
(2006) 05 DEL CK 0060

In the Delhi High Court

Case No : Regular First Appeal No's. 893, 885, 908, 928, 929, 930, 931, 932 and 933/87 and 8 and 9/88

Shiv Dhan Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151, 152
Land Acquisition Act, 1894 — Section 17, 18, 4, 6

Citation : (2006) 131 DLT 403 : (2006) 90 DRJ 260

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : M. Lal, for the Appellant; Sanjay Poddar, for the Respondent

Judgement

Swatanter Kumar, J.—Despite the fact that all the above referred 11 Regular First Appeals are squarely covered on facts and law by a recent judgment of this Court passed in the case of Jasrath v. Union of India (RFA No. 751/94 decided on 27th April, 2006), counsel for the respondent have raised a legal issue in regard to very maintainability and entertainment of these appeals by this Court.

2. According to learned Counsel appearing for the respondent these appeals cannot be equated with the appeals remitted by the Supreme Court for fresh determination as per its order dated 7th September, 2005 either on factual matrix or in law. According to the respondent the appellants in these appeals are not entitled to get the benefit of the judgment of this Court in Jasrath case. The order of remittance could at best revive the review applications, which themselves are not maintainable. Reliance was also placed upon the judgment of the Supreme Court in the case of Dwarka Das v. State of M.P. and Anr. (1993) 3 SCC 500 and Des Raj (Deceased) through L.Rs. and Others Vs. Union of India (UOI) and Another, to argue that the application filed before the High Court was beyond the scope of corrections, which could be directed to be carried out under the provisions of Sections 151 and 152 CPC. The fact that appellants had claimed

review on the ground that in earlier judgment of Jasrath, higher compensation has been awarded is no ground for awarding higher compensation to the claimants in the present appeals.

3. Both these arguments are inconsequential inasmuch as these were the arguments, which the respondents were required to raise at the time of hearing of CM 501/2002 and passing of order dated 19th July, 2002 by the Division Bench. Once that order was passed, all these controversies came to an end. Even that order has been set aside by the Supreme Court along with the order dated 4th September, 2001. Thus, these objections now cannot be of much help to the respondent.

4. In order to examine the merit of contentions raised on behalf of the respondents, it would be necessary for the Court to notice the facts, which have given rise to the present situation. The claimants are owners of the land falling in the revenue estate of Village Rithala. Notification under Sections 4, 6 and 17 of the Land Acquisition Act were simultaneously issued on 20th February, 1981 for acquiring large tract of land including the land of the appellants. An award bearing No. 20/82-83 dated 11th June, 1982 was made by the Land Acquisition Collector in respect of the notified land and the Collector had assessed the price of the agricultural land on irrigated and unirrigated basis at Rs. 3800/- per bigha and Rs. 2600/- per bigha respectively. Aggrieved from this award of the Collector, the claimants had filed references u/s 18 of the Act, which were decided by the Reference Court vide its judgment and order dated 1st September, 1987. The compensation payable to the claimants was enhanced by the reference Court to Rs. 20,000/- per bigha without any classification of the land. The claimants were still dissatisfied from the enhanced compensation. They filed Regular First Appeals before this Court. The appeal of Shiv Dhan Singh v. Union of India (RFA 893/87) was taken as a lead case. These appeals were dismissed by the High Court in liming vide its order dated 15th December, 1987. The order of the High Court was challenged by the claimants before the Supreme Court in SLP Nos. 4488-96/94. However, these Special leave petitions were also dismissed by the Supreme Court vide order dated 2nd March, 1994 on the ground of delay. Certain other appeals were filed before the Supreme Court including in the case of Bir Singh and Ors. etc. etc. v. Union of India etc. etc. Civil Appeal Nos. 1001-05/90. The ground taken up in these appeals was that the appeals in relation to the land acquisition of the same notification and village had been admitted by the High Court and were pending hearing and reference was made to RFA Nos. 182/88, 368/88 and 314/89. The Supreme Court vide its order dated 30th January, 1990 allowed the said appeals and set aside the judgment of the High Court dismissing the appeals in liming and referred the matter to the High Court to be heard along with other Regular First Appeals.

5. In view of the fact that High Court had allowed the appeal of Jasrath and awarded higher compensation to the claimants, the present appellants filed an application being CM No. 501/2002 praying that the judgment of the Court dated

4th September, 2001 in Jasrath case may be made applicable to the claimants despite the fact that their appeals had been dismissed by the High Court in liming and their SLPs. against the order of the High Court dismissing their appeals in liming were also dismissed by the Supreme Court on the ground of delay vide its order dated 2nd March, 1994. This application was allowed by the High Court vide judgment and order dated 19th July, 2002 and respondents were directed to pay to the appellants the compensation as has been determined by the High Court in Jasrath case.

