

(2001) 04 DEL CK 0036

In the Delhi High Court

Case No : Letters Patent Appeal No. 252/79

Rashida Begum (Since deceased Now represented through
LRs.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Citation : (2001) 4 AD 716 : (2001) 91 DLT 664 : (2001) 59 DRJ 554

Hon'ble Judges : Om Prakash Dwivedi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. N.S. Vashist, for the Appellant; Mr. Sanjeev Sahey, for Ms. Geeta Luthra, for the Respondent

Judgement

O.P.Dsivedi, J

1. This Appeal, u/s 10 of the Letters Patent has been filed against judgment dated 26th September 1979 passed by the learned Single Judge in RFA No. 65/76 whereby the cross objections filed by the appellant (who was respondent in the said RFA) were dismissed as time barred.

2. Briefly stated, the facts leading to this appeal are that appellant Smt. Rashida Begum, since deceased now represented by her legal heirs, was the owner of the land comprised in Khasra No. 1/etc/197 measuring 110 bigha 6 biswa and 1 etc/317/8 measuring 27 bigha 9 biswa situated in the revenue estate of village Nangloi Sayyed. Notification u/s 4 of the Land Acquisition Act for the acquisition of the land was issued on 4th March, 1963 and notification u/s 6 of the said Act was issued on 20th June, 1966. The land was acquired by Award No. 2202 of the Land Acquisition Collector who fixed the market value of the land of the appellant at the rate of Rs.600/- per bigha. For the purpose of assessment of compensation the Collector has classified the land into four categories depending on its location and quality. The land near abadi having comparatively higher building potentiality was placed in block A and compensation was assessed at the rate of Rs.1200/- per bigha. All level agricultural land was placed in block B and

was assessed at the rate of Rs.1100/- per bigha. Low lying land near Nazafgarh drain was put in block C. The remaining land viz. Bhatta, Banjar and Ghair Mumkin etc. Which were decidedly inferior to all other land were put in block D. The compensation payable for the land of block C&D was assessed at the rate of Rs. 800 and 600 per bigha respectively. The land of the petitioner was shown as "Banjar Kadim" in the revenue record so it was assessed at the rate of Rs.600 per bigha falling in block D. On an application of the owner , the matter was referred to the Court u/s 18 of the Land Acquisition Act and the learned Additional District Judge vide his judgment dated 28th November 1975 enhanced/ assessed the compensation payable in respect of different types of land as under:-

1. Land falling in block A Rs.5000/- per bigha.
2. Land falling in block B Rs.4750/- per bigha.
3. Land falling in block C
4. Land falling in block D Rs.2750/- per bigha.

3. Against the said judgment of the learned Additional District Judge, the Union of India filed RFA No.65/76 in this Court on 20th February, 1976. The said appeal was admitted on 31st March, 1976. On 26th April 1976 a notice of appeal as well as CM. No. 164/76 for stay of payment was issued to the respondent inf RFA who is the appellant herein. By the said notice the appellant was notified that the stay application will be listed before the Court on 26th May 1976 (actual). On 26th May, 1976 Pt. Jai Ram Singh, Advocate appeared on behalf of the appellant. The stay was made absolute. Thereafter, the appeal was listed for hearing for the first time on 12th September 1979. On 25th September 1979 the appellant herein who is respondent in RFA No. 65/76 filed cross objections seeking enhancement of compensation to Rs. 8000/- per bigha. The Appeal filed by Union of India was dismissed by the learned single Judge vide order dated 25th September 1979. The cross objections filed by the appellant were also dismissed as being time barred vide impugned order dated 26th September, 1979. Feeling aggrieved by the order dated 26th September 1979, the appellant has preferred this appeal.

4. We have heard the learned counsel for the parties and perused the record. Learned counsel for the appellant contends that the period of limitation of one month for filing cross objections in an appeal begins to run only from the date of service of notice of the day fixed for hearing of the appeal on respondent and since in this case no notice of the day fixed for hearing of the appeal was ever served on the appellant, the period of limitation of one month would begin to run only from the date on which the appeal was first listed for hearing on the board. In the present case the appeal was listed for hearing for the first time on 12th September 1979. So, according to learned counsel for the appellant, the period of limitation of one month for filing cross objections would begin to run from 12th September 1979 and thus computed cross objections which were filed on 25th September 1979 were well within time. Learned counsel for the appellant further

