
(1973) 11 AHC CK 0014
In the Allahabad High Court
Case No : First Appeal No. 181 of 1966

The Collector, Dehradun and Another	APPELLANT
Vs	
Daya Ram	RESPONDENT

Date of Decision : 27-11-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25(2), 9

Citation : AIR 1974 All 284

Hon'ble Judges : S. Malik, J

Bench : Single Bench

Advocate : B.C. Saxena, K.C. Saxena and M.Y. Siddiqi, for the Respondent

Final Decision : Allowed

Judgement

S. Malik, J.—This appeal arises out of the judgment dated 27-11-1965 of the Civil Judge Dehradun, in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the Act).

2. The relevant facts are that an area measuring 53.64 acres has been acquired by the State Government to provide land for the construction of a power channel and residential quarters etc., of the Yamuna Hydel Scheme. This area comprises a number of plots including plot No. 1768 measuring 30 acre. The subject-matter of the reference u/s 18 giving rise to this appeal is the said plot No. 1768 measuring .30 acre and the trees standing thereon.

3. The notification u/s 4 of the Act was published on the 19th of November, 1960 and the notification u/s 6 was notified on the 31st of December, 1960. The notice u/s 9 of the Act inviting objections, if any, was notified on the 28th of March, 1961. Thereafter the objector-respondent filed his objections within the period provided by law. It is also apparent that the Land Acquisition Officer did not award any compensation to the respondent in respect of plot No. 1768 and the trees standing thereon because, according to the Land Acquisition Officer, the plot was Banjar land on the date of vesting under the U. P. Zamindari Abolition

and Land Reforms Act (Act No. I of 1951) and, therefore, vested in the Gram Samaj and the respondent had no interest therein. The appellants i.e., the Collector and the Deputy Land Acquisition Officer also took the plea that the trees standing in plot No. 1768 had been cut away by the respondent before the Collector took possession of the same.

4. The first contention put forward on behalf of the appellants was that the lower court erred in recording a finding that plot No. 1768 was abadi land on the date of vesting or in other words, in the year 1359 F. and, therefore, it could not have vested in the Gram Samaj. After considering the evidence on the record and the reasons given by the court below, I see no force in this contention. As has been pointed out in the impugned judgment, the appellants did not file any Khasra to show that during 1359 F or during any year prior to it the plot in question was Banjar land. The objector-respondent, besides examining himself, examined two independent witnesses, namely P. W. 1. Brahma Dutt, a former Chairman of the Choharpur Town Area Committee and P. W. 2 Pyare Lal who supported the respondent and stated that the respondent had his house in plot No. 1768 till about 1959 or so. As has been pointed out, there are some minor contradictions which obviously were due to lapse of memory. The evidence adduced by the appellants on the other hand, consisted of statements made by interested witnesses and, as already pointed out, no relevant documentary evidence was produced. It has also been rightly pointed out that if the land had vested in the Gram Samaj, it should not have been in possession of the respondent. The lower court has rightly attached considerable importance to the fact that admittedly possession of plot No. 1768 was taken from the respondent. Therefore, on the basis of material on the record, the lower court rightly concluded that the land in question was abadi land on the date of vesting and as a matter of fact, till about the year 1958 or 1959 and, therefore, it could not have vested in the Gram Samaj.

5. Similarly, it could not be said that the finding of the court below regarding the trees is not in accordance with the evidence on the record. One of the witnesses examined by the appellants, D. W. 2 A. L. Saxena, the then Deputy land Acquisition Officer who gave the award in this case, admitted that he had found the trees in existence in accordance with the list (Ex. A-2) prepared by the appellants three or four months after possession of the plot was taken by the Collector. The lower court therefore, rightly concluded that there were 20 trees, as shown in Ex. A-2, in existence in the plot at the time its possession was taken by the appellants from the respondent.

6. The question which next arises, is regarding compensation to be awarded to the respondent in respect of .30 acre of land comprising plot No. 1768, and the twenty trees which were in existence in it. The learned Counsel for the appellants pointed out that a perusal of the objections filed by the respondent on receipt of the notice u/s 9 of the Act will show that in it though a large number of objections were raised, the respondent nowhere specified the amount he claimed

as compensation either for the land or for the trees and, therefore, in view of Section 25(1) and (2) of the Act, the court below could not award any compensation to the respondent either for the land or for the trees. It was pointed out that Sub-section (1) of Section 25 of the Act lays down that the amount awarded by the Court shall not exceed the amount claimed by the objector in his objections filed on receipt of the notice u/s 9 and that the amount awarded shall not be less than the amount awarded by the Collector. Sub-section (2) of Section 25 lays down that where the objector, in this case the respondent, did not make any specific claim or specify the amount he claimed as compensation, the Court shall not award as compensation an amount exceeding the amount awarded by the Collector. In support of this contention my attention was drawn to the observations made by a Division Bench of this Court in the case, *Secy. of State v. Bishun Dat* (1911) 8 All LJ 115. It has been held in the ruling cited that Clause (2) of Section 9 of the Act intends that the owner of the property pointed out to be acquired should appear and state his claim in the manner provided by the said clause and that where the owner of the property or in other words the objector failed to specify the amount which, according to him, should be the proper compensation for the land acquired without sufficient cause failure on his part to comply with the provisions of Section 9 (2) of the Act would be an absolute bar to the obtaining of an amount greater than that awarded by the Collector. Besides the ruling cited, my attention was drawn to a number of other cases reported in AIR 1930 Mad 618, *A.P.S. Karuppaiah Nadar Vs. Special Dy. Collector for Land Acquisition, Virudhunagar and Another*, *The State of Hyderabad Vs. Mohammad Omerali and Another*, *State of Hyderabad v. Mohammad Omerali*. Under the circumstances, I agree with the learned Counsel for the appellants that as the respondent did not specify any amount which, according to him, should have been the proper compensation for the land or the trees acquired, this Court could not fix an amount as compensation more than what may have been awarded by the Collector. But the difficulty which arises in this case is that no compensation at all was awarded by the Collector either for the land acquired or for the trees standing thereon. In my view, because of what has been discussed, the proper course to adopt in this case would be to refer back the matter to the Collector for fixing the amount of compensation to be awarded to the respondent in respect of the land and the trees acquired or in other words plot No. 1768 measuring .30 acre and the twenty trees described in Ex. A-2.

7. The appeal is allowed, the judgment dated 27-11-1965 is hereby set aside and the Collector, Dehradun is hereby directed to reopen the case and after giving a fresh notice to the respondent determine the compensation to be awarded to the respondent in respect of .30 acre of land comprising plot No. 1768 and the twenty trees which were in existence thereon. Parties to bear their own costs.