

(2014) 04 AHC CK 0114
In the Allahabad High Court
Case No : F.A. No. 100 of 2007

Secretary

APPELLANT

Vs

Charan Das

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Evidence Act, 1872 — Section 68

Land Acquisition Act, 1894 — Section 11, 12, 17(1), 17(4), 18

Citation : (2014) 6 ADJ 751 : (2014) 105 ALR 340 : (2014) 124 RD 653

Hon'ble Judges : Tarun Agarwala, J; Akhtar Husain Khan, J

Bench : Division Bench

Advocate : B. Dayal, Advocate for the Appellant; Ajay Kumar Singh and Vivek Kumar Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala and Akhtar Husain Khan, JJ.—This a first appeal u/s 54 of the Land Acquisition Act filed at the instance of the Meerut Development Authority. The facts leading to the filing of the appeal is, that approximately 412 acres of land situated at village Mukarrabpur Palhera, Pargana Daulara, Tehsil Sardhana, District Meerut, for the purpose of providing housing accommodation to the residents of Meerut City, was acquired. Notification dated 12.7.1980 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and notification dated 1.5.1981 u/s 6 of the Act was issued. 17 persons, who held 40 acres of land, filed various writ petitions before the High Court questioning the validity of the notification issued u/s 4 of the Act and the declaration issued u/s 6 of the Act on various grounds. One of the grounds of attack was that the action of the Government in invoking section 17(1) of the Act and dispensing with the inquiry u/s 5-A of the Act was arbitrary and uncalled for. The High Court, after hearing the parties, allowed the writ petitions holding that the notification issued u/s 4 of the Act which contained a direction u/s 17(4) of the Act, dispensing with the inquiry u/s 5-A of the Act was invalid and accordingly quashed the notifications

under sections 4 and 6 of the Act.

2. Being aggrieved by the said judgment, the State of U.P. as well as the Meerut Development Authority filed SLP before the Supreme Court, which was entertained and was allowed by a judgment dated 12.9.1986 and the judgment of the High Court was set aside and the notifications were held to be valid. The said judgment in State of U.P. Vs. Smt. Pista Devi and Others,

3. Thereafter, the Special Land Acquisition Officer gave an award dated 9.1.1988 u/s 11 of the Act awarding Rs. 30/- per square yard for the first belt and, for the remaining, @ Rs. 11.25 per square yard. The tenure holder Charan Das, since deceased, filed an application u/s 18 of the Act for enhancement of the quantum of compensation, which was referred to the District Judge by the Collector by an order dated 23.2.1988 with regard to plot Nos. 328, 349, 351 and 379 having an area of 14 bighas and 5 biswansi in Mukarrabpur Palhera, Pargana Daulara, Tehsil Sardhana, District Meerut.

4. The appellant, i.e., the Meerut Development Authority, filed their objection contending that the compensation awarded by the Special Land Acquisition Officer was just and required no enhancement. The appellant further contended that the tenure holder was not entitled for any compensation, inasmuch as, the claimant had sold off portions of the plot to various persons who have made unauthorized construction thereon. In support of their submission, the appellant filed certified copies of various sale-deeds.

5. During the pendency of these proceedings the alleged purchasers filed an application for impleadment under Order I, Rule 10 of the C.P.C. contending that they are bona fide purchasers and that they are entitled to receive compensation and that the original tenure holder, Charan Das, was not entitled to receive any compensation far less the enhanced compensation. This application was rejected by the reference Court by an order dated 27.8.2003 against which Civil Revision No. 332 of 2003 was filed before this Court, which was also dismissed by a judgment dated 20.9.2004. The Court held that the application for impleadment under Order 1 Rule 10, C.P.C. could not be moved in reference proceedings u/s 18 of the Act. The Court held, that the reference Court gets jurisdiction only if the matter is referred to it under sections 18 or 30 of the Act and that the Civil Court only had the jurisdiction to decide the matter that was referred to it. The Court held that the reference Court could not widen the scope of its jurisdiction or decide matters, which was not referred to it. The Court held, that the applicant had not appeared or objected before the Special Land Acquisition Officer nor any reference to that effect was made u/s 18 of the Act and, therefore, no impleadment application could be filed.

