(2002) 01 DEL CK 0159

In the Delhi High Court

Case No : Regular First Appeal 315 of 1983 and 230 of 1985 and C.M. (Cross-Objections) 1359/91

Union of India (UOI) APPELLANT

Vs

Tarifa and Others RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4, 6

Citation : (2002) 98 DLT 26

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Geeta Luthra, for the Appellant; Om Prakash, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—Through notification issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) on 5.7.1973 claimants/ respondents land situate within revenue estate of Tughlakabad was acquired for public purpose. Declaration u/s 6 was issued on 12.8.1975. Award No. 43/78-79 was made by the Collector on 8.2.1979. Feeling dissatisfied reference was sought. The Reference Court held claimants entitled to compensation @ Rs. 31,500/- per bigha. Feeling aggrieved Union of India has preferred appeal (RFA 315/83) seeking reduction in the amount of compensation. Cross-objections have been filed by the claimants/respondents claiming further enhancement in the amount of compensation @ Rs. 68,000/- per bigha. The entire land being 19 bids was only, a sum of Rs. 44,650/- has been claimed by way of further enhancement.

2. After the reference was decided the claimants filed an application before the Reference Court for allowing benefit of additional solarium and interest in view of the provisions of the Act. Said application was allowed by an order dated 3.1.1985, which is also under challenge separately by the Union of India in RFA 230/85.

3.19 bids was of land, which was the subject matter of the acquisition was jointly owned by the claimants/respondents 1 to 5 who are the sons of Late Shri Harkaran. They jointly filed an application u/s 18 of the Act on 3.11.1979 seeking reference to the Court for determination of the amount of compensation. While forwarding the reference to the Court in the statement drawn u/s 19 of the Act a note was appended by the Collector that reference had been withheld as regards Dalip and Dalpat, respondents 2 and 4 saying that the reference was withheld "on account of time barred". No intimation was given to them that their reference had been withheld, was received in the Court notice was issued to the appellants. A written statement to the reference petition was field by the appellant specifically claiming therein that the reference u/s 18 of the Act with respect to Dalip and Dalpat had been withheld on account of time barred. Claimants/respondents filed the replication questioning validity of such order saying that the reference had wrongly been withheld.

4. The reference Court framed the following issues:

(1) Was claim of Dalip and Dalpat filed within time ?

(2) Whether the D.L.R. Act was applicable to the land in dispute on the date of notification u/s 4 of the L.A. Act ? If so, to what effect ?

(3) To what amount enhancement in compensation, if any, are the claimants entitled ?

5. As regards Issue No. 3 reference Court held Rs. 31,500/- per bigha to be the fair market value. Issue No. 2 was decided in favor of the claimants and on Issue No. 1 reference Court observed that Statement had been made by learned Counsel for the claimants that since the claim of Dalip and Dalpat had been withheld, Therefore, their claim could not be decided in this case.

6. As noticed above appeal was filed by Union of India but claimants filed cross-objections seeking enhancement and have challenged even the order passed by the reference court saying that the enhanced amount of compensation will not be paid to Dalip and Dalpat.

7. Our attention has been drawn to the decision of this Court in RFA 299/84 Virender Singh Etc. v. Union of India, decided on 23.4.1991 by which decision Rs. 68/- per sq. yard was held to be the fair market value payable for similar land and similarly situate within the same revenue estate of Tughlakabad which were also acquired through the same notification issued u/s 4 of the Act on 5.7.1973.

8. We have gone through the evidence adduced in the present case and do not find any difference as regards the nature, quality and location of the land and are of the view that compensation deserves to be paid to the claimants at the same rate at which it was allowed by Division Bench of this Court in Virender Singh''s case (supra) i.e. @ Rs. 68/- per sq. yard.

9. As regards claim of Dalip and Dalpat learned Counsel for the appellant has

placed reliance upon decision of Supreme Court in A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others, , urging that a reference u/s 18 of the Act can be sought for by one of the co-owners irrespective of the fact that the other co-owners do not expressly seek reference and once reference is sought by one of the co-owners, all co-owners will be unfilled to enhanced amount of compensation as per their share. Supreme Court in the said decision held:

"When one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly staled so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof u/s 18 they are equally entitled to receive compensation prorata as per their shares."

10. We may also make a reference of a decision of Division Bench of this Court in RFA 217/75, Jyoti Bhushan Gupta v. Union of India, decided on 21.12.2002. Relying upon the decision of A. Vishwanath Pillai''s case (supra) it was held that even in a case where reference is not sought by a co-owner he still will be entitled to the benefit of enhancement. We have gone through the record of the reference Court and find that it was a joint reference which was sought by the claimants/respondents stating that they were joint owners and were entitled to compensation jointly and since compensation had not adequately been awarded same deserves to be enhanced.

11. Learned Counsel for the appellant has contended that since reference petition of Dalip and Dalpat was not within the period of limitation and they had a defined share in the land, the ratio of the aforementioned decisions will not be applicable. The decision would apply only incase they had not sought reference and had unspecified share in the property.

12. Submission made by learned Counsel for the appellant cannot be accepted in view of the law laid down in the aforementioned two decisions. Otherwise also the appellants had sought reference and no material has been brought on record that Dalip and Dalpat had not sought reference within the period of limitation. It was a joint reference, which was sought under the same petition tiled on the same date. As such the reference Court was obliged to make a reference to the Court and could not have withheld the reference qun Dalip and Dalpat. Irrespective of the fact that the reference was withheld we are of the view that Dalip and Dalpat will otherwise be entitled to the benefit of the enhanced amount of compensation.

13. Reliance has been placed by learned Counsel for the appellant on the decision of Supreme Court in Ashwani Kumar Dhingra Vs. State of Punjab, . The

said decision is not applicable to the facts of the case.

14. The reference Court was justified in having allowed claimants/respondents application for benefit of the increased interest and solarium as per the provisions of the Land Acquisition (Amendment) Act, 1984, in view of the decision of the Supreme Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , since the reference was pending on the date of coming into force of the Amendment Act.

15. Consequently RFAs 315/83 and 230/85 are dismissed. Cross-objections (CM, 1359/91) are allowed. The impugned award is modified with costs holding the claimants/respondents entitled to compensation @ 68/- per sq. yard and that Dalip and Dalpat will also be paid enhanced amount of compensation as per their share.

16. Over and above the enhanced market value the claimants will be paid solarium @ 30% and interest @ 9% p.a. for a period of one year from the date of Collector taking possession and thereafter @ 15% p.a. till payment. Interest will also be paid to the claimantson solarium in view of decision, of Supreme Court in Sunder Vs. Union of India, .

