

(2016) 11 DEL CK 0128

In the Delhi High Court

Case No : CM(M) 1139 of 2016 and CM Nos. 41958-41959 of 2016

Union of India

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Land Acquisition Act, 1894 — Section 13A, Section 19, Section 4, Section 6

Citation : (2017) 171 AIC 646 : (2017) 236 DLT 80

Hon'ble Judges : Jayant Nath J.

Bench : Single Bench

Advocate : Mr. J.K. Jain, Advocate, for the Respondent in Item Nos. 34 to 37, 43 to 49 and 51; Shri Hansha Peechara, Addl. Standing Counsel, SDMC with Ms. Vidhi Jain, Advocates, for the SDMC; Ms. Arti Bansal, Advocate, for the SDMC in Item Nos. 48 and 49; Mr. Siddhar

Final Decision : Disposed Off

Judgement

Jayant Nath, J. (Oral) - By the present order I shall dispose of the above petitions. The issues of law involved in the present petitions are identical. There is only some variation in the facts. For the purpose of this judgment I will take the facts of CM(M) No.1139/2016.

2. By the present petition filed under Article 227 of the Constitution of India the petitioner/Union of India seeks to challenge the order dated 4.8.2016 passed by the Reference Court whereby a direction was issued to the Land Acquisition Collector (hereinafter referred to as "LAC") to correct the Award to the extent of shares and names of the respondents and further direction to the said LAC to file correct statement under Section 19 of the Land Acquisition Act, 1894 (hereinafter referred to as the Acquisition Act).

3. The relevant brief facts are that the land measuring 8 biswas of village Khampur Raya belonging to Shamlat Deh was notified for acquisition under section 4 of the Land Acquisition Act on 7.6.2004. A declaration/notification

under Section 6 of the said Act was passed by the LAC on 2.6.2007. Award was made on 02.06.2007.

4. Dissatisfied with the said Award respondent No.1 and 43 others filed a petition under section 18 of the Acquisition Act on 10.7.2007 and sought enhancement of the amount determined by the LAC. It was also stated that names of the interested persons and their respective shares have not been correctly mentioned. The said petition though filed in 2007 was not traceable in the office of the LAC. Later on it was found that the diary number mentioned on the copy of the reference petition filed by the respondents was correct. Accordingly, the same was forwarded to the Reference Court along with the Statement under section 19 of the Acquisition Act. On 7.4.2016 some of the respondents filed objections to the Statement under section 19 of the Acquisition Act seeking directions to the LAC to make necessary corrections in the said statement. A revised statement under section 19 was thereafter filed.

5. A perusal of the impugned order dated 4.8.2016 shows that the Reference Court has taken up for consideration an application filed by the respondents on 1.8.2007 which was also not traceable in the office of the LAC. This application has been filed for correction of the Award. The filing entry of the application was, however, available and was found to be correct. The grievance of the respondents was noted that the reference under section 19 of the Acquisition Act which was submitted on 10.7.2015 and also the revised statement submitted on 25.5.2016 do not correctly show the extent of shares of the respondents. The Reference Court held that the issue involved correction of Statement under Section 19 by correcting the names of owners and the extent of land owned by them in the acquired land. The impugned order notes that as per report filed the application of the respondent would have been received by the LAC for necessary corrections but no steps have been taken. The Reference Court compared the Khasra Nos. and names of the parties from the first Award dated 5.4.2006 and noted that the shares mentioned in the present Award dated 2.6.2007 and subject matter of the present petition are totally different. Noting that the land and Khasra numbers remained the same, the Reference Court concluded that it could not be possible that the shares of the respondents changed in this short time. Hence, a direction was given to the LAC to correct the Award to the extent of shares and names of the respondents. The LAC was also directed to file a correct statement under section 19 of the Acquisition Act on the next date of hearing.

6. I have heard learned counsel for the parties. Learned counsel for the petitioner has submitted as follows:-

(i) Under section 13A of the Act only clerical or arthematical mistakes can be corrected in the Award by the LAC but same cannot be done after six months from the date of the Award. Hence, he submits that the direction in the impugned order in 2016 to make these corrections in the award passed on 2.6.2007 is misplaced.

(ii) It is vehemently argued that reference which is made by the Collector under section 19 of the Acquisition Act for the information of the Court is to be prepared by the LAC. The Reference Court would have no powers to direct the Collector to either modify the Award or to modify the reference. It is of course conceded that the Reference Court would be free to pass appropriate orders in regard to the reference under Section 18 of the Acquisition Act.

7. Learned counsel appearing for the respondents has submitted that the respondents had made their application for correction on 1.8.2007 which is well within the limitation period. The LAC having slept on the matter cannot now turn around and take technical objections of limitation etc. There are errors apparent on the face of the Award which in the interest of justice had to be corrected rather than going into technicalities, Reliance is placed on a judgment of the Supreme Court in Ram Kumar & Ors. v. Union of India & Ors., 43 (1991) DLT 540 to support the contentions.

8. Section 13A, Section 18 and Section 19 of the Acquisition Act reads as follows:-

"[13A Correction of clerical errors, etc. -

(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue.]

18. Reference to Court:-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award:

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2); or within six months from the date of the Collector's award, whichever period shall first expire.

