
(1954) 07 BOM CK 0003

In the Bombay High Court

Case No : Land Acquisition Reference No. 7 of 1953

Special Land Acquisition Officer

APPELLANT

Vs

Kalyanji Dewji Dharsi

RESPONDENT

Date of Decision : 22-07-1954

Acts Referred:

Land Acquisition Act, 1894 — Section 15, 17, 18, 23, 24

Citation : (1955) 57 BOMLR 934

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Judgement

TehdolKar J.

1. Mr. Mody wishes to examine this witness further with regard to the damage sustained by the claimants by reason of the acquisition injuriously affecting other property of the claimants. The plea is that as the land was acquired for use as a cemetery or a burial ground, the vicinity of a cemetery or a burial ground would injuriously affect the value of the remaining land of the claimants.

2. Mr. Khandalwalla for the Special Land Acquisition Officer objects to such evidence being led on the ground that a claim for damages sustained by reason of the acquisition injuriously affecting the other property of the claimants was not put forward at any time before the Special Land Acquisition Officer and it cannot be allowed to be put forward for the first time upon a reference.

3. Now, in so far as the facts of this reference are concerned, the claim put forward before the Special Land Acquisition Officer was put forward in a report of Messrs. V.M. Mody & Co., architects; and the report after citing various instances of sales of land concludes by asking for the land the flat rate of Rs. 35 per square yard as the price of land. There is not even the remotest suggestion in the report that the claimants had suffered any damages of the kind now alleged. Then after the award was made, an application was made to the Special Land Acquisition Officer for a reference to this Court. The application is dated June 12 and merely

states that the claimants object to the amount of compensation awarded on the ground that the amount is inadequate. Annexed to this petition is what is intended to be the grounds of objection. There is no suggestion in these grounds that any damage of the kind now alleged was suffered by the claimants and that they claimed any compensation in respect of such damage. Those being the facts, the question to consider is whether it is open to the claimants for the first time on this reference to "allege and seek to prove that they sustained damage by reason of the acquisition injuriously affecting their other property.

4. In order to determine this question, it is necessary to consider the scheme of the Act. Section 9(2) provides that upon a public notice being given of intention to acquire, the notice shall require all persons interested to appear before the Collector and

to state the nature of their respective interests in the land and thx; amount and particulars of their claims to compensation for such interest.

After this is done the Collector is directed by Section 15 to determine the amount of compensation in accordance with Sections 23 and 24. Section 23 sets out seriatim the matters which shall be taken into account in determining the amount of compensation. The first matter to be taken into account is the market value of the land at the date of the publication of the notification u/s 4(1), and the matters "secondly" to "sixthly" enumerated in this section as matters which shall be taken into account are all different kinds of damage sustained by the person interested by reason of the acquisition. The matter "fourthly" enumerated relates to the damage sustained by reason of the acquisition injuriously affecting the claimant's other property. While in every case there must of necessity be some market value of the land acquired, there need not be in every case damage under all or any of the heads "secondly" to "sixthly" enumerated; and the only person who can be in a position to say that he has sustained damage by reason of the acquisition would obviously be the claimant, and he and he alone can be in a position to substantiate such a claim. It cannot be therefore that the: Special Land Acquisition Officer, in the absence of any claim for damages having been put forward before him, can conceivably take into account any claim for damages in determining the compensation to be awarded ; and it appears to me to be plain that if a claimant desires to claim compensation on the basis of damage sustained under any of the heads "secondly" to "sixthly" set out in s. 23, he must so state in the particulars of his claim which he is required to put in by reason of Section 9(2) of the Land Acquisition Act.

