

(2006) 10 AHC CK 0163
In the Allahabad High Court

State of U.P.

APPELLANT

Vs

Ram Swaroop, IVth Additional District Judge and U.P. Rajya
Viddut Utpadan Nigam Ltd.

RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 30, 4, 6

Citation : (2007) 1 AWC 728

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Prakash Krishna, J.—This appeal is directed against the award of civil court dated 30th of January, 1993 passed in Reference Case No. 216 of 1986. The State of U.P. acquired certain piece of land for the purposes of establishing Parichha Thermal Power Station at Jhansi. Notification u/s 4 of the Land Acquisition Act was issued on 22.4.1978. It was followed by the notification u/s 6 of the Land Acquisition Act dated 29.4.1978. Certain plots of claimant respondents were also acquired by the aforesaid Land Acquisition Notifications. The Special Land Acquisition Officer awarded compensation at the rate of Rs. 3, 000/- per acre by the award-dated 1.12.1978. Feeling aggrieved against the aforesaid award, an application u/s 18 of the Land Acquisition Act was filed for making the reference to the civil court. The District Magistrate referred to the civil court. The court below on the basis of the material on record enhanced the compensation and awarded it at the rate of Rs. 10, 000/- per acre. It also enhanced solatium from 15 per cent to 30 per cent. Feeling aggrieved against the judgment of the Reference Court the present appeal is at the instance of the State of U.P

2. Heard Shri Bhagwati Prasad Singh along with Shri Shishir Chandra Khare, the learned standing counsel for the appellant and Shri S.S. Chauhan, the learned Counsel for the contesting respondent No. 1.

3. The learned Counsel for the appellant in support of the appeal raised the

following three points:

Firstly he submitted that the reference before the court below was time barred. Secondly, the compensation awarded by the court below on the basis of the compensation awarded to Bhagwati cannot be taken as basis for enhancement of the compensation in the present case. Thirdly, that the Reference Court erred in law in enhancing the solatium from 15 per cent to 30 per cent and invoking the amended law. In reply, the learned Counsel for the respondents supported the judgment of the court below.

4. So far as the question of limitation is concerned, the learned Counsel for the appellant after going through the written statement filed on behalf of the State of U.P. before the Reference Court admitted the position that no such plea was raised therein. u/s 18 of the Land Acquisition Act, period of limitation for making a reference application has been provided for to refer the matter to the Civil Court. The learned Counsel for the appellant on the basis of Section 18(2) Proviso (b) made the submission that at any rate 6 months time from the date of Collector's award is the maximum period for making application for reference. Elaborating the argument it was submitted by the appellant that in the present case, admittedly, the date of award is 1st of December, 1978. The Reference Application was made on 7th of August, 1979. He submitted that taking 6 months time from the date of award, obviously the reference application was barred by time. I have given careful consideration to the said submission but unable to agree with him. The Supreme Court in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, has interpreted the word the date of award". It has been held that the date of award does not mean the day on which the award is made. It means the day on which the award has been communicated to the person affected by the award. In the present case, there is no material on record to show as to when the award was communicated to the claimant respondents. The learned Counsel for the appellant strenuously placed reliance upon a document being Prapatra 8 Anusoochi - E on page No. 10 of the Paper Book. The said document: is in the nature of a service report, submitted by the Special Land Acquisition Officer. It is really unfortunate that the said document does not contain any date. The learned Counsel for the appellant in spite of repeated queries made by the Court could not point out the date on which the award was communicated to the claimant respondents. In this view of the matter the said document cannot be relied upon. Moreover the court below on the basis of the material on record has preferred to believe the statement of the claimant respondent that he came to know of the award on 23.7.1979. The said finding of the court below could not be demonstrated to be perverse or illegal. In this view of the matter reckoning the period of 6 months from that date i.e. 23.7.1979 but it is obvious that the reference application was filed within time.

5. The second point raised by the learned Counsel for the appellant relates to the determination of the quantum of compensation. The court below has discussed

