

(2004) 07 MP CK 0012
In the Madhya Pradesh High Court
Case No : First Appeal No. 187 of 1991

State of Madhya Pradesh

APPELLANT

Vs

Hashiboo Nisha and Others

RESPONDENT

Date of Decision : 15-07-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1)

Citation : (2004) 3 MPHT 463 : (2004) 4 MPLJ 159

Hon'ble Judges : Saraswati Prasad Khare, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : R.S. Patel, A.A.G, for the Appellant; K.B. Bhatnagar, for the Respondent

Judgement

A.K. Shrivastava, J.

This appeal has been preferred by the State of Madhya Pradesh against the award dated 18-7-1991 passed by the District Judge, Mandla.

A reference u/s 18 of the Land Acquisition Act, 1894 (in short "the Act") was referred by the Land Acquisition Officer/Collector, Mandla on the application being submitted by Bashi Ahmad, whose legal representatives are respondent Nos. 1 to 5.

The Court below issued notice to the Collector, however, since no appearance was made, the Court below proceeded ex-parte against the appellant.

Under the Municipal limits of Nainpur the land in question was acquired by the Irrigation Department of State of Madhya Pradesh for the purpose of its "Thawar Pariyojna". The disputed land which is 2.14 acre in area was acquired. On going through the award of the Court below, it is gathered that on account of mutual agreement the Bhumiswami of the land in question agreed for the acquisition and by keeping final consideration of the land in question alive, a sale deed was executed on 8-7-1985 and a sum of Rs. 7,960.80 paise was accepted under protest by Bashi Ahmad. The said amount was paid through cheque on 1-8-1985.

The Land Acquisition Officer thereafter assessed the compensation including the amount of solation. The amount of compensation was thereafter paid by the State.

Bashi Ahmad submitted objections indicating therein that the compensation, which has been assessed, is on lower side. In the objections it has been contended that the land acquired was situated in the Municipal limit and, therefore, it should have been assessed at the rate of Rs. 12-15 per sq. ft. and it was prayed that the matter be referred to the Court constituted under the Act. The Land Acquisition Officer/Collector referred the matter to the Court u/s 18 of the Act.

The learned Court below on the basis of oral and documentary evidence came to hold that since the land is situated under the municipal limit and there is sufficient material to hold that the amount of compensation was quite inadequate as such on the basis of the provisions as contained u/s 23(1) of the said Act assessed the compensation to the tune of Rs. 1,11,687/- and it was directed to pay this amount after deducting a sum of Rs. 7,960/- which was already paid.

In this appeal it has been contended by Shri R.S. Patel, learned Additional Advocate General, that indeed the land was purchased by the State Government from Bashi Ahmad and, therefore, the provisions of the Act are not applicable. On merit it has been contended by him that since the land was agricultural land and otherwise also the compensation, which has been awarded, is on higher side.

On the other hand, Shri K.B. Bhatnagar, learned Counsel appearing for the respondents, submitted that there was an agreement with Bashi Ahmad (whose legal representatives are respondents) and it was agreed that the land will be taken by the State and what should be the consideration, it would be fixed later on, as a result of which the sale deed was executed under protest. It has been contended by the learned Counsel that as a matter of fact since, u/s 18 of the Act the matter was referred to the Court below for the determination of the amount of compensation, therefore, it is incorrect to say that jurisdiction for determination of the compensation is ousted. On merit it has been contended that the land which was acquired comes under the Municipal limit and the same was not agricultural land but it was a diverted land and was diverted for non-agricultural purpose. According to the learned Counsel, the determination of compensation by the Court below does not require any interference and the appeal be dismissed.

After having heard the learned Counsel for the parties we are of the considered view that this appeal deserves to be dismissed.

On going through the award passed by the Court below it transpires that though it has been written in the impugned order that written statement was filed but on going through the record, we could not find any written statement and on going through the order sheets it is revealed that since beginning the time was sought to submit the written statement which was allowed from 22-6-1988 to 5-1-1990

and on the next date, i.e., 12-1-1990 Counsel for the State informed the Court that he is not having any instructions and on this ground he put his inability to plead further on behalf of the State, as a result of which the Court proceeded ex-parte against the appellant. Thereafter respondent adduced evidence in ex-parte and ultimately, the award was passed in ex-parte on 18-7-1991.

On going through the record it transpires that the Land Acquisition Officer/Collector referred the matter u/s 18 of the Act to the District Court and, therefore, since the matter itself was referred u/s 18 of the said Act by the Collector, it can not be said that the Court below was not competent to pass the award and the award is without jurisdiction. The objection in this regard is, therefore, rejected.

On merit also we have considered the submissions of learned Counsel for the parties. On going through the record it is found that on 30-4-1983 the disputed agricultural land was diverted for non-agricultural purpose and the relevant documents are Ex. P-2 and Ex. P-3 and, therefore, before the date (8-7-1985) when the land was taken by the appellant, it was diverted to non-agricultural purposes.

The respondent submitted Ex. P-4, a document, which is a "registered Durustinama" executed between one Shakila Khatun and State of Madhya Pradesh, in which the compensation was fixed by the Court at the rate of Rs. 2.50 paise per sq. ft. Apart from this document a very important document (Ex. P-5) has been filed which is guide-line of the year 1985-86 fixing the market rate of the land situated under the Municipal limit of Nainpur by the State Government. It be seen that the land which was required and taken was situated in Ward Nos. 6 & 7 as it has been said by Shamim Ahmad s/o Bashi Ahmad in his testimony and for Ward Nos. 6 & 7 the Government fixed the price of Rs. 4/- per sq. ft. The learned Court below on the basis of this yard stick determined the compensation which, according to us, can not be said to be excessive in any manner.

We have seen the reasonings assigned by the Court below and we find them to be cogent and in accordance with law and we do not think it proper to deviate ourselves from those reasonings and by this judgment we hereby give our stamp of approval to those reasonings.

Resultantly, the appeal is found to be devoid of any substance. The same is hereby dismissed with costs. Counsel fee Rs. 2.000/- if pre-certified.