

(2006) 04 DEL CK 0138

In the Delhi High Court

Case No : L.A. (APP) No. 146 of 2006 and CM 2076-78 of 2006

Union of India (UOI)

APPELLANT

Vs

Shri Satish Gupta and Others

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 54, 6
Limitation Act, 1963 — Section 5

Citation : (2006) 04 DEL CK 0138

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Sanjay Poddar, for the Appellant; Mahesh Srivastava and S.S. Dabas for Respondents 1 to 4 and Kamaldeep, GNCTD for PWD, Irrigation and Food, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This appeal u/s 54 of the Land Acquisition Act (hereinafter referred to as "the Act") is directed against the judgment and order dated 23.3.2005 passed by the learned Additional District Judge, Delhi in LAC No. 418/1993.

2. The petitioners' land falling in the revenue estate of village Malik Pur Kohi @ Rang Puri, was acquired by the Government on the basis of the notification issued u/s 4 of the Act dated 23.12.1986. In furtherance thereto, the declaration u/s 6 of the Act was issued on 24.12.1986. These acquisition proceedings ultimately culminated in Award No. 28/87-88 and the Land Acquisition Collector assessed the market value of the acquired land except in khasra Nos. 1946/2, 1947/1, 1947/2 and 1948/1 at Rs. 26,000/- per bigha while for these khasras the market value was fixed at Rs. 22,000/- per bigha as the earth had been removed from these khasras, The land owners/claimants were completely dissatisfied with the order of the Collector and preferred references u/s 18 of the Act which were referred to the reference court of Additional District Judge, Delhi.

In their references, they had claimed compensation @ Rs. 1,000/- per sq. yd. as according to them the land was situated near Vasant Kunj where the flats were being sold @ Rs. 3,50,000/- per flat and the potentiality and location of the land demanded award of much higher compensation to the claimants.

3. On the pleadings of the parties, the following two issues were framed by the court on 20.10.1995:-

1. Whether the petitioner have got any right, title or interest in the acquired disputed land? If so, to what extent?

2. What was the market value of the acquired disputed land on the date of notification u/s 4 of the LA Act and what enhancement in market value, if any the petitioners/claimants are entitled to OPP

3. Relief.

4. Both these issues were answered in favor of the petitioners and against the respondents and the learned reference court granted compensation to the claimants @ 55,000/- per bigha besides statutory and other admissible benefits and interest.

5. The Union of India aggrieved from the said judgment dated 23.3.2005 filed the present appeal and challenged the award of the granted compensation on the ground that as per the sale deeds produced by the petitioners themselves they were not entitled to the awarded compensation and could claim compensation only @ Rs. 26,000/- per bigha. It is also their contention that the judgment in the case of R.S. Bhatia Vs. Union of India (UOI), could not be made the basis for awarding such high compensation which otherwise was not supported by evidence. The learned Counsel appearing for the appellant has vehemently argued that the respondents herein would be bound by their admission and as such, the award of the learned reference court is liable to be set aside and the award given by the Collector should be restored. In support of their contention, they have also relied upon the judgment in the case of Shakuntalabai (Smt) and Others Vs. State of Maharashtra, .

6. Along with the appeal, the appellant have filed CM 2077/2006, an application u/s 5 of the Limitation Act praying for condensation of delay of 176 days" in filing the present appeal. In the application, it has been stated that after pronouncement of the judgment on 23.3.2005, application for obtaining certified copy of the said judgment was made on 27.4.2005 and the same was prepared on 3.5.2005. Thereafter, the file was sent for seeking legal opinion and finding out whether the case was fit one for preferring an appeal. The opinion was received on 19.7.2005. Again, according to the appellant, some procedure was followed and the file was sent to the Legal Advisor. Some clarification was sought and the appealable amounts were calculated and withdrawn. Then for the purposes of filing, the appeal was sent to the Advocate on 9th December, 2005 and the appeal was finally filed on 20.12.2005.

7. There is admittedly a delay of 176 days in filing the present appeal. The application does not even contain single averment as to why the certified copy was applied after more than a month and when the certified copy was ready on 3rd May, 2005 why was it not collected till 27th June, 2005. This delay of two months has not been even mentioned in the application much less the delay has been explained properly. Even if the legal opinion had been given as back as in July, 2005 and in August, 2005 the clarification was given, still why was the appeal filed on 20.12.2005 is again not explained in this application. The averments made in the application are vague, indefinite and do not explain the delay in accordance with law. Since there is no proper and sufficient Explanation, the appellant cannot claim condensation of delay as a benefit accrues in favor of the respondents once the appeal is barred by time. Reference in this regard can be made to a recent judgment of this Court in the case of Delhi Waqf Board v. Balbir Singh RFA No. 80/1982 decided on 20.03.2006.

8. In view of the above enunciated principles of law and the fact that the appellant has shown no cause much less sufficient cause by properly explaining the delay of 176 days in filing the present appeal, we dismiss the application for condensation of delay i.e. CM 2077/2006 and the appeal would not survive for consideration on merits.

9. As we have heard the application for condensation of delay as well as the appeal on merits, we would even proceed to discuss the merit of the arguments addressed by the counsel appearing for the parties while challenging the impugned order.

10. Coming to the merits of the case, the reference court while relying upon a Division Bench judgment of this Court in the case of R.S. Bhatia (Supra) had granted the same compensation which was awarded by the court in that case. In that case, the land measuring amount 713 bighas 2 bids was was acquired in the revenue estate of village Malikpur Kohi @ Rangpuri by notification dated 23.12.1986 i.e. the same notification as well as relating to the revenue estate of same village. The reliance placed by the court on that judgment cannot be said to be incorrect and erroneous, legally or otherwise. The Division Bench judgment of the court had been placed on the record of the court and the court was under obligation to consider the same in accordance with law.

11. As far as the photocopies of the sale deeds are concerned, they have been rightly ignored by the learned reference court inasmuch as these documents were never proved or exhibited on record. They are not admissible in evidence. It was for the respondents either to admit those documents, get them exhibited and request the court to read the same in evidence in accordance with law. The respondents failed to take any such steps and at the same time they also led no evidence to show in the present case that the compensation awarded in R.S.Bhatia's case (supra) was unfair or was not the just and fair market value of the land at the relevant time. A document which is neither admissible in evidence nor has been exhibited on record cannot be referred to and made the foundation

of a judicial pronouncement.

12. Viewing the case from another aspect, the said photocopies alleged to have been executed in January 1984 while the notification in question is dated 23.12.1986. There is a gap of nearly three years and they cannot be said to be a correct guide for determining the fair market value of the land in face of a judicial precedent fully applicable to the facts and circumstance of the present case being a judgment relating to the same land and same notification.

13. For the reasons afore-stated, we see no merit in this appeal. The same is dismissed being barred by time as well as on merits. However, the parties are left to bear their own costs.

14. The appeal and CMs 2076-78/2006 are finally disposed of.