
(2004) 04 SC CK 0158
In the Supreme Court Of India
Case No : Civil Appeal No. 5349 of 1998

Ramesh Dutta

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Citation : (2004) 10 SCALE 465 : (2004) 7 SCC 63

Hon'ble Judges : S. N. Variava, J;H. K. Sema, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.N. Variava J.-This appeal is against the judgment of the High Court dated 20-8-1997.

2. Briefly stated, the facts are as follows:

The appellant was running a poultry farm on land admeasuring approximately 10,000 sq feet in Village Bhatinda. On 6-4-1992 a notification under Section 4 of the Land Acquisition Act was published proposing to acquire, amongst others, the land of the appellant. Section 17 of the Land Acquisition Act was invoked and no-objections were invited under Section 5. The notification under Section 6 was issued on 8-4-1992. The appellant was then given a notice to vacate on 17-4-1993 and possession was taken on 21-4-1993.

3. The Deputy Director, Animal Husbandry by his report assessed the loss to the appellant. The report of the Deputy Director was reconsidered by the Director of Animal Husbandry who reassessed the loss caused to the appellant by his having to close down his poultry business at such short notice. Based on the reports and other material an award came to be published on 3-6-1994 wherein apart from the compensation for the land, an amount was awarded towards loss of business.

4. On 6-6-1994 the Financial Commissioner grants post facto approval to the award. However, while granting approval, the following observation was made:

"No compensation is payable under Section 23(1) fourthly of the Land Acquisition Act to the poultry as nowhere is it established that poultry/eggs, hatchery or machinery were damaged when possession of the land was taken over by PSIEC."

As a result of this, the appellant has not paid the compensation awarded towards loss of business.

5. The appellant thus filed a writ petition in the Punjab High Court. The Punjab High Court has, by the impugned judgment, held that under Section 11 of the Land Acquisition Act, previous approval of the appropriate Government is required for publishing an award. It is held that as approval has not been granted to payment of compensation for loss of business that portion of the award could not be enforced. It is held that if the appellant feels aggrieved then he can apply for a reference under Section 18 of the Land Acquisition Act.

6. We have heard the parties at great length.

7. On behalf of the appellant it is submitted that as Section 17 was invoked the proviso to Section 11(1) would not apply. It is submitted that once the possession is taken, the Land Acquisition Officer is bound to pass an award. It is submitted that in such cases it would not be necessary to seek approval. We are unable to accept this submission. Section 17 merely permits taking of possession in case of urgency. However, even in such cases an award has to be passed. The award can only be under Section 11. Therefore, the proviso to Section 11(1) would apply even in such cases.

8. The next question that arises is whether the Financial Commissioner was correct in not giving approval to payment of compensation in respect of loss of business. We have already extracted the reasoning of the Financial Commissioner. That reasoning shows that compensation is refused on the ground that it is not established that poultry/eggs, hatchery or machinery were damaged when possession of the land was taken over. We are afraid that in so commenting the Financial Commissioner has displayed a total non-application of mind on his part. He has also ignored statutory provisions. As there was total non-application of mind on his part we adjourned this matter to give to the Financial Commissioner an opportunity to reconsider. Even after reconsideration, we are told that the Financial Commissioner is sticking to his decision for the same reasons. It, therefore, becomes necessary to see the law. Section 23(1), *inter alia* provides as follows:

"fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and"

(emphasis supplied)

9. Thus in determining compensation, the damage sustained by a person, at the time of taking possession by reason of his earnings being affected is to be computed and paid. Similarly where a person is compelled to change his residence or place of business, reasonable expenses incidental to such changes have also got to be paid. We have perused the report of the Deputy Director as well as the Director. The report takes note of the amount of poultry/eggs, chicks and machinery which were there at the time when possession was taken. Thereafter, the reports work out how much time would be taken for such a business to be restarted. The loss of business which is computed is not on the basis of loss of poultry/eggs, hatchery or machinery. The loss of business is computed on the basis of loss which will be incurred by the appellant in having it to restart his business. This loss which is worked out is the loss of earning during the time that would be required to restart his business. It is a pity that a Financial Commissioner, who is supposed to be a responsible officer of the Government, cannot understand a simple proposition like this. It was the duty of the Financial Commissioner to have seen that the loss of earning was properly computed. Even if he did not agree with the computations done by the Deputy Director or the Director, it was his duty to have then computed the loss of earning and incidental expenses. In refusing to sanction payment under Section 23(1) fourthly and fifthly on irrelevant grounds, even after an opportunity to reconsider was granted, the Financial Commissioner has acted irresponsibly and continued to display non-application of mind.

10. Reliance was placed on the case of Ramesh Dutt v. State of Punjab¹. In this case, the question was whether the compensation under Section 23(1) was payable to a person who had not given possession of the property and carried on his business. On those facts this Court held that since he continued to carry on business there was no loss of earning and thus he was not entitled to compensation. This case has no relevance to the facts on hand. In this case, admittedly, possession was taken. The appellant had to stop his business which caused him loss of earning. This had to be computed and paid.

11. Reliance was also placed upon the case of Jaspal Singh v. Union of India² wherein it is held that compensation payable under Section 23(1) fourthly and fifthly is not to be increased merely because a person could not start his business for a long time. The use of the term "increased" shows that even according to this judgment compensation has to be paid for loss of earning. All that this judgment lays down is that such a compensation has to be worked out on a rational basis and does not depend on the time taken by the affected party to restart his business. It is indeed a pity that in spite of the statutory provision the Financial Commissioner chose not to work out any compensation payable under these heads and without applying his mind refused to correct his error even after opportunity was granted to him.

12. Having taken possession by invocation of Section 17, the respondents are

bound to pay damages for loss of earning as well as reasonable expenses for change of place of business. The question then would be, what would be the amount payable under these heads. We are told that the appellant has already filed a reference under Section 18. That reference is pending. In that reference, the court is bound to consider, among other things, the amount of compensation payable. The amount of compensation payable would also include compensation under the abovementioned heads. We, therefore, permit the appellant, if he has not already done so, to claim in the pending reference (if necessary, by amendment), compensation under the abovementioned heads. The Reference Court while considering what should be just and fair compensation will also determine the compensation for loss of earning as well as reasonable expenses incurred for change of place of business. It goes without saying that the Reference Court whilst fixing compensation under these heads will take into consideration the figures of poultry, eggs, chicks and machinery and on these bases along with other material, work out what the earnings of the appellant were in respect of a poultry farm of this size and nature. The Reference Court shall then consider how much time would be taken to restart such a business and on that basis work out the loss of earning/business.

13. With the above directions, the appeal stands disposed of. In view of the unreasonable attitude of the respondents, they shall pay to the appellant cost fixed at Rs 10,000. If necessary, the respondents may recover this cost personally from the Financial Commissioner concerned.