(2018) 05 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : CFA NO. 08 OF 2016

UNION OF INDIA AND ORS — APPELLANT

Vs

SOHAN LAL AND ORS — RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Land Aquisition Act 1894 — Section 4, 6, 7, 9, 9A, 12(2), 17, 18, 31

Citation : (2018) 05 J&K CK 0049

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Union of India is in appeal against the award passed by learned District Judge, Rajouri (hereinafter referred to as â??the Reference Courtâ?) in

File No. 18 dated 30.09.2015 in a reference titled Sohan Lal and Others Vs. Collector Land Acquisition Act and others, whereby the Reference Court

enhanced the rate of compensation payable for cultivable and uncultivable land, which was fixed at Rs. 20,000/- and Rs. 18,000/- respectively by

theÂ Collector to Rs. 50,000/- per kanal along with Zabrana @ 15 % on the enhanced amount together with interest @ 6 % per annum from the date

on which the possession of the land was taken over by the appellants.Â

2. Briefly stated, the facts leading to the filing of this appeal are that the appellants somewhere in the year, 1991 placed an indent for acquisition of

land measuring 585 kanals and 12 marlas situated at Village Dhangri, Tehsil and District Rajouri before the respondentÂ Â No. 7. In view of the

urgency of acquisition, the request was made by the appellants for invoking Section 17 of the Land Acquisition Act (hereinafter referred to as â??The

Actâ?) and accordingly an 80% of the estimated compensation was deposited with the respondent No. 7 on 09.12.1996.Â However, due to later

developments, the land could not be acquired by invokingÂ emergency provisions and ultimately, the Government vide Order No. 14Rev(LAJ) -93

dated 15.05.1998 directed the respondent No. 7 to follow ordinaryÂ procedures and pass an award. The respondent No. 7 accordingly proceeded and

issued his award on 03.03.1999. The respondent No. 7 fixed the rate of cultivable land @ Rs. 20,000/- per kanal and uncultivable land @ Rs. 18,000/-.

The tentative rates fixed by the respondent No. 7 were subsequently approved by the Government vide Order No. 14-Rev(LAJ) 93 dated 09.02.1999.

The award was accordingly published and announced on 03.03.1999.Â

3. The appellants have pleaded that declaration under Section 6 and 7 of the Act was issued on 06.03.1993 and the interested persons were notified as

required under Section 9 and 9A of the Act and were heard. The land owners did not prefer any objection to the acquisition. Despite the fact that

claimants had conceded to the acquisition, yet the respondent No. 7 also awarded Zabrana @ 15%. The claimants, i.e, respondent Nos. 1 to 6 herein

still felt aggrieved and approached the respondent No. 7 on 16.06.2004Â for reference under Section 18 of the Act. The Reference Court on

receiving the reference, summoned the appellants. The reference was contested by the appellants. Learned District Judge, Rajouri framed the

following issues for determination:-

1. Whether the reference is barred by time?Â OPR.

2. In case the issue No. 1 is proved in affirmative, whether the market value of the acquired land at the relevant time was more than that determined

under the award? OPP.

3. Relief.Â

4. On appreciation of the evidence led by the parties, the Reference Court passed the impugned award on 30.09.2017 enhancing the amount of

compensation in the manner stated above.Â

5. Feeling dissatisfied, the appellants have filed the instant appeal. The award passed by the Reference Court has been assailed on the ground that

upon a reference earlier made by the respondent No. 7 under Section 31 of the Act, the Reference Court vide its order dated 05.05.2004 had held that respondent Nos. 1 to 6 were not the owners of the land acquired but only had occupancy rights being the heirs of the displaced persons/allottees of the

State land. The award of the Reference Court has also been challenged on the following grounds:-

(i) The Reference Court failed to appreciate the evidence that had come on record and arbitrarily enhanced the amount of compensation.

(ii) The learned Reference Court ignored the provisions of Section 23 and 24, which provide a guide for determining compensation by specifying the

matters which are required to be considered and which are required to be ignored in computing the compensation payable on account of land

acquisition.

(iii) Since the respondent Nos. 1 to 6 had not opposed the acquisition and had wilfully conceded therein, as such, no Zabrana was payable.

(iv) While enhancing rate of compensation, the Reference Court has not made any distinction between cultivable land and uncultivable land and has

fixed a uniform rate of Rs. 50,000/- per kanal, which is not only excessive but is also exorbitant.Â

6. Per contra, Sh. D.C Raina, learned Senior Counsel appearing for the respondent Nos. 1 to 6 submits that impugned award has been passed by the

Reference Court after proper appreciation of the evidence that was brought on record by the parties. Learned Senior counsel took this Court through

the entire evidence that was led before the Reference Court and submitted that there was preponderance of evidence on record suggesting that the

rate of the land acquired was much more than it has been granted by the Reference Court. Regarding the contention of the appellants, that petitioners

hold only occupancy right and not the ownership rights and, therefore, are entitled to less compensation, the learned Senior Counsel submits that

aforesaid issue was not subject matter of reference before the Reference Court. The Collector had already considered the aforesaid issue and

accordingly assessed the compensation. The appellants are not against the assessment of the compensation made by the Collector. It is submitted by

the learned Senior Counsel for the respondent No. 1 to 6 that keeping in view the topography of the land acquired, it was of no consequence as to

whether the land was cultivable or uncultivable. Keeping in view the commercial potentialities of the land acquired, the compensation at the uniform rate of Rs. 50,000/- per kanal cannot, by any stretch of reasoning, be said to be excessive or exorbitant.Â

7. Having heard learned counsel for the parties and perused the record, I am of the opinion that enhancement of rate of compensation from Rs.