19. Collector's statement to the Court:-

(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,--

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid for tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

9. I will now deal with the contentions of the petitioner raised against the impugned order. The first contention is about the limitation aspect as contained under Section 13A of the Acquisition Act. As per Section 13A, the corrections are to be made not later than six months from the date of the award. Admittedly, the award is dated 02.06.2007 and the period of six months has expired. However, there are other facts which cannot be ignored. The respondents had filed an application on 01.08.2007 i.e. before the expiry of six months from the date of the award for correction of the particulars of the owners/area under the ownership as stated in the award. The said application was not traceable with the LAC. The filing number has been verified and has been found to be correct. Clearly, the respondents cannot be penalized for the inaction of the petitioner. Had the petitioner taken action on the application filed by the respondents, the necessary corrections would have been made within the stipulated period of six months. Hence, there is no merit in the submission of the petitioner that the award at this stage cannot be corrected. The request for correction was made before expiry of six months.

10. The other contention raised by the petitioner is that the Reference Court

cannot direct the petitioner to modify the award and correct the statement under Section 19 of the Acquisition Act contrary to the Award. In this context reference may be had to the judgment of the Supreme Court in the case of Chimanlal Hargovinddas v. Special Land Acquisition Officer, AIR 1988 SC 1652 wherein the Supreme Court held as follows:-

"4. The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications under Sections. 6 and 9 are irrelevant). ?."

11. Reference may also be had to the judgment of the Supreme Court in the case of Ram Kumar v. Union of India (supra). The facts of that case were that the Collector passed the award. The appellants therein moved an application under Section 18 of the Act for making a reference to the court. The Collector made reference pursuant to the said application. The appellants therein submitted that khasra numbers had not been shown by the Collector in the statement under Section 19 of the Act although he had sent the names of all the bhumidars of the land. The Additional District Judge i.e. the Reference Court after hearing the parties, allowed the application of the appellants and directed the Collector concerned to furnish a correct statement under Section 19 of the Act regarding the land acquired by the appellants. The Supreme Court upheld the directions of the Reference Court. The relevant portion of the judgment reads as follows:-

"6?.Under Section 18 of the Act the only requirement for the person interested

who had not accepted the award was to move a written application to the Collector requiring that the matter be referred for the determination of the Court. One of the grounds for not accepting the award was the amount of compensation. Once such application was moved it was the duty of the Collector to make a reference to the Court. Under Section 19 of the Act while making the reference the Collector was required to state for the information of the Court the particulars as mentioned in clauses (a) to (d) of Sub-section (1) of Section 19 of the Act. Thus it was the duty of the Collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khasra No. or area as entered in the Revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference under Section 18 of the Act it becomes the duty of the Collector to send full information to the Court regarding the entire land acquired and it is thereafter the duty of the Court to decide the matter in accordance with law."

12. For the sake of completeness, reference may also be had to the judgment of the Division Bench of Gujarat High Court on Section 13 A of the Act. The Division Bench of Gujarat High Court in *Shivlalbhai Vaikunth and Anr. v. State of Gujarat and 3 Ors.* held as follows:-

"8. The plea that Section 13A of the Act empowers the Land Acquisition Officer to correct only clerical or arithmetical mistakes but does not empower him to modify the award in a manner which would entitle another person to claim compensation and therefore the correction in the award should be set aside has also no substance. The language used by the Legislature is that the Collector has power to correct any clerical or arithmetical mistakes in award or errors arising therein. This provision is not analogous to Section 152 of the Code of Civil Procedure, 1908. The powers conferred on the Land Acquisition Officer are wide in nature and any error noticed in the award can be corrected if good ground is made out. This power is conferred on the Land Acquisition Officer to do substantial justice to the party aggrieved and cannot be read in a narrow manner as suggested by the learned Counsel for the petitioners. The proviso appended to Sub-section (1) of Section 13A further stipulates that no correction which is likely to effect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter. The proviso thus implies that the power to correct the award is not only confined to correction of clerical or arithmetical mistakes but any error arising in the award, of course, subject to hearing the persons who are likely to be affected prejudicially. Under the circumstances, the plea that the correction made in the award travels beyond the scope of Section 13A of the Act and therefore, should be set aside, cannot be upheld and is hereby rejected."

13. It is apparent from the facts of the case that the needless controversy is

sought to be generated. The matter of fact is that it is not the case of the petitioner that the reference court has made a wrong observation about the details of land having been acquired and dealt with by the award being incorrect. The grievance appears to be that the reference court cannot give direction to the LAC. The respondents also admitted that there are errors in describing the land which has been acquired by the award.

14. A closer look at the directions passed by the impugned order would show essentially the matter has been remanded back to the LAC to take up the application filed by the respondents for correction in the award which was filed on 01.08.2007, i.e. before expiry of six months from the date of award. The LAC has not for certain reasons been able to dispose of the said application. The remand has been directed as there appears to be mistakes in land description in the award which are apparent. This fact is not disputed. As per legal position, the LAC can correct the Award if such mistakes occur. In view of the above, it would be for the LAC to take steps under Section 13A of the Acquisition Act to rectify the award as stated. In case, rectification is carried out, the consequential amendment in the reference under Section 19 of the Acquisition Act would also follow.

15. With the above observations, the present petitions stand disposed of. All the pending applications also stand disposed of.