5. Turning next to the section that deals with a reference to Court, Section 18, that section provides that where a person does not accept the award, he may apply for a reference, and Sub-section (2) of that section in terms states that the application shall state the grounds on which objection to the award is taken. Now, if a point has not been raised before the Land Acquisition Officer and has not been dealt with or determined by him, obviously no objection can arise in respect thereof. If the point has been raised and he has not dealt with it, the

claimant may object to the failure of the Special Land Acquisition Officer to deal with it; but if it had not been raised at all by the claimant, I cannot see how he can possibly object to the Land Acquisition Officer not having considered something which was not within the knowledge of the Land Acquisition Officer at all and which indeed was entirely within the knowledge of the claimants and which was never raised before him. Therefore, it appears to me that it cannot be open to a claimant to raise by way of a ground of objection to the award any matter which was not raised before the Land Acquisition Officer at all and not adjudicated upon by him. The jurisdiction of the Court upon a reference being made is to determine whether the objection is or is not well-founded and to uphold or to disallow such objection; and when the Court make so final award, Section 26 in terms provides that the Judge shall specify the amount awarded under the first of Sub-section (2) of Section 23 and also the amounts if any respectively awarded under each of the other clauses of that section. It seems to me, therefore, upon a consideration of the relevant sections of the Act, unhampered by any decided cases, that the claimant must, in the first instance, if he wishes to claim damages under any of the heads "secondly" to "sixthly" enumerated in s. 23, make such a claim when he puts forward a claim u/s 9(2). If he fails to do so, I do not think it is open to the Collector to consider of his own motion whether the claimant has sustained damage under any of the sub-heads "secondly" to "sixthly" described in Section 23. It may be that before the Collector's award is made the Collector may allow the claimant to amend his claim by giving particulars as regards any alleged damage, and if he does so, the Collector may proceed to adjudicate upon it; but in the absence of an adjudication as regards damages sustained by the claimant, in my opinion, no question can arise of the claimant coming to Court on a reference and claiming that damages have been sustained by him. Moreover, even assuming that it was possible for the claimant to put forward such a claim, in any event that claim must be made in the statement of objections to the award which is required to be made when an application for reference is made. The reference is not an independent proceeding for the purpose of determining the amount of compensation payable. It is merely intended for the purpose of enabling the claimant to have his objections to the award adjudicated upon by a Court of law and not for the purpose of raising any fresh matter before the Court for the first time on, a reference.

6. Turning now to the decided cases which have been cited at the bar, Mr. Mody for the claimants has relied upon a decision of a division bench of the Judicial Commissioner's Court at Sind reported in *Secretary of State v. Dinshaw* A.I.R. [1983] Sind 31. In that case what had happened was that the Collector had in fixing the amount of compensation allowed a sum of Rs. 1,553 for injurious affection. The learned Judicial Commissioner increased this amount to Rs. 3,600, and the plea raised before the division bench was that it was not open to the Judicial Commissioner to disturb the award of the Land Acquisition Officer in respect of this claim because the claimants had never put in a specific claim for

allowance for injurious affection. The learned Judges took the view that Section 9(2) did not require that the claimant should specify the amount he claims in respect of the six sub-heads enumerated in Section 23 and further held that failure to specify the amount in respect of any subhead of Section 23 was no bar to a Judge reviewing an award on a reference. Now, of course, the plea that the amount of compensation awarded by the Collector for injurious affection could not be increased because the claimant had put forward no claim before the Collector in respect thereof was, in my opinion, obviously untenable as the case clearly did not fall within a, 25(2). That sub-section deals with cases where an applicant has refused to make a claim to compensation and a claim to compensation does not cease to be a claim to compensation merely because it does, not set out any one of the heads under which compensation can be given by reason of Section 28. Therefore, with respect to the division bench, they rightly negated the contention that it was not open to the Judge to revise the amount awarded by the Collector in respect of allowance for injurious affection; but in so far as the judgment lays down that Section 9(2) does not require the claimant to set out the particulars of compensation under each of the heads of Section 23 of the Act, with respect to the learned Judges, I do not agree with that interpretation. In any event, so far as the case before me is concerned, even if that interpretation were right, and my view of Section 9(2) was not the correct view, the case which the division bench was dealing with was a case where the Collector had adjudicated upon a claim to damages whether or not it was put forward on behalf of the claimant, with the result that an objection could be made to such an adjudication and could be determined by a Judge upon a reference; and the case, therefore, does not, in my opinion, in any view help Mr. Mody in the present case, in which there is no adjudication by the Special Land Acquisition Officer of any claim to damages.

