
(2005) 04 DEL CK 0054

In the Delhi High Court

Case No : CM No. 15395 of 2004 in Regular First Appeal 52 of 1994

Shri Daulat Ram and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 52

Land Acquisition Act, 1894 — Section 13A, 18, 23(1A), 26(1), 26(2)

Citation : (2005) 120 DLT 353 : (2005) 82 DRJ 391

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Ghanshyam Vashisht, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—This application is preferred by the claimant under Sections 151 and 152 of CPC for modification or clarification of the judgment dated 26.03.1999.

2. The Union of India issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on 27.01.1984. After following the procedure laid down in the Act, a declaration was made u/s 6 of the Act on 24.09.1984 for the lands situated at Village Amber Hai. After following the procedure laid down in the Act, the Land Acquisition Collector (in short "LAC") awarded a compensation @ Rs. 13,000/- per bigha and Rs. 11,000/- per bigha for the land in categories "A" and "B" respectively. The claimants being aggrieved and not satisfied with the amount of compensation determined by the LAC made an application u/s 18 of the Act. The Reference Court Therefore was required to determine the fair market price and other benefits in LAC No. 7/93 and ultimately the Reference Court awarded compensation @ Rs. 36,400/- per bigha as on the date of notification u/s 4 of the Act for all types of lands irrespective of categories indicated by the LAC. Against the decision rendered by

the Reference Court on 22.09.1993, the appeal was preferred by the claimants in this Court, inter alia, requesting the Court to grant higher compensation and all other statutory benefits which are required to be granted under the Act. The High Court while hearing an appeal u/s 54 of the Act, in view of the decision in RFA 619/1993 titled Sita Ram v. Union of India held that the claimants are entitled to get compensation @ Rs. 47,224/- per bigha and granted other benefits which are indicated as under:

"Besides compensation on the aforesaid basis, the appellant will also be entitled to 12% additional amount u/s 23(1A) of the Act. Appellant will also be entitled to solarium at the rate of 30% of the market value of land. The amount of compensation awarded by the Court in the present case is in excess of the amount awarded by the Collector. Therefore, the appellant will be entitled to interest on the excess amount at the rate of 9% per annum from the date of taking possession of the land by the Collector to the date of payment of such excess into Court. If the excess or any part thereof was paid into Court after the date of expiry of a period of one year from the date on which possession was taken, interest at the rate of 15% per annum shall also be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry. The appellant will get proportionate costs of the Appeal."

Now, this application is being made, inter alias praying, that the Court by allowing the application should clarify the judgment and decree dated 26.03.1999, passed in appeal to the extent that the appellants are also entitled to interest on the solarium and additional amount granted in this appeal. This submission is made relying on the decision of the Apex Court in the case of *Sunder Vs. Union of India*, .

It is required to be noted that amount of solarium, interest etc. are integral parts of the award. In the process of determination of the amount of compensation these aspects are required to be taken into consideration. It is clear that the claim was made before the Division Bench in this behalf as stated by the counsel. It is clear from the prayer clause that all statutory benefits were also claimed. Learned counsel stated that though it was argued that he is entitled to claim additional amount u/s 23(1A) as also interest, however, additional amount was granted but the interest was not granted. The appellant accepted the judgment delivered by this Court and did not pursue further. The Apex Court in the case of *Sunder v Union of India (supra)* much after held that the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solarium. The decision was rendered by the Apex Court on 19.09.2001.

It is required to be noted that when a claimant or plaintiff has approached the Court and the decision rendered by the Court is accepted, thereafter, it would not be open to a party to request the Court to re-open the proceedings with a view to get the benefit of a decision which was delivered subsequently by the Apex Court or the High Court unless the Court has reserved right while deciding the

matter or the decision which is rendered by the Court is with a direction to give effect retrospectively. Ordinarily law made by the legislature or the decision rendered by the Court would operate prospectively. It is required to be noted that this judgment is in personam and not in rem. However, when the Apex Court or the High Court declares the law, this becomes the judgment in rem and effect of the same is given to other cases also. The case of *Sunder v. Union of India* (supra) was decided on 19.09.2001, i.e. much after the judgment delivered by the Division Bench in the year 1999. Thus it is not open for the applicant to move the Court by saying that the application is maintainable u/s 151 of Civil Procedure Court.

Our attention is invited by learned counsel for the respondent to the point that once the decision is rendered and is not challenged further, the benefits of other decisions cannot be granted. It was submitted that in the case of *Des Raj (Deceased) through L.Rs. and Others Vs. Union of India (UOI) and Another*, , the Apex Court has laid down the principle. In that case there was an award of compensation and appeal was preferred. However, the High Court dismissed 6 appeals including 2 appeals of the appellants by a common judgment fixing the compensation @ Rs. 4000/- per bigha. The appellants before the Apex Court in the case of *Desraj* (supra) did not pursue the matter any further. However, other appellants in remaining appeals approached the Apex Court aggrieved by the decision rendered by the High Court. The Apex Court allowed the appeal by an order dated 22.11.1988 and remanded the case to the High Court with certain observations to re-determine the amount of compensation. The appellant in the case of *Desraj* (supra) filed review applications before the High Court seeking review of the order of the High Court dated 11.10.1984 on the ground that *Pratap Singh* and others whose lands were also acquired under the same notification and who were similarly placed, got higher rate of compensation for the lands acquired along with the statutory benefits, hence the appellants were also entitled to get higher amount of compensation u/s 28A of the Act. It was prayed that the appellants were also entitled for the amount of compensation at the same rate which were allowed to *Pratap Singh* and others. The Division Bench by a judgment dated 22.10.1997 dismissed the review applications against which the appeal was preferred by the appellant namely *Desraj*.

