

(2003) 03 MP CK 0017
In the Madhya Pradesh High Court
Case No : First Appeal No. 452 of 1997

State of M.P

APPELLANT

Vs

Ku. Rajiya Vano and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 54, 9(1)

Citation : (2003) 03 MP CK 0017

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : P.D. Gupta, Deputy A.G, for the Appellant; R.N. Singh, with Arpan Pawar for respondents Nos. 1 to 22, Alok Aradhe for respondent No. 23, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—In this appeal preferred u/s 54 of the Land Acquisition Act, 1894 (for brevity "the Act") the State of Madhya Pradesh has called in question the legal validity of the award passed by the Reference Court in MJC No. LA 28/96 by the IXth Additional District Judge, Bhopal.

2. The undisputed facts are that the land in question admeasuring 87.79 acres situated in village Chananpura and 142.41 acres of village Damkhera of District Bhopal were acquired for construction of Spill Channel of Kaliya-Gota Project in the Revenue District of Bhopal. The possession of the land was taken over in the year 1984 but notification u/s 4(1) was issued on 2-2-1991 which was published in the Official Gazette dated 29-3-1991. It is not disputed that the notification u/s 4(1) was published in two daily newspapers on 9-2-1991. Objections were invited by publication of notice in the newspaper on 25/26-12-1991. The declaration u/s 6 of the Act was issued and published in the Official Gazette dated 17-8-1992. Notice u/s 9(1) of the Act was issued to the landowners on 21-9-1992 and eventually an award was passed on 8-7-1993 by the Land Acquisition Officer. The award passed was approved by the Commissioner, Bhopal

on 6-6-1994.

3. The Land Acquisition Officer upon hearing the interested parties and taking note of the documents, namely, sale-deeds for the period 15-11-1990 to 28-12-1990 in respect of adjoining village, namely, Akbarpur determined the compensation u/s 23(1) of the Act and fixed the same at Rs. 71,574.65/-. The Collector under the Land Acquisition Act also granted additional compensation u/s 23(1A) by allowing 12% interest per annum on the market value of the land for a period of ten years, the date of taking over of possession i.e. 1-7-1984 till passing of the award i.e. 6-6-1994, and further granted solatium at the rate of 30% on the excess amount u/s 23(2) of the Act. Being dissatisfied with the award the claimants who are the respondents herein preferred an application u/s 18 of the Act seeking reference to the Civil Court, and accordingly the Collector referred the matter to the Civil Court for determination of compensation. Before the Reference Court it was put forth that the amount fixed by the Land Acquisition Officer was totally unjust and required to be enhanced. It was urged that when the notification u/s 6 was issued on 7-8-1992 the compensation should have been determined on the market value on that date, but not from the date when notification u/s 4(1) of the Act came into existence. It was also contended that the interest which has been granted u/s 23(1A) from the date of notification should have been granted from the date of taking over of possession. The award was also criticized with regard to grant of interest u/s 28 of the Act. Before the Reference Court the claimants examined number of witnesses and certain sale-deeds were brought on record and marked as Exhibits. The Reference Court came to hold that the Land Acquisition Officer has erred in law by determining compensation on the basis of market value which was prevalent at the time of notification u/s 4(1) of the Act i.e. 2-2-1991. In his opinion it should have been fixed on the base of the date of notification u/s 6 of the Act. Being of this view the Reference Court proceeded to determine the market value as on 10-7-1992, the date of notification issued u/s 6 of the Act. He took note of the sale-deeds which were brought on record before him. On a scrutiny of the same he found that not a single sale deed pointed out that the value of the land per acre was Rs. 5 lacs. He referred to the sale-deeds contained in Document-D-1 and D-2 which showed the market value at Rs. 2,35,000/- but observed that the said sale-deeds related to June, 1993 and November, 1993 which are after the date of notification issued u/s 6 of the Act. He also made a reference to other sale-deeds but as the transactions under those sale-deeds were relatable to small pieces of land he did not place reliance on the same for the purpose of determining the market value. Thus, the reference Court did not accept the sale-deeds which were pressed into service by the claimants. However, he referred to the sale-deeds of November and December, 1990 which were mentioned in the award passed by the Land Acquisition Officer. On that basis he did not accept the determination of the Land Acquisition Officer which was Rs. 71,575/- per acre. The Reference Court placed reliance on the decision rendered in the case of M.P. Grih Nirman Mandal and Another Vs. Umashankar Kunjilal and Another, wherein