the matter under issues No. 1 and 2 and has held that the land of the claimant respondents was irrigated and fertile land. The said land is situated on National Highway namely Jhansi Lucknow Road. The irrigation facility by way of well is also admitted to the parties. Before the Reference Court the judgment and order of other claimants were produced as exemplar/guideline for fixation of the compensation. In the case of Bhagwati the Reference Court had granted compensation at the rate of Rs. 10,000/- per acre. Similarly, the judgment and order of other tenure holders namely Kalka Prasad, Avtar Singh etc. were produced. The contention of the learned Counsel for the appellant is that against the aforesaid judgment and order appeal was filed which was dismissed as barred by time and the said order was confirmed by the Apex Court. His argument is that this Court had no occasion to examine the legality and validity of the compensation awarded in the case of Bhagwati etc. Be that as it may, the fact remains that the compensation at the rate of Rs. 10,000/- per acre has been granted to other tenure holders whose lands are adjoining to the present claimant respondent. No. 1, there is no justification for not granting the compensation at the same rate to the present claimant respondent No. 1. The court below has placed reliance upon the judgment of the Apex Court in the case of *Kripa Rangoi v. Deputy Collector* (1982) 2 S.C.C. 324. It has been held in the said case that while determining the compensation under the Land Acquisition Act, the compensation awarded to the nearby plots and acquired under the same notification should be awarded to the other tenure holders. It is not the case of appellant that the land of the claimant respondent No. 1 was in any way inferior in quality than the land of Bhagwati. Moreover, from the reading of the judgment of the court below it appears that on the contrary the land of the claimant respondent No. 1 is better situated as it is abutting the National Highway. In this view of the matter the finding of the court below that the compensation should be awarded at the rate of Rs. 10,000/- per acre is perfectly justified in law. It is based on relevant consideration and material on record. The learned Counsel for the appellant was not able to point out any perversity or factual error therein.

6. The third and last point urged by the learned Counsel for the appellant that the court below erred in granting the solatium and interest as per the amended law. It appears that the said controversy stands covered by judgment of the Apex Court in the case of *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, . Indisputably in the present case the reference was pending before the court below which was decided on 30th of January, 1993 wherein it has been held as follows:

There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) of amendment Act in respect of an award made by the Collector between 30 April, 1982 and 24th Sept, 1984, Likewise the benefit of the enhancement solatium is extended by Section 30(2) to the case of an award made by the Court between 30th April, 1982 and 24th September, 1984, even though it be upon reference from an award made before 30th April, 1982.

The dispute is about the meaning of the words "or to any order passed by the High Court or Supreme Court on appeal against any such award" used in Section 30(2)?. Are they limited, to appeals against an award of the Collector or the Court made between 30 April, 1982 and 24 September, 1984, or do they include also, appeals disposed of between 30th April, 1982 and 24th September, 1984 even though arising out of awards of the Collector or the Court made before 30th April, 1982. It is significant to note that the Parliament has identified the appeal before the High Court and the appeal before the Supreme Court by describing it as an appeal against "any such award". The words "any such award" are intended to have deeper significance, and in the context in which those words appear in Section 30(2) it is clear that they are intended to refer to awards made by the Collector or Court between 30 April, 1982 and 24 September, 1984. In other words Section 30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between 30 April, 1982 and 24 September, 1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before 24th September, 1984 or after that date. All that is material is that the award by the Collector or by the Court should have been made between 30 April, 1982 and 24th September, 1984. It cannot be said that the words "any such award" only mean the award made by the Collector or Court, and carry no greater limiting sense. No such words of description by way of identifying the appellate order of the High Court or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchical structure of forum contemplated in the parent Act those appellate orders could only be orders arising in appeal against the award of the Collector or of the Court.

7. The aforesaid view has been reiterated in *Union of India and Ors. v. Filip Tiaao De Gama* AIR 1990 S.C. 981 wherein it has been held that the benefit of higher solatium u/s 23(that) should be available also to such cases where the matter was pending before the Reference Court on 24th of September 1984, as this would be the only reasonable view to be taken in the circumstances of the case and in the light of the purpose of Section 30(2). The Supreme Court affirmed the grant of higher solatium by the High Court.

8. Following the aforesaid rulings in *Ravindra Sinah v. State of U.P.* 2004 (54) A.L.R. 8 it has been held that solatium at higher rate should be granted when the matter was pending before the Reference Court on 24th of September, 1984.

9. So far as grant of additional compensation at the rate of 12 per cent by the Reference Court on the market value for the period 24th February 1978 to 31st May, 1978 is concerned the same cannot be sustained. The Apex Court in the case of *Union of India v. Filip Tiaqo De Gama* (Supra) has held that additional amount provided u/s 23(1A) of the Land Acquisition Act shall be applicable to acquisition proceedings pending before the Collector as on 30th of April, 1982 in which he has not made the award before that date. If the Collector has made the

award before that date then, that additional amount cannot be awarded. Section 30(1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30th April 1982 irrespective of the fact that whether the Collector has made award or not before 24th of September, 1984. The final point to note is that Section 30(1) does not refer to court award and court award is used only in Section 30(2).

10. The case of *Sunder v. Union of India and Ors.* 2002 U.P.L.B.E.C. 204 does not deal with regard to the increase or decrease of the solatium. But it has been held therein that the interest should be imposed on whole aggregate amount of compensation awarded and the compensation includes solatium also.

11. In view of the above discussion, the appeal is allowed in part, as indicated above. The order of the Reference Court granting additional amount of compensation at the rate of 12 per cent on the market value of the land for the period 22.4.1978 to 31.5.1978 is set aside. In respect of all other items, the appeal is dismissed. The parties shall be entitled to receive and pay cost proportionately to their success and failure the appeal.