

(2001) 01 DEL CK 0121

In the Delhi High Court

Case No : Regular First Appeal No's. 78, 79, 84, 85, 95, 116, 117, 122, 126, 127, 128, 129, 130, 131, 137, 138, 139, 141, 142, 144, 148, 149, 150, 158, 159, 160, 170, 171, 177, 178, 179, 183, 184, 186, 188, 189, 195, 196, 197, 200, 202, 207, 210, 215, 216, 217, 21

Richhpal Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Court Fees Act, 1870 — Section 13

Land Acquisition (Amendment) Act, 1984 — Section 11(2)

Land Acquisition Act, 1894 — Section 18, 19, 23, 23(1), 24

Citation : (2001) 90 DLT 794

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Om Prakash, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—These 80 appeals have been preferred by the claimants u/s 54 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) seeking determination of the amount of compensation payable to them for their lands acquired for public purpose.

2. Village Jaitpur is situate by the side of Mathura Road contiguous to DDA Colony Sarita Vihar, Apollo Hospital, Sukhdev Vihar, Ishwar Nagar, New Friends Colony and Villages Jasola and Badarpur. Claimants mostly are displaced persons from Pakistan and claim that after they migrated from Pakistan they were allotted the lands by government. They were fully dependent on the income derived from the lands. For the purpose of construction of Ash Pond of Badarpur Thermal Power Station 729 bigha and 10 bids was land situate in village Jaitpur was notified for being acquired through notification issued u/s 4(1) of the Act on 2.6.1989. Declaration u/s 6 was made on 2.6.1989. Pursuant to the notices issued u/s 9 of the Act claimants lodged their claims praying for being allowed

compensation @ Rs. 1,000/- per sq. yard. Collector Land Acquisition proceeded to make necessary inquiries and on 26.4.1990 made his Award No. 2/90-91 fixing market value of the land at Rs. 12,000/- per bigha. Claimants allege that the Delhi Administration had already taken a policy decision, which was notified on 26.4.1990, fixing minimum market value of agricultural lands in entire Delhi @ Rs. 4.65 lakhs per acre. They alleged that ignoring the said policy decision of the Government, the Collector on the same date at about 4.00 p.m. announced his award fixing market value at a meagre amount of Rs. 12,000/- per bigha (Rs. 7,000/- per acre) instead of Rs. 4.65 lakhs per acre.

3. Feeling dissatisfied with the amount of compensation offered to them the claimants sought references u/s 18 of the Act for determination of the market value. Claimants alleged that after filing petitions seeking reference a Panchayat was held in the village to consider the ways and means to have the award of the Collector altered and modified. They even met the Prime Minister of India, Local Parliament Members and Lt. Governor, Delhi pointing out to them that in the matter of offering amount of compensation the Collector had flouted the policy decision of Delhi Government but no action was taken by the Collector in modifying his award despite the fact a question was also raised in Parliament wherein Delhi Administration was asked to clarify its decision. Even references were not being forwarded by the Collector to the Court. It was after a great persuasion that the Collector forwarded the references to the Court but while forwarding references u/s 18 of the Act Collector incorporated in the statement u/s 19 of the Act a note as follows:

"The Administration has decided to concede the demands of farmers to the extent of Rs. 4.65 lakhs per acre as market value. However, the concession is restricted to this award only and it is humbly submitted that this may not be taken as precedent for other cases.

Sd/-

(R.K. Mishra)

Land Acquisition Collector (ME)

4. On receipt of the references, the Reference Court issued notice to the respondent. On the next date appearance was put in on behalf of the respondents by their Counsel who made a statement before the Reference Court that on instructions from LAC he had no objection in case the market value of the land is fixed @ Rs. 4.65 lakhs per acre. It was further stated that the decision in the case and his statement made in the case be not treated as binding or a precedent upon Union of India in other cases arising out of any other award. On behalf of the claimants their Counsel also made a statement that in view of the statement of Counsel for the respondent no evidence is to be led by him and he had no objection if market value is fixed at Rs. 4.65 lakhs per acre.

5. The Reference Court in view of the statement made by Counsel for the parties

proceeded to determine the market value of the land @ Rs. 4.65 lakhs per acre. Claimants feeling aggrieved against the order of Reference Court filed these appeals seeking determination of the amount of compensation payable to them in accordance with law.

