
(1988) 02 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5963 of 1984

Shyam Sunder Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-1988

Acts Referred:

Defence of India Act, 1962 — Section 37, 43
Land Acquisition Act, 1894 — Section 23, 28

Citation : AIR 1988 All 200

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : V.D. Ojha, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

K.P. Singh, J.—By means of this writ petition the petitioner has prayed for quashing the award dated 12-12-1983 contained in Annexure I attached with the writ petition. A certified copy of the award has also been filed.

2. Brief facts giving rise to the present writ petition are that the petitioner's land was acquired for the construction of P.A.C. quarters in the year 1964 and thereafter the same land was acquired under the Defence of India Rules, 1962, on 3-5-1968. The petitioner claimed 3/4th share of the compensation regarding the disputed land. It has been alleged that the petitioner's uncle Ram Avtar had executed a will in his favour so he is entitled to 3/4 share and the remaining 1/4 share should be given to the opposite party No. 4 in the present writ petition. The petitioner had also claimed solatium and interest.

3. The claim of the petitioner was contested by the opposite party No. 4 on the ground that the alleged will relied upon by the petitioner was not known to him and that it was not a genuine document, therefore, the petitioner was not entitled to the share claimed. According to the contesting opposite party the petitioner as well as the opposite party No. 4 should get equal share.

4. The State of U.P. had also contested the claim of the petitioner and had asserted that the compensation determined by the competent authority was adequate and that the petitioner was not entitled to interest and solatium claimed.

5. The arbitrator in his impugned award dated 12-12-1983 has not accepted the claim of the petitioner regarding 3/4 share in the compensation and he has also not allowed interest and solatium to the petitioner. Aggrieved by the award of the arbitrator, the petitioner has approached this Court under Article 226 of the Constitution.

6. The learned counsel for the petitioner has pressed before me that the petitioner is entitled to 3/4 share claimed out of the compensation. The arbitrator has patently erred in giving only 1/2 share to the petitioner and the remaining 1/2 to the contesting opposite party.

7. The second argument advanced on behalf of the petitioner before me is that the petitioner is entitled to solatium and interest claimed by him but the arbitrator has patently erred in not granting that relief to the petitioner.

8. None has appeared on behalf of the opposite parties.

9. After hearing the learned counsel for the petitioner I am unable to accept the contention of the petitioner that he is entitled to 3/4 share in the compensation amount. The will set up by the petitioner regarding the land acquired for the purpose of P.A.C. constructions was in the nature of Sirdari land. It is well known by now that sirdari land is non-transferable, therefore, even if the uncle of the petitioner had bequeathed his share in the sirdari land to the petitioner, the petitioner cannot claim greater share on the basis of a document which would be a void document in the circumstances of the case. The decision of the arbitrator contained in para. 7 of the award on the point in issue does not appear to me suffering from any patent error of law. In my opinion the decision of the arbitrator contained in para. 7 of the award is quite correct and legal and needs no interference by this Court in the exercise of powers under Art. 226 of the Constitution.

10. As regards the petitioner's claim about solatium and interest, it is noteworthy that the arbitrator in para. 11 of his award has negated the petitioner's claim on the following observations : --

"In accordance with Section 37 and Section 43 of the Act which are complete and exhaustive in themselves the claimant cannot be granted interest and solatium as claimed under Sections 22 and 23 of the L.A. Act, which is not applicable to the acquisition proceedings made Under Sections 29 and 34 of the Defence of India Act, 1962, I, therefore, decide points in the negative against the claimant."

11. Similar question arose before this Court in Civil Misc. Writ Petition No. 5627 of 1982 connected with Writ Petition No. 12829 of 1981, wherein a learned single Judge of this Court has dealt with the question as below : --

"One of the claims was for awarding solatium and interest on compensation. It was repelled by the Arbitrator as there was no provision in Defence of India Act analogous to Section 23 and Section 28 of the Land Acquisition Act. It has been argued by the learned counsel for the petitioner and rightly, that in taking this view the arbitrator committed manifest error of law. According to him provisions of Section 23 of the Land Acquisition Act were applicable for requisition or acquisition under the Defence of India Act as well, and therefore, the petitioner was entitled to the same. Reliance has been placed on Civil Appeal No. 3058 of 1983 Shri Goverdhan and others versus Union of India and others decided by the Supreme Court of India on January 31, 1983. It was held by the Supreme Court:

"The payment of solatium at 15% is obligatory under the Land Acquisition Act and for the same reason it should be regarded as obligatory under the Defence of India Act. As regards the claim of interest, we think that it is only right that interest should be awarded to the appellants for the entire period up to the date of payment."

"In view of this decision the controversy is no more res integra and the order of the arbitrator so far as he did not award solatium and interest is liable to be quashed. Further in view of the Patel Maganbhi Chaturbhai and Another Vs. The Collector, Mehsana District, solatium shall be added to compensation for calculation of interest."

12. In view of the above decision of this court I also think that the arbitrator has patently erred in not granting solatium and interest to the petitioner in the facts and circumstances of the present case. To this extent the impugned award suffers from patent error of law and deserves to be quashed.

13. In the result, the writ petition succeeds and is allowed in part. The arbitrator is directed to award solatium and interest to the petitioner as provided under the Land Acquisition Act. The arbitrator shall recalculate the same within a period of six weeks from the date a copy of this order is produced before him. When the same is determined, half of the amount shall be paid to the petitioner within a period of two months from the date of determination. In the circumstances of this case, parties shall bear their own costs.