
(2009) 05 AHC CK 0812
In the Allahabad High Court

State of U.P. and Another

APPELLANT

Vs

Purshottam Das and Others

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 17, 18, 20, 23
Limitation Act, 1963 — Section 5

Citation : (2009) 4 AWC 3906

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, J.—Since all the aforesaid first appeals are connected and have been heard analogously, the same are being decided by this common judgment and order having binding effect upon all the aforesaid appeals. The First Appeal No. 42 of 1997 which has been dealt with first herein, will be considered as leading case.

2. The facts in brief giving rise to the aforesaid appeals are as under:

First Appeal No. 42 of 1987:

This appeal has been filed by the State of Uttar Pradesh through the Collector, Gorakhpur and Union of India through the Ministry of Defence, New Delhi. Initially a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter called as the "Act") was issued on 14th March, 1970 which was subsequently modified and fresh one was issued on 26th October, 1971. By way of such notification land situated in Village Mahadeo Jharkhandi, Tukra No. 3, district Gorakhpur was acquired. The acquisition was made by the State of Uttar Pradesh for the Union of India. The purpose of acquisition was construction of residential quarters for the married persons of Air Force posted at Gorakhpur. Possession of the land was taken on 15th December, 1971 and total acquired area, subject-matter in this appeal, is 0.51 acres. Land Acquisition Officer (hereinafter called as the "L.A.O.")

by its order dated 31st July, 1975 awarded compensation at the rate of Rs. 8,000 per acre. Thereafter, application for reference u/s 18 of the Act was made on 6th December, 1980 which was registered as L.A.R. No. 185 of 1981. Before the Court of reference, the case of claimants was that the land is situated quite adjacent to the Gorakhpur Cantt. Station of North East Railway, North East Railway Bridge Workshop, Signal Workshop, Nina Thapa Inter College and other markets like Girdharganj alias Takiya Bazar, Turk Nala Bazar and Padri Bazar; the land of close proximity was being developed for a building site where Madan Mohan Malviya Engineering College and Gorkha Regiment Convent School, Aerodrum and Colony for Air Force Officers have already been constructed; the land has got potential value of the building site. The claimants demanded compensation of the land at the rate of Rs. 4 per square foot; compensation for severance of land from other portions thereof Rs. 10,000 and compensation for standing crops, which they could not harvest at the time of taking over possession. To the aforesaid reference, objection was filed on behalf of the State of Uttar Pradesh alleging that the L.A.O. had correctly assessed the market value of the land @ Rs. 8,000 per acre; the claimants were given sufficient time to harvest the crop and in any case no damage was caused to them; the claimants suffered no loss for the severance of the land from their holdings; and the land had no potential value of a building site. Court of reference vide its judgment dated 25th August, 1986 awarded compensation of the land at the rate of Rs. 1.25 per square foot, i.e., Rs. 54,500 per acre, solatium @ 30%, interest @ 12% from the date of notification u/s 4 of the Act till the date of taking over possession and interest @ 9% from the date of award till the date of actual payment. Prayer for compensation towards severance of land and crops was rejected. Against this judgment of the court of reference, present appeal has been filed.

First Appeal No. 43 of 1987:

3. State of U.P. through the Collector, Gorakhpur has filed this appeal. Notification u/s 4 of the Act was issued on 6th January, 1972 for acquiring the land situated in village Mahadeo Jharkhandi, Tukra No. 3, district Gorakhpur. The acquisition was made by the State of Uttar Pradesh for the Union of India. The purpose of acquisition was construction of hospital for Air Force personnel. Possession of the land was taken on 19th March, 1972 u/s 17 of the Act without determining the amount of compensation. The area of land acquired, subject-matter of this appeal, is 16.47 acres. L.A.O. by its order dated 18th July, 1975 awarded compensation at the rate of Rs. 8,000 per acre.