6. In the meanwhile, against the award of the Special Land Acquisition Officer, the matter reached the Supreme Court in the case of Sheo Singh v. State of U.P. in Civil Appeal Nos. 8870-8893 of 1995, which was decided by the Supreme Court by judgment dated 30.4.1997. The Supreme Court, after considering the

matter held that the claimants were entitled to compensation @ Rs. 85/- per square yard and were also entitled to an additional amount of 12% per annum u/s 23(1-A) of the Act till the date of the passing of the award.

7. In the light of the said decision of the Supreme Court in the case of Sheo Singh (supra), the reference Court allowed the reference u/s 18 of the Act by judgment dated 28.9.2006 enhancing the compensation to Rs. 85/- per square yard and further directing that the additional amount of 12% would be payable from the date of notification u/s 4 of the Act, i.e., from 12.7.1980 till the date of possession, i.e., 9.7.1982.

8. The Meerut Development Authority, being aggrieved by the said enhancement, has filed the present appeal.

9. Heard Sri Bhupeshwar Dayal, the learned Counsel for the appellant and Sri Vivek Kumar Singh, the learned Counsel for the opposite parties.

10. In view of the decision of the Supreme Court in the case of Sheo Singh (supra) the learned Counsel for the appellant admits that the enhancement of compensation to Rs. 85/- per square yard needs no interference since the matter has now attained the finality. The only ground urged by the learned Counsel for the appellant is, that the reference Court had committed a manifest error of law in not considering the objection of the appellant, namely, that the original tenure holder and thereafter their heirs were not entitled for any compensation or enhancement of the compensation, inasmuch as, the original tenure holder had sold off the property to various purchasers prior to the date of notification issued under sections 4 and 6 of the Act.

11. The learned Counsel submitted that such objection should have been considered and decided by the reference Court and that the reference Court committed a manifest error in rejecting their objections on the ground that the scope of the proceedings u/s 18 of the Act could not be enlarged and that such objections could not be considered. In support of his contentions, the learned Counsel has placed reliance upon a decision of the Supreme Court in Madan and Another Vs. State of Maharashtra,

12. On the other hand, the learned Counsel for the respondents contended that the appellant has no locus standi to raise such objection and that such objection could only be raised by the alleged purchasers who are not before this Court. The learned Counsel submitted that the impleadment application of the alleged purchaser was rejected by the reference Court, which was upheld by the High Court in the revision filed by them and therefore, the controversy has now been set at rest. The learned Counsel submitted that such objection cannot be raised again by the appellant.

13. The learned Counsel for the respondents further contended that in any case the certified copies of the sale-seeds could not be used as evidence, inasmuch as, the said sale-deeds were not proved since no attesting witness was called to

prove the execution of the said documents. In support of his submissions, the learned Counsel placed reliance upon section 68 of the Evidence Act and a decision of this Court in *Kuldip Singh Vs. Ram Kishan and Others*, The learned Counsel for the respondents further contended that the claimants are entitled to the additional amount u/s 23(1-A) of the Act @ 12% per annum from the date of the notification till the date of passing of the award, i.e., from 12.7.1980 till 9.1.1988 instead of from 12.7.1980 till the date of possession, i.e., 9.7.1982 in view of the decision of the Supreme Court in *Sheo Singh case* (supra). In support of his submissions, the learned Counsel for the respondents submitted, that even though he is supporting the decree of the reference Court, it was not necessary for the claimant to file an appeal or file a memorandum of cross-objection challenging a particular finding of the referring Court and that the finding of the referring Court could be modified in this present appeal.

14. Having heard the learned Counsel for the parties at some length, we are of the opinion, that the appellant is not entitled for any relief. In the first instance no objection of this sort was raised by the appellant or by the alleged purchasers before the Special Land Acquisition Officer. In the absence of such objections being raised, the scope of proceedings questioning the award made by the Special Land Acquisition Officer u/s 11 of the Act becomes limited in proceedings u/s 18 of the Act. In this regard, section 18 of the Act states as under:

"18. Reference to Court.--(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

15. A perusal of the aforesaid provision indicates, that any person interested, who has not accepted the award, may get the matter referred upon a written application to the Collector with regard to the measurement of the land or the amount of compensation or to the person to whom it is payable or the apportionment of the compensation amongst the persons interested.

