
(2013) 10 JH CK 0030
In the Jharkhand High Court
Case No : First Appeal No. 87 of 2009

Union of India

APPELLANT

Vs

Smt. Pia Majumdar

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : AIR 2014 Jhar 29 : (2014) 1 JLJR 204

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : M. Khan, ASG, for the Appellant; H.K. Mehta, for the Respondent

Final Decision : Partly Allowed

Judgement

Dhruv Narayan Upadhyay, J.—Instant appeal on behalf of the Union of India through Defence Estate Officer of Jharkhand, Orissa and Bihar (JOB) Circle, Danapur, Bihar has been preferred against the Award prepared on 30.04.2009 in Arbitration Case No. 2 of 2008 by the sole Arbitrator Hon'ble Mr. Justice Vikramaditya Prasad (Retd.), u/s 8(1)(B) of the Requisition and Acquisition of Immovable Property Act, 1952 whereby and whereunder, an Award of Rs. 65,98,971/- has been passed in favour of the claimant/respondent. The brief facts of the case is that an area measuring 2590.91 Acres was requisitioned during the 2nd World War by the Defence Estate Officer, Bengal Circle, Calcutta under the Defence of India Act, 1939 and Rules made thereunder. Out of the total requisitioned land, 82.21 Acres was acquired in the year 1959 by the Defence Estate Officer, Bengal Circle, Calcutta under the Requisitioning and Acquisition of Immovable Property Act, 1952. The land was under the occupation of the Army since it was requisitioned. Army proposed that the said land was permanently required for use of the Army at Ranchi.

In the year 1970, the Government of India, Ministry of Defence, accorded sanction for acquisition of the requisitioned land measuring 2590.91 acres for Dipatoli Campus at Ranchi vide No. 1/2/B and O/Team/MLC/207/8/D (Lands)

Dated 16.03.1970 at an estimated cost of Rs. 1,29,54,960/- under the provisions of Requisitioning and Acquisition of Immovable Property Act, 1952.

On spot verification, it was revealed that out of total area of requisitioned land 2590.91 Acres, the land measuring 2437.37 Acres belonged to private parties. The land measuring 117.54 Acres, being the State Government's land, is still under occupation of transfer with the Government of Bihar.

Accordingly, out of the private land, an area measuring 53.68 Acres situated at village - Gari, District - Ranchi, Thana No. 114, Khata No. 158, Plot No. 776, 777, 778, 1368 and 1388 was acquired by Gazette Notification dated 01.12.1971 from Smt. Kamla Ray, wife of Arjun Ray, Resident of 12C, Judges Court Road, Kolkata - 27.

The compensation of the land was assessed as per the provisions envisaged under the Requisitioning and Acquisition of Immovable Property Act, 1952 and paid to Smt. Kamla Ray by the competent authority. The compensation amount was assessed/fixed by the Deputy Commissioner, Ranchi considering the type of land, quality of soil and its prevalent market rate.

2. Smt. Kamala Ray was paid a sum of Rs. 2,52,596/- after the land was so acquired. But she had sent a letter to the Land Acquisition Officer, Ranchi on 01.09.1997 by registered post disclosing therein that no proper compensation was paid to her and she had raised her objection and requested to refer the dispute to District Judge, Ranchi for Arbitration, but no Arbitrator was appointed.

Arjun Ray, husband of said Smt. Kamala Ray died in the year 1962 leaving behind his widow Kamala Ray and two daughters namely Kokila Sidhant and present claimant/respondent Pia Majumdar. Kokila Sidhant died on June 2, 1981 leaving behind her husband Nikhil Sidhant and Nikhil Sidhant also died in the month of February, 1995.

Kamala Ray died on 16.12.1990. Therefore, the claimant/respondent Pia Majumdar, being surviving daughter, has claimed herself to be the sole legal heirs of Late Kamala Ray and she has pursued the matter.

3. Since no Arbitrator was appointed, Writ Petition being C.W.J.C. No. 374 of 1998 (R) was filed in the year 1998 before the High Court of Judicature at Patna, Ranchi Bench, Ranchi for a direction to appoint Arbitrator.

