

(2009) 02 SC CK 0073

In the Supreme Court Of India

Case No : Special Leave Petition (C) No. 4782 of 2009 and CC 14290 of 2008

Special Land Acquisition officer, U.K. Project

APPELLANT

Vs

Mahaboob and Another

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 136
Land Acquisition Act, 1894 — Section 18(1), 4(1)
Limitation Act, 1963 — Section 5

Citation : (2009) AIRSCW 3323 : (2009) AWC 1947 Supp : (2009) 7 JT 210 :
(2009) 5 KarLJ 193 : (2009) 5 KCCR 3153 : (2009) 4 MLJ 137 : (2009) 3 SCALE
263 : (2009) 14 SCC 54 : (2009) 2 SCR 881

Hon'ble Judges : R. V. Raveendran, J;J. M. Panchal, J

Bench : Division Bench

Advocate : Anitha Shenor, for the Appellant;

Final Decision : Dismissed

Judgement

R.V. Raveendran J.

1. This case relates to acquisition of 1 acre 13 guntas of land belonging to respondents 1 and 2. Notification u/s 4(1) of the Land Acquisition Act, 1894 was issued on 20.12.1990. The land Acquisition Officer, by award dated 11.9.1991, assessed the compensation at Rs. 4,000/- per acre. The reference court, by award dated 10.3.2005, increased the compensation to Rs. 30,420/- per acre, by capitalizing the agricultural income from the crops of jowar and tur. The petitioner filed an appeal, contending that the compensation was excessive. The said appeal was dismissed by the first appellate court on 23.12.2005. The second appeal by the petitioner was also dismissed by the High Court on 26.10.2007. By this petition, the petitioner seeks special leave to appeal against the said judgment.

Drafting of Special Leave Petition

2. The petition states that the following "questions of law of general importance" arise for consideration:

(i) Whether the High Court was right in dismissing the appeal filed by the petitioner without considering the merits of the case, only on the ground that there is delay in filing the application seeking condonation of delay in filing the application for bringing the legal representatives of the deceased respondent No. 1 on record?

(ii) Whether the High Court was right in dismissing the appeal even without considering the application for condonation of delay in filing the application for bringing the legal representatives of the deceased Respondents on record, when the petitioner has explained the delay in filing with cogent reasons which constitutes 'sufficient cause' as contemplated u/s 5 of the Limitation Act?

(iii) Whether the High Court was right in dismissing the appeal without appreciating the fact that the separate value for fodder cannot be taken into account for determination of market value of the land.

Strangely none of these questions relates to this case nor arise in this case. Neither of the claimants-respondents died, though question (i) gives an impression that first respondent had died and question (ii) gives an impression that both respondents died during the pendency of the appeal before the High Court. No application was filed either for bringing the legal representatives of any respondent on record, or for condoning the delay in filing such application. Nor did the High Court refer to or take into consideration the value of fodder separately for determination of compensation, as stated in question (iii).

3. We may next turn to the grounds on which leave to appeal is sought. The only two grounds mentioned in the SLP are extracted below:

5.1: It is submitted that the Hon'ble High Court misdirected itself on facts and in law which has resulted in the passing of an erroneous order and the same is liable to be set aside.

5.2: It is submitted that the petitioner herein had acquired the land in Sy. No. 139/3 (Dry) measuring 01-13 situated at Magangere u/s 4(1) Notification dated 20.12.1990 and the award is passed on 10.3.2005 determining the market value at Rs. 4,000/- per acre. The respondents, being not satisfied with the said amount, filed a petition u/s 18(1) of the Land Acquisition Act for enhancement. The Reference Court, after registering the case in L.A.C. No. 907/2000 and after hearing the parties, enhanced the compensation amount from Rs. 4,000/- to Rs. 30,420/- dated 10.3.2005. The petitioner, being aggrieved by the same, filed L.A.C. Appeal Nos. 67 and 68 of 2005. The learned III Addl. District Judge, after hearing the parties, dismissed the appeal by the judgment dated 23.12.2005 in L.A.C. No. 67/2005. Being aggrieved by the same, the petitioner presented the above Miscellaneous Second Appeal No. 121/2006 (before the High Court).

The first para contains a standard ground usually incorporated in appeals/special

leave petitions. The second para is not a ground for seeking leave to appeal, but merely a narration of facts. Thus in effect there is no ground on which leave to appeal is sought.

