
(1995) 02 AHC CK 0089
In the Allahabad High Court
Case No : First Appeal No. 74 to 81 of 1982

State of U.P.

APPELLANT

Vs

Brij Behari Sahai & Ors.

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25, 26

Citation : (1995) 02 AHC CK 0089

Hon'ble Judges : V.P.Goel, J and S.C.Mohapatra, J

Final Decision : Allowed

Judgement

S.C.Mohapatra, J.—These are 8 appeals filed by the State Government under Section 54 of the Land Acquisition Act (hereinafter referred to as "the Act").

2. Since the lands involved in these appeals were acquired under the same Notification, a common award was made by the Land Acquisition Collector and a common award under Section 26 of the Act was also made by civil court, these appeals are heard together with the consent of parties as the materials and points involved are the same.

3. An area of 11 bigha 17 Biswa 15 dhur of land in Allahabad was acquired for Engineering College on basis of a Notification under Section 4 (1) of the Act published on 23/10/1976. Notice was given by the Land Acquisition Collector to the respondents as persons interested, who claimed compensation @ 50 per sq. yard initially, which was enhanced to Rs. 80 per sq. yard before Land Acquisition Collector. Land Acquisition Collector determined market value @ 30,30 per sq. yard of which 6 Annas interest were awarded to the claimants and balance 10 Annas were held to be the interest of State Government in the acquired land. Aggrieved by the determination, claimants requested for reference to civil court under Section 18 of the Act stating that the market value determined is too low and entire amount determined is the interest of the claimants. They also stated that they have full interest in the acquired land in which State Government has no interest. Long after the references at the instance of land owners, District

Collector with the permission of the Board of Revenue requisitioned the Land Acquisition Collector to make reference to the civil court to consider the respondents have no interest in the land and as such they are not entitled to compensation awarded in their favour. In the references, volumes of documents were filed and witnesses were examined on behalf of the parties in support of their respective cases. Learned District Judge on consideration of the materials on record held that the market value as determined by the Land Acquisition Collector calls for no interference. It was, however, held that interest of the State Government is for the rent only and capitalising the same by adeptying multiple of 20 the amount was awarded in favour of State Government and balance compensation was directed to be paid to the respondents. State Government has, preferred appeals and respondents have filed crossobjections for enhancement of the compensation.

4. Mr. S. P. Gupta, learned Advocate General submitted that respondents who were in possession of the acquired area had no interest therein and as such they are not entitled to any compensation Mr. Suwami Dayal, learned counsel for respondents while submitting that respondents are entitled to the entire compensation at the rate of Rs. 80 per sq. yard being perpetual lessees and there was no scope for reducing the amount awarded by Land Acquisition Collector at instance of State Government.

5. On rival contentions, following points require consideration:

(i) Whether reference made to the civil court at the instance of Collector is maintainable?

(ii) Whether it is within the period of limitation?

(iii) Whether State Government otherwise has a right of appeal against the award?

(iv) Whether apportionment as determined by civil court is correct? And

(v) What is market value of the land?

Mr. Swami Dayal, learned counsel for claimants is correct in his submission that reference not having been requisitioned by Land Reforms Commissioner, is not competent at instance of Collector of the District. It is seen that Principal of Engineering College brought to notice of the Collector of the District that 6 Annas interest has been determined by Land Acquisition Collector on basis of which compensation has been offered to respondents although they have no interest in the acquired land. District Collector sought for permission from Board of Revenue to requisition the Land Acquisition Collector to make a reference for determination of interest of respondents. On obtaining permission from Board of Revenue, Collector requisitioned Land Acquisition Collector to make a reference. No provision of law or material has been brought to our notice to find that exercises power of Land Reforms Commissioner under Section 18 (3). It is not the authority to give permission to the Collector to make a reference. Thus, on

basis of such permission of Board of Revenue, Collector was not authorised to move the Land Acquisition Collector to make a reference to the civil court. Besides, determination of excessive compensation can be challenged in such reference. There is no scope for reference under Section 18 (3) in respect of apportionment. Offer of 6 Annas of the amount of compensation to respondents declaring the balance 10 Annas interest to be of State Government cannot be assailed by State Government which is bound by the decision of the Collector though respondents can challenge the same in reference.

