Basreddy and ors. Vs. Special Land Acquisition Officer

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Court : Karnataka

Decided On : Jun-20-2008

Reported in : ILR2008KAR4158; 2009(3)KarLJ284

Judge : B.S. Patil, J.

Acts : Land Acquisition Act, 1894 - Sections 11, 12, 12(2), 13A, 15A and 23A; Karnataka Land Acquisition (Amendment) Act

Appeal No. : Writ Petition No. 20341 of 2007

Appellant : Basreddy and ors.

Respondent : Special Land Acquisition Officer

Advocate for Def. : M. Keshavareddy, AGA

Advocate for Pet/Ap. : Manikappa Patil, Adv.

Disposition : Petition allowed

Judgement :
ORDER

B.S. Patil, J.

1. The four petitioners in this writ petition are challenging the notices dated 10.03.2005 issued under Section 12(2) of the Land Acquisition Act (for short 'the

Act'). Copies of the impugned notices are produced at Annexures-B, C, D and E. The said notices are assailed only to the extent they purport to deduct 25% of the amount of compensation payable to the petitioners allegedly towards the depreciation charges of the buildings acquired. Petitioners have further sought for a direction to the respondent-Special Land Acquisition Officer to pay the amount as per the award passed together with all the statutory benefits.

2. It is the case of the petitioners that the buildings constructed by them in the properties owned by them were acquired for the purpose of constructing a canal. The Special Land Acquisition Officer, Karanja Project, Bidar passed an award vide Annexure-A determining compensation for the acquired properties. The names of the four petitioners including the details of the property acquired, their measurements and the market value determined along with statutory sums payable is found at Sl. Nos. 102, 114, 117 and 145 of the statement of details annexed to the award -Annexure-A. In respect of petitioner No. 1 - Basreddy son of Shivareddy, the total amount of compensation determined is shown as Rs. 94,885/-. Likewise in respect of other petitioners also different sums are determined as total amount payable as compensation. This is inclusive of statutory sums payable towards solatium and the additional amount payable under Section 23-A of the Act. Petitioners are not aggrieved by the determination of the compensation made by the Special Land. Acquisition Officer vide Annexure-A. But, their grievance is that after the award was passed and after the award became final, while issuing notices under Section 12(2) of the Act, the Special Land Acquisition Officer has proceeded to deduct 25% out of the total amount as depreciation charges.

3. In the case of the 1st petitioner - Basreddy, out of the sum of Rs. 94,885/-, Rs. 23,721/- is deducted towards depreciation charges and the net amount payable is shown as Rs. 71,164/- in Annexure-B notice issued on 10.03.2005 under Section 12(2) of the Act. Similar notices are issued in respect of the three other petitioners deducting 25% from out of the total amount of compensation payable.

4. Learned Counsel for the petitioners submits that the Special Land Acquisition Officer has no such power, jurisdiction or authority to deduct 25% of the amount

once an award was passed determining the compensation and the same attained finality.

5. Learned Additional Government Advocate who was directed to take notice and obtain instructions, submits that the award passed did not deal with deduction towards depreciation charges. Hence, the Special Land Acquisition Officer has deducted 25%, out of the total amount arrived at as compensation payable to the petitioners for the constructed buildings, as the market value was determined based on the valuation by the technical experts who had taken the actual cost of construction apart from assessing the value of the land without deducting the depreciation charges.

6. Upon hearing the learned Counsel for the parties and on perusal of the materials on record, it is seen from Annexure-A award that nothing is stated with regard to the deduction towards the alleged head 'depreciation'. Once an award is passed as per Section 12 of the Act, it becomes final and conclusive evidence as between the Collector and the persons interested. The only correction that is permissible in the award passed is as provided under Section 13-A of the Act, which pertains to correction of clerical errors, etc. It cannot be disputed that the Special Land Acquisition Officer has not noticed any clerical error nor has he made any such correction exercising his powers under Section 13-A of the Act. This is a case where the Special Land Acquisition Officer has assumed to himself the jurisdiction of virtually amending the award and reducing the compensation which has been once determined in exercise of powers under Section 11 of the Act. Section 12 of the Act gives finality to the award passed by the Collector. Hence, it has to be stated that the impugned action of the Special Land Acquisition Officer in issuing the impugned notices under Section 12(2) of the Act showing deduction of 25% of the market value towards depreciation charges from out of the amount of compensation awarded is illegal and without jurisdiction.

Learned Additional Government Advocate submits that as per Section 15-A of the Act power is vested in the appropriate Government to call for the record of any proceeding from the Land Acquisition Officer for the purpose of satisfying itself as to the legality or propriety of any finding or order passed and as to the regularity of such proceedings and the appropriate Government may pass such order or issue such direction in relation thereto as it may think fit, after notifying the interested persons, if the order to be passed prejudicially affects them. A perusal of Section 15-A, Act as amended by the Karnataka Amendment, makes it clear that the power of the State Government to call for the record of any proceedings and pass any order or issue any direction is circumscribed and qualified by the expression 'at any time before an award is made by the Collector under Section 11'. Therefore, it is clear that the Government can exercise the power under Section 15A of the Act before the Special Land Acquisition Officer passes the award. At any rate, the State Government has not passed any order invoking Section 15A, in the present case. Therefore, application of Section 15A of the Act to the facts of the case does not arise.

7. The Special Land Acquisition Officer has sought to deduct the amount from the total amount of compensation payable not by either correcting or modifying the award, but while issuing the notice of award under Section 12 of the Act. Therefore, the contention advanced by the learned Additional Government Advocate supporting the impugned action is untenable.

8. For the reasons stated above, this writ petition succeeds. The impugned notices in so far as they purport to deduct 25% of the amount towards the depreciation charges are set aside. The respondent-Special Land Acquisition Officer is directed to disburse the amount of compensation to the persons entitled in accordance with the award passed by him vide Annexure-A as expeditiously as possible. Writ Petition is accordingly disposed of.