

(1998) 05 AHC CK 0055

In the Allahabad High Court

Case No : First Appeal No's. 1176 of 1990 and 59 of 1991

State of U.P.

APPELLANT

Vs

Mohar Singh

RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 150, 151, 54
Land Acquisition Act, 1894 — Section 11, 18, 19, 20, 21

Citation : (1998) 3 AWC 2049

Hon'ble Judges : R.R.K. Trivedi, J; R.K. Mahajan, J

Bench : Division Bench

Advocate : M.C. Dwivedi and S.C, for the Appellant; Ramesh Chandra Sinha, for the Respondent

Judgement

R. K. Mahajan, J.—This Judgment will dispose of aforesaid two first appeals arising out of the same notification and acquisition is also for the same purpose.

2. First Appeal No. 1176 of 1990, has been filed by the State of U. P. against the award dated 22.8.1990 passed by Sri Sudhir Kumar, VIIth Additional District Judge, Muzaffarnagar for quashing the same. First Appeal No. 59 of 1991, has been filed by Shri Mohar Singh against the aforesaid award for enhancement of the claim from Rs. 5,800 per bigha to Rs. 12,000 per bigha. The First Appeal No. 59 of 1991, has arisen as Mohar Singh was not satisfied with the claim of Rs. 5,800 per bigha which was awarded by the Additional District Judge vide order dated 22.8.90 on a review application u/s 150. C.P.C. read with Section 28(A) of Land Acquisition Act, 1894 (hereinafter referred to as the Act).

3. It appears that a big chunk of land measuring 2,064 Bighas 14 Bis was 19 Biswansi was acquired in village Jalalpur, Behra, district Muzaffar Nagar u/s 4 of the Act on 21.4.1984. The possession of the land was taken on 18.12.1984. The aforesaid land was acquired for making "Bandh" on the bank of Ganges Canal. The Special Land Acquisition Officer on 26.4.1986 awarded compensation of Rs. 2,332 per bigha to Rs. 4,050 per bigha according to soil quality of land. Mohar

Singh, who is respondent in the appeal filed by the State of U. P., was having 1/3rd share in 50 Bighas and 1 Biswa of land regarding which award was given. The Land Acquisition Officer had awarded compensation at the rate of Rs. 2,015 per bigha. The kind of land was Khadar Soyam Khaki. It appears that against the award of the Land Acquisition Officer reference was filed on 21.1.1988 and against the said reference the State has filed objections on 1.7.1988. The District Judge enhanced the compensation to the tune of Rs. 3.222 per bigha in respect of 1 /3rd share of Shri Mohar Singh and also granted usual statutory benefits under the Act such as 30% solarium and 12% interest was also awarded. It appears that the respondent Mohar Singh was not satisfied from the award of the District Judge dated 6.12.1988. Now the real controversy starts. Mohar Singh was not satisfied with the award of the District Judge dated 6.12.1988 passed in Land Acquisition Reference No. 428 of 1987. It is not disputed by the learned counsel for the parties that the first appeal was filed before this Court by the respondent Mohar Singh and the same was dismissed for not paying sufficient court fees.

4. Shri Mohar Singh moved an application before the District Judge being Misc. Case No. 44 of 1990 u/s 151. C.P.C. read with Section 28A of the Act. The application aforesaid was allowed vide judgment and order dated 22.8.1990 by VIIth Additional District Judge, Muzaffar Nagar by which the learned Additional District Judge has accepted the application and enhanced the amount to Rs. 5,800 per Bigha. The aforesaid judgment dated 22.8.1990 is under challenge in appeals aforesaid.

5. In the grounds of appeal filed by the State in para No. 3 it is averred that Mohar Singh should have approached the Collector u/s 28A of the Act instead of moving the application before the Additional District Judge numbered Misc. Case No, 44 of 1990 and he had chosen wrong forum. It is further submitted in the grounds of appeal that notification for the big chunk of land for Madhya Ganga Nahar Pafiyojna and it cannot be said with certainty that the land of Surjeet Singh was also of the same quality as that of respondent Mohar Singh. Learned standing counsel has submitted that the District Judge had no power u/s 151. C.P.C. to review the award.

6. Learned counsel for the appellant-Mohar Singh submitted that compensation of Rs. 5,800 per bigha has been given to other co-sharer. He further submitted that dismissal of appeal for want of court fee is not an appeal in the eyes of law. It was not contested and decided on merits. We are of the view that power u/s 151, C.P.C. cannot be exercised. There is remedy of appeal u/s 54 of the Act to the High Court. It is now undisputed proposition of law that Section 151 is applicable only if no specific provision provided under the Civil Procedure Code. Enhancement power cannot be invoked to nullify statutory provision as held in Mahesh Chand Gupta Vs. State of Madhya Pradesh and Others, . It is also undisputed proposition that where statute requires to do a certain thing in a certain way. the thing must be done in that way or not at all. Inherent power

cannot be exercised to override the substantive rights of the parties. It would be something playing fraud with the State revenue that appeal is filed and court fee is not paid and it is got dismissed on knowing that compensation has been increased and he would avail remedy u/s 151, C.P.C. This was not the intention of the legislature at all. Section 28A of the Act deals with the redetermination of the amount of compensation on the basis of the award of the Court. For ready reference Section 28A of the Act is quoted below :

"28A. Redetermination of the amount of compensation on the basis of the award of the Court.--(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11. the persons interested in all the other land covered by the same notification u/s 4, subsection (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court :

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under subsection (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be. apply to such reference as they apply to a reference u/s 18."

7. Learned counsel for the appellant relied upon Sri Aulvin V. Singh Vs. Smt. Chandrawati, and Dharma Samaj Society, Aligarh Vs. Ram Kishan Dass and Another, . We are of the view that these judgments are not applicable in the facts and circumstances of this case.

8. The Additional District Judge has misconstrued Section 28A of the Act read with Section 151, Civil Procedure Code. It is only applicable to whom who has not filed reference u/s 18 of the Act. In this case reference was sought by the appellant. This controversy has been concluded by the Hon"ble Supreme Court in Union of India and others etc. Vs. Mangatu Ram, etc., and Smt. Bhagti (deceased) through her Bhagti (Smt) (Deceased) through her Lrs. Jagdish Ram Sharma Vs. State of Haryana, . Ratio in both the aforesaid cases is that Section 28A of the Act is only applicable where reference u/s 18 of the Act is not filed by

the affected persons.

9. So in our view the Additional District Judge fell into error of law and the allowing of enhanced compensation u/s 151. C.P.C. read with Section 28A of the Act is illegal and we set aside the same and the First Appeal No. 1176 of 1990 is allowed. The First Appeal No. 59 of 1991 is dismissed. No order as to costs.