4. Thus the SLP ('SLP' for short) is filed without any grounds in support of it or questions of law. The possibility of any mix up in typing is ruled out because Para 5.2 narrates the facts correctly and other portions of the petition show that it relates to the case on hand. The notings at the end of the memorandum of SLP states that it has been "Drawn by 'B', High Court Government pleader" and "Filed by 'A', Advocate for the petitioner State". It is a matter of concern that minimum care is not taken even to verify the petition before filing. The frequency of carelessly drafted SLPs is rapidly increasing. The very purpose of requiring SLPs to be filed only through Advocates-on-record would be defeated if SLPs prepared by some other counsel are mechanically filed without examination or verification by the Advocate-on-record. The remedy by way of special leave under Article 136 of the Constitution is an extra-ordinary remedy, intended to be invoked in special cases and should not be treated so casually, negligently or routinely.

Delay in filing

5. We may now turn to the aspect relating to delay of 135 days in filing the SLP. The reasons given for explaining the delay is typical, and extracted below.

2. The impugned order is dated 26.10.2007. The State has applied for issue of Certified copy of the impugned Order on 7.11.2007 and the same was ready and delivered on 21.1.2008. The Certified Copy of the judgment passed in MSA No. 121/2006 and the opinion of the Government Advocate, High Court was sent to the Special Officer, Legal Cell and Ex-Officio Deputy Secretary to Government, UKP, vide letter No. 6584/AGA/07-08 dated 24.1.2008. The Special Officer, Legal Cell, UKP, has forwarded the same to the government vide letter No. LAW-UKP-134/2006-07/LC-01032-2008 on 12.2.2008. This was received in R & I Section on 18.2.2008. It was mis-sent to Lit.VII Section by R & I Section and on 17.2.2008, the letter was returned to Lit.VII Section and on 23.2.2008, it was marked to the case worker.

3. The case worker has submitted the file on 25.2.2008 and on the same day, it was sent to the Deputy Secretary, Law Department. The Deputy Secretary has sent the file to Addl. Law Secretary-II on 4.3.2008. Addl. Law Secretary-II has sent the file to Secretary, Law Department on 11.3.2008 with a note to prefer an appeal. The Law Secretary, law Department has sent the file to the Advisor to Governor on the same day. On 16.3.2008 Advisor to Governor has approved and the file was sent to Deputy Secretary on 18.3.2008 with an instruction to prefer an appeal to this Hon'ble Court. The file was sent to the Section on 20.3.2008 to issue the Government Order for preferring an appeal. The file was marked to the case worker on 24.3.2008 and a draft Government Order was submitted on 26.3.2008. The draft was approved on the same day and was typed on the same

day. Fair copy of the Government was signed on 28.3.2008 and was issued on the same day.

4. Requisition was given to C & M Section on 8.4.2008 to secure file. The file was issued on 8.4.2008. The office has written a letter to the concerned authority for want of certified copy and delay note on 8.4.2008. Then entire file was put up to Administrative Officer for obtaining allotment of Government Advocate and the same was returned to Section on 3.4.2008 and accordingly file was handed over to Government Advocate immediately for drafting Special Leave Petition.

5. After going through the papers and discussions with departmental officers, the Government Advocate has drafted the SLP and list of dates and sent back the file to Supreme Court Section on 30.5.2008. The already called delay note was not received till 30.5.2008, a reminder letter was also sent on 31.5.2008 to secure delay note and, the said delay note was received on 7.6.2008 and once again file was put up to Government Advocate for drafting I.A. for condonation of delay on the same day. The Government Advocate drafted the said I.A. for condonation of delay and sent back the file to Supreme Court section on 10.6.2008 for further process.

6. And further, an intimation has been given to the litigation conducting officer on 11.6.2008 for swearing necessary affidavits. In the mean while necessary papers given to typing and got Xeroxed in requisite number of copies immediately. The litigation conducting officer came to Bangalore and sworn the affidavit in the third week of June, 2008 and further after setting all the papers pertains SLP and proper arrangements have been made to send SLP to legal cell at New Delhi for filing before Supreme Court immediately.

7. The delay if any is not an intentional one. It is due to the administrative procedure and heavy work in the Law Department. Hence, it is requested to condone the delay caused.

