

(1965) 03 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 78 of 1963

Smt. Sumatra Bai

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 29-03-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 18, 53

Citation : AIR 1966 MP 65 : (1967) ILR (MP) 568 : (1965) JLJ 680 : (1965) 10 MPLJ 531 : (1965) MPLJ 531

Hon'ble Judges : Shiv Dayal Shrivastava, J; S.P. Bahrgava, J

Bench : Division Bench

Advocate : N. Roy Choudhary, for the Appellant;

Final Decision : Allowed

Judgement

Shiv Dayal, J.

Certain land of the appellant, together with a house standing thereon, has been acquired by the Land Acquisition Officer, Balaghat. The acquisition is for the purposes of a school. For her khasra No. 310/1, area 0.68 acre, and the house standing thereon, the Land Acquisition Officer, by his award dated 29 May 1956, assessed Rs. 1131/- as compensation payable to her. She did not accept the award and applied for a reference to the Civil Court u/s 18 of the Land Acquisition Act.

The Additional District Judge, Balaghat disposed of the reference in the following manner. He found that the award made by the Land Acquisition Officer was based purely on the report of the Revenue Inspector and his own impressions which he formed on spot inspection. It appeared to him that the Land Acquisition Officer did not at all apply his mind to the question of valuation and just accepted the report of the Revenue Inspector and in doing so the Land Acquisition Officer

"abdicated his functions to the Patwari and the Revenue Inspector and pronounced the award without even considering the correctness of the report".

The learned Judge further observed that the Patwari gave some information to the Land Acquisition Officer mentioning therein sales of some lands in favour of different persons in particular areas, but the parties were not called upon to file any sale deeds, nor was any evidence recorded by the Land Acquisition Officer. He further remarked that it was the duty of the Land Acquisition Officer to permit the parties to file sale deeds in respect of the neighbouring lands and to see that they were duly proved. But even the Patwari and the Revenue Inspector were not examined; nor was any evidence given on behalf of the State Government. Having said all this the learned Additional District Judge merely held that the award given by the Land Acquisition Officer was invalid being not in accordance with law. From this he concluded that the proceedings before the Civil Court also became ineffective. In the result, he declared the reference incompetent and rejected it on the ground that there was no valid award.

It is impossible to sustain the decision of the learned Additional District Judge. In the penultimate paragraph of his order, the Additional District Judge points out what should have been done by the Land Acquisition Officer. He says that the assessment of the compensation is normally made on the basis of the prices of the lands in the vicinity sold within a reasonable time prior to the date of acquisition. He expressed surprise that the Land Acquisition Officer made no effort to find out the prices fetched in such sales. If any such sales were made, the prices would indicate the fair market value. If such data were not available, the other considerations relevant for determining the market value of the land were the profit or loss which was derived from similar lands nearabout. It was for the Land Acquisition Officer to find out the value of such lands and also consider other data which might be available, but the Land Acquisition Officer made no such endeavour.

But what did the Additional District Judge himself do? Merely finding fault with the award was not enough; it gave no redress to the party aggrieved by the award. The Additional District Judge, in rejecting the reference, virtually maintained the award; he did not even set aside the award, nor remitted it to the Land Acquisition Officer. Having made weighty observations against the manner in which the Land Acquisition Officer reached his conclusions, the Additional District Judge did nothing to undo the wrong. Furthermore, it is clear to us that he did not care to peruse the provisions of the Land Acquisition Act as regards the powers of the Court u/s 18.

That section enjoins the Court, inter alia, to determine the amount of compensation. That is an important duty of the Court. It is quite clear from the scheme of the Act that the award of the Land Acquisition Officer is an offer of compensation to the person entitled to it. Any person interested may refuse to accept the award and require the Land Acquisition Officer that the matter be referred to the Court for the determination of the amount of compensation, among other things. Thus, it is the Court which in reality determines the amount of compensation and, in doing so, it is invested with a special, and exclusive

jurisdiction. Section 53 of the Act empowers it to apply the provisions of the Code of Civil Procedure. It may frame issues on the objections and also on other relevant matters. It rests primarily with the Court to work out the amount of compensation.

It is clear to us from the scheme of the Land Acquisition Act that the Land Acquisition Officer is merely an agent of the Government for the purposes of acquisition. He is not a Court when he makes an enquiry u/s 11 of the Act. His award is not a judgment, nor does it possess the characteristics of a judgment. It is subject to the result of a reference u/s 18. He need not confine his award to the evidence at the enquiry. It is open to him to take into account all available information for the purpose of forming a true estimate for the compensation to be awarded. No doubt, it is his duty to give a decision by himself on the valuation for compensation. If he depends upon some body else's report, he must nevertheless examine its correctness and exercise his independent judgment. Sections 11 and 12 cast a statutory duty upon the Land Acquisition Officer to make an enquiry into the valuation of land and into the respective interests of the persons claiming compensation, and then to make an award in respect of the matters specified in Section 11. However, the award is but an administrative act. The proceeding before the Land Acquisition Officer is not judicial: it becomes judicial only when there is a reference to the District Court u/s 18. The award operates merely as an offer of an amount of compensation payable by the Government. It is given to the claimant to question the offer and have it adjudicated in the Court u/s 18 of the Act. The ultimate decision and the real decision as to the amount of compensation is of the Court.

It was the duty of the Additional District Judge to frame issue, record evidence and determine the amount of compensation payable to the appellant, having regard to the settled principles. The error, which the Additional District Judge committed in abdicating his own functions u/s 18 of the Land Acquisition Act, was of a more serious nature than the one committed by the Land Acquisition Officer because the responsibility of the Court to determine the amount of compensation is of substantial importance. In fact, it is the Court which really adjudicates upon the dispute between the person interested and the Land Acquisition Officer. Even if an award is erroneous, defective or invalid, the reference does not become invalid or incompetent; indeed it is all the more reason for interference by the Court and to give to the person interested relief which he is entitled to.

In the present case, the operative portion of the Additional District Judge's order reads thus:

"In the result, in the absence of valid award, the reference is incompetent and hence it is rejected."

He did not set aside the award of the Land Acquisition Officer which would have necessarily required the Land Acquisition Officer to assess afresh the

compensation payable to the appellant. The result of rejecting the reference and not setting aside the award is that the award subsists. It seems to us that although the award of the Land Acquisition Officer cannot be upheld, it is unnecessary to require him to give a fresh award. More than 8 years have elapsed since the land acquisition proceedings commenced. This is not to say that an award cannot be set aside as invalid, directing the Land Acquisition Officer or leaving it to him to make a fresh award according to law. What we say is that the District Court has power to render substantial justice to the parties; it has the power to record evidence; and, having regard to the interests of justice, this Court may not in a given case see any useful purpose being served in remitting the award to the Land Acquisition Officer; it may be persuaded to direct the District Court to deal with and dispose of the reference for determining the amount of compensation. In the circumstances we have stated above, we are clearly of the opinion that interests of justice require not to send this case back to the Land Acquisition Officer for a fresh award, but to direct the District Court to deal with and dispose of the reference afresh according to law.

The appeal is allowed. The order of the Additional District Judge is set aside. The case shall now go back to the District Court, Balaghat, to proceed with and dispose of afresh the reference u/s 18 of the Land Acquisition Act according to law. Since the State Government has not supported the the order of the Additional District Judge, we see no reason to saddle it with costs. There shall be no order for costs.