4. Application for reference u/s 18 of the Act was made on 6th December, 1980, which was registered as L.A.R. No. 186 of 1981. Before the court of reference the case of claimant was that the land is situated in close proximity of the Gorakhpur Cantt. Railway Station, Neewa Thapa Inter College, Central School and at a distance of one furlong from aerodrome and colony of Air Force; Gorakhpur city was spreading and developing towards the land in suit, where

Gorakhpur Regiment Centre and Kuraghat Market etc. are situated; the land has got potential value of the building site. Therefore, the claimant demanded compensation of the grove land of 3.50 acre @ Rs. 55,000 per acre; for the remaining land at the rate of Rs. 4 per square foot; Rs. 25,000 as compensation for severance of the land from his holding, and Rs. 40,000 as compensation for loss of standing crops. To the aforesaid reference, objection was filed on behalf of the State of Uttar Pradesh. Court of reference vide its judgment dated 25th August, 1986 awarded compensation of the land at the rate of Rs. 1.25 per square foot, i.e.. Rs. 54,500 per acre, solatium @ 30%, interest @ 12% from the date of notification u/s 4 of the Act, till the date of taking over possession; interest @ 9% from the date of award till the date of actual payment, whereas the amount of compensation awarded by the L.A.O. in respect of the trees was confirmed. Against this judgment of the Court of reference, present appeal has been filed.

First Appeal No. 44 of 1987:

5. This appeal has been filed by the State of Uttar Pradesh through the Collector, Gorakhpur and Union of India through the Ministry of Defence, New Delhi. Notification u/s 4 of the Act was issued on 26th October, 1971. Total area of land comprising 5.70 acres situated in village Mahadeo Jharkhandi, Tukra No. 3, district Gorakhpur was acquired by the State of Uttar Pradesh for the Union of India. The purpose of acquisition was construction of residential quarter for the employees of Air Force. Possession of the land was taken on 15th December, 1971. L.A.O. by its order dated 31st July, 1975, passed in Land Reference No. 40 of 1982, awarded compensation at the rate of Rs. 8,000 per acre. Before the court of reference, case of claimant was that the land is situated quite adjacent to the Gorakhpur Cantt. Station of North East Railway, North East Railway Bridge Workshop, Signal Workshop, Nina Thapa Inter College and established markets like Girdharganj alias Takiya Bazar, Turk Nala Bazar and Padri Bazar; P.H.C. Camp Bichhiya and Madan Mohan Malviya Engineering College, Gorakhpur situate within distance of one furlong; the sehan land of the house of the claimant was also acquired and market value of the land acquired was Rs. 5 per square foot, therefore, the claimant filed an objection u/s 9 of the Act and claimed compensation at the rate of Rs. 5 per square foot for the land, Rs. 600 for a hut and Rs. 10,000 for standing crops. Court of reference vide its judgment dated 25th August, 1986 awarded compensation of the land at the rate of Rs. 1.25 per square foot, solatium @ 30%, interest @ 12% from the date of notification u/s 4 of the Act till the date of taking over possession; interest @ 9% from the date of award till the date of actual payment and Rs. 600 as compensation for hut. Prayer for compensation towards severance of land and crops was rejected. Against the judgment of the court of reference, present appeal has been filed.

First Appeal No. 45 of 1987:

6. This appeal has been filed by the State of Uttar Pradesh. Notification u/s 4 of the Act was issued on 26th October, 1971, by which a total area of 97.21 acres

situated in village Mahadeo Jharkhandi, Tukra No. 3, district Gorakhpur was acquired by the State of Uttar Pradesh for the Union of India for the purpose of construction of residential quarters of the married persons of the Air Force employees posted at Gorakhpur. Possession of the land was taken over on 15th December, 1971 u/s 17 of the Act. L.A.O. by its order dated 31st July, 1975 awarded compensation at the rate of Rs. 8,000 per acre. Thereafter, application for reference u/s 18 of the Act was made on 6th December, 1980 which was registered as L.A.R. No. 184 of 1981. Before the court of reference, the case of claimants was that the land is situated in close proximity of the developing town near Gorakhpur Cantt. Station of North East Railway and adjoining market, Central School, Madan Mohan Malviya Engineering College and Colony of Indian Air Force; the land has got potential value of the building site; claimant had his tube well and constructed tube well nali; claimant had also grown fruits, trees and timber tree; and therefore, the claimants demanded compensation of the land at the rate of Rs. 4 per square foot; compensation for severance of other portion of land Rs. 25,000; compensation for standing crops Rs. 40,000, which they could not harvest at the time of taking over possession. To the aforesaid reference, objection was filed on behalf of the State of Uttar Pradesh. Court of reference vide its judgment dated 25th August, 1986 awarded compensation of the land at the rate of Rs. 1.25 per square foot, i.e., Rs. 54,500 per acre, solatium @ 30%, interest @ 12% from the date of notification u/s 4 of the Act till the date of taking over possession; interest @ 9% from the date of award till the date of actual payment. Prayer for compensation towards fruit bearing trees and timber tree was rejected. Against this judgment of the court of reference, present appeal has been filed.