The aforesaid writ petition along with other Writ Petitions were disposed of on 13.09.2007 by which the appellant was directed to appoint Arbitrator in accordance with the provisions of Section 8(1)(B) of the Requisitioning and Acquisition of Immovable Property Act, 1952 within three months.

The order was not complied with and thereafter, contempt case being Contempt Case (Civil) No. 200 of 2008 was filed before this Court and in pursuant to that, Hon'ble Mr. Justice Vikramaditya Prasad (Retd.) was appointed as an Arbitrator who, after recording evidence of the appellant as well as claimant/respondent

and also after granting hearing to them, passed the impugned Award published on 30.04.2009.

4. The appellant has challenged the impugned Award on the ground that no objection, as required under Rule 9(5)(i) of Requisitioning and Acquisition of Immovable Property Rules. 1953 was made by the claimant/respondent within 15 (fifteen) days.

Further case of the appellant is that the amount which was paid to Late Kamala Roy was full and final and it was received without raising any objection. There is no provision to pay solatium or interest on the amount awarded.

The appellant has relied on the Judgments reported in Union of India (UOI) and Others Vs. Munsha and Others,

It has been further argued that the Hon''ble Arbitrator has wrongly considered the case of Senath Munda and committed an error in passing the Award in favour of the claimant because said case was not decided on merit rather it was dismissed on the ground of delay. The documents relied upon for deciding the value of the land is not sufficient and, therefore, the findings of the Hon''ble Arbitrator is liable to be set aside.

5. On the other hand, learned counsel appearing for the claimant/respondent has relied on catena of Judgments passed by Hon''ble Apex Court as well as by the other Hon''ble High Courts including the High Court of Jharkhand.

It was argued that Hon''ble Apex Court has relied on all important Judgments while deciding case of Dilawar Singh and Others etc. Vs. Union of India (UOI) and Others, By referring aforesaid Judgment, it was submitted, where inordinate delay has occurred in appointing the Arbitrator, appropriate solatium and interest should be paid on the amount of compensation awarded against the acquisition/requisition of the lands.

He has also referred Rule 9(5)(ii) of the Requisitioning and Acquisition of Immovable Property Rule, 1953 in support of his contention that amount paid to Kamala Ray was 80% of the compensation assessed against the land belonging to her. It is admitted case of the appellant that no agreement, either in Form-K or in Form-L, was ever executed by and between the parties.

It was duty of the appellant to refer the matter to the Government with all details so that the Arbitrator should have been appointed within a reasonable period but it was not done and, therefore, the ancestors of the present claimant made correspondence in the year 1977 and raised their objections and requested to appoint Arbitrator to solve the dispute. The appellant kept silent for a long time and they did not wake up even after filing of the Writ Petition and the Arbitrator was appointed only after Contempt proceeding was initiated before the High Court. Almost after 39 years of acquisition of the land, the matter was decided by the Arbitrator and, therefore, the claimant/respondent has rightly been given solatium and interest on the amount of compensation against the

land so acquired/requisitioned. There is no merit in this appeal and as such, the same is liable to be dismissed.

6. Having heard both sides and also after going through the impugned Award, the admitted facts are as follows:-

i. The appellant has failed to bring on record any offer letter sent to the claimant/respondent/interested persons, as required under Rule 9(3) of the Requisitioning and Acquisition of Immovable Property Rule, 1953;

ii. The claimant/respondent has also failed to bring on record any objection raised by her, as required under Rule 9(5)(1) of the Requisitioning and Acquisition of Immovable Property Rule, 1953;

In view of the above, the admitted situation is that neither the provisions of Rule 9(3) of the Requisitioning and Acquisition of Immovable Property Rule, 1953 was complied with by the appellant nor the claimant/respondent had responded by raising objections as required under Rule 9(5)(i) of the said Rule.

7. Before advertent opinion, I feel it desirable to refer Rule 9(3), 9(5) and 9(6) of the said Requisitioning and Acquisition of Immovable Property Rules, 1953.

Rule 9. Compensation:-

(1)... ..

(2)... ..

(3) The competent authority shall, as soon as may be practicable after the making of a requisitioning order or the service of a notice of acquisition, communicate to each person interested an offer of what, in the opinion of the competent authority, is a fair amount of compensation payable to such person in respect of the property requisitioned or acquired.

