
(1990) 09 MP CK 0051
In the Madhya Pradesh High Court
Case No : F.A. No. 45 of 1980

State of M. P.

APPELLANT

Vs

Ramrao Krishnarao Palsikar

RESPONDENT

Date of Decision : 28-09-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 28

Citation : (1991) MPJR 60

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, J.

This First Appeal is directed against the judgment and decree dated 18-2-1980. passed by the IIrd Additional District Judge, Indore in Misc. Judicial Case No. 121 of 1977.

Short facts of the case are that the State of Madhya Pradesh acquired a piece of agricultural land, bearing Survey Nos. 584 and 586, admeasuring 5.09 acres, situated in the city of Indore. The Land Acquisition Officer awarded Rs. 5000 - per acre for compensation of the said land.

Since the owner of the land was not satisfied with the compensation as awarded by the Land Acquisition Officer, he prayed for a reference, which was accordingly made to the Court of Additional District Judge, Indore, u/s 18 of the Land Acquisition Act.

The learned Addl. District Judge framed the following four issues : (1) whether the compensation as awarded to the objector (land owner) was just and proper (2) whether the objector submitted his objections u/s 18 of the Act in time, and (3) whether there was any good or sufficient cause on the part of the State for

not referring the matter to the proper Court for over fourteen years and (4) relief and costs.

The first two issues have been decided in favour of the respondent and the third issue had been answered in the negative. Aggrieved by the aforesaid judgment and decree the State has preferred this appeal, raising the following point : (1) that the land in question being agricultural land, the lower Court erred in appreciating the evidence on record and holding that the acquired land being situated in the city, its compensation should be fixed at 00.50 paise per square feet, (2) the lower Court overlooked the fact that the land was situated not in a developed colony, but in a slum area, which is most backward area in the city of Indore; hence it could not be compared with the land falling within the area of Palsikar colony and (3) that even in the matter of calculation of compensation, the lower Court erred in not excluding that area of land, which would be required for providing approach roads, open space, drainage, etc.

It was also contended on behalf of the State that the learned Addl. District Judge was wrong in holding that the Land Acquisition Officer did not make a reference, within a reasonable time, which was in fact made after fourteen years of taking objections u/s 18 of the Act.

Lastly, it was contended that the objector-owner of the land did not apply for making a reference u/s 18 of the Act, within the prescribed period.

Shri Chaphekar, learned counsel for respondent has on the other hand, supported the judgment and decree as passed by the lower Court and also claimed that in view of the amendment made to the Land Acquisition Act in 1984, the respondent was entitled to the benefits u/s 23 and 28 of the Land Acquisition Act.

The first point raised by the appellant is regarding limitation. In this connection, few dates may be noted. The award was passed by the Land Acquisition Officer on 7-4-1963 which was communicated to the respondent on 21-12-1963. The application for reference was filed on 6-1-1964- apparently within six weeks of service of notice of award. These facts are not in dispute. As a matter of fact, question of limitation does not arise. The making of a reference was delayed by fourteen years.

Proviso to section 18 of the Land Acquisition Act envisages two situations : (1) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award, and (2) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

The very fact that the collector ordered issuance of a notice goes to show that the respondent was not present on the date of making of the award, hence the necessity of serving him with a notice. Going through the order-sheets of the

District Court it is seen that by order dated 21-3-1978 the Court specifically directed the State to explain as to when and on which date the original award was given and why there was delay of fourteen years in making the award. Order-sheet dated 23-6-1978 further reads that no such explanation was placed before the Court nor the date of the award, as directed, was given to the Court. There is a further noting by the Court on 2-8-1978 that the order made on 21-3-1978 was not complied with. Government Advocate appearing for the State prayed for time, which was granted. Even in the reply filed by the appellant-State of the claimants petition u/s 18 of the Act, the date of the award has not been mentioned in paragraph 2 of the said reply, although the words "award dated-----" are very much there. As for limitation, all that has been said is "the claimants application and reference are barred by limitation". There is absolutely no indication as to how this application was barred. Despite repeated opportunities being granted the State failed to give the date of award as well as the date of filing of objections u/s 18 of the Act and yet the plea of limitation was raised. There is no substance in this plea.