6. In appeals by State Government, award of 6 Annas interest to respondents by Land Acquisition Collector, which has been enhanced to full interest minus capitalisation of rent by learned District Judge is challenged. Challenge to award of Collector by State Government is prohibited under Section 25 of the Act. Learned Advocate General has relied upon Section 18 (3) of the Act as inserted by amendment of the State legislature in support of such challenge. Section 18 (3) provides that in a case where Collector has offered compensation which is excessive, Land Reforms Commissioner can requisition Collector to make a reference to civil court for determination of market value. Period of limitation has been provided under Section 18 (4) of the Act as inserted by State Legislature by amending Section 18.

7. In view of our decision that reference at the instance of District Collector is incompetent, we need not to go into the question of limitation for such reference under Section 18 (3), which is of a academic interest only.

8. In spite of decision that it is not open to State Government, to assail 6 Annas interest to respondents by Land Acquisition Collector, we are satisfied that disturbing the apportionment made by the Land Acquisition Collector affects interest of the State Government and accordingly, appeals are maintainable.

9. Learned Advocate General submitted that in spite of the fact that State Government can not challenge award of Collector offering compensation at the rate of 6 Annas per rupee, the rate can be challenged so that any higher amount of compensation that what has been awarded by Land Acquisition Collector would not be directed to be paid in case the rate of market value is enhanced. There appears to be some force in contention of learned Advocate General in view of language of Section 25 of the Act which restricts interference with the total amount of compensation awarded by Collector and not the reasons for such award. There can be no doubt that land owner can challenge the reasons for enhancement of compensation. Therefore, both parties can challenge the reasons given by Land Acquisition Officer though State Government or the person for whom land is acquired cannot assail the total amount of compensation unless there is a valid reference under Section 18 (3) of the Act as legislated in this State.

10. Relying upon the decision of Supreme Court reported in AIR 1955 SC 298 Collector of Bombay v. Nusserwanji Ratanji Mistri and others. Mr. Swami Deal,

learned counsel for respondents submitted that in view of the fact that Land Acquisition Officer issued notice under Section 9 of the Act and State Government acquired the land under the Act, it cannot be disputed by State Government that respondents have some interest in the acquired land since State Government cannot acquire its own interest. There is force in contention of Mr. Deal. If, on account of lack of care of the officers responsible for acquisition, State Government has admitted some interest of the respondent it cannot in the same proceeding challenge such interest. Loss to State Government can be recovered from those delinquent officers. Therefore, this appeal is to be decided assuming that respondents have some interest in the acquired land.

11. Land Acquisition Collector offered compensation at the rate of 6 Annas in a rupee to the respondents relying upon a decision of Full Bench of the Court reported in AIR 1934 All 239, *Shay am Lal v. Collector, Agra*, Mr. Swami Dayal is correct in distinguishing the decision which is in respect of agricultural land and practice prevailing in the area during that time. Such a decision would not govern the interest of respondents in this case.

12. Once the decision of this court is distinguished this court to decide the respective interests of respondents and State Government in the acquired land on basis of the materials produced, keeping, note that compensation offered to respondents by land Acquisition Collector cannot be reduced in view of Section 25 of the Act.

13. Respondents were claiming title to the acquired land being purchasers of interest of their vendors as perpetual lessees of Nazul land. In support of this claim, they have produced copy of a letter by the Executive Engineer on behalf of the Crown in 1892 transferring the acquired land with other area to an Indigo planter with a term to pay annual rent as provided therein. Indigo planter transferred his interest to a Mission in the Year 1863. Mission in its turn transferred its interest to Rana, who is the predecessor in interest of vendors of respondents. If this is the interest of respondents it becomes a crown grant and not a perpetual lease. But, a copy of a register seated to be maintained by Government in 1910 produced by respondents indicate that Rana had the interest of perpetual lease on land in possession being Nazul land. Rana executed a will. Executor of the will was not clear about the title of Rana. There are some documents in the record to indicate that Rana before his death applied for lease of land. His legal representative also did not execute the lease deed. Mr. Swami Dayal's submission that lease might be in respect of some other land and not the acquired land. There is no material in support of submission of Mr. Swami Dayal. Subsequent award for partition indicates that there was no difference between the acquired land and other land of Rana. In this background, State Government relied upon two decrees for recovery of arrears of rent which is not disputed to relate to the acquired land and other land. Judgments in those suits are 27 of 1941 and 22 of 1959. Both the suits were decreed. In the judgment it was stated that Ranas were in possession on basis of short term lease. In a suit