6. Claimant's grievance is that they were displaced persons from Pakistan and had been allotted government land they had been carrying on their avocation of agriculture on the land which was the main source of income. Only a paltry sum was offered to them by the award of the Collector. Despite their best efforts award could not be modified by the Collector to make it in consonance with the policy of the Government. Having been deprived of the source of income they were in urgent need of money and finding that the Reference Court was likely to take considerable time in deciding their references, statement on their behalf was made by the Counsel that no evidence is to be led in the case and in these circumstances they had to accept the offer made by the Government without producing any evidence. It was urged during the course of arguments that compensation had been claimed by them @ Rs. 1,000/- per sq. yard. Acquired land had very good potential of being developed as a residential colony, keeping in view the tremendous developments which had already taken place in and around the acquired land and considering the proximity of the acquired land to the developed colonies. Irrespective of the fact that no evidence was led by the claimants the Reference Court ought to have proceeded to independently make determination of the amount of compensation. Reference Court had abdicated its function by not making determination of the amount of compensation in accordance with law. Judicial notice ought to have been taken by the Reference Court of various judgments of the Courts pertaining to determination of the amount of compensation for the surrounding villages. Market value determined by the Reference Court is not on the basis of any material on record but on the basis of the statement made on behalf of respondents Counsel. Respondent was bound to pay compensation on the basis of the market value as determined in accordance with law. Since determination of compensation in accordance with law has not taken place interference is called for in these appeals.

7. We have given due consideration to the facts and circumstances of the case and to the submissions made at the Bar.

8. The facts are apparent and need no further elaboration. Circumstances do suggest that the claimants felt agitated by the action of the Collector Land Acquisition in fixing market value at Rs. 12,000/- per bigha instead of and in place of Rs. 4.65 lakhs per acre. By the time the Collector made and published his award Delhi Administration had already come out with a policy of fixing minimum market value of the lands in entire Delhi @ Rs. 4.65 lakhs per acre. Claimants did not accept this amount of Rs. 4.65 lakhs per acre to be the fair market value as on the date of publication of notification u/s 4(1) of the Act. They did make a mention of this fact in their petitions seeking reference to the Court saying that the Land Acquisition Collector should not have announced the

award on 26.4.1990 at 4.00 p.m. after the policy of minimum price in Delhi was announced by Lt. Governor on the same day. In any case Land Acquisition Collector ought to have assessed the market value at Rs. 4.65 lakhs per acre. While making this reference claimants further stated in their reference application that fair market value of the land as on the date of the notification u/s 4 was not less than Rs. 1,000/- per sq. yard and accordingly sought reference for determination of the amount of compensation. It appears that because of the agitation of the claimants the Collector while forwarding references to the Court incorporated a statement as an appendage to the statement of facts that Administration had decided to concede to the demands of the farmers to the extent of Rs. 4.65 lakhs per acre. Needless to add that the demand of the farmers was not to the extent of Rs. 4.65 lakhs per acre but it was to the extent of Rs. 1,000/- per sq. yard.

9. Under the scheme of the Act - the jurisdiction of Reference Court u/s 18 is a special one. The Court has to treat the reference as original proceedings. Reference u/s 18 is not an appeal against the award of the Collector. Reference Court while making determination of compensation cannot take into consideration the material relied upon by the Collector Land Acquisition in his award unless the said material is placed and proved before the Court. No doubt the burden of proving that the amount offered by the award of Collector Land Acquisition is inadequate rests upon the claimant but irrespective of the fact that no evidence is led by the claimant or by the respondent the Reference Court is still obliged to make determination of the amount of compensation in accordance with law for which purpose the Reference Court is enjoined upon to take into consideration the factors as are enumerated in Section 23 of the Act and to exclude from consideration the factors as are enumerated in Section 24 of the Act. Instead of discharging its function in accordance with law in making determination by taking into consideration the factors as are incorporated in Section 23 of the Act the Reference Court in these cases proceeded merely on the offer made on behalf of the respondent that the administration had no objection in case the market value is fixed at Rs. 4.65 lakhs per acre. This to our mind was not a proper exercise of the power of determining the amount of compensation.