6. The correctness of the above order was questioned by the Union of India by filing Special Leave Petitions before the Supreme Court. These appeals filed by the Union of India were disposed of by the Supreme Court vide its order dated 7th September, 2005 whereby all the cases have been remitted to this Court for fresh determination and fixation of market value of the acquired land in different notifications relating to Village Rithala.

7. At this stage, we may also notice that number of all these appeals have been shown in the order of remand passed by the Supreme Court. In light of these facts, the counsel appearing for the respondent vehemently argued that the appeals having been dismissed, may be on the ground of delay by the Supreme Court vide its order dated 2nd March, 1994, no review application was maintainable. Further it is contended that order passed by this Court on 19th July, 2002 stands set aside in view of order of remand of the Supreme Court, as such the appeals cannot be reheard by this Court.

8. The principle of judicial propriety would require that this Court should hear the appeals on merits in view of the order of the Supreme Court dated 7th September, 2005. In that order, the Supreme Court has not made any distinction between different kinds of appeals, which were preferred either by Union of India or by the claimants. It is an order, which on its plain reading, required this Court to rehear the appeals on merits and redetermined the market value of the land payable to the claimants as on the date of issuance of the notification. Admittedly, the land in the revenue estate of Village Rithala was acquired by four different notification dated 13.2.1981, 20.2.1981, 13.3.1981 and 31.12.1981. All these notification were subject matter of different appeals before the Supreme Court. In the body of the order, it has been itself noticed by the Supreme Court that all the 342 appeals stand remitted to this Court for consideration of the matter afresh. It is also stated in the order that High Court shall proceed to determine the market value of the land upon taking into consideration the material on record and all other relevant factors, which are necessary for determining the market value of the land in question. No exception has been carved out by the Supreme Court in relation to any category of cases. The contention of counsel for the respondent that by necessary implication this Court would carved out an exception to the judgment of the Supreme Court is without any substance. It was for the respondent to seek any clarification, if at all necessary, from the Supreme Court and they have admittedly taken no steps

despite the fact that more than a period of 7 months have already passed. It is not for this Court to interpret the order of the Supreme Court and in comity to the directions issued by the Supreme Court we are of the considered view that all these appeals have to be heard on merits as the basic judgment, which even was relied upon by the Court in the present case i.e. Jasrath v. Union of India (RFA 751/94) has been set aside by the Supreme Court. In other words, there is no judgment in all these appeals determining and deciding the rights and liabilities of the parties to the lis.

9. Such an approach would even otherwise be in consonance with the basic principles of rule of law i.e. equity and good conscious. When this Court is redetermining the market value of the same land acquired under the same notification from the revenue estate of the same village in which the land of the appellants falls, there would hardly be any justification for excluding the claims of the appellants from the scope of the said judgment on this technical ground. In fact in a very recent order of the Supreme Court in the case of Bhagwan Devi through L.Rs. Etc v. Union of India etc. Civil Appeal No. 556/2005 dated 13th January, 2006, the Supreme Court stated this principle and remanded the matters to this Court for placing the claimants at parity with other claimants. The order reads as under:

Leave granted.

We have heard counsel for the parties and with a view to do substantial justice, we pass the following order which shall not be treated as a binding precedent.

It is stated by the counsel for the appellants that the deficit court fee has since been paid for claiming higher amount by way of compensation. According to him earlier the appellant could not claim compensation @16750/- per bigha because he did not have sufficient funds to pay the full Court fee and Therefore, he only paid court fee for claiming a compensation @Rs. 8000/- per bigha. The appellant has now managed to collect money and has paid the deficit court fee. In our view the interest of justice demands that if others have been paid compensation @16750/- per bigha for the same acquisition, the appellants should not be deprived of that benefit by awarding him compensation only @Rs. 8000/- per bigha. The difficulty has arisen on account of the appellant's financial condition. There can be no justification for discrimination between one citizen and Anr. in the matter of grant of compensation for the land acquired under the same Notification. We, Therefore, set aside the judgment and order of the High Court and remit the matter to the High Court to entertain the application for review filed by the appellant and pass an appropriate order in accordance with law so that justice is done to the appellant. Accordingly, the appeal is allowed.

No order as to the costs.

We have no doubt that the High Court will find time to dispose of the matter as early as possible.

10. Even in the case of Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , the Supreme Court took the view that State was bound to pay to the claimants compensation on the basis of market value of the acquired land and if, according to the judgment of the Court, market value of the acquired land was higher than that awarded by the Collector, there could be no reason why those claimants should be denied the benefit of higher market value. To deny this benefit to the claimants would be tantamount to permit the State Govt. to acquire the land of the claimants on payment of less than true market value. The Supreme Court also stated that acquisition proceedings is primarily not a dispute between private individuals. The State must do what is just and fair to the citizens and should not, as far as possible, except in cases where tax or revenue is received or recovered, defeat the claim of a citizen on technical grounds. The Supreme Court allowed payment of higher compensation to the claimants, despite the fact that there was deficiency in Court fee and appellant had not claimed higher compensation before the Supreme Court.