20,000/-Â per kanal to Rs. 50,000/-Â per kanal in the case of cultivable land is justified in view of the evidence that has come on record before the

Reference Court. However, I find no justification to fix the uniform rate of compensation both for cultivable and uncultivable land. The Collector in its

award had maintained the distinction by providing rate of Rs. 20,000/- per kanal for cultivable and Rs. 18,000/- for uncultivable land. In the absence of

any reasoning supported by evidence, the fixation of uniform rate for both types of land as has been done by the Reference Court cannot be

accepted.Â

8. I have gone through the judgment of the Reference Court and the evidence led in the matter.Â

9. From the evidence led, it is apparent that the land is situated at a distance of 10 to 12 kms from Rajouri town and is few meters away from the

Kalakote National Highway. The respondent No. 1 to 6 have also brought on record two sale deeds executed in the year, 1993, in which the rate

indicated is Rs. 50,000/- per 10 marlas and Rs. 70,000/- per 10 marlas respectively, i.e Rs. 1 lac and 1.40 lac per kanal. Though the aforesaid deeds

are for a small piece of land, yet they would serve as guide to determine the compensation for comparatively bigger chunk of lands as is in the case of

the appellants. Accordingly, by taking into consideration all the factors including the commercial potentialities of the land, its proximity to the Rajouri

township and Kalakote National Highway, the Reference Court enhanced the rate of compensation.Â

10. Going by the evidence on record, particularly in the absence of contrary evidence led by the appellants, this Court has no reason to differ with the

findings of fact recorded by the Reference Court on proper appreciation of evidence. I am, therefore, inclined to uphold the rate of compensation

awarded by the Reference Court. But at the same time, the aforesaid rate of Rs. 50,000/- per kanal cannot be applied to the uncultivable land. The

distinction, which was made by the Collector Land Acquisition was required to be borne in mind by the Reference Court, more so when there was brought no contrary material on record. While upholding the rate of Rs. 50,000/- per kanal for cultivable land, this court holds the respondent Nos. 1 to

6 entitled to compensation @ Rs. 40,000/- per kanal in the case of uncultivable land.Â

11. Apart from assailing the award of Reference Court on merits, the learned counsel for appellants also emphasised his objection, which he had taken

before the Reference Court with regard to filing of reference application after the prescribed period of limitation. In terms of Section 18 of the Act, an

application for seeking reference to the District Court can be filed by a person interested within six weeks from the date of Collectorâ??s award, if

the person making it was present or represented before the Collector, else within six weeks from the receipt of notice from the Collector under

Section 12 (2) of the Act or within six months from the date of Collectorâ??s award, which ever period shall expire first. The appellants, as observed

by the Reference Court have not been able to prove by reference to any record that any notice under Section 12 (2) of the Act was issued and served

upon the respondent No. 1 to 6. The payment was received by the respondent Nos. 1 to 6 only on 17.06.2004 under protest and on the same day, the

application was moved by respondent Nos. 1 to 6 for making reference under Section 18 of the Act. In the absence of any contrary evidence, this

Court like the Reference Court is left with no option but to believe that the date on which the respondent Nos. 1 to 6 received payment was the date

on which they came to know about the award.Â

12. Viewed thus, the reference cannot be said to be barred by limitation. The contention of the appellants that the reference was barred by limitation is

found to be of no substance and is rejected.Â

13. The arguments of the learned counsel for the appellants that no Zabrana was payable to the respondent Nos. 1 to 6 as they never objected to the

acquisition is also misconceived and is noticed to be rejected only. Section 23(2) of the Act makes it obligatory on the Court to award a sum of 15%

on the market value of the land in view of compulsory nature of acquisition. All acquisitions under the Act are compulsory in nature. As such, the sum

of 15 %, which is known as Zabrana in common parlance and called â??solatiumâ? as well is a statutory payment and cannot be denied to the

persons interested, that too, on the ground that they had not objected to the acquisition in response to notices issued under Section 4, 6 and 7 of the Act

etc, as such a view is not supported by any statutory provision.Â

14. In view of the foregoing discussion, I accept this appeal only to the limited extent and provide that the enhanced rate of compensation would be

Rs. 50,000/- per kanal for cultivable land Rs. 40,000/- per kanal for uncultivable land. Except for the aforesaid modification, the award of the

Reference Court, impugned in this appeal, is upheld.Â

15. Appeal is accordingly disposed of in terms as above.

