
(2001) 11 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : CIMA No. 186/1993 & Cross Obj. (CIMA) No. 202/1993

Union of India and another

APPELLANT

Vs

Kamal Kant Gupta and others

RESPONDENT

Date of Decision : 16-11-2001

Acts Referred:

Land Acquisition Act, 1990 — Section 18, 25

Citation : AIR 2002 J&K 115 : (2002) KashLJ 518 : (2002) SriLJ 181

Hon'ble Judges : R.C.GANDHI, J

Bench : Single Bench

Advocate : Ajay Sharma, Addl. CGSC, H. L. Bhagotra, Sr. Advocate with Raghu Mehta and Sindhu Sharma, Advocates appearing for the Parties

Judgement

1. This appeal has been preferred against the Award dated 30.09.1993 passed by the Arbitrator (District Judge, Rajouri) in respect of land

measuring 36 kanals 10 marlas bearing Khasra Nos. 259 and 260 min. of village Gurdan Pain, Tehsil Rajouri whereby he has enhanced the award

amount of Rs. 11.000/ to Rs. 40.000/ per kanal.

2. Land measuring 204 kanals and 10 marlas situated in village Gurdan Pain in Tehsil Rajouri bearing Survey Nos. 265, 259, 260, min. 262, 266

and 263 was acquired under the provisions of the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act. 1968

(hereinafter called the ""Act of 1968"").

3. The respondents including the other aggrieved persons filed an application for appointment of an Arbitrator, under Section B of the Act of 1968.

The Arbitrator was appointed for assessing the compensation claims of Dhanwanti. Mulakh Raj and the Respondents. The Arbitrator after

appreciating the evidence on record has enhanced the award of the suit land to

Rs. 40.000/ per kanal vide impugned award dated 30.09.1993.

4. Aggrieved of the award of the Arbitrator, appellants have filed this appeal on the grounds that the award is not sustainable and that the solatium

and the interest has been directed to be paid despite there being no provision in the Act of 1968 to grant solatium and interest.

5. Cross objections have also been filed by the respondents Kuldeep Raj, Subash Chand & Romesh Chander, Kuldeep Raj and Romesh Chander

have expired and their Legal Representatives have been brought on record. The respondents have challenged the award claiming that the award

amount should be enhanced to Rs. 80000/ per kanal and besides that solatium @ 24 % and interest @ 24 % be also paid on the award amount.

6. Heard learned counsel for the parties and perused the record.

7. At the very outset. Mr. Bhagotra, learned Senior Counsel representing the Respondents has submitted that he does not press the relief for

solatium and interest. He is otherwise also not entitled thereto in view of the law laid down by the Supreme Court in case titled ""Union of India vs

Dhanwanti"" reported as 1996 (6). SCC. 44.

8. Mr. Ajay Sharma, learned counsel representing the Appellants has submitted that the evidence led by the respondents before the Arbitrator by

recording statements of Tilak Raj, Krishan Lal, Arun Kumar including that of Respondent Kuldeep Raj is not credit worthy with regard to the

valuation of the land acquired in the year 1986.

9. He has drawn the attention of the Court towards the statements of these witnesses. It is gatherable therefrom that the suit land is situated about

1 to 1/2 kilometers away from the Bus Stand, Rajouri which is a town having District Head Quarters. Krishan Lal has stated that the land of Tilak

Raj is about 1 1/2 Kilometers away from the Bus Stand. The cost of the land of Arun Kumar is Rs. 6000/ per kanal and its cost was Rs. 3000/to

Rs. 4000/ per marla in 1986. Tilak Raj has sold his land @ Rs. 4000/5000 per marla, whereas Arun Kumar has purchased it at the same rate. He

has produced a copy of the Sale Deed also. ZahurudDin has also sold the land (shop sites) measuring 10'x23' for Rs. 1.6000/ to Rs. 20000/ in

October, 1986 and his land is about 1/2 Kilometers away from the Bus Stand. Sanjeev Gupta has also stated that his uncle Mulkh Raj has been

paid compensation @ Rs. 75000/per kanal. The land is agricultural and produces

two crops. Kuldeep Raj has stated that his land has been acquired by the Army which is situated in village Gurdan Pain adjacent to the land of Dhanwanti. Dhanwanti has been paid compensation @ Rs. 60000/ per Kanal The land of Mulak Raj was also acquired by the same appellants and had been paid compensation @ Rs. 75000/ per kanal.