contended that the notice dated 26th April 1976 was regarding admission of the appeal and also about the stay matter being listed for hearing before the court on 26th May, 1976. The said notice did not contain any date for hearing of the appeal as such and Therefore it cannot be said to be a notice of the date of hearing of the appeal, as required by Order 41 rule 14 CPC nor the said notice is in the prescribed proforma so the date of service of the said notice cannot be the starting point of the limitation period of one month for filing cross objections. Therefore the view taken by the learned single Judge that advocate engaged by the parties are obliged to keep the track of the cases listed for hearing as required by rule 8 of Chapter III-A of Vol.V of Rules and Orders of Punjab & Haryana High Court as applicable to this Court so no fresh notice for actual date of hearing of appeal need be given, is un-sustainable in view of the specific requirements of the provisions of rule 11,12,14 and 22 of Order 41 CPC which read as under:-

ORDER XLI

(APPEALS FROM ORIGINAL DECREES)

XXX XXX XXX XXX XXX Rule:11 Power to dismiss appeal without sending notice to Lower Court -(1) The appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his p leader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleaser.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

(4) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (1), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.

Rule: 12 Day for hearing appeal-(1) Unless the Appellate Court dismisses the appeal under rule 11, shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Rule 13 xxx xxx xxx Rule 14 Publication and service of notice of day for hearing appeal - (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the

respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceeding with reference to the service thereof, shall apply to the service of such notice.

Rule: 22 Upon hearing respondent may object to decree as if he had preferred a separate appeal:

(1) Any respondent though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favor; and may also take any cross-objection) to the decree which he could have taken by way of appeal:

Provided he has filed such objection in the appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit allow.

(2) Form of objection and provisions applicable thereto: Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objections a written acknowledgment from, the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court think fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.

5. A plain reading of these provisions makes it clear that law specifically requires that if the appeal is not dismissed in limine the appellate Court shall fix a day for hearing of appeal (O.41 R.12) and notice of date fixed for hearing of appeal under Rule 12 shall be served on the respondent or on his pleader (O.4 R.14). Such notice of the date fixed for hearing of appeal has to be in Form No. 6, appendix 'G'. Admittedly, the notice dated 26th April 1976 did not specify any date for hearing of appeal, although it notified the date for hearing of stay matter nor it was in the prescribed Form No.6. So the said notice cannot be said to be sufficient compliance of Order 41 R. 14 CPC. In support of his contention, learned counsel for the appellant referred to some earlier D.B. decisions of this Court on the point. In the Union of India Vs. Jhutter Singh, , a notice regarding filing of

the appeal was served on the respondent but no date for hearing of the appeal was mentioned. It was held that notice was not in accordance with the provisions of Order 41 so the time for filing cross-objections has not yet begun. Similarly in the case of Union of India Vs. Siburam reported in 99 DRJ DB 166, it was found that although notice of the admission of the appeal was served on the respondent the said notice did not indicate the date fixed for hearing of the appeal. It was held that the limitation for the purpose of filing cross objections under O.41 R. 22 did not begin to run. In this case notice dated 26th April, 1976 contains only tentative date of hearing of stay matter. No dated whether tentative or actual for hearing the appeal itself was mentioned therein. So the said notice does not conform to the specific requirement of the law contained on Order 41 Rule 14 SPC and Therefore the service of such notice on 23rd May, 1976 does not offer starting point of limitation for filing cross-objections.

6. For these reasons the view taken by the learned single Judge, though plausible, cannot be accepted in the face of specific provisions of law and earlier D.B. decisions of this Court notice above.

7. We Therefore hold that cross objections filed by the appellant herein on 25th September 1976 were well within time as the appeal was listed for hearing for the first time on 12th September 1979 only.

8. The next point urged by the learned counsel for the appellant was regarding enhancement of the amount, of compensation. As already stated all acquired land belonging to the appellant was placed in block D as it was described as Banjar Kadim in the revenue record which was inferior to other lands falling in blocks A,B and C. The submissions of the learned counsel for the appellant is that the categorisation of the appellant's land in block D is wrong and arbitrary in as much as the same was leveled land adjoining village abadi. But apart from this oral assertion we do not find any material to uphold this claim. In the copies of Khasra girdawri Exhibit A-7 and A-8 which were produced learned Additional District Judge, the land in question was described as Banjar Kadim. Further , in his statement dated 24th November 1975, the learned counsel for the petitioner, appellant herein, had admitted the correctness of revised statement filed u/s 19 of the Act dated 7th January, 1975 regarding the area, shares and categorisation of land in question. It seems that the categorisation of land in block D was not questioned before the learned single Judge also. No other material has been brought on record to show that land in question should not have been placed in block D. This contention of the learned counsel for the appellant, Therefore, cannot be upheld.