7. Moreover, this decision of the Judicial Commissioner's Court of Sind has been distinguished in a subsequent decision in Land Acquisition Officer v. Hiranand A.I.R.[1041] Sind 152 where Davis C.J. points out (p. 152):-

...But that case is not authority for the statement that if in reply to a notice u/s 9 of the Act, no claim at all has been made, for instance, under the item thirdly in Section 23, such a claim can be made for the first time on a reference to the Court.

The learned Judge then sets out Section 9(2) and states (p. 132):

...these particulars would relate to the matters set out in Section 23 of the Act.

Dealing thereafter with other sections of the Act the learned Judge points out (p. 153):

...We have not here a case where a question for compensation for injurious affection was raised by the claimant in pursuance to a notice u/s 9, or was raised before it was considered by the Collector, and though it may be that a sentence may be taken from its context in the judgment of this Court reported in 27 S.L.R.

84 (This is the case reported in AIR 1933 Sind 21, to support the contention of the claimant, that compensation for injurious affection can and should be awarded to him, though the point was raised for the first time before the Court that is not the sense or the meaning of the judgment at all.

8. The learned Judge then proceeds to follow a decision of the Madras High Court, to which I will presently draw attention, in (Chennubhotla) Venkatasubbarayudu Vs. (Duvvuri) Nagamma and Others, . In that case Curgeven J. after considering the relevant sections of the Land Acquisition Act, observes (p. 577):

...The proceedings before the Court (upon a reference) are thus of the nature of objections to the Collector's award, and not a judicial inquiry independently undertaken into such questions as the claimant may raise. On this view, it would not be open to a claimant to make out a fresh case, whether by way of supplementary claims to compensation or otherwise.

With these observations I am in respectful agreement and in my view it is not open to a claimant for the first time upon a reference to claim any damages of the nature contemplated in the grounds "secondly" to ""sixthly" described in Section 28.

9. When the Court rose for the day yesterday and after the judgment was part-delivered Mr. Mody for the claimants drew my attention to the fact that compensation which is "secondly" and "fourthly" described in Section 28 is for damage sustained at the time of the Collector's taking possession; and the point apparently made is that whereas the Collector does not ordinarily take possession, except when resort is had to his special powers u/s 17, until after the award is made these two grounds of damage in any event will arise at a date subsequent to the making of the award; and that being so the damages cannot possibly be claimed before the award is made or indeed before the Collector takes possession. The matter has not been argued at the bar but prima facie there appears to be more than one answer to this contention. In the first instance s. 23 deals with matters which are to be taken into consideration by the person making the award, viz. the Collector in the first instance, and once the award has been made, there can be no question of the Collector considering anything at all. Therefore, when Section 23 refers to damage sustained at the time of taking possession, it can only be such damage as can have been reasonably anticipated at or before the time of making the award. Of course in a case in which possession has been taken under the provision of Section 17 the damage may be actual and in other cases only prospective. But that does not prevent the claimant from claiming the damage which could have been reasonably foreseen before the date of the award. It is possible to conceive of cases, however, where the "damage caused could not be so reasonably foreseen. What the remedy of the claimant would, be in such a case, it is unnecessary to determine in these proceedings because it is not alleged in this case that any damage resulted which could not have been reasonably foreseen at or before the

date of making the award. Such damage can certainly not be claimed upon a reference for the simple and ample reason that you can on reference only raise objections to the award of the Collector u/s 18; and if the damage could not even have been reasonably foreseen at the date of the award, certainly no objection can be raised to the award itself on the ground that such damage was not allowed. It is said that there is no wrong without a remedy, and it is quite possible that the general law confers upon the claimant power to recover in proper proceedings any damage that he may sustain by reason of the acquisition which could not have been reasonably foreseen at or about the time of the making of the award by the Collector and which could not therefore have been claimed before the Collector.

10. I, therefore, uphold the objection and disallow any evidence to prove such damages.