(4)... ..

(5) (i) Every person interested to whom an offer is made under sub-rule (3) shall, within fifteen days of the receipt of the offer, communicate in writing to the competent authority his acceptance, or otherwise of the offer. If he accepts the offer, the competent authority shall enter into an agreement with him on behalf of the Central Government in Form "K".

(ii) In the following circumstances, the competent authority may, at his discretion, make to all eligible claimants "on account" payment upto 80 percent of the amount which, in his opinion, is likely to be assessed as compensation or recurring compensation as the case may be:-

(a) when there is likely to be delay in assessing compensation;

(b) where the competent authority has made an assessment but there is delay in reaching an agreement though there is a reasonable prospect of agreement

being reached; or

(c) where it is clear that an agreement cannot be reached.

(iii) If the competent authority makes an "on account"; payment under clause (ii), he shall enter into an agreement with the person to whom payment is made on behalf of the Central Government in form "L" with such modifications as the nature of the case may require.

(6) If any person to whom an offer is made under sub-rule (3) does not accept the offer or does not within fifteen days of the receipt of the offer communicate in writing to the competent authority his acceptance or otherwise of the offer, the competent authority shall, as soon as may be, submit to the Central Government a report setting forth the full facts of the case, particularly as regards the nature and extent of disagreement between himself on the one hand and the said person on the other hand and he shall also forward with the report all connected papers. The competent authority shall at the same time deposit in Court the amount offered by him to the said person under sub rule(3).

8. In view of the provisions of Rule 9(5)(ii)(a), (b) and (c) of Requisitioning and Acquisition of Immovable Property Rules, 1953, 80% of the compensation amount is to be given to the claimant whose land is acquired. The issue - "Whether the amount paid to Kamala Ray was 80% of the compensation amount assessed or it was full and final payment against the land acquired?" has been decided by the Hon"ble Arbitrator after considering the evidence on record and that has not boldly been challenged by the appellant in the present appeal and, therefore, the findings of the Hon"ble Arbitrator that the amount received by said Kamala Ray was 80% of the compensation amount decided by the competent authority.

9. The next point which the appellant has raised is that "the finding of the Hon"ble Arbitrator in deciding the value of the land is not correct". In this regard, I have gone through the impugned Award. The Hon"ble Arbitrator has discussed all the aspects with regard to location of the land and its potentiality of development. The documents produced by the claimant/respondent have also been considered to decide the value of the land. The appellant did not adduce evidence or produced documents to controvert the value of land as claimed by the claimant/respondent.

I do not find any merit in this arguments and, therefore, the findings of the Hon"ble Arbitrator needs no interference.

10. I have gone through the Judgments reported in Dilawar Singh and Others etc. Vs. Union of India (UOI) and Others, The Hon"ble Apex Court has relied upon all the important Judgment like Dilawar Singh (Supra) which has been decided after placing reliance on the Judgments i.e. Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., ; Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, ; Harbans Singh Shanni Devi v. Union of India, Civil Appeals

Nos. 470-71 of 1985 decided on 11.2.1985; Prabhu Dayal and Others Vs. Union of India, ; Union of India (UOI) Vs. Parmal Singh and Others, ; AIR 1928 287 (Privy Council) relied on Shankar Singh and Others Vs. The Union of India

11. It is indicated in the preceding paragraphs that the claimant/respondent has failed to bring on record any objection required to be raised under Rule 9(5)(i) of the Requisitioning and Acquisition of Immovable Property Rules, 1953 and the letter which was written by Late Kamala Ray raising objection and requesting for appointment of Arbitrator, came in existence only in the year 1977 and, therefore, the interest which has been ordered to be paid from the date of acquisition of the land is required to be modified to the extent that the interest shall be payable since thereafter i.e. from the year 1978. So far rest part of the Award is concerned, it is hereby upheld and the claimant shall be entitled to withdraw the ordered amount as per the schedule appended with the Award with modification in the interest which shall be payable since the year 1978. If the amount deposited by the appellant shall fail to satisfy the modified Award passed by this Court, the appellant shall deposit rest sum of money within 60 days from the date of this judgment.

With the aforesaid modification in the Award, this appeal is partly allowed.