11. The Court has to consider as to what view the court has to take on a true interpretation of the language in the facts and circumstances of the case. Reasonable view, which is to be taken on the facts and circumstances of the present case, would be to hear the appeals and decide them in consonance with the recent judgment of this Court in Jasrath case. The Union of India cannot be permitted to take total advantage of different orders of the Supreme Court. Vide order dated 4th September, 2001, the case of Jasrath was originally decided by the High Court whereby compensation was enhanced. Application not for review but for applying the said judgment to the facts and circumstances of the present case was allowed by the High Court vide its order dated 19th July, 2002. Earlier these appeals were dismissed in liming vide order dated 15th December, 1987. Special Leave Petitions filed against that order, which were also dismissed in liming and only on the ground of delay by the Supreme Court vide its order dated 2nd March, 1994. In other words, the appeals before the High Court as well as before the Supreme Court were not dismissed on merits but were dismissed in liming and only on the ground of delay in filing the SLPs. Before, the order of the High Court dated 19th July, 2002 would have attained finality and the original judgment in Jasrath case would be applicable to the present appeals, the Union of India preferred a SLP against that order and the Supreme Court has set aside the original judgment passed in Jasrath case dated 4th September, 2001, which is the very foundation of the order dated 19th July, 2002 and as such, none of these orders would be alive any longer in the eyes of law and in terms of the judgment of the Supreme Court dated 7th September, 2005. The Union of India cannot be heard to say that despite the order of the Supreme Court dated 7th September, 2005, the appeals could be rendered remedy less to the extent that no benefit of the judgment dated 19th July, 2002 will be given to the appellants because the judgment has been set aside by the Supreme Court but still they would also not be heard afresh for determination of fresh market

value. In other words, except the earlier dismissals in liming, no other order would control the rights of these appellants despite the order of the High Court dated 19th July, 2002 and Supreme Court dated 7th September, 2005.

12. Learned counsel appearing for the appellants also relied upon the judgment of the Supreme Court in Kunhayammed and Others Vs. State of Kerala and Another, to contend that dismissal of SLPs on the ground of delay would not debar the appellants from approaching the High Court by filing application for review and the doctrine of merger would not be attracted so as to defeat the present remedy of the appellants. This argument is advanced in addition to the contention that in view of the judgment of the Supreme Court dated 7th September, 2005, this Court has to hear the appeals on merit. In the case of Kunhayammed (supra) the Supreme Court held as under:

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the Court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are "heard and dismissed", "dismissed", "dismissed as barred by time" and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest of the maintainability of the petition. The Court may apply its mind to the merit worthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say "dismissed on merits". Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the SLP only. In our opinion neither doctrine of merger nor Article 141 of the Constitution of India is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 of the C.P.C. act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of SLP does not take away the jurisdiction of the Court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellant jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract

applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other Court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However, this would be so not by reference to the doctrine of merger.

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage."

13. The above law was enunciated by the Supreme Court in the case where the SLP was dismissed by a non-speaking order and the contention raised before the Supreme Court was that order of the High Court had merged into the order of the Supreme Court and no review was maintainable. This approach was not accepted by the Supreme Court and the application was entertained.

14. We are of the considered view that this Court is not functus officio and has the jurisdiction to rehear the present appeals on merits. It will be more so in light of the order of the Supreme Court dated 7th September, 2005 and keeping in view the peculiar facts and circumstances of the case where both the orders of the Court dated 4th September, 2001 and 19th July, 2002 were set aside, which is clear from the index of the order of the Supreme Court where all these appeals as well as orders have been specifically mentioned.

15. Having answered the question of jurisdiction and maintainability of the present appeals before this Court against the Union of India, we would revert back to the effect of the judgment of this Court dated 27th April, 2006 in the case of Jasrath. There cannot be any dispute that the appeals decided by that judgment and the present appeals are on identical footings. The present appeals arise from the order of the Additional District Judge, Delhi dated 1st September, 1987 vide which he had enhanced the compensation payable to the claimants, whose land in the revenue estate of Village Rithala have been acquired vide notification dated 20th February, 1981 issued u/s 4, 6 and 17 of the Act. In fact this very award has been subject matter of our discussion in the judgment of Jasrath. This was not disputed before us that on merits the present appeals would not be squarely covered on fact and law by the judgment of this Court in Jasrath case.

16. For the reasons aforesaid, we would partially allow these appeals and hold that the appellants in the present appeals would also be entitled to the same rate of compensation as has been awarded to the claimants in the case of Jasrath.

17. These appeals are accordingly disposed of in terms of the judgment of this Court in the case of Jasrath dated 27th April, 2006. The appellants would be entitled to proportionate costs.