7. Mr. Ravi Shankar Prasad, learned Additional Chief Standing Counsel appearing for the appellants/State vehemently contended before this Court that the impugned judgments of the Court of reference are not only against the law and facts on record but also the findings recorded therein are perverse. He further contended that the references are barred by the law of limitation and the instant acquisition proceedings are to be governed by the old provisions of Section 25 of the Act. He also contended that the compensation enhanced by the court of reference is at the exorbitant rate and that too without any evidence on record.

8. Mr. A.B. Singh, learned Counsel appearing for the respondents/claimants, contended before this Court that the orders impugned are perfectly correct and legal. He further contended that the applications for making reference were made well within time from the date of knowledge and the proceedings are to be governed by the existing provisions of Section 25 of the Act. He also contended that the amount of compensation is in accordance with the potential value of the land acquired and is in consonance with the evidence available on record.

9. Having heard learned Counsel appearing for the parties, the germane points for the determination by this Court are whether the reference are barred by principles of approbate and reprobate, law of limitation can be applicable in this

type of case, award was wrongly made on square foot basis and whether the claims will be governed by the unamended provisions of Section 25 of the Act or by the amended provisions of Section 25, which had come into force by Act No. 68 of 1984.

10. So far as the point of limitation is concerned, the court of reference has factually held that the land holders, presented their applications just after award and within time on 17th September, 1975 but the same was lost including the original file of the L.A.O. and thereafter, records were reconstructed by the L.A.O. In proof of the same the claimant/respondent has filed receipt 25/Ka signed by the Nurul Hasan, the Land Acquisition clerk, working in the office of the L.A.O. which proves the contention of the claimants that the petition was presented well within time and therefore, the contention of the State was rejected by the court of reference holding that the reference is well within time.

11. Learned Counsel for the appellants has contended before this Court that against the notice u/s 9 of the Act, no application had been given to the L.A.O. putting objection, if any, with regard to compensation. In Land Acquisition Officer Vs. Shivbai and others, it has been held by the Apex Court that it is now settled position in law that the claimants who receive the compensation under protest and who make application u/s 18(1) of the Act, alone are entitled to seek a reference.

12. According to us, the stand taken by the State is correct to the extent that if no protest has been raised by the claimant in accepting the compensation as fixed by the L.A.O. (Collector), the same cannot be challenged and this point has already been dealt with by this Division Bench in its judgment in Ghaziabad Development Authority v. Chandra Bhan and Ors. 2008 (3) AWC 3060. It has been categorically held therein that if the Court allows the claimant to accept the compensation without any protest and then again allows them to make an application u/s 18 of the Act to go to the court of reference to independently adjudge whether quantum of compensation as arrived at by the L.A.O. is wrongful or not, the same will be specifically hit by the principles of "approbate and reprobate". The relevant portion of such judgment is as follows:

Lastly, a determination of compensation cannot be baseless determination. If we try to find out the base, obviously it will relate back to the original offer made by the Collector. Although it is an offer of the S.L.A.O. but it is to be seen by the court of reference whether such offer is accepted by the claimants or not. As soon as the offer is accepted, such offer cannot be termed as an offer at all but a contract. Therefore, a further question arises when contract is concluded by acceptance of consideration, whether the same can be reopened independently or not unless it is established beyond doubt that the conclusion reached by the S.L.A.O. out of fraud or coercion or undue influence. This is not such case. Here, the offer made by the S.L.A.O. has been accepted by the claimants without protest. Admission is the best evidence. Section 18 of the Act starts with the wordings any person interested who has not accepted the award may proceed

before the Court. Again second proviso to Sub-section (2) of Section 31 of the Act says that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18. Section 20 of the Act says that notice will be served by the Court upon the persons interested except such of them as have consented without protest to receive payment of compensation so awarded. Therefore, the statute is clear and categorical to that extent. Ashwani Kumar Dhingra Vs. State of Punjab, speaks as follows:

It is clear from the provisions of Section 18 of the Land Acquisition Act that the person interested, in order to enable him to seek the remedy of reference can do so only if he does not accept the award. In order to show that the person concerned had not accepted the award the claimants accept the compensation only under protest because once the compensation awarded in pursuance of the award is accepted without protest the person concerned may lose his right to a reference for various matters mentioned in Section 18 of the Land Acquisition Act.

Again in Land Acquisition Officer Vs. Shivbai and others, , the Supreme Court held that it is now settled position in law that the claimants, who receive the compensation under protest and who make application u/s 18(1), alone are entitled to seek reference. Therefore, it is implied that who has received the compensation without protest cannot be held entitled to raise any objection before the court of reference. One cannot take two advantages when the law is explicit that reference cannot be maintainable when the claimant/s received the compensation without protest. There is a maxim known as *qui approbat non reprobatur*, meaning thereby one who approbates cannot reprobate. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. This principle, though originally borrowed from Scots Law, is not firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction. Although a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver, the aforesaid principle which prohibits a party to a transaction from approbating a part of its conditions and reprobating the rest, is different from the doctrine of estoppel or waiver. A plaintiff is not permitted to "approve and reprobate." It is used to express the principle embodied in doctrine of election-namely, that no party can accept and reject the same instrument. The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approve and reprobate the transaction. So the maxim that a person cannot "approve and reprobate" is only one application of the doctrine of election, and

that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The doctrine of "approbate and reprobate" is only a species of estoppel, it applied only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. Law does not permit a person to both approbate and reprobate. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. No inconsistent stand can be taken in the court of law.

13. Therefore, according to us, the point which has been raised by the State saying that no application has been made, is valid and we think that the decision of the court of reference suffers from misconception of law.

14. Section 18(2)(a) of the Act provides that an application making objection to the award shall be made within 6 weeks from the date of such award. From the record we find that award is dated 21st July, 1975 and the claimants have proceeded before the court of reference on 6th December, 1980. It is held by the learned District Judge in reference following the ratio of a judgment in Secy. of State Vs. Bhagwan Prasad and Another that question of limitation will be applicable from the date of filing the award and not from the date of declaration of the award.

15. Mr. Ashok Nigam, learned Additional Solicitor General of India appearing for the Union of India, the requiring body, contended before this Court that such judgment has been overruled by a three Judges' Bench of the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, Therefore, such ratio is inapplicable in this case. It has been further said by him by citing a three Judges' Bench judgment of the Supreme Court in State of Karnataka Vs. Laxuman, that Section 5 of the Limitation Act cannot be resorted to while making an application u/s 18 of the Act and the application has to be made within the period fixed by Section 18(2) of the Act. Therefore, condoning the delay by the court of reference on the pretext that reference was made well within time but due to loss of file and reconstruction of the same, it has become time barred and thereby the delay has been condoned or construed that the reference is not out of time, is beyond the jurisdiction of that court of reference and against the settled principles of law. Thus, we also hold that even on that ground the judgments and orders as passed by the court of reference are unsustainable in nature. A further factual point is available in this case that when a big chunk of land is being acquired, whether the value of the land can be fixed on the square foot basis or not. In State of Uttar Pradesh etc. Vs. Smt. Ram Kumari Devi etc., the Supreme Court while dealing with the matter regarding acquisition of land of 13.75 acres held that no feats of imagination would require to bog the mind that when 13.75 acres of land was offered for sale in an open market, no prudent man would have credibility to purchase that land on square foot basis. Therefore,

