(1998) 10 DEL CK 0097

In the Delhi High Court

Case No : C.M.No. 184-185 of 1991 and C.M.1853 of 1996 in R.F.A. No. 245 of 1968

Union of India APPELLANT

Vs

Shibu Ram Mittal RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22(1)

Citation : (1998) 6 AD 908 : (1998) 76 DLT 577 : (1999) 49 DRJ 166

Hon'ble Judges : Manmohan Sarin, J;Arun Kumar, J

Bench : Division Bench

Advocate : Ms. Geeta Luthra Adv, for the Appellant; Mr. P.N. Lekhi, Subhash Mittal and Ramesh Vats, for the Respondent

Judgement

Arun Kumar, J.—These applications have been filed by the respondents in the main appeal with the object of claiming enhancement in the compensation awarded to them for their acquired land. The necessary facts are :-

2. The (Late) Shri Shibu Ram Mittal, father of the Applicants/Respondents and Shri Sukhbir Saran were co-shares/co-owners of undivided agricultural lands comprising Khasra Nos. 146(12-0), 148(5-5), 149(4-13), 150(4-0), 151(10-1), 152(4-19), 153(4-3), 154(6-6), 155(0-6), 156(1-10) and 157(3-5), total measuring 56 bighas 8 biswas, village Chandrawali, Shahdara, Delhi, to the extent of half share each.

3. The aforesaid land was notified u/s 4 of the Land Acquisition Act on 13.11.1959 and was acquired under award No.1542 of village Chandrawali. References u/s 18 of the Land Acquisition Act were filed by both the aforesaid co-sharers of the land. The two references, being LAC No.709/65 and 651/1964 were decided by Shri F.S.Gill, the then A.D.J., Delhi by a common Judgment dated 26.3.1968. The learned A.D.J. enhanced rate of the compensation from Rs.1250/- per bigha as awarded by the Collector to Rs.5000/- per bigha.

4. The other co-sharer, namely, Shri Sukhbir Saran preferred an appeal in this Court being R.F.A. No. 417 of 1968 - Sukhbir Saran Vs. Union of India, against the aforesaid judgment of the Additional District Judge dated 26.3.1968. A Division Bench of this Court allowed the said appeal and compensation payable to the appellant was enhanced by modifying the award from Rs.5000/- per bigha to Rs.15/- per sq. yard, vide Judgment and decree dated 8.8.1984.

5. The Union of India filed the present appeal (R.F.A. No.245/1968 Union of India Vs. Shri Shibu Ram Mittal) and also RFA No.213/1968 Union of India Vs. Shri Sukhbir Saran, in respect of same acquired land against the judgment of the Addl. District Judge, Delhi dated 26.3.1968. Shri Shibu Ram Mittal, the respondent in RFA No.245/1968 died during the pendency of the appeal and the present respondents were brought on record as his legal representatives.

6. The appeal of Union of India (RFA No.245/1968) was dismissed for non prosecution vide order dated 24th January, 1991. CMs 184-185/1991 were also dismissed Along with the main appeal. The respondents/applicants challenged the dismissal of CMs 184-185/1991 in the Supreme Court. The appeal was allowed vide Judgment dated 20.9.93 and CMs 184-185/1991 were remanded to this court for decision on merits in accordance with law. These applications are now before us for disposal.

7. At the outset the learned counsel for the appellant raised an objection that the application under Order 41 Rule 22 C.P.C. is barred by limitation. Our attention was drawn to the provision contained in sub-rule (1) of Rule 22 of Order XLI C.P.C according to which the cross objections are to be filed within one month from the date of service of notice of the date fixed for hearing the appeal. The cross objections in the present case were filed on 19th January, 1991 while the appeal was admitted for hearing on 19th August, 1968. According to the learned counsel for the appellant, the cross objections were thus filed much beyond the period of limitation and Therefore, cannot be entertained. In support of this argument, it was further contended that the respondents had already put in appearance in the appeal in as much as presence of counsel on their behalf is noted in the order dated 30th April, 1987. The respondents had notice of the appeal and the cross objections ought to have been filed at least within one month from this date.

8. In reply to the preliminary objection the learned counsel for the respondents/ applicants submitted that a closer scrutiny of the provision regarding limitation contained in Sub-Rule (1) of Rule 22 of Order XLI C.P.C. would show that the limitation of one month prescribed in the said provision starts to run only from the date of service on the respondent or his pleader of a notice of the day fixed for hearing of the appeal. In the present case no notice of the day fixed for hearing of the appeal was ever served on the respondents or their pleader and, therefore ,the limitation never started to run. In support of this contention the learned counsel for the applicant has invited our attention to an order dated 1st October, 1985 in RFA No. 7/1977 Union of India Vs. Pinda which was passed in

similar circumstances. This court noted that the notice of appeal which was served on the respondents did not indicate the date fixed for hearing of the appeal and Therefore the limitation for purpose of filing cross objections under Order 41 Rule 22 did not begin to run. In Union of India Vs. Jhutter Singh, another Division Bench of this Court held that a notice of appeal served on the respondents which did not specify the date fixed for hearing of the appeal could not be taken as the notice envisaged under Sub-Rule (1) of Rule 22 of Order XLI C.P.C. Therefore, the limitation for filing cross objections in the appeal could not be said to have begun to run.

9. A bare perusal of the relevant provisions contained in Sub-Rule (1) of Rule22 of Order XLI C.P.C makes it clear that the limitation would begin to run from the date of service of notice on the respondent or his pleader of the day fixed for hearing of the appeal. A notice informing the respondent that an appeal has been admitted against him and intimating a Farzi (tentative) date of hearing cannot be taken as the notice envisaged under this provision. The provision is specific-"notice of the date fixed for hearing the appeal". A Farzi date cannot be said to be the date fixed for hearing the appeal. Simply because a counsel appeared for the respondents does not displace the requirement of service of notice of actual date of hearing of appeal. The emphasis on the words "notice of date fixed for hearing an appeal" cannot be allowed to be diluted. The provision ensures that the appellant has advance notice before the hearing of the appeal about the cross objections by the respondent.

10. We are unable to uphold the preliminary objection raised by the learned counsel for the appellant. We are in agreement with the views expressed by the Division Benches of this court on the issue.

11. Having held that the cross objections filed by the respondents are maintainable, there is no escape from the fact that they have to be allowed. The claim of the respondents as contained in the cross objections could not be refuted by the learned counsel for the appellant. The lands which are subject matter of the present appeal were jointly owned by the predecessor of the respondents herein and one Sukhbir Saran. Both the cosharer claimed half share each in the said lands. The other co-sharer has been awarded compensation @ Rs.15 per sq. yard as per the Judgment of this court in RFA No. 417/1968, decided on 8.8.84. It is only just and fair that the respondents in the present appeal should also get compensation on the basis of the same market value of the land as was determined in RFA No. 417/1968. The dates of notification u/s 4 of the Land Acquisition Act are the same. The cases of both the co-sharers have been dealt with together all along. The learned Additional District Judge decided both the cases by a common Judgment. The cross objections are accordingly allowed. The respondents are held entitled to compensation for their half share in the acquired land at the market value of Rs.15 per sq. yard. In addition the respondents will be entitled to 15% solarium and interest @ 6% p.a. from the date of dispossession till payment. The respondents will also be entitled to

interest @ 6% p.a. on the market value of land u/s 4(3) of the Land Acqusition (Amendment and Validation) Act, 1967, in view of the fact that there is a difference of more than 3 years between the date of notification u/s 4 (13.11.1959) and the declaration u/s 6 of the Act (3.12.1962). The respondents will be entitled to costs. All the applications stand disposed of.