10. It is not in dispute that a common notification was issued on 29.01.1986 for acquiring 204 kanals and 10 marlas of land of villages Gurdan Pain, Ram Pur and Talwar owned by Smt. Dhanwanti. Mulkh Raj and the respondents. The collector, Rajouri vide his order dated 03.11.1986 assessed the compensation at Rs. 11000/ per kanal in favour of the respondents.

11. The award of the collector was challenged by Dhanwanti before the Arbitrator, District Judge, Rajouri, who enhanced the award from Rs. 11000/ to Rs. 60000/. In appeal, the award has been maintained by this court. Appellants challenged the order of this court before the Supreme Court. The Supreme Court quashed the order of this court so far as it granted interest and solatium but did not disturb the enhanced compensation. Similarly, the award of the Collector on being challenged by Mulak Raj was enhanced by the Arbitrator to s. 60.000/ per kanal. In a peal before this court, it came to be enhanced to Rs. 75000/ per kanal, vide judgement dated 29.09.1992. It was challenged before the Supreme Court by the Union of India in Civil Appeal Nos. 14061407 of 1993. The Supreme Court, vide its judgement dated Oct. 01.1997, dismissed the appeal and maintained in order of this court to the extent of payment of compensation but set aside the order of granting interest and solatium.

12. The plea of the learned counsel is that the land in dispute being quite adjacent to the land of Smt. Dhanwanti, having the same soil and status, the respondents are also entitled to the Same rate of compensation though they have claimed compensation @ Rs. 80000 per kanal before this court. Mr. Sharma has submitted that the respondents are not entitled to this compensation as during the proceedings before the Collector, Deputy Commissioner, Rajouri, respondent Kuldeep Raj has submitted that he be paid compensation @ Rs. 40000/ per kanal. From the record, it is seen that the Collector has not agreed with it. Before the Arbitrator, respondents have raised the claim of Rs. 75000/ and before this court Rs. 80000/ per kanal.

13. The plea of Mr. Sharma that respondents are not entitled to the enhanced rate of compensation as assessed by the Arbitrator is misplaced, as the award of the Arbitrator is based on documentary evidence placed on record and the oral evidence led by the respondents. There is cogent evidence making out a case for enhancement of the award and the award of the Arbitrator does not suffer on that count being supported by evidence.

14. Mr. Sharma's further plea is that the respondents are estopped in law to claim compensation at different rates before the collector or before this court. This, apparently appears to be appealing. Mr. Bhagotra, learned counsel for the Respondents in rebuttal relying upon Section 25 of the J&K Land Acquisition Act, 1990 and Section 8 of the Act of 1968, has submitted that there is no provision in this Act of 1968 which can take away the rights of the claimants to seek enhancement of the compensation despite of the fact of having raised the restricted claim.

15. With a view to appreciate the provision of law, Section 25 of the Land Acquisition Act, is reproduced below :

25. Rules as to amount of compensation. (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 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 under Section 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 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.

16. Section 8 of the Act of 1968, reads as under:

8. Principles and methods of determining compensation (1) Where any property is requisitioned or acquired under this Act, there shall be given compensation which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say :

a. where the compensation can be fixed by agreement, it shall be given in

accordance with such agreement;

b. where no such agreement can be reached, the Government shall appoint as arbitrator a person, who is a District Judge or Additional District

Judge.

c. the government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or

acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same

purpose;

d. at the commencement of the proceedings before the arbitrator, the Government and the person to be compensated shall state what in their

respective opinion is a fair amount of compensation;

e. the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and

specify the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of

each case and the provisions of subsections (2) and (3), so far as they are applicable;

f. where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the

arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such person.

g. nothing in the Jammu and Kashmir Arbitration Act, 2002, shall apply to arbitrations under this section.

17. Having not satisfied with the award of the Collector, invoking Section 8(1) (b) of the Act of 1968, they sought appointment of the Arbitrator.

