
(2008) 03 RAJ CK 0139
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3149 of 2004

Shri Barda

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Land Acquisition Act, 1984 — Section 18

Citation : (2008) 3 WLN 332

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—This writ petition has been filed by the petitioner being aggrieved of the order of learned District Judge rejecting the application of the land holder filed u/s 18 of the Land Acquisition Act, 1984 (hereinafter referred to as "the Act") on the ground that u/s 18 of the Act, the Court had no jurisdiction to declare the award as illegal. The Court, therefore, refused to go into other issues framed by it and rejected the application u/s 18 of the Act. Hence, this writ petition.

2. The learned Counsel for the petitioner Mr. S.L. Jain firstly urged that the learned Court below had erred in rejecting the application u/s 18 of the Act wholly and it ought to have been decided the other issues even if the issue No. 1 was not decided by the Court below. Secondly, he alleged that directions given by the Collector to whom the said application u/s 18 was initially made, to the Land Acquisition Officer referred to in Annex.2, the amended award dt. 18.08.2000 could not have been given by the Collector suggesting the reduction of the amount of compensation. He relied upon the decision of the learned Single Judge of Patna High Court in Bijoy Kumar Santhalia Vs. State of Bihar and Others,

3. Learned Counsel for the petitioner further submits that in the original award made by the learned Land Acquisition Officer on 20.06.2000, the compensation determined for the land in question acquired for Hindustan Petrolia Corporation Ltd. (HPCL) for construction of Depot near Chittorgarh in village Jalampura Ki

Nahari was at the rate of Rs. 3,85,000/- per bigha. The said land being near the National Highway whereas in pursuance to the direction of the Collector amended award was passed by the Land Acquisition Officer reducing the rate for the part of land which was not adjacent to the National Highway from the aforesaid rate of Rs. 3,85,000/- per bigha to Rs. 94,875/- per bigha. The petitioner, therefore, raised the issue with regard to the power of approval given to the Collector/State Government u/s 11 of the Act. The said proviso says:

provided that no award shall be made by the Collector under this Sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

4. Learned Counsel for the petitioner accordingly submitted that while the original award was sent for approval, the learned Collector could not have suggested or directed the Land Acquisition Officer to reduce the amount of compensation as aforesaid. On this issue, issue No. 1 was framed by the learned District Judge when the proceedings were transferred to the "Court" u/s 18 of the Act.

5. Though during the course of arguments, before the learned District Judge, it appears vide para 12 of the impugned judgment that the petitioner has filed application under Order 14 Rule 5 C.P.C. praying that the issue No. 1 relating to declaring the amended award dt. 14.08.2000 as illegal be deleted as he did not press the said issue, however, such application was rejected by the learned District Judge by order dt. 20.03.2004. When finally deciding the application u/s 18 of the Act, the Court, therefore, found that since the issue No. 1 was decided against the petitioner, the whole application u/s 18 of the Act was required to be rejected. Being aggrieved of the said order, the petitioner approached this Court by way of this present writ petition.

6. The learned Counsel for the petitioner submitted that in the application filed u/s 18 of the Act, the alternative prayer was also made to the Court to determine and enhance the amount of compensation and since the said point squarely fell within the jurisdiction of the Court u/s 18 of the Act, the learned Court below could not have rejected the application u/s 18 itself and irrespective of the decision on issue No. 1 regarding legality or otherwise of the amended award, the Court ought to have decided the said application as far as the question of amount of compensation was concerned. He, therefore, prayed for allowing of the writ petition.

7. On the side opposite Mr. Arun Bhansali, learned Counsel for the respondent HPCL, it is submitted that as far as the question of direction being given by the Collector to the Land Acquisition Officer is concerned under first proviso to Section 11 of the Act, the controversy is no longer res integra and Hon'ble Supreme Court in Union of India Vs. Shri Rati Pal Saroj and Another, has clearly laid down that under the said proviso the Commissioner is competent to reduce the suggested amount when the matter is referred to him for approval under the

aforesaid provisions. Secondly, Mr. Bhansali fairly submitted that since alternative prayer was made in the application u/s 18 of the Act for determination of the amount of compensation and issue No. (ii) was framed in this regard, the learned Court below ought to have, as it could have, decided the said question. Mr. Bhansali also raised an objection that this writ petition is not maintainable on account of alternative remedy by way of appeal u/s 54 of the Act to High Court which is available to the petitioner against the impugned order of the learned District Judge.

8. I have heard learned counsels at length.

9. Section 18 of the Act which deals with the provisions relating to reference to the Court is reproduced hereunder:

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.

A bare perusal of the said provision would indicate that when the matter is referred to the Court, the Court can deal with the aspects of the award relating to: (i) whether the objection be to the measurement of the land, (ii) the amount of the compensation, (iii) the persons to whom it is payable, or (iv) the apportionment of the compensation among the persons interested. Thus, these are the areas which are required to be dealt with by the Court u/s 18 of the Act.

10. Since the original award as well as amended award determined the amount of compensation which Land Acquisition Officer was bound to do and on that reference was made initially to the Collector and thereupon referred to the Court, it is beyond the pale of doubt that the Court below ought to have determined the amount of compensation in accordance with law on the basis of evidence as to market value of the land acquired and the learned Court below ought not to have dismissed the application u/s 18 of the Act as a whole.

11. The observations of the learned Court below that it was beyond the

jurisdiction of the Court to pronounce upon the legality of the award were also not correct in the opinion of this Court. While deciding the objections as to amount of compensation, it would necessarily require an adjudication of the issue whether the award of which a reference is made to the Court is legal or not. An award may be legal or not for a variety of reasons and the "Court" cannot say that issue of legality of the award is beyond the jurisdiction of the "Court" u/s 18 of the Act. In the present case also what was done by the amended award was to reduce the amount of compensation as provisionally determined by the Land Acquisition Officer in the original award dt. 20.06.2000. If the Collector could give direction in this regard as held by the Hon"ble Supreme Court in *State of Bihar and Ors. v. D.N. Singh* (supra), one fails to understand how upon the matter referred to the Court u/s 18 of the Act, the Court below could shirk its responsibility to decide the question of the legality or otherwise of the award. The said question was necessarily implied question to be decided while deciding the amount of compensation in terms of Section 18(1) of the Act.

12. Be that as it may, since the Court below in the impugned order dt. 11.05.2000 has chosen to not to decide other issues while deciding the issue No. 1 against the petitioner, this Court is of the opinion that the matter deserves to be sent back to the learned District Judge for determination afresh on the said application u/s 18 of the Act.

13. In view of what has been said above the objection of learned Counsel for the respondents about the alternative remedy u/s 54 of the Act is not required to be decided.

14. Accordingly, this writ petition is allowed and setting aside the impugned order of learned District Judge dt. 11.05.2004, the matter is restored back to the learned District Judge, Pratapgarh for determination afresh in accordance with law on the issue of amount of compensation payable to the land owner, the present petitioner. Since the land acquisition proceedings is of the year 2002, the matter is required to be decided expeditiously. Accordingly the learned District Judge is requested to decide the said application u/s 18 of the Act preferably within a period of 6 months from today.

15. With these observations, this writ petition is allowed. No order as to costs.