filed by State Government in 1970, for ejectment of Ranas, State Government averted that on expiry of short term lease, Ranas were to be evicted. Suit, however, was not decided on merits as on account of nonsubstitution of a deceased defendant, suit abated. There is no material that Ranas were claiming to have perpetual lease in the suits of 1941 or 1959 or in suit of 1970. When respondents were claiming full interest on basis of transfer of perpetual lease, they were to prove the same. Since there is no clear proof, respondents are to suffer the finding that they purchased interest of tenant holding over.

14. Neither appellant nor respondents advanced any submission to determine share of a tenant holding over in the acquired land. Accordingly, we are not in a position to decide the said question. Apportionment of Land Acquisition Officer is therefore, confirmed and the same by learned District Judge is reversed since he proceeded on the footing that respondents have interest on basis of perpetual lease which we have not accepted.

15. Acquired land is Nazul land and Nazul Rule 1935 land is applicable. Such is applicable in 1968 when respondents purchased the acquired land. In the Nazul rules prior permission was necessary for the purpose of transfer by a lessee. Transfer to respondents is not supported by any permission. Accordingly, their claim of interest on basis of perpetual lease would be of no assistance to them.

16. Although, learned Advocate General submitted that transfer in favour of the claimants being invalid they are not entitled to any compensation, we are not able to appreciate this submission, when Rana has entered appearance before the Land Acquisition Collector and stated that the compensation would be paid to the claimants, as they have transferred their interest, respondents are entitled to compensation as tenant holding over and not as perpetual lessee.

17. Mr. Swami Dayal relied upon a decision reported in AIR 1955 298 (supra) and submitted that it is only the interest of the tenants which can be acquired and not of the State Government. Accordingly, entire amount determined in respect of interest of respondents as interest by the State Government has not been acquired. There is no force in the submission. Land Acquisition Collector has not determined market value of whole interest and therefore, only 6 Annas interest of the claimants has been acquired for which they have been paid for. The apportionment is correct.

18. Coming to the market value of the land acquired, Mr. Dayal, learned counsel for claimants has put strong reliance on the agreement made in respect of 600 sq. yards of land acquired prior to the Notification under Section 4(1) of the Act. The intending purchaser has been examined in this case. He stated that he had an agreement to purchase 600 sq. yards land at the rate of Rs. 70 per sq. yard and paid advance of Rs. 1000. However the Notification under Section 4(1) of the Act having been published, the transaction could not materialise when he failed to get the proposed land sought to be purchased by him excluded from acquisition he has taken back advance paid. Application filed by the witness

before Land Acquisition Collector for release of the land from acquisition has been relied on by civil court and reading the same with the statement of the witness learned District Judge held that market value has to be determined on that basis. Learned Advocate General, however, submitted that agreement cannot be basis in the peculiar circumstances of this case.

19. Mr. Swami Dayal has put strong reliance on the decision reported in AIR 1982 SC 63 Bangaru Narasingha Rao Naidu v. Revenue Divisional Officer, Vizianagram and submitted that agreement can be the basis for determination of market value According to him, this agreement being for a short period before the Notification under Section 4(1) of the Act should have been accepted. We have no doubt that in absence of sale transactions in vicinity of land acquired having for similar advantages, agreement can become material for being utilised to determine the market value, provided the same is acceptable. In this case, there was a written agreement. There is no explanation why the written agreement has not been proved in this case. Where an agreement is to be relied on, the term of agreement are to be examined to find out why the rate mentioned therein was agreed to be paid. Oral evidence is no substitute for the agreement itself. Therefore, in this case in absence of proof of any interest of respondents better than a tenant holding over which is a precarious possession, we are not inclined to interfere with determination by Land Acquisition Collector at the rate of Rs. 33.30 per sq. yard. In conclusion, claimants are entitled to compensation as determined by the Land Acquisition Collector.

20. In result, appeals are allowed in part and crossobjections are dismissed. There shall be no order as to costs.

Appeals allowed.