it has been held that ordinarily in five years time the price of the land increases by 100%. Applying the said principle he expressed the view that within a period of two years the price would increase by 1.5 times. He accepted the market value at Rs. 75,835/- in the year 1990 and taking note of the notification issued in July, 1992, enhanced the price to Rs. 1,13,752/- per acre. Similar value was also fixed for the land situated in village Chananpura. Thereafter, the Reference Court determined the date of taking over of possession as 1-7-1984 and granted interest at the rate of 12% from 1-7-1984 till 5-7-1994 which is the date of award passed by the Land Acquisition Officer. On that basis he determined the compensation of village Chananpura and village Damkhera. The Reference Court also granted solatium at the rate of 30%. It is pertinent to state here that the Reference Court determined the compensation area-wise and thereafter in paragraph 23 fixed the quantum qua each claimant.

4. Assailing the aforesaid award it is urged by Mr. P.D. Gupta, learned Deputy Advocate General that the enhancement of the rate by the Reference Court from Rs. 71,575/- to Rs. 1,13,752/- is without any material evidence on record and the findings recorded by the Reference Court is absolutely perverse. It is also contended by him that the Reference Court has committed gross illegality in taking the relevant date to be the date when notification u/s 6 of the Act had come into existence whereas the relevant date should be when the notification u/s 4(1) of the Act was issued. It is canvassed by him that grant of interest from the date of compensation till the date of passing of the award is totally impermissible.

5. Learned counsel appearing for the respondents submitted that the Court has rightly granted the interest u/s 23(1A) of the Act as the notification has come into existence in the year 1990 and the award has been passed thereafter and hence, the award on that score cannot be found fault with. However, they have fairly conceded that the compensation which has been fixed on the base of publication of notification u/s 6 of the Act is erroneous and the Collector under the Land Acquisition Act had rightly determined from the date of publication of notification of section 4. It is put forth by them that the interest granted by the Reference Court u/s 28 and the solatium u/s 23(2) of the Act is absolutely justified and does not warrant any interference of this Court. It is their further submission that even though the relevant date is the publication of notification u/s of the Act for the purpose of determination of the compensation and the Reference Court on erroneous date fixed the compensation yet there is enough material on record to sustain the amount fixed the Reference Court. Elaborating the aforesaid submission it is contended by Mr. Singh as well as Mr. Aradhe that though the respondents have not filed the cross objection, yet they can support the determined quantum by challenging the findings recorded by the Reference Court to the extent that determination at the rate of Rs. 1,13,752/- per acre is absolutely impeccable.

6. First of all we shall deal with the issue whether the Reference Court was

justified in fixing the compensation on the bedrock of the date of publication of the notification issued u/s 6 of the Act. Though this aspect is conceded to by the learned counsel for the respondents, we think it apposite to deal with the same. On a reading of the initial part of section 23 it is graphically clear that the market value of the land has to be determined at the date of publication of the notification issued u/s 4(1) of the Act. That apart, in the case of Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, the Apex Court has clearly stated that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification issued u/s 4(1) of the Act.