10. On a reference u/s 18 the Reference Court must exercise its own judgment and consider amongst other things that whether the award of the Land Acquisition Collector was based on correct principles. In AIR 1946 75 (Privy Council) considering the provisions of the Act as it stood prior to Land Acquisition (Amendment) Act, 1984 it was held that the Land Acquisition Officer in awarding amount of compensation is performing his statutory duty, a duty the exercise of which, in cases where land is to be acquired for a public purpose, concerns the public, since it affects the expenditure of public money. In assessing compensation he is bound to exercise his own judgment as to the correct basis of valuation, and his judgment cannot be controlled by an agreement between the parties interested. On a reference u/s 18 the District Judge must also exercise

his own judgment and consider, amongst other things, whether the award of the Land Acquisition Officer was based on correct principles. It was further held that an agreement arrived at between the parties to the land acquisition proceedings relating to the basis on which compensation is to be allowed would neither bind the Land Acquisition Officer nor the District Judge in the performance of their statutory duties under the Act. In *Mathura Prasad Rajgharia and Others Vs. State of West Bengal*, , also it was held that the Land Acquisition Officer in awarding the amount of compensation u/s 11 of the Act is performing a statutory duty, and in assessing compensation is bound to exercise his judgment as to the correct basis of valuation, and his judgment cannot be controlled by an agreement between the parties interested. Again the Apex Court in *Assam Railways and Trading Co. Ltd. Vs. The Collector of Lakhimpur and Another*, , following the Privy Council decision in AIR 1922 365 (Privy Council) , and that of *Samiullah's case (supra)*, held that agreement between the parties as to price does not interfere with jurisdiction of Land Acquisition Officer in assessing compensation payable.

11. There has been a considerable change now brought in the Act by incorporating Sub-section (2) in Section 11 of the Act by the Land Acquisition (Amendment) Act, 1984. It is now permissible for the Collector to make an award according to the terms of an agreement arrived at by all the persons interested. But in the instant case no such agreement is alleged to have been arrived at before the Collector before he made his award. After reference had been made to the Court it was the bounden duty of the Reference Court to determine the amount of compensation payable to the claimants for acquisition of their lands for which the Collector was bound to consider the factors as are enumerated in Sub-section (1) of Section 23 of the Act. Section 11(2) in Part II of the Act is not applicable to the Reference Court. Reference to the Court and the procedure to be followed by the Reference Court are contained in Part III of the Act. Section 26 of the Act says that every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under Clause First of Sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same Sub-section, together with the grounds of awarding each of the said amounts. In other words it enjoins upon the Court to first assess the market value of the land as on the date of publication of notification u/s 4(1) of the Act. Thereafter in case compensation is awarded under any of the other clauses, the same is required to be mentioned in the award separately. For the amounts mentioned in each head the Reference Court is bound to record his reasons. The Reference Court did not separately assess the market value of the land except by saying that as the respondent had agreed to accept Rs. 4.65 lakhs per acres as the market value the same is accepted as the market value.

12. In *Bhag Singh and Others Vs. Union Territory of Chandigarh* through the land acquisition collector, Chandigarh, , it was held that State was bound to pay to the appellants compensation on the basis of the market value of the land and that it

would not be fair and just to deprive the holders of the land without payment of true market value when the law in so many terms, declares that he shall be paid such market value. State Government must do what is fair and just to the citizen and should not, as far as possible, deprive a citizen of the legitimate dues. The Reference Court thus has failed to answer the reference in accordance with law and has failed to determine amount of compensation in accordance with law. As the Reference Court has not answered the reference in accordance with law the impugned judgment is liable to be set aside.

13. Consequently the appeals are allowed. In each case the impugned judgment of the Reference Court is set aside. As there has been no trial of the references by the Reference Court inasmuch as no reply was filed by the respondent no issues were framed and no evidence was led. In these circumstances, there is no option left except to direct remand of the reference petitions for being decided in accordance with law. Accordingly, the reference petitions are remanded to the Reference Court for being decided in accordance with law. Parties are directed to appear before the District Judge on 26.2.2001 on which date the District Judge will assign these cases to one Presiding Officer who will ensure that these cases are consolidated and decided by a common judgment in accordance with law.

14. A certificate in accordance with Section 13 of the Court Fees Act, 1870 will be issued to the appellants in each case enabling them to seek refund of the amount of Court-fee paid on the memorandum of appeals in accordance with law.

15. Copy of the judgment will be placed by the Registry in the record of each case and will also be sent to the Reference Court for being placed on the record of each reference.

16. Appeal allowed.