High Court as well as the District Judge have committed a grave error in not applying the above acid test while considering the case. In *Pitambar Hemlal Badgujar (dead) by Pitambar Hemlal Badgujar (dead) by LRs. and others Vs. Sub-Divisional Officer, Dhule and another*, also the Supreme Court held that it is settled by series of judgments of the Supreme Court that determination of compensation in respect of the lands acquired on the square foot basis is an obvious illegal principle being adopted by the Courts only to inflate the market value and no reasonable prudent purchaser would be willing to purchase the land on the square foot basis when large extent of land is offered for sale. In all the cases in hand before us, the land area is either 0.51 acres or 16.47 acres or 5.70 acres or 97.21 acres, of which the compensation was awarded by the L.A.O. at the rate of Rs. 8,000 per acre, which has been enhanced by the Court of reference on square foot basis and inflated the huge sum of money when admittedly the references appear to be made after a period of approximately 5-6 years from the date of award. In *O.N.G.C. Ltd. v. Sendhabhai Vastram Patel and Ors.* 2005 (6) SCC 454 like many other cases, it has been held by the Supreme Court that in determining the amount of compensation, the Court of reference as also the High Court is bound to take into consideration the well-settled principles of law and the factors enumerated in Section 23 of the Act. The first condition as laid down u/s 23A is the market value of the land on the date of publication of the notification u/s 4, Sub-section (1) of the Act. Therefore, according to us, market value cannot be applied to determine the compensation on the basis of the subsequent development. It has been held in *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta*, particularly on land value that the value fetched for small plots of land cannot be applied to lands covering a very large extent. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, it has been held that the reference is an original proceeding but not an appeal from the award passed by the L.A.O. Therefore, we are of the view that when a court of reference is not the Court of appeal and it has an Independent procedure in coming to conclusion on the basis of the evidence adduced before it as well as before the L.A.O., if any, the Court is to bear in mind the first condition of Section 23 of the Act, which requires to say that the determinative factor for relevant date is that when the notification u/s 4 of the Act was issued and as such, the court of reference has committed an error taking into account the subsequent dates to fix the quantum even condoning the delay in the reference cases after a period of 5-6 years from the original award.

16. The last important aspect is that the period of making application is prior to 1984 when the amended Section 25 of the Act was not applicable to determine the compensation. The unamended provision of Section 25 of the Act is as follows:

25. Rules as to amount of compensation.- (1) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

17. The amended Section 25 as replaced by Act No. 68 of 1984 w.e.f. 24th September, 1984 is as follows:

25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11.

18. We have gone through the Uttar Pradesh Amendment of the old Act. As per the said amendment of the old Act by Act XXII of 1954, effected on 19th November, 1954, the portion "or be less than the amount awarded by the Collector u/s 11" was deleted. Admittedly, the proceeding. before the court of reference was initiated in the year 1980, prior to coming of the amendment of such Section on 24th September, 1984. Hence, if we go on the basis of the old Act, we shall not be able to find out whether the court of reference has exceeded the claimed amount or not, no reflection is available from the order itself. The court of reference has not even considered the legal question at all. Therefore, it can be said that either parties have not raised or even after raising such point the Court ignored the same. According to us, such legal question cannot be ignored in the manner as proposed.

19. In *Dadu Yogendra Nath Singh and Others Vs. The Collector, Seoni*, three-Judge's Bench of Supreme Court held that whether or not a land has potential value as building site, is primarily a question of fact on merits the District Judge was palpably wrong in awarding compensation at higher rate because he acted contrary to legislative mandate contained u/s 25 of the Act according to which, the Court "shall not award" compensation to an applicant in excess of the amount claimed by him pursuant to any notice u/s 9 of the Act.

20. Therefore, in totality it is a clear case of remand. Hence, the judgments and orders of the court of reference impugned in all the instant appeals cannot be sustained at all from any corner whatsoever and are hereby set aside. The appeals are allowed, however, without imposing any cost. The matters are remanded back to the court of reference to arrive at appropriate conclusion taking into account all aspects of the matter discussed by this Court.

21. Let the lower Courts' record of the instant appeals be returned back to the concerned Courts as expeditiously as possible.

Shishir Kumar, J.

I agree.