

(2006) 04 DEL CK 0137

In the Delhi High Court

Case No : CMs 483-484 of 2002 and 863 of 2003 in Regular First Appeal No. 377/86

Smt. Bhagwan Devi Etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151

Citation : (2006) 04 DEL CK 0137

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

Bench : Division Bench

Advocate : Vinod and Sehrawat, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—On 30.10.63 notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the "Act") was issued by the appropriate Government followed by a notification u/s 6 dated 16.1.1969 for acquisition of the land in village Kureni, Delhi by passing of an award dated 6.1.81 being Award No. 91/80-81. By this Award the Land Acquisition Collector awarded compensation @ Rs. 2200/- per bigha to the claimants for acquisition of their lands. Dissatisfied from the award of the Collector, the claimants moved objections u/s 18 of the Act which was referred for adjudication to the Court of the learned District Judge in accordance with law. Vide award dated 8.1.85, the Reference Court enhanced the compensation payable to the claimants @ Rs. 3900/- per bigha with other statutory benefits and interest payable in terms of the award. The claimants were still aggrieved from the award . They preferred the above regular first appeal before this Court. Vide judgment dated 31.1.02, a Division Bench of this Court partially allowed the appeal and enhanced the compensation payable to the claimants @ Rs. 8000/- per bigha with interest on solarium as per provisions of the Act. After considerable lapse, the claimant/applicant filed an application

being CM No. 484/02 under Order 47 Rule 1 r/w Section 151 of the CPC for review of the order dated 31.1.02 and enhancement of the compensation of Rs. 16,750/- as granted by the Supreme Court in connected appeals and claiming the compensation @ 16,750/- per bigha. This application for review was dismissed by the High Court vide order dated 4.9.03. Against that order the appellant filed SLP before the Supreme Court which was granted and in Civil Appeal No. 556/06 the Court passed the following order :

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 another 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.

2. The case was listed before the Court in furtherance to the above orders and the counsel for the parties were heard. As far as the claim of the petitioner is concerned, from the very language of the order of the Supreme Court stands accepted. It has been noticed in the order that if other claimants have been paid compensation @ Rs. 16750/- per bigha, there is no reason why the appellant should be deprived of that benefit by awarding him less compensation. There was no serious opposition to the grant of this compensation. However, the learned Counsel appearing for the respondents while relying upon the judgment of the Division Bench of this Court in the case of the Shri Kanwar Singh and Others Vs. Union of India (UOI), contended that the appellant would not be entitled to interest u/s 23(1a) granted by the Court on the enhanced amount because the delay is attributable to the claimant himself or even to his own limitations. In terms of the order of the Court and since there is no dispute to the

fact that the claimant's place is identical like the petitioner, the claimant is also awarded compensation @ Rs. 16,750/- for the land which have been acquired. He would be entitled to interest even on the enhanced amount till passing of the award by the Reference Court but would not be entitled to interest in terms of Section 23(1a) from the date of filing of the appeal till date. However, he could be entitled to all other statutory benefits of solarium and interest in accordance with law. We may also clarify that the petitioner would also be entitled to interest and all other benefits including Section 23(1a) of the Act on the initial sum of Rs. 8,000/- for the entire period.

3. Despite the observations made in the order of the Supreme Court and even till date the petitioner has not paid the requisite court fee. Let the petitioner pay the court fee within one week from the date of pronouncement of this order. The certified copy of the order would be issued to the petitioner only upon payment on making up deficiency in the payment of the ad velorem court fee and the appellant would not be entitled to execute the decree unless he has paid the requisite court fee within the time granted. In view of our above discussion, we recall the order dated 31.1.2002 and allow the review application being CM No.484/02 in the above terms.