

(2002) 02 RAJ CK 0106

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189 and 190 of 1998 and Civil Special Appeal No's. 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 of 2001

Union of India (UOI)

APPELLANT

Vs

Mana and Others

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 28, 34, 4
Limitation Act, 1963 — Section 5

Citation : (2002) WLC 606 : (2002) 4 WLN 516

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. These appeals are directed against the judgments passed by the learned Single Judge, rejecting the misc. appeals filed by the Union of India which was barred by more than 1302 days. The learned Single Judge did not find the explanation furnished by appellants, could amount to sufficient cause which could have prevented the appellants from filing the appeals in limitation.

3. The special appeal was admitted on 1.5.2001 and an interim order was passed, staying the execution of the award.

4. In the interest of justice notwithstanding agreeing with the findings recorded by the learned Single Judge about the validity of reasons disclosed for rejecting the application moved u/s 5 of the Limitation Act, we have examined the merit of the order passed by the learned Addl. District & Sessions Judge, Banner in the land reference cases which arose out of the notification issued u/s 4 of the Land Acquisition Act, 1894 on 4.8.1987.

5. The land in question is situated at village Mithadi Khurd in Banner District and

was sought to be acquired for the defence purposes by the Union of India. The Land Acquisition Officer has made an award for compensation by taking the market value of the land in the question at the rate of Rs. 1021/- per bigha as on 4.8.1987. The Addl. District Judge, Banner on a reference enhanced the rate of the land in question by determining the market value as on 4.8.1987 at the rate of Rs. 2500/- per bigha.

6. The appellants are aggrieved with the order passed by the learned Addl. District Judge, Banner on two grounds. Firstly, the enhancement of rate of the land in question to Rs. 2500/- per bigha is excessive and is not the correct market value on the relevant date and also that the amount of solatium to be awarded u/s 239(2) cannot be considered as a part of compensation so as to subjected to charge of interest on delayed payment of compensation.

7. So far as the second question is concerned, learned Counsel for the parties have referred to the judgment of Supreme Court in the case of *Sunder Vs. Union of India*, In this case, the Apex Court has held that the provisions of Section 34 of the Land Acquisition Act, 1894 does not say that the award should refer only to amounts awarded under Sub-section (1) of Section 23. The Apex Court stated that the question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land on account of acquisition proceedings is not given the amount which law demands to be paid to him; any delay thereafter would only be to his detriment. There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in Section 34 of the Land Acquisition Act for payment of interest on amount of compensation payable.

8. When the Court is of the opinion that the Collector should have awarded a larger sum as compensation the Court has to direct the Collector to pay interest on such excess amount. The rate of interest is at per with the rate indicated in Section 34. This is so provided in Section 28 of the Act. Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later.

9. Considering the question as to what shall be the compensation for the purpose of subjecting to charge of interest, the Apex Court said that the compensation awarded would include not only the total sum arrived at as per Sub-section (1) of Section 23 but the remaining Sub-sections thereof as well. It is, thus, clear from Section 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the Sub-sections thereof.

10. In view of the aforesaid, it must be held that the contention raised by Union of India that no interest is payable on the amount of solatium awarded u/s 23(2)

of the Land Acquisition Act, cannot be accepted. Therefore, no error on that count can be found in the order of learned Addl. District & Sessions Judge, Banner.

1.1. The second contention is also not well founded. The learned Addl. District Judge has referred to three instances; where the compensation has been awarded under the land acquisition proceedings by the courts in respect of land situated in Banner District.

12. The first instance to which the reference has been made by the learned Addl. District Judge, is the order passed in Acquisition Case No. 6/1987, on 12.7.1989. It refers to land situated in village Jalipa. The relevant date for acquisition proceedings in that case was 24.11.1987. The market value of the land was awarded at the rate of Rs. 3450/- per bigha. It may be noticed that the relevant date in the present case is also October, 1987 which was in question of Land Acquisition Case No. 6/1987.

13. The other case which has been referred to by the learned Addl. District & Sessions Judge is 1/1990, decided on 16.3.1993. It relates to village Jasai. It may be noticed that this acquisition proceedings relates also to the land in village to which the present appeal is concerned. In that case, the High Court has awarded the compensation at the rate of Rs. 2800/- per bigha with reference to 15.9.1990. Lastly, the reference has been made to award passed by the Addl. Sessions Judge, Banner in case No. 143/1989, decided on 15.3.1993. In this case also, the market value of the land has been fixed at the rate of Rs. 2860/- per bigha by keeping in view the distance from village Jasai, where the award has been made at the rate of Rs. 2860/- per bigha for which the acquisition proceedings were made in the year 1987.

14. Thus, the learned Addl. District & Sessions Judge, Banner has referred to the awards made by the courts in different cases in respect of acquisition proceedings in Banner District in different villages includes the village Mithadi Khurd where the land in present case is situated and not on any sale instances. All the awards also relate to relevant dates in close proximity of relevant dates in present case.

15. We are unable to sustain the contention of the learned Counsel that there is any error in determining the market price which may warrant any interference by this Court.

16. Learned Counsel for the appellants submitted that they were not made party in the application for reference by the persons interested in the land. In this connection, firstly, we find that the appellants, on the face value of their assertions and as noticed by learned Single Judge, have come to know about the impugned award as early as in 1996, still no effect has made to challenge until November, 1997. This clearly shows gross negligence on the part of the appellants in the conduct of the litigation. Secondly on merit also, the appellants have not been able to make out even a prima facie case that there has been any

error in the determination of market value of land in question, which is founded on the judicial decisions about the land price in the same vicinity of land in close proximity of relevant date. Nor any case of fraud or doubt in the conduct of proceedings have been suggested, so as to condone delay and reopen the case in its entirety.

17. As a result, these appeals fail and the same are dismissed on the ground of delay in filing the misc. appeal within limitation as also on merit.