9. Learned counsel for the appellant next contended that in RFA No. 422/72 titled Teja Singh Vs. Union of India, which was in respect of the land situated in the same village Nangloi Sayyed acquired by same notification dated 4th March, 1963 decided on 25th September, 1979, the learned single Jude has awarded compensation for different categories of land falling in the revenue estate of Nangloi sayyed at the following rates:

Block-A: Rs. 6000/- per bigha. Block-B: Rs. 5750/- per bigha. Block-C: Rs. 4666/- per bigha Block-D: Rs. 3750/- per bigha

10. According to the learned counsel for the appellant this assessment of compensation at the rate of Rs. 6000/- per bigha for the land falling in block-A was made on the basis of the fact that the compensation of the land falling in the revenue estate of the near by village Chougkhandi was assessed at the rate of Rs. 9000/- per bigha by the learned Additional District Judge in some other case. According to learned counsel for the appellant, the said assessment of Rs.9000/- per bigha for the land situated in the revenue estate of Chougkhandi was raised to Rs.15000/- per bigha by the High Court in RFA No. 163/72 and RFA. No 169/72 vide judgment dated 7th August 1990. Learned counsel for the appellant, Therefore, contended that the compensation payable in respect of land in question should proportionately be enhanced to Rs. 15000/- per bigha in the adjoining village of Chougkhandi was surrounded by developed colonies and the land fell in Block-A whereas the land in question is neither developed nor being developed for raising residential colonies. Moreover, according to the categorisation of the land falling in the revenue estate of village Nangloi sayyed, the land in question falls in Block-D which is inferior to all other types of land.

11. In the case of Basant Kumar and Other Vs. Union of India (1996) 11 SCC 452, the Supreme Court has observed that "it is common knowledge that even in the same village, no two lands command same market value. The lands abutting the main road or national highway command higher market value and as the location goes backward, market value of interior land would be less even for the same kind of land". The Supreme Court has further observed that "only lands which have similar potentiality with similar advantages can offer comparable parity of the value. Burden is always on the claimant to prove the market value and the court should adopt realistic standards and pragmatic approach in evaluation of the evidence. The doctrine of equality in determination and payment of same compensation for all claimants involved under the same notification is not a correct principle for calculating the compensation. It is only when both the lands are proved to be possessed of the similar features that equal compensation can be allowed."

12. Keeping these parameters in mind, we think that there is no question of parity between the compensation awarded by the High Court for the land falling in Block A of village Chougkhandi where developed colonies have already come up and land in question which is undeveloped and of inferior quality falling in the revenue estate of village Nangloi Sayyed. It is not the case of the appellant that there was any proposal for the development of the land in question either at the time of notification or even now. The land as it is cannot be used either for agricultural purposes or for raising a residential colony thereon. Therefore, the question of awarding compensation at the rate applicable to developed land in village Chougkhandi does not arise.

13. In the case of Teja Singh Vs. Union of India, RFA.No. 422/72 decided on 25th

September 1979, learned single Judge has awarded compensation at the rate of Rs. 3750/- per bigha for the land falling in block D in the revenue estate of village Nangloi Sayyed where the land of the appellant is situated. The land which was subject matter of the award in the case of Teja Singh was also acquired by the same notification dated 4th March, 1963 and falls under the same category. Therefore, following the principle laid down in the case of Basant Kumar (Supra), we hold that the appellant is entitled to compensation at the rate of Rs. 3750/- per bigha for her land measuring 137 bigha and 15 biswa comprising in khasra No. 1 etc/197 and 1 etc/317/8 in the revenue estate of village Nangloi Sayyed. The appellant will be further entitled to 15 per cent solatium and 6% interest per annum on the enhanced compensation from the date on which the Collector took the possession of the land till the date on which the excess amount is paid or deposited in Court.

14. The appeal is accordingly allowed, to the extent indicated above but in the circumstances, without any order as to costs.