It is in view of this judgment the appellant is not entitled to seek the benefit. Our attention was drawn to the decision of the Apex Court in the case of *State of Maharashtra Vs. Maharau Srawan Hatkar*, , wherein the Court has pointed out that a decree having been made u/s 26(2) of the Act, the Civil Court is left to correct only either clerical or arithmetical mistakes as envisaged u/s 13A of the Act or u/s 52 CPC.

Though Section 151 of CPC gives inherent power to the Court, it is intended only to prevent abuse of process of the Court or to meet the ends of justice. The present case is not a case of such nature. Further, since Section 23 is an express power under which the civil court has been conferred with the jurisdiction to

determine compensation and in addition to the market value certain percentage of the amount is directed to be awarded as envisaged under Sections 23(1A) and 23(2) and the interest component u/s 28, the invocation of Section 151 CPC by necessary implication stands excluded.

In the case of Union of India Vs. Swaran Singh and others, the Court pointed out as under :

"7. It is settled law that after the Reference Court has granted an award and decree u/s 26(1) of the Act which is an award and judgment u/s 26 of the Act or on appeal u/s 54, the only remedy available to a party is to file an application for correction of clerical or arithmetical mistakes in the decree. The award of solarium and interest would be granted on enhancement of compensation when the court finds that the compensation was not correct. It is a part of the judgment or award. Admittedly, as on that date the claimants were entitled to solarium at 15% and interest at 6%. The Amendment Act 68 of 1984 came into force as on 24-9-1984. It is settled law that if the proceedings are pending before the Reference Court as on that date, the claimants would be entitled to the enhanced solarium and interest. In view of the fact that the Reference Court itself has answered the reference and enhanced the compensation as on 24-12-1981, the decree as on that date was correctly drawn and became final.

8. The question then is whether the High Court has power to entertain independent applications under Sections 151 and 152 and enhance solarium and interest as amended under Act 68 of 1984. This controversy is no longer rest integra. In State of Punjab and Another Vs. Jagir Singh and Others, and also in a catena of decisions following thereafter in Union of India (UOI) and Others Vs. Pratap Kaur (Smt) (Dead) through Lrs. and Another, , State of Maharashtra Vs. Maharau Srawan Hatkar, ; State of Punjab and Another Vs. Babu Singh and Others, ; Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., and K.S. Paripoornan Vs. State of Kerala and Others, , this Court has held that the Reference Court or the High Court has no power or jurisdiction to entertain any applications under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solarium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solarium at 30% u/s 23 and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till date of deposit u/s 28 as amended under Act 68 of 1984 is clearly without jurisdiction and, Therefore, a nullity. The order being a nullity, it can be challenged at any stage. Rightly the question was raised in execution. The executing court allowed the petition and dismissed the execution petition. The High Court, Therefore, was clearly in error in allowing the revision and setting aside the order of the executing court."

In the case of Union of India Vs. Rangila Ram (dead) by Lrs., , the Apex Court pointed out as under :

"4. The point is no longer rest integra. This Court has considered the scope of the power of the High Court under Sections 151 and 152, CPC and also u/s 13A of the Act. This Court has held that once the civil court made an award as per law then in force which became final and that there is no error of law as on that date. Subsequent amendment does not give power to the court to amend the decree under Sections 151 and 152, CPC."

In the case of Union of India and another Vs. Karam Singh and others, , the Apex Court pointed out as under :

"3. It is now a well-settled legal position in law that under the Requisitioning and Acquisition of Immovable Property Act, there is no provision to pay enhanced solarium and interest; and Amendment Act, i.e. Act 68 of 1984 has no application. It is also a well-settled legal position that the grant of solarium and interest is an integral part of the process of determination of compensation. The District Court has no jurisdiction to amend the award and to grant solarium and interest exercising the power under Sections 151 and 152 of the Code of Civil Procedure. It is a case of inherent lack of jurisdiction. The High Court, Therefore, has committed manifest error of jurisdiction in not removing the error committed by the Tribunal."

Learned counsel for the applicant submitted that in view of the decision of this Court in the case of RFA No. 385/1978 Shri Bhulan v. Land Acquisition Collector and Ors., where the Court held that Sunder v. Union of India's case (supra) would be applicable and directed the benefit to be extended to the claimant despite the appeal was already disposed of.

It is required to be noted that once the judgment is delivered by the Court and is not challenged thereafter, it is not open for the appellant to seek benefit of other judgment for the reasons indicated herein above. The application can be made in respect of some reservations made in the judgment. It is required to be noted that Division Bench of this Court has no occasion to examine the decision of the Apex Court in the case of Desraj (supra) and other decisions which we have considered today. Some of the judgments are delivered by the Apex Court subsequently to the Division Bench judgment in Bhulan's case (supra).

It is required to be noted that once the decision attains finality the parties are bound by the same.

For all the aforesaid reasons, in our view the application is not maintainable and is rejected.