16. In *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. Vs. Allahabad*

Vikas Pradhikaran and Another, the Supreme Court held-

"It is well established that the reference Court gets jurisdiction only if the matter is referred to it u/s 18 or 30 of the Act by the Land Acquisition Officer and that Civil Court has got the jurisdiction and authority only to decide the objections referred to it. The reference Court cannot widen the scope of its jurisdiction or decide matters which are not referred to it."

17. Similarly in Madan and Another Vs. State of Maharashtra, the Supreme Court held-

"A cursory glance of the provisions of sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the Court. But, a closer scrutiny would indicate that the two sections of the Act operate in entirely different circumstances. While section 18 applies to situations where the apportionment made in the Award is objected to by a beneficiary thereunder, section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the Court u/s 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the Award would crystallize after apportionment is made in favour of a claimant. It is only thereafter that a reference u/s 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the Court in the reference u/s 30 or in the civil suit, as may be."

18. In the light of the aforesaid, it is well established that the referring Court gets jurisdiction only if the matter is referred to it u/s 18 or 30 of the Act and that the referring Court has got the jurisdiction only to decide such matters, which has been referred to it. The referring Court cannot widen the scope of its jurisdiction or decide matters, which are not referred to it.

19. In the instant case, the impleadment application of the alleged purchasers was rejected by the reference Court, which order was affirmed by the High Court. The matter has attained finality as nothing has been brought on record to indicate that the alleged purchasers have filed any SLP before the Supreme Court. Since the matter has been concluded and a finality has been attained, it was not open to the appellant to raise the same objection again in the present appeal. The grounds taken by the appellant is, accordingly, misconceived quite apart from the fact that this Court is also of the opinion that the appellant is not a "person interested" u/s 18 of the Act and consequently had no locus standi to object on this issue. Section 18 of the Act applies to a situation where the apportionment made in the award is objected to by a beneficiary. The appellant is not a beneficiary and therefore, is not entitled to raise such objection in the present appeal.

20. In Sheo Singh case (supra), the Supreme Court enhanced the compensation to Rs. 85 per square yard and further held that the claimants were entitled to an additional amount of 12% per annum u/s 23(1-A) of the Act till the date of the passing of the award. In the light of this observation, the learned Counsel for the claimant-respondents contended that the award of the reference Court should be modified accordingly. The learned Counsel for the respondents submitted that the reference Court has awarded the additional amount of 12% from the date of notification, i.e., 12.7.1980 till the date of possession, i.e., 9.7.1982 instead of awarding compensation till the date of the passing of the award i.e., 9.1.1988.

21. Having heard the learned Counsel for the respondents on this issue, we find that the claimant-respondents in the present appeal is entitled to support the decree of the Trial Court. It is not necessary for the respondents to file a memorandum of cross-objection challenging a particular finding that is rendered by the Trial Court against him when the ultimate decree is in his favour. A memorandum of cross-objection is needed only if the respondents claim any relief which had been negated to him by the Trial Court and in addition to what he had already been given by the decree under challenge as held by the Supreme Court in *S. Nazeer Ahmed Vs. State Bank of Mysore and Others*,

22. In the light of the aforesaid, we are of the opinion, that even though the respondents were not obliged to file a cross-objection to challenge any finding given against him, nonetheless, the respondents are not entitled for enhancement of the compensation in view of the provisions contained in section 23(1-A) of the Act. For facility, the said provision is extracted hereunder:

"23. (1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

23. From a perusal of the aforesaid provision, it is clear that the additional amount is to be calculated @ 12% per annum from the date of publication of the notification u/s 4(1) of the Act till the date of the award of the Collector or the date of taking possession of the land, which ever is earlier.

24. In Sheo Singh's case (supra), the Supreme Court awarded the additional amount of 12% till the date of the passing of the award considering the fact that possession was not taken. In the instant case, a specific finding has been given in the award that possession was taken on 9.7.1982 and, consequently, the additional amount of 12% u/s 23(1-A) of the Act was given till the date of possession, i.e., 9.7.1982. The said finding given by the reference Court does not suffer from any error of law and consequently, the contention of the learned Counsel for the respondents is untenable.

25. For the reasons stated aforesaid, the appeal lacks merit and is dismissed.

26. The plea raised by the respondents for enhancement of the compensation without filing cross-objection also fails and is rejected. In the circumstances of the case, there shall be no order as to costs.