

(1970) 11 DEL CK 0015

In the Delhi High Court

Case No : Regular First Appeal No. 174 of 1970

Sheo Nath and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-11-1970

Acts Referred:

Citation : (1970) ILR Delhi 353

Hon'ble Judges : T.V.R. Tatachari, J; Narain Andley, J

Bench : Division Bench

Advocate : D.R. Dhamija, O.P. Malhotra and Sat Pal, for the Appellant;

Judgement

S.N. Andley, J.

(1) This appeal is directed against the award of the Additional District Judge, Delhi, made upon a reference u/s 18 of the Land Acquisition Act, 1894, whereby he determined the market value of the land in question at Rs. 3,000.00 per bigha. He calculated the amount payable to the appellants at Rs. 25,920.00. He also awarded Rs. 3,888.00 as solarium at 15% of the market value. The appellants have claimed compensation at an average rate of Rs. 4,500 per bigha. Accordingly, the appellants have claimed enhancement of the market value by Rs. 85,370.00. They have further claimed a sum of Rs. 12,806.25 as solarium, at 15% on the said amount of Rs. 85,370.00.

(2) The appellants have paid court fee on the memorandum of appeal under Schedule I Article I of the Court Fees on the said amount of 85,370 but they have not paid court fee on the said amount of Rs. 12,806-25 claimed in the appeal as solarium. A question has thus arisen whether the appellants are liable to pay ad valorem court fee under Schedule I, Article I of the Court Fees Act ad valorem on Rs. Rs. 12,806.25 also.

(3) The argument on behalf of the appellants is that the said amount of, Rs. 12, 806.25 claimed as solarium in the appeal is not a subject matter in dispute in the appeal within the meaning of Schedule I, Article I of the Court Fees Act because,

it is contended, solarium is not a part of the amount awarded by the Court u/s 18 of the Land Acquisition Act, nor is it a part of the amount claimed in the appeal.

(4) Section 8 of the Court Fees Act prescribes the fees on a memorandum of appeal against an order relating to compensation under any Act for the acquisition of land for public purposes and, according to this section, the amount of fee payable is to be computed according to the difference between the amount awarded and the amount claimed by the appellant. If, Therefore, the amount of solarium can be said to be included in the expressions "amount awarded" and "amount claimed", it will attract court fee but not otherwise and if it attracts court fee, it will have to be ad valorem according to Schedule I, Article I of the Court Fees Act.

(5) SUB-SECTION (1) of Section 23 of the Land Acquisition Act enumerates six matters, including the market value of the land, to be taken into consideration in determining the compensation, Then Sub-section (2) of this section imposes an obligation upon the Court to award a sum of 15% in addition to the market value in consideration of the compulsory nature of the acquisition. The injunction in sub-section (2) of this section is clear and definite and it provides the rate at which solarium is to be awarded in addition to the market value of the land. No option is left in the Court not to grant solarium in a case where the market value of the land has been determined by it. Therefore, there cannot be any dispute between the parties, namely, the Government on the one hand and the person whose land is acquired on the other either about the granting or not granting of solarium in addition to the market value or the rate of such solarium. solarium will not be the subject matter in dispute in the appeal except in the exceptional case where the Court has in spite of the injunction in sub-section (2) of section 23 of the Land Acquisition Act omitted or failed to award solarium in addition to the market value determined by it. Therefore the "amount awarded" by the Court comprehends only the compensation determined by it under sub-section (1) of section 23 of this Act and not the amount of solarium. This construction receives confirmation from sub-section (1) of Section 26 of this Act which prescribes the form of awards. It says:-

" 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."

(6) The above quoted sub-section does not refer to sub-section (2) of Section 23. It, Therefore, follows that the determination by the Court which is called the award concerns itself only with the six clauses of sub-section (1) of section 23 of this Act and not with sub-section (2) of this section relating to solarium. Therefore, in any appeal against the award, the subject matter in dispute in appeal would be only the amount of compensation determined under subsection

(1) of section 23. On construction of the aforesaid provisions, we are of the view that the amount specified in the memorandum of appeal as solarium will not attract the provisions of the Court Fees Act except in the exceptional case where the Court has notwithstanding the injunction contained in sub-section (2) of section 23 of the Land Acquisition Act omitted or failed to award the solarium.

(7) A contrary view was taken by a learned Single Judge of the Madras High Court in the case reported in Air 1930 Madras 45 in re : (Koppaka) Brahmanandam v. Secy. of State . The learned Judge construed section 8 of the Court Fees Act and sub-section (2) of section 23 of the Land Acquisition Act and came to the conclusion that the amount of compensation to be awarded includes not only the market value but also the 15% solarium on such market value. We regret we are unable to accept this view.

(8) Take a case where the Court to which a reference has been made u/s 18 of the Land Acquisition Act determines the compensation under sub-section (1) of section 23 of this Act at say Rs. 1,000.00 and also awards Rs. 150.00 as solarium as required by subsection (2) of section 23 of this Act. In appeal, the owner of the land merely challenges the determination of compensation for his land and claims Rs. 2,000.00. The High Court accepts the appeal and enhances the compensation as prayed. In such a case the High Court is merely declaring the market value of land which should have been determined by the Court of Reference and, in making the enhancement, will have to perform the duty imposed by sub-section (2) of section 23 of this Act upon the latter. The statute does not give any option in the matter of solarium to the Court and, Therefore, the amount of solarium cannot be the subject matter of dispute in the appeal. A mere mention of the solarium or the amount of it in the memorandum of appeal would not make it a subject matter in dispute in the appeal or part of the "amount claimed" in the appeal. It must be granted and has to be calculated as provided by sub-section (2) of section 23 of the Land Acquisition Act.

(9) In the case reported in Abdul Sultan Hussainbhai Velji Vs. Collector of Ahmednagar, , it has been observed that the words "amount awarded" must have a limited construction as they appear in a fiscal statute. There is an observation in this" case that if an appellant asks for solarium in an appeal then it is possible to say that he ought to pay Court fee on the 15% as it was a part of the claim. We do not entertain any such doubts. The fact that sub-section (2) of section 23 of the Land acquisition Act imposes a statutory obligation upon the Court to award solarium leads to the conclusion that solarium is not included in the expression "amount awarded" appearing in section 8 of the Court Fees Act and would not be the subject matter in dispute in the appeal or a part of the amount claimed in the appeal.

(10) A Full Bench of the Andhra Pradesh High Court had occasion to consider this question and the decision is reported in Air 1970 A.P. 136 in re: Kesireddi Appala Swamy and others v. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada, where it has been held that the award which is the subject matter of

an appeal to the High Court is the award u/s 26 of the Land Acquisition Act and it is this award which is referred to in section 8 of the Court Fees Act and that the amount of solarium to be added to the compensation is not part of the award which has to be made by the Court u/s 26 of the Land Acquisition Act. We respectfully agree.

(11) In our opinion, Therefore, the memorandum of appeal bears proper court-fee in the present appeal and even though an amount towards solarium has been claimed in the memorandum of appeal, court-fee is not payable on this amount.