pertaining to the same village.

(3) In my opinion, since late Shri Indraj and already filed an application lodging his protest, it was not necessary for him to lodge his protest on the pay bill. The Land Acquisition Collector ought to have at least heard the petitioner before he refused to make a reference u/s 18 of the Land Acquisition Act to the Additional District Judge. The error would not have crept in if notice was given to the petitioners. In any event, the land Acquisition Collector was legally bound to forward the reference application to the District Judge and could not withhold the objections merely because protest was not Judged ..

(4) This being the position, the orders dated 1st February 1965, 15th September 1983 and 1st July 1985 are set aside and Land Acquisition Collector is directed to forward the reference petition u/s 18 of the Land Acquisition Act to the District Judge for proper adjudication according to law.

(5) In the result the petition is allowed. There will be no order as to costs. Petition allowed.