7. In view of the aforesaid there remains no iota of doubt that the computation has to be made keeping in view the value on the date of notification published u/s 4(1) of the Act. Thus, the foundation or edifice on which the award is passed is erroneous. The Reference Court has noticed that Land Acquisition Officer has fixed the rate at Rs. 71,575/- per acre. He has posed the question what would have been the value as on 10-7-1992. To determine the same he has deliberated on the facet that in every five years the price of the land gets doubled and as more than one and a half years have passed it should be deemed that the price would have gone up by 1.5 times and on that basis he has determined the rate at Rs. 1,13,752/-. The question that falls for adjudication is once this determination is erroneous, whether there is any material to support the rate. Mr. P.D. Gupta, learned Deputy Advocate General has submitted that in the absence of filing of cross-objection this aspect cannot be gone into. The learned counsel for the respondents, in their turn, have placed reliance on the decisions rendered in the cases of Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, and Babulal Agrawal Vs. Smt. Jyoti Shrivastava and Others, . Quite apart from the above, they have also placed reliance on the decision rendered in the case of K. Muthuswami Gounder Vs. N. Palaniappa Gounder, to highlight that Court in exercise of powers under Order 41 Rule 33 of the CPC can pass such further orders or decree as the case may be in favour of all or any of the parties even though such a party has not filed any appeal.

8. First we shall deal with the spectrum of filing of cross objection. In the case of Ravinder Kumar Sharma (supra) in paragraph 22 their Lordships expressed the view as under:-

22. In our view, the opinion expressed by the Mookerjee, J. of the Calcutta High Court on behalf of the Division Bench in Nishambhu Jena's case, 1985 (89) Cal WN 685 and the view expressed by U.N. Bachawat, J. in Tej Kumar Jain Vs. Purshottam and Another, in the Madhya Pradesh High Court reflect the correct legal position after the 1976 Amendment. We hold that the respondent-defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose sustaining the decree to the extent the lower Court had dismissed the suit against the Defendants-respondents. The filing of cross-objection, after

the 1976 Amendment is purely optional and not mandatory. In other words, the law as stated in *Gaddam Chinna Venkata Rao and Others Vs. Koralla Satyanarayanamurthy and Another*, by the Madras Full Bench and *Sri Chandre Prabhuji Jain Temple and Others Vs. Harikrishna and Another*, by this Court is merely clarified by the 1976 Amendment and there is no change in the law after the Amendment.

9. In the case of *Babulal Agrawal* (supra) this Court expressed the view as under:-

20-A. Under Order 41, Rule 22, Civil Procedure Code, cross-objection in lieu of cross appeal is permissible as also cross-objection is permissible against an adverse finding. The Explanation added below Order 41, Rule 22 was introduced by Amendment Act of 1976 with a specific purpose that cross-objections may be allowed to be filed even against adverse finding by the respondent who may have been successful on other findings of the court below. The cross-objection which is merely against an adverse finding would not attract applicability of Article 1-A but where the cross-objection is in lieu of cross appeal as contemplated by Order 41, Rule 22(1), CPC it would attract ad valorem Court fees under Article 1-A and omission of the words "cross-objection" in Article 1-A would have no different legal effect. The cross-objection against adverse finding and cross-objection in lieu of cross appeal have thus to be treated differently for the purpose of Court fee.

10. In view of this we have no hesitation in our mind that filing of cross-objection is not necessary and the finding can be assailed without filing the cross-objection. We may hasten to clarify that the cross-objection can be permitted to the extent to sustain the decree passed in favour of the plaintiff.

11. As far as grant of discretionary relief under Order 41 Rule 33 of the CPC is concerned in the case of *K. Muthuswami* (supra) a three-Judge Bench of the Apex Court in paragraph 12 expressed the view as under:-

12. Order 41, Rule 33 enables the appellate Court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the court and the question raised properly arises (sic out of) one of the judgments of the lower court and in that event, the appellate court could consider any objection to any part of the order or decree of the court and set it right. We are fortified in this view by the decision of this Court in *Mahant Dhangir vs. Madan Mohan*. No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41, Rule 33, CPC and each case must depend upon its own facts. The Rule enables the appellate court to pass any order/decreed which ought to have been passed. The general principle is that a decree is binding on

the parties to it until it is set aside in appropriate proceedings. Ordinarily the appellate court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this Rule holds good notwithstanding Order 41, Rule 33, Civil Procedure Code. However, in exceptional cases, the Rules enables the appellate court to pass such decree or order as ought to have not filed any appeal. The power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeals.....

