
(1960) 09 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscs. (First) Appeal No. 60 of 1958

Ramnarain Damodrilal

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-09-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18

Citation : AIR 1963 MP 35 : (1960) ILR (MP) 1041 : (1962) JLJ 865 : (1962) 7 MPLJ 638

Hon'ble Judges : T.C. Shrivastava, J;S.P. Bahrgava, J

Bench : Division Bench

Advocate : S.C. Dubey, for the Appellant; Rama Gupta, Dy. Govt. Advocate, for the Respondent

Judgement

Shrivastava, J.

This appeal arises out of a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the Act) decided by the 2nd Additional District Judge, Bhopal, on 6-2-1958.

The Municipal Board, Bhopal, found it necessary to widen a road situate in Sarafa Bazar, Bhopal town, and requested the Collector, Bhopal, to acquire 54 sq. ft of land belonging to the appellant and 9sq.ft. of land belonging to one Iqbal Hussain. Notifications under sections 4 and 6 of the Act were issued in 1954 and the parties filed their claims before the Land Acquisition Officer. The appellant claimed Rs. 12,000/- for his 54 sq.ft. bf land and Iqbal Hussain claimed Rs. 13040/- for his 9 sq.ft. The Collector gave his award on 25-6- 1955 fixing Rs. 350/- and Rs. 26/- as compensation payable to them. Both of. them requested the Collector to make a reference to the "Court and this was done by the Collector. Before the Court, the appellant claimed Rs. 8640/- only on the basis of the fact that he was getting Rs. 36/- per month as rent from the acquired property. We need not refer to the claim of Jqbal Hussain, as he has not come up in appeal.

Shri S.C. Dube for the appellant points out that on 18-8-1954 the Director of Land Records, Bhopal, who was also the Land Acquisition Officer, wrote to the Municipal Board that Rs. 17,000/- would be needed for acquisition of the two pieces of lands. He also indicated that the award would be announced after the approval of the Chief Secretary. He then wrote a letter on 9-10-1954 to the Government asking for the approval of the Chief Secretary as required by Rule 73 of the Bhopal Land Acquisition Rules. On 24-10-1954 he was informed by the Government that the proposed compensation was excessive and the Chief Secretary desired that the valuation be worked out by the Public Works Department. Accordingly, the Land Acquisition Officer requested the P. W. D. to do the needful. The award was finally pronounced in accordance with the report of the P. W. D.

On these facts, Shri S.C. Dube contends that the award made by the Land Acquisition Officer is not his award but is at the instance of the Chief Secretary, Bhopal. He had abdicated all "his functions to the P. W. D. and pronounced the award without even considering the correctness of the report of the P. W. D. Shri Dube thus contends that the award is not in accordance with law and the consequent reference to civil Court is also invalid. He prays that the Collector should be asked to proceed according to law and make a proper award.

A perusal of the award shows that the Land Acquisition Officer did not at all apply his mind to the question of valuation and accepted the report of the Chief Engineer, Public Works Department, without even discussing it. The Chief Engineer has valued the structure at a particular sum. This part of his recommendation is not much material, as the dispute is really about the site value of the land acquired. The Chief Engineer has suggested Re. 1/- per sq. ft. for this land but has not indicated the basis on which this has been done. He was not examined either by the Collector or by the Additional District Judge. In fact, no evidence was given on behalf of the State Government before the Additional District Judge.

The contention of Shri S.C. Dube that the award given by the Collector in accordance with the report of the Chief Engineer without scrutinizing it does not amount to an award at all is correct. In *Dossabhai Bejanji v. Special Officer, Salsette Building Sites* ILR Bom 599 the Collector had submitted his report to the State-Government recommending Rs. 50/- per acre as compensation. The State Government returned the papers directing to award Rs. 4/- per acre and he accordingly passed his award. The learned Judges of the Division Bench who heard the case held that u/s 11 of the Act the local Government had no power to interfere with the award of the Collector. Any instructions of the Government requiring the award to be submitted for approval were in contravention of the provisions of the Act. Accordingly, it was held that the award given by the Collector at the instance of the Government was no award at all. In that case, compensation was fixed on the basis of the valuation made by the Collector before submitting his report to the local Government.

In another case, *Katherasan v. Special Collector, Twante* AIR 1936 Rang 206 where the Collector had submitted his proposed award to the Commissioner for approval and on his instructions had reduced the amount, a Division Bench of the Rangoon High Court observed:

".....It is not the opinion of the Commissioner that matters, for the award of compensation has to be that which the Collector in his opinion thinks the right sum to be allowed for acquiring the land. The result is that there has been no award by the Collector as prescribed and required u/s 11 of the Act. Now, the award of the Collector u/s 11 is binding upon the Local Government, and the amount of compensation awarded by the District Court in the events that happened was determined by the amount of the award. There being no award pursuant to the provisions of the Land Acquisition Act, the order of the District Court which is based upon such an alleged award cannot stand. The result is that the appeal is allowed, and the order of the District Court is set aside, and the proceedings will be returned to the Collector in order that he may make an award according to law."

Thus, in that case, not only the award was held to be invalid but even the subsequent reference and the proceedings taken by the District Court were set aside and the Collector was asked to dispose of the case according to law. We may also refer to a case reported in *Macdonald v. Secy, of State*, 4 Ind Cas 914 (Lah). In that case, the Collector had asked a subordinate officer to make the necessary enquiries and when his report was received, he merely endorsed "approved" and initialled it. The learned Judges of the Division Bench said:

"The result is that the whole of these proceedings must be quashed, for as there was no award, there could, of course, be no valid reference to the Civil Court. We accordingly accept the appeal and set aside the decree of the Divisional Judge as being made without jurisdiction, there being no award of the Deputy Commissioner upon which any reference could have been made to him".

In that case, there was no interference by any superior authority; but we are referring to that "case as laying down that where the award is held invalid for any reason, the subsequent reference to the District Court and the proceedings in the District Court are also of no effect.

As we have already said, the award in the instant case was made by the Land Acquisition Officer not on his own judgment but on the valuation made by the Chief Engineer, P. W. D. as desired by the Chief Secretary, Bhopal. Under these circumstances, the award is invalid. According to the view taken in the decisions referred to above, the reference to the District Court as also the proceedings in the District Court are of no effect.

Before parting with the case, we may make a few observations. The assessment of compensation by the Collector is normally made on the basis of the prices of lands in the vicinity sold within a reasonable time prior to the date of acquisition. It is surprising that the Land Acquisition Officer made no effort in this case to

find out the prices fetched in such sales. The appellant himself admits that he had purchased 216 acres of which the acquired site was a part. The details are not given in his deposition. Other sales may also have taken place in the locality. If any such sales were made, the price would indicate the fair market value. If the data about the sales is not available, the other circumstance which is relevant for determining the market value of the land is the profit or rent which is derived from similar lands nearabout. For this purpose, the rents prevailing in the locality for similar sites and the expenses incurred in maintaining the buildings in proper condition would be relevant data. It is for the Collector to find out the valuation of such lands and also consider other data which may be available. We may also observe that when a reference is made to the District Court, it is necessary for the Collector also to adduce such evidence about valuation as would enable that Court to accept his assessment. In the instant case, the Land Acquisition Officer made no such effort.

In the result, the award of the District Court as also that of the Land Acquisition Officer are set aside. The Collector (Land Acquisition Officer) shall be at liberty to assess afresh the compensation payable to the appellant. The costs of these proceedings and the proceedings before the District Court shall be borne as incurred.