We have already referred to the result of so many consultations, legal opinions, discussion, and drafting sessions. When compared to the usual explanations offered by State Governments for delays, we should say that the delay is less than normal and explanation is more detailed than what is usually given. By the applicable standards, the delay has to be condoned.

6. More than half the number of SLPs filed in the Supreme Court are by the State Governments and Union of India. About 90% of these SLPs are filed with applications for condonation of delay. The delay is usually condoned keeping in view, the administrative snarls and bottlenecks, governmental procedures and the public interest. But there is an urgent need to streamline the 'decision making process' in filing 'special leave petitions' and reduce the delay. Delays in filing, in virtually every SLP by the government/s, make a mockery of the provision relating to limitation and the meaning of 'sufficient cause'.

Plight of land losers

7. We may now advert to the facts of this case. The acquisition is of the year 1990. The extent of land acquired is 1 acre 13 guntas. The Land Acquisition Officer awarded a sum of Rs. 4,000/- per acre which is about nine paise per sq.ft. Not much argument is needed to show that the compensation was very low. The total compensation as per the award of the LAO made in 1991, was Rs. 5,300/- (excluding statutory additions). Having lost his land, and consequently, the means of livelihood, the land loser had to engage a lawyer and fight for a reasonable compensation by seeking reference to the court. The reference court determined the compensation as Rs. 30,420/- per acre on 10.3.2005. This means an increase of about Rs. 35,000 in compensation (plus statutory additions) for the acquired land. But the land loser was not given this amount. The State Government files a first appeal, then a second appeal and then a SLP. The result is except the paltry amount which he must have received when the LAO made the award, the land loser has not received any compensation for nearly 17 years and had to fight the litigation before three courts for a total compensation of Rs. 40000/- (excluding statutory benefits). Apart from the fact that the land loser would have spent virtually the entire amount for litigation, whatever amount he may ultimately receive will not get him even one-fourth or one-fifth of the extent of land which he lost by acquisition. Unless the process of acquisition gives him a reasonable compensation either at the time of or immediately after the dispossession, the compensation will be a mirage for most land losers.

8. Statistics show that most of the acquisitions relate to lands held by small farmers, whose livelihood depends upon the acquired land. The land is taken purportedly in accordance with law by resorting to acquisition proceedings. The Collector (LAO) is supposed to offer a fair compensation by taking all relevant circumstances relating to market value into account. To safeguard the interests of the land loser, the Act requires the Collector to make the award before the land owner is dispossessed. The intention is that the land loser will immediately be able to draw compensation and purchase some other suitable land or make appropriate arrangements for his livelihood. But in practice the Collectors (LAOs) seldom make reasonable offers. They tend to err on the 'safer' side and invariably assess very low compensation. Such meager awards force the land loser to seek reference to civil court for increase in compensation in regard to almost every award made by the LAO. In fact, many a time, even the reference courts are conservative in estimating the market value and it requires further appeals by the land loser to the High Court and Supreme Court to get just compensation for the land. We can take judicial notice of the fact that in several States the awards of the reference court or the judgments of the High Court and this Court increasing the compensation, are not complied with and the land losers are again driven to courts to initiate time consuming execution process (which also involves considerable expense by way of lawyers fee) to recover what is justly due. Resultantly the land losers seldom get a substantial portion of proper compensation for their land in one lump sum immediately after the

acquisition. The effect may be highlighted by the following illustration:

A farmer owns 3 acres of land in a village, which is his sole means of livelihood. The land is acquired for some project in the year 1990. The true market value of the land was around Rs. 1,50,000/- per acre in 1990. If he got the said price, that is, Rs. 4,50,000/- with solatium, additional amount and interest in the year 1991, he has a reasonable opportunity of purchasing some alternative land, so that he can eke out his livelihood and continue to live with dignity. But this rarely happens in practice. The final notification is made in 1992 and the LAO makes an award in the year 1993 offering Rs. 50,000/- per acre. So the land loser is constrained to seek a reference to the court. The reference court takes three to four years to decide the reference and increases the compensation to Rs. one lakh per acre in the year 1996. The increased amount is deposited in 1997-1998. The land loser is constrained to file a further appeal to the High Court and the High Court takes another three to four years and increases the compensation to Rs. 1.5 lakh per acre in the year 2000 and such increase is deposited in the year 2001-02. That is, the loser is forced to fight at least in two courts to get the compensation commensurate with the market value of Rs. 1.5 lakhs per acre. To add to his woes, when the reference court or the High Court increases the compensation, the government does not pay the increased amount immediately and drives him to execution proceedings also. This means that the land owner gets compensation piecemeal, that is Rs. 50,000/- per acre in 1993, another Rs. 50,000/- per acre in 1997-98, and another Rs. 50,000/- per acre in 2001-02. At every stage he has to incur expenses for litigation. As he does not get the full compensation in one lump sum, he is not in a position to purchase an alternative land. When the land is acquired, he loses his means of livelihood, as he knows no other type of work. The result is, he is forced to spend the compensation received in piecemeal, on sustenance of his family when he fights the legal battles for increasing the compensation and for recovering the increases granted, by levying execution. The result is that whatever compensation is received piecemeal, gets spent for the sustenance of the family, and litigation cost during the course of prolonged litigation. At the end of the legal battle, he is hardly left with any money to purchase alternative land and by then the prices of land would have also increased manifold, making it impossible to purchase even a fraction of the land which he originally possessed. Illiteracy, ignorance, and lack of counselling add to his woes and the piecemeal compensation is dissipated leaving him with neither land, nor money to buy alternative land, nor any means of livelihood. In short, he is stripped of his land and livelihood.

9. When large areas are acquired, unless some effort is made by all the wings of government to ensure prompt payment of realistic compensation with appropriate rehabilitation measures, land acquisitions lead to great tragedy and ruination of poor families. We may, at the risk of stating the obvious, refer to the following steps if taken within the frame work of existing laws may provide considerable succour to the land loser: (a) Collector/LAO should offer compensation which is reasonable and realistic and very near to value. (b)

Whenever courts increase the compensation, instead of mechanically filing appeals in all cases, or delaying payments without apparent reason, an effort should be made to pay the increases awarded by court promptly. (c) The government and/or beneficiaries of acquisition should encourage and resort to negotiations to arrive at a mutually acceptable amount of compensation. (d) Avenues of rehabilitation by way of employment, housing, investment opportunities, identification of alternative lands, may be explored and implemented. When large tracts of lands belonging to several land owners are acquired by development authorities for formation of residential or commercial layouts, schemes may be formulated which contemplate 25% to 30% of the land area being used for roads amenities and open spaces, and utilize the remaining area which is developed into plots, by selling about one-third by auction to recover the development cost, by allotting about one-third to poor or needy at cost price, and by releasing/allotting about one-third area to the land losers whose lands were acquired. Some development authorities have reduced land acquisition litigation considerably either by entering into negotiated consent awards or formulating schemes for sharing the developed area with the land losers. Others may emulate them with appropriate modifications.

10. We are not unaware of the fact that in some cases, the awards of courts is high. The main reason therefore is the failure on the part of Collectors/LAOs/Beneficiaries of acquisition, to conduct the cases before the reference court properly. They either fail to cross-examine the claimant's witnesses or fail to lead evidence to rebut the high claims. An attempt is belatedly made to set right the matter by filing appeals.

11. It is not our intention to discourage the governments or the beneficiaries of acquisition from filing appeals where high compensation or unreasonable awards are made by courts. Nor is our intention to suggest policy or interfere with existing policy. Our endeavour is only to draw attention to the plight of many land losers and to some aspects of land acquisition litigation, so that urgently needed remedial measures can be initiated for the benefit of land losers for whom acquisition means deprivation of the means of livelihood. Unless there is a concerted effort by the governments/beneficiaries of acquisition/ collectors/courts to give effect to the legislative intent of prompt disbursement of adequate compensation, the suffering and disillusionment will continue.

Conclusion

12. Learned counsel for the petitioner submitted that there was delay in seeking reference and therefore the reference ought to have been rejected. Such a ground was not urged either before the reference court, or the first appellate court or before the High Court or even in the SLP. In the circumstances, we cannot countenance such a contention.

13. Resultantly, we condone the delay, but dismiss the SLP as having no merit. We may add that we find no specific fault with the Advocate-on-record in this

case. We have merely taken the opportunity to advert to several general shortcomings in filing of special leave petitions, with the hope bringing changes for the better.