Thus, the Rule enables the appellate authority to pass such order or decree which ought to have been passed. True it is, the aforesaid exercise of power is discretionary but in proper cases it can be taken recourse to.

12. Now, coming to the present case, we find that on behalf of the claimants witnesses were examined and certain documents have been exhibited. On a perusal of the sale-deeds it is apparent that they have been executed after the date of notification issued under sections 4(1) as well as 6 of the Act inasmuch as they pertain to sometime in the year 1993. It is submitted by the learned counsel for the respondents that the post notification sale-deeds can be considered by the Reference Court while determining the market value of the land. It is submitted by them that in the case at hand the sale-deeds which have been exhibited by the claimants before the Reference Court pertain to the land situated in the adjacent village, namely, Akbarpura. To substantiate the aforesaid stand they have placed reliance on the decisions rendered in the cases of State of Uttar Pradesh Vs. Major Jitendra Kumar and Others, and Administrator General of West Bengal Vs. Collector, Varanasi, . It is contended by them that what has to be seen by the Reference Court is that the sale-deeds are in proximity, genuine and the acquisition has not motivated the purchaser to pay higher price on account of resultant improvement in the development prospects. Before we advert to that aspect we would like to notice what should be the proper duty of the Reference Court while determining the compensation u/s 23 of the Act. In the case of Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, in paragraph 17 their Lordships expressed the view as under: -

17. In Narasingh Rao case, I have dealt with in paragraph 8 thus:

The object of the inquiry is to bring on record the price fetched or capable of fetching, the relative situation of the land acquired and the subject of the sale transaction, their fertility, suitability, nature of the use to which they are put to, income derived or other special distinctive features possessed of by the respective lands either single or some or all relevant to the facts in issue. In this process the courts are not mere umpires but to take intelligent participation and to see whether the counsel on either side are directing towards this goal or the court itself to intervene in this regard.

Therefore, it is the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at reasonable

market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. The neighbourhood lands possessed of similar potentialities or same advantageous features or any advantageous special circumstances available in each case also are to be taken into account. Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometimes trench on the border of the guesswork but mechanical assessment has to be eschewed. The judges are to draw from their experience and the normal human conduct of parties in bona fide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

13. In the case of *The Executive Director Vs. Sarat Chandra Bisoi and Another*, the Apex Court laid down as under:-

5. We have heard the learned counsel for the parties. Ordinarily, the most accepted and recognised method of appointing compensation for land acquisition is to find out the value of the land prevailing on the date of notification u/s 4 of the Land Acquisition Act which can best be enabled by tendering in evidence documentary evidence showing the price at which similar pieces of land have been bought and sold on and around the date of notification. Where there are no sales of comparable land the value has to be found out in some other way. One of the methods is to find out the annual income of the land which the owner has been deriving or is expected to derive from the use of the land and capitalize the same by adopting a multiplier. In *Union of India vs. Shanti Devi* this Court has said (SCC p. 550, para 14)

The capitalised value of a property is the amount of money whose annual interest at the highest prevailing rate of interest at any given time will be its net annual income. The net annual income from a land is arrived at by deducting from the gross annual income all outgoings such as expenditure on cultivation, land revenue etc. The net return from landed property, generally speaking, reflects the prevalent rate of interest on safe money investments.

14. In this context we may profitably refer to the decision rendered in the case of *M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others*, wherein the Apex Court ruled that the market value means the price that a willing seller for a property, having due regard to its existing conditions, with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired.

15. From the aforesaid proposition of law two facets emerge that in certain circumstances the later sale-deeds can be looked into and some guess work has to be done to fix or determine the market value. Various qualifiers have been added. To appreciate the scenario in entirety we think it appropriate to peruse