In terms of Clause (d), before the Arbitrator at the commencement of the proceedings, the Government and the persons to be compensated has to

state their opinion as to what is the fair, amount of compensation. This opportunity, provided by the statute, was made available to the parties and

in response thereto, the respondents have submitted that they be paid compensation @ Rs. 75000/ per kanal. Whereas the appellants have not

made any suggestion or grievance. To meet the plea of Mr. Sharma, Mr. Bhagotra learned Senior Counsel has also relied upon the judgement

delivered in case titled Padamshri Humayun Mirza vs. The Station Director,

reported as AIR 1975 Kant. 124, where the question of determination of compensation of land of particular period was in issue and the plea taken was that once the compensation has been fixed the claimant is estopped from pressing into service the mandate contained in Section 25 of the Land Acquisition Act. Dealing with this plea, the Court has observed as under :

Shri Papanna pointed out that when Rs. 500/ was offered to the appellant claimant contended that he ought to receive Rs. 600/ per month and it was only when he appeared before the Arbitrator that he put forward his present claim. He, therefore, urged that the claim of the appellantclaimant before the Arbitrator cannot be considered as it is not the same as it was when he disputed the offer of Rs. 500/ per month. Section 8(1) of the Act reads as follows :

Section 8(1) ""where any property is requisitioned or acquired under this Act, they shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that in to say :

X X X X X

2. At the commencement of the proceedings before the Arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation.

This provision itself gives a right to the claimant to state before the Arbitrator at the commencement of the proceedings as to what in his opinion is

the fair amount of compensation. there is no provision in the Act analogous to Section 25 of the Land Acquisition Act precluding a claimant from

claiming an amount of compensation higher than what he had claimed before the Land Acquisition Officer, it is under these circumstances that the

decision of this court in Union of India vs. Narasiyappa, (1970 (1) Mys. LJ 319) aptly applies to the facts of this case. In that case also Section 8

and 11 of the very Act were considered and it was held that Section 25 of the Land Acquisition Act which imposes a bar in the way of the

claimant asking for any thing more than what he had asked for in his statement of claim does not apply to cases falling under the Requisitioning and

Acquisition of Immovable Property Act 1952. We, therefore, do not agree with the contention of Sri Papanna.

18. Learned counsel has also relied upon AIR 1998 Kant. 274 titled Divisional Controller. K.S.R.T.C. Bangalore V. J.D. Sigamany and another.

Wherein it has been held :

The law is well settled with regard to one interesting aspect of the matter namely that the Courts do come across a few instances where instead of

over pitching the case before the trial Court, a very modest amount is claimed and the tribunals in these circumstances have been wrongly limiting

the relief to the amount that has been claimed on the ground that even though the party is entitled to something higher, what was asked for is a

lower figure. This court had occasion to correct these orders and to lay down that the Tribunal is required to pass an order qualifying the

compensation correctly irrespective of what has been claimed on the basis of the principle that it is not the amount that is claimed in that matter, in

so far as if the Court has the power to award a lesser amount. That it is equally equipped with the powers to awards higher amount. It is that

principle which applies with equal force to the appeal court and though I do not dispute that a court would normally not permit a party to ask for

enhancement unless an appeal or crossobjections have been filed but there could be a very small category of cases in which a Court would make

an exception, the reason being that the essence of doing justice requires that a Court will not refuse a relief only because of the technical or a

procedural bar. I need to amplify here that if the technicalities are upheld, the result would be doing injustice in so far as the party will be left with a

compensation lesser than what a fair evaluation entitles the party.

19. In view of the law settled in these judgements, Mr. Sharma's plea that respondents are estopped from raising their claims appears to be not

sustainable. The respondents have exercised their right before the Arbitrator provided by law in terms of Section 8(1) (d) of the Act of 1968.

20. Mr. Sharma, learned counsel could not rebut that the land was notified by the Collector vide same Notification dated 19.01.1986 and the

award was made including the land of the respondents vide award dated 30.09.1993 pertaining to three different villages including village Gurdan

Pain. The compensation of Rs. 60000/ in the case of the land of Smt. Dhanwanti has been awarded by the Court. The respondents land is situated

in the same village i.e. Guran Pain and the status of the land of the respondents

being similar to the land of Dhanwanti, is not disputed. The yardstick applied for determination of compensation in to both these pieces of land is also not disputed.

21. In these circumstances, keeping in view the rate of compensation determined and compensation paid to Dhanwanti whose land is situated

adjacent to the land of the respondents, being of similar soil and status and also on the basis of the evidence and the judgements delivered in the

case of Dhanwanti vs. Union of India and Civil Appeal Nos. 14061407/1993 titled Union of India and Anr. Vs. Shri. Mulak Raj, the respondents

are entitled to the relief of enhanced compensation.

22. For the aforesaid reasons the Appeal of the appellants Union of India is partly allowed to the extent of quashing the award of solatium and

interest.

23. The Cross Objections/Appeal of the respondents is allowed holding that the respondents are entitled to compensation of Rs. 60000/ per

kanal.

24. No order as to costs.