
(2008) 12 P&H CK 0187
In the Punjab And Haryana At Chandigarh

State of Haryana

APPELLANT

Vs

Manbhari

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2009) 154 PLR 563 : (2009) 3 RCR(Civil) 550

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of seven Regular First Appeals bearing RFA Nos. 2473 to 2475 of 1989 and 1141 to 1144 of 1991, as common question of law and facts are involved therein.

2. Vide notification dated 15.4.1979 issued u/s 4 of the Land Acquisition Act, 1894 (for short, the Act") followed by subsequent notification dated 14.8.1979 issued u/s 6 of the Act, 66.774 acres of land in village Bhatsana, Tehsil Rewari, District Mohindergarh was acquired for constructing Massani Barrage by the Irrigation Department. Land Acquisition Collector vide his award No. 37 dated 27.6.1980 divided the land into four categories and assessed the compensation as under:

Chahi : @ Rs. 11,000/- per acre Barani : @ Rs. 7,000/- per acre Bhood : @ Rs. 6,000/- per acre Banjar : @ Rs. 4,000/- per acre

3. On reference made by the landowners/claimants u/s 18 of the Act, the learned Addl. District Judge, Narnaul, vide his award dated 12.6.1989 enhanced the compensation in respect of the Chahi land from Rs. 11,000/- per acre to Rs. 14,000/- per acre and also awarded solatium @ 30% u/s 23(2) of the Act, additional compensation @ 12% u/s 23(1-A) of the Act and interest @ 9% and 15% per annum as provided u/s 28 of the Act.

4. Mr. Rajiv Kawaira, Sr. D.A.G. Haryana, appearing for the appellant-State has only objected to the award of additional compensation under Sections 23(2),

23(1-A) and 28 of the Act on the ground that the notification u/s 4 of the Act was issued on 15.4.1979 followed by a notification of declaration u/s 6 of the Act dated 14.8.1979 for which the award was announced by the Collector on 27.6.1980.

5. I have heard the learned Counsel for the appellants and have perused the record.

6. Before proceeding with the adjudication of the present lis, both the provisions of Section 23 of the un-amended Act and amended Act are required to be noticed:

7. Section 23 of the un-amended Act.

Matters to be considered in determining compensation-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:

First, the market value of the land at the date of publication of the [notification u/s 4, Sub-section (1)];

Secondly, the damage sustained by the person interested, by reason of taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any), sustained by the person interested, at the time of Collector's taking possession of the land, by reason of severing such land from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning;

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona-fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector taking possession of the land.

(2) In addition to market value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition.

Section 23 of the amended Act.

Matters to be considered in determining compensation-

(1) In determining the amount of compensation to be awarded for land acquired

under this Act, the Court shall take into consideration:

first, the market value of the land at the date of publication of the [notification u/s 4, Sub-section (1)];

secondly, the damage sustained by the person interested, by reason of taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona-fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector taking possession of the land.

(2) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per-centum per annum on such market value for the period commencing on and from the date of publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation:- in computing the period referred to in this sub section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] oh such market value, in consideration of the compulsory nature of acquisition. Section 28 of the amended Act.

Collector may be directed to pay interest on excess compensation:- If the sum which in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess @ six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Provisions of the amended Act.

Collector may be directed to pay interest on excess compensation:- If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess @ (nine per centum) per annum from the date on which he took possession of the land to the date of payment of such excess into Court:

[Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest @ fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry].

8. According to the above provisions, Section 23(1-A) has been added in Section 23 vide which the Court, in every case shall award an amount calculated @ 12% per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4(1) in respect of such land to the date of award of the Collector or the date of taking the possession of the land whichever is earlier. But while computing the aforesaid period, if any period or periods during which the proceedings of the acquisition of land were held up on account of any stay or injunction by the order of any Court shall be excluded. u/s 23(2) of the amended Act, amount of solatium from 15% to 30% was raised and as per the amendment of Section 28, interest @ 9% for the first year and 15% for the subsequent year is envisaged.

9. In the present case, notification u/s 4 of the Act was issued on 15.4.1979. Notification of declaration u/s 6 was issued on 14.8.1979. The Land Acquisition Collector gave his award on 27.6.1980 but the learned Reference Court gave its award on 12.6.1989. In the backdrop of the aforesaid facts, so far as the applicability of Section 23(1-A) of the Act is concerned, majority view on the decision of the Supreme Court in the case of K.S. Paripoornan Vs. State of Kerala and Others, makes it clear that provision of Section 23(1-A) of the Act is applicable only to cases where the award of the Collector has been made after 30.4.1982 and the said provision is not applicable to cases where the award of the Collector was made prior to 30.4.1982, although the award of the learned Reference Court or the High Court or even of the Supreme Court has been passed after 30.4.1982 or even after 24.9.1984 when the amending Act 68/84 was enforced. In another case reported as Krishi Utpadan Mandi Samiti Bulandshahr and Others Vs. Ganga Sahai and Others, , notification u/s 4 of the Act was issued on 25.5.1976 and the award of the Collector was passed on 10.5.1977. The learned Additional District Judge, gave his award on 15.9.1979. The Supreme Court thus held that the landowner shall not be entitled to enhanced solatium and interest and additional amount since the learned Reference Court had made the award and decree on 15.9.1977 much earlier to

the introduction of the amended Act 68/84. Only solatium @ 15% and interest @ 6% were allowed on the enhanced compensation from the date of taking possession till date of deposit. In the present case, since the award of the learned Reference court is after 1982 but the award of the Collector is before 30.4.1982, the claimant/landowner shall be entitled to the benefits in view of Section 23(2) and Section 28 of the Amended Act in view of the judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , but the claimant shall not be entitled to the benefit of Section 23(1-A) of the Act.

10. To summarize what has been said above,

(i) If the award of the Collector is after 30.4.1982, the claimant shall be entitled to all the benefits of amended Act;

(ii) If the award of the Collector is before 30.4.1982 but the award of the Civil Court in reference u/s 18 of the Act, is after 30.4.1982, the claimant is entitled to the benefits u/s 23(2) and Section 28 as amended by the Amending Act, but is not entitled to the benefit u/s 23(1-A) of the Act; In view of the above discussion, the appeals filed by the State of Haryana, are partly allowed and that of the landowners/claimants are dismissed, however, without any order as to costs.