the oral evidence brought on record. On a perusal of the evidence of some of the witnesses it transpires that the acquired land is situated between 6 to 8 Kms. away from the city of Bhopal. The land is situated within urban agglomeration of the city of Bhopal. The land is approachable by road. There is evidence that the adjacent lands are sold between 5 to 6 lacs per acre. There is also evidence that there is habitation in proximity to the land which is the subject-matter of acquisition. There is uncontroverted evidence that Mini Buses can go on the lands of some claimants. Some of the witnesses have also deposed that their lands are absolutely adjacent to the city of Bhopal. There is also uncontroverted testimony that colonies are growing up nearby the land of acquisition. Various statements have been given with regard to the value, but the fact remains that the land is situated in the proximity of the city of Bhopal and that the colonies are growing up in the nearby locality and that mini buses can go on the land and some adjacent lands have been sold at higher rates. Even if we do not take into consideration the post notification sale-deeds because they have been executed after quite a gap of time of date of notification u/s 4(1), appreciating the oral evidence we feel by allowing some guess work the price can be enhanced. The Reference Court has not discussed the oral evidence brought on record. Considering the totality of circumstances, we are of the considered opinion that the value fixed by the Land Acquisition Collector is not correct and it should be enhanced by Rs. 15,000/- per acre. Accordingly we fix the price at Rs. 86,575/- per acre.

16. The next question that calls for adjudication is the grant of interest. The Reference Court has taken note of the fact that possession has been taken over on 1-7-1984 and, therefore, the claimants are entitled to additional compensation as envisaged u/s 23(1A) of the Act from 1-7-1984 till the date of award i.e. 5-7-1994. The said determination is absolutely erroneous in view of the law laid down by the Apex Court in the case of Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, wherein their Lordships interpreting section 23(1A) of the Act in paragraphs 6 and 7 held as under:-

6. It is, as we see it, clear from section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error in holding that the appellants were entitled to the additional compensation u/s 23(1-A) for the period 8-3-1991 to 6-2-1993.

7. Section 23(1-A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for my construction other than that given above. It is only where a provision is ambiguous that a construction that leads to

a result that is more just can be adopted. Having regard to its clear terms, section 23(1-A) must receive the only construction it can bear. We are of the view, therefore, that the law has been correctly laid down in the decision in Special Tahsildar (LA), P.W.D. Schemes vs. M. A. Jabbar and that it has not been correctly laid down in Asstt. Commr., Gadag Sub Division vs. Mathapathi Basavannekwa and, for that matter in State of H.P. vs. Dharam Das.

17. In view of the aforesaid pronouncements of law there remains no scintilla of doubt that the claimants are entitled only to get the interest from the date of notification issued u/s 4 of the Act i.e. 7-2-1991 till the date of award i.e. 5-7-1994.

18. The next question that arises for grant of solatium and interest u/s 28A of the Act. It is noticeable that the Reference Court has granted solatium at the rate of 30% which has been provided u/s 23(2) of the Act. We find no error in the same as the same is permissible by the statute.

19. In this context we may also refer to the decision rendered in the case of Sunder Vs. Union of India, wherein it has been held as under:

26. We think it useful to quote the reasoning advanced by the Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana vs. Kailashwati:

Once it is held as it inevitably must be that the solatium provided for u/s 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable u/s 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of section 28 in terms warrant and authorise the grant of interest on solatium as well.

27. In our view the aforesaid statement of law is in accord with the sound principles of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.

In view of the aforesaid the claimants would be also entitled to interest at the rate of 9% on the amount which is payable as solatium as well as the amount awarded u/s 28 of the Act. We have granted the aforesaid amount as the claimants would be entitled to the aforesaid relief even if they do not pray for it as that is statutorily provided.

20. In view of the aforesaid, our conclusions are as under:-

(i) the price of the land is fixed at Rs. 86,575/- per acre;

(ii) the claimants/respondents would be entitled to additional compensation u/s 23(1A) of the Act from the date of publication of notification u/s 4(1) of the Act till the date of the award;

(iii) the claimants should be entitled to solatium at the rate of 30%;

(iv) the claimants shall also be entitled to the interest as provided u/s 28 of the Act; and

(v) the claimants shall also be entitled to the interest at the rate of 9% p.a. on the sum payable as solatium as well as the amount payable in accordance with section 28 of the Act;

21. The appeal is allowed in part and the award is modified accordingly. The parties shall bear their respective costs of this appeal.