
(1956) 09 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 187 of 1956 and Civil Miscellaneous Writ No. 1272 of 1955

Samalia Ram and Another

APPELLANT

Vs

P.W.D. Agra and Others

RESPONDENT

Date of Decision : 27-09-1956

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 35, 35(2), 35(3), 36
Land Acquisition Act, 1894 — Section 18, 35, 35(2), 35(3), 36
Land Acquisition Act, 1894 — Section 18, 35, 35(2), 35(3), 36

Citation : (1957) 27 AWR 96

Hon'ble Judges : G. Mehrotra, J

Bench : Single Bench

Advocate : Chandra Shekhar Prasad Singh, for the Appellant;

Final Decision : Dismissed

Judgement

G. Mehrotra, J.—These are two writ petitions arising out of land acquisition proceedings.

2. The facts which are necessary for the disposal of the petitions briefly are that by notification dated 26-4-1946 the State Government acquired 12 bighas and 12 biswas of land belonging to the Petitioner Ram Chand in petition No. 1272 of 1955. Ram Chand had one-half proprietary share in the above area. The land is situate in village Boola Khatena which is within the Agra Municipality and as such the ZA and LR Act has not affected the rights of the Petitioners. The possession was handed back to the Petitioners in the month of August-September, 1953. Some earth had been removed from the land and on 18-2-55 Sri B. Swarup, Additional Collector, acting as Land Acquisition Officer, awarded Rs. 33-8-6 as compensation to the Petitioners, and awarded under the same award Rs. 44-8-0 as compensation to Sanwalia Ram who is Petitioner No. 1 and who was the tenant of this land. The value of the land according to the Petitioner Ram Chand is Rs. 1,000 per bigha and the damage done to the land was Rs. 5,000 according

to Sanwalia Ram in his affidavit filed in support of the writ petition. The Petitioner Ram Chand claimed a sum of Rs. 12,000 as compensation for the land and Rs. 5,000 as compensation for the trees standing thereon. Sanwalia Ram claims as compensation a sum of Rs. 5,000. The Petitioners in both the petitions have stated that the award was passed behind the back of the two Petitioners and when they came to know of it applications were filed before the Additional Collector disputing the amounts of compensation. The Additional Collector refused to interfere with the award and directed the Petitioners to withdraw the amounts deposited in their names. Thereupon a review application was filed which was rejected. Petition No. 1272 of 1950 was filed on behalf of Ram Chand on 19-12-55 to this Court and notices were ordered to issue on that. The second petition was filed on behalf of Sanwalia Ram on 2-2-1956. Both were ordered to be connected together and notices were issued on that also. Counter-affidavits have been filed on behalf of the opposite parties.

3. The main contention raised by the Petitioners was that there was a duty cast upon the opposite parties to refer the matter to Court for determination of the amount of compensation if there was any dispute as regards the compensation u/s 35(2) of the Land Acquisition Act. It is agreed between the parties now that the acquisition was a temporary acquisition and it was governed by the provisions of Section 35 of the Land Acquisition Act. The acquisition took place in the year 1946 and the possession was handed over back to the landlord and the tenant sometimes in September, 1953. The award which is the subject-matter of controversy between the parties was given sometimes in February, 1955. Section 35 of the Land Acquisition Act provide? as follows:

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the appropriate Government may direct the Collector to procure the occupation and use of the same, for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials if any to be taken therefrom, pay to them such compensation either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

4. Sub-clause (3) of Section 35 make it obligatory on the Collector to refer the matter to Court provided there is difference between the parties as regards the sufficiency of the compensation. The compensation in this sub-clause refers to

the compensation awarded or handed over by the Collector under Sub-clause (2) of Section 35. On the acquisition being made the Collector has to give compensation to the persons to whom notices have been issued for the use of the land sought to be acquired and thereupon if any dispute is raised the matter may be referred to Court.

5. In the present case the acquisition was made in the year 1946. Notices must have been issued to the persons interested at that stage and if there was any dispute the persons to whom the notices had been issued had to raise the dispute and that time with regard to the sufficiency of the compensation as to the use and occupation of the land. Nothing has been pointed out in the affidavit that any such dispute was raised by the Petitioners at that stage and consequently there is no mandatory duty u/s 35, Sub-section (3) which may be enforced by this Court by means of a writ of mandamus. Section 36 of the Act then provides that:

On payment of such compensation, or on executing such agreement or on making a reference u/s 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage if any done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein.

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such terms, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

6. Sub-section (2) of Section 36 contemplates the payment of compensation for the damage done to the land to the interested persons after the Government has restored the possession to the persons. In the present case the possession was delivered in September, 1953 and the award of 18-2-1953 only ascertained the compensation which was payable to the persons interested in the land for the damage done to the land. It did not deal at all for the compensation of the land which must have been determined earlier. If that is so, then the Petitioners have no right to ask for a mandamus for a reference to any Court, if there is any dispute with regard to the amount of compensation for the damage done to the land. The proviso to Section 36 only provides that:

If the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

7. That is, if the land has been so damaged as to have become unfit for the use for which it was put prior to the acquisition the person interested can ask for the permanent acquisition of the land. No such prayer was made in this case as the applications made by the Petitioners which have been filed as annexures to the counter-affidavit of the Standing Counsel in the petition of Sanwalia Ram, show.

8. It was then urged that a mandamus can be issued directing the opposite parties to make a reference to Court u/s 37 of the Land Acquisition Act which reads as follows:

In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

9. That only cans a duty upon the Collector to refer if there is difference as to the conditions of the land at the expiration of the term or as to the matters connected with the agreement. No dispute is raised by the present applicants as regards the condition of the land at the time of the expiration of the term. It was never asserted by the Petitioners, as I have already pointed out, that the land has become unfit for the use for which it was put prior to the requisition and consequently the land should be permanently acquired. It is only in those class of cases where actually a difference may arise as to the condition of the land reference can be claimed as a matter of right u/s 37. There has been no allegation also that there was any dispute connected with the agreement which could be referred to Court. There is therefore no mandatory duty under any of the provisions of the Act under which the Petitioners could have claimed a right to get the matter referred to Court. It has been conceded by the Petitioners that this was not an application for reference u/s 18 of the Land Acquisition Act for that only relates to permanent acquisitions.

10. There is therefore no force in these petitions and they are rejected. Petition No. 187 of 1956 is rejected with costs; but as the copy of the counter affidavit has not been given to the Petitioner in petition No. 1272 of 1955 I do not award any costs in this petition.