As has been noted above, objections seeking reference u/s 18 of the Act were filed well in time from the date of communication of the notice on the respondents. The State is regarded and recognised as a virtuous litigant. It is regrettable that in order to defeat an otherwise just claim of a citizen, the State should come forward with a plea of limitation, without substantiating it on facts despite repeated opportunities being granted to it. As has been observed by the Supreme Court in a similar vein in *Madras Port Trust Vs. Hymanshu International* by its Proprietor V. Venkatadri (Dead) by L.R.s,

"The plea of limitation based on this section is one which the Court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Government and public authorities adopt the practice of not relying upon technical pleas, for the purpose of defeating legitimate claims of citizens, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it the evidence for the purpose of resisting such a claim has become unavailable."

As has been noted above, the plea of limitation, as raised by the State, is without any foundation.

So far as appreciation of evidence and fixation of rate by the District Court is concerned, the criticism made by the learned counsel for the State is wholly unjustifiable, in fact the District Court came to the conclusion that the just compensation would be ten-annas-equal to 62 paise per square feet, yet it has awarded only 00.50 paise per square feet, as had been claimed by the respondents.

The respondent had placed on record certified copies of the lease-deeds, Exs. P/1 and P/2, the valuation certificate, Ex. P/3, given by the registered Estate Duty valuer Shri Apte, who also entered the witness-box. There is nothing in his cross-examination to disbelieve his testimony. All that was suggested to him was, if he had seen the sale-deeds of other adjacent lands. Claimant-respondent himself entered the witness-box, while the appellant-State did not choose to examine any witness, although repeated opportunities for the purpose were granted. There is an application dated 22-2-1978, moved by the State, which is on record. All that it says is that the evidence recorded before the Land Acquisition Officer be read as evidence before the District Court. Repeated directions made by the learned Judge, even for production of the original record, were not complied with by the State, as has already been noted above. In such circumstances, there can be no legitimate grievance made as regards fixation of compensation by the learned Addl. District Judge.

The last point, which still remains for consideration is the benefit accruing to the respondent under the amended provisions of section 23 and 28 of the Land Acquisition Act. In fact he has made an application. I. A. No. 264/86, in this behalf on 16-1-1985, praying :

""That in view of the Land Acquisition (Amendment) Act (No. 68/1984) and the decision of the Hon'ble Supreme Court, reported in Bhagsingh v. The Land Acquisition Collector 1985 MPLJ 523. the respondent is entitled to receive the interest at the rate of 9% and solatium at the rate of 30% of the compensation as the amended provisions are applicable to the present appeal also.""

The appellant-State has not filed any reply to this application, it was noted, vide order dated 24-1-1986, that this application would be considered at the time of final hearing. It is accordingly considered.

In the light of the Supreme Court decision, referred to in the application (I. A. 264/86) itself and the subsequent decisions of the Supreme Court as reported in State of Punjab Vs. Mohinder Singh and Another, holding as follows :

"We find no merit in this appeal so far as quantum of compensation is concerned, because SLP has been dismissed against the impugned judgment. However, the respondents are entitled to the benefit of the provisions of Act 68 of 1984 by which 30% solatium is to be given from the date of publication to the date of notification under S. 4, sub-section (1) of the Act, and interest at the rate of 9% instead of 6% as originally contained in the unamended Act, from the date of taking possession of the land acquired. Since the decision in this case has been given after one year, it is manifest that under the said Act, respondents would be entitled to interest at the rate of 9% towards which they have already got 6%"

The respondent is entitled to the benefit as claimed by him. The application (I. A. No. 264/86) is allowed. The respondent be paid solatium and interest at the rate indicated above.

For the foregoing reasons this appeal stands dismissed. The judgment and decree is modified to the extent indicated above. Counsel's fee shall be as per the schedule, if certified.