

Surendra Mohan Hans and anr. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Nov-18-1983

Reported in : AIR1984All151

Judge : K.C. Agrawal and ;O.P. Saxena, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 18 and 31(2)

Appeal No. : First Appeal Nos. 198 and 257 of 1976

Appellant : Surendra Mohan Hans and anr.

Respondent : State of U.P. and anr.

Disposition : Appeal dismissed

Judgement :

K.C. Agrawal, J.

1. These two appeals arise from a Judgment and decree of the District Judge. Meerut dated 3-3-76 deciding land acquisition reference No. 80 of 1974.

2. The relevant facts briefly stated are these. By means of a notification issued in August, 1960 the State of U. P. notified 259.56 acres of land in village Mirzapur, Pargana Loni, Tahsil Ghaziabad. District Meerut for acquisition for Ghaziabad Improvement Trust for planned development of the area. This notification was

modified on June 9, 1962. This was followed by a notification under Section 6 read with Section 17(1)(1-A) of the Land Acquisition Act dated January 13, 1969. Possession in pursuance of the aforesaid notification was taken on 16th Aug. 1972. Thereafter proceedings for determination of compensation of the acquired land were started. By means of the award dated 21-11-73 the Special Land Acquisition Officer determined the award of the appellants at the rate of fifty paise per square yard. The total amount of 9 plots of the appellants measuring 153 Bighas 9 Biswas 19-2/3 Biswansis and 15 Kachwansis came to Rupees 11.41.123-92 P.

3. It appears that the appellants and some other interested persons made representations to the State Government that their land may not be acquired. They also filed writ petitions in the High Court which were dismissed. Thereafter on their representation the State Government made orders for ex gratia payment at the rate of Rs. 1-50 p. per square yard to be awarded to them. Under this policy of the State Government the appellants were given in addition to fifty paise awarded by the Special Land Acquisition Officer, ex gratia at the rate of Re. 1 per square yard on 24-11-73. This ex gratia payment was accepted by the appellants and they signed 41/C2 in lieu thereof. This document is headed as compromise and is in respect of 119 Bighas 7 Biswansis. The total amount paid to each one of the appellants was. Rupees 18.93.330-38 p. it reads:

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ge ' ;ke th eksgu iq= fxj/kkjhykylqqjsanz eksgu iq= fnoku jruyky gaql ctfj;s rgjhj ggtk rk;nkn feugkbZ o rk;nkneqvkokt rFkk rk;nkn vuqxzg Hkqxrku ,DI xzs'kh;k isesaV eqLIYyk tsy dks tksokcr vkjkt eqUn&tkZ; tSy ds feyk gSa eUtwj uqdoy djrs gS vkSj bdjkj djrs gSafd vxj bZuds eqrkfyd dqN vkSj nkok ds ckor dksbZ ukyhl nk;j djs ;k gekjs ukelsnk;j dh tk; rks QkSju fMI feal djnh tk;ftykijxukEkkStkr'kfjgk tk;tkndk gqdqe

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4. After the award the appellants moved an application to the Collector under Section 18 of the Land Acquisition Act claiming compensation at the rate of Rs. 5

per square yard. The reference was contested by the Collector on a number of grounds including that as the appellants had accepted the compensation awarded by the Special Land Acquisition Officer and had agreed not to prefer any reference application, the reference was not maintainable and was liable to be rejected on that ground.

5. On the pleadings of the Parties the learned District Judge framed the following issues:

(1) Whether compensation awarded is unfair and inadequate? If so what is the fair compensation?

(2) Whether claimant is entitled to compensation for the land shown in claim petition?

(3) Whether the claimant accepted ex gratia payment for his land and surrendered his right to claim any further compensation?

(4) Whether signature of the claimant of application dated 24-11-73 was not in full payment as alleged in para 4 of re-joinder?

(5) Whether, in spite of payment ex gratia compensation, this court has to determine compensation as alleged in para 5 of reminder?

(6) To what relief, if any is petitioner entitled?

On issues Nos. 3, 4 and 5 the learned District Judge held that as the appellants had compromised the dispute with the State Government in respect of two out of the three khatas, they were stopped from challenging the compensation received in respect of two khatas by means of the application under Section 18. However, with regard to the third khata the view of the District Judge was since the compromise 41/C2 did not pertain to it the reference application was maintainable. Consequently under issues Nos. 1 and 2 he determined the compensation and found that the correct market value the appellants were entitled to act compensation in accordance with the said rate. Consequently upon the aforesaid order the reference application was partly allowed and partly dismissed. Against

the judgment of the District Judge allowing the reference, the State of U. P, has preferred first Appeal No. 198 of 1976 whereas First Appeal No. 257 of 1976 has been filed by the claimant-appellants.

6. In the appeal filed by the State of U. P. a preliminary objection was raised by the learned counsel for the respondents about limitation. The contention was that as the appeal ought to have been filed on the re-opening day of the High Court. i.e., 5-7-76 instead of 13-7-76. hence the appeal was barred by time. The learned Chief Standing Counsel prayed for time to file an application under Section 5, of the Limitation Act for condonation of delay. At the time when we heard the appeals and reserve, we did not consider it necessary to grant time to the standing counsel for the said purpose but on a review of the whole matter we consider it to be in the ends of justice to allow to the appellant, the State of U. P. time for filing an application for condonation of delay. Hence we do not decide this appeal on merits and instead of it grant one month's time to the appellant for filing an application for condonation of delay.

7. Coming to First Appeal No. 257 of 1976 the main controversy is whether the appellants had compromised the dispute with the State of U. P. and had disentitled themselves as a result of the same to file the reference application. 41/C2 which contains the undertaking of the appellants that they would not file the appeal or raise the question of the adequacy of compensation by means of any legal proceedings has already been referred to by us. Before we decide the correct interpretation of the aforesaid compromise, we wish to note some of the provisions of Land Acquisition Act which would have bearing on the controversy in issue. The relevant Sections are 18, 19, 20 and 31(1) and (2) of the Act. They are being quoted below:

'18. (1) Any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award:

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12. Sub-section (2). or within six months from the date of the Collector's award, whichever period shall first expire.

19. (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand.--

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon:

(b) the names of the persons whom he had reason to think interested in such land:

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11: and.

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing, made or delivered by. the parties interested respectively.

20. The Court shall thereupon cause a notice, specifying the date on which the Court will proceed to determine the objection and directing their appearance before the Court on that day to be served on the following persons, namely:--

(a) the applicant:

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded: and.

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

31. (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 38:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.'

8. From a conjoint reading of these sections it would appear that the policy of the Legislature behind them is that any person who has accepted the award is not entitled to apply for reference under Section 18 of the Land Acquisition Act. If the Collector decides to make a reference, he has to supply the information required by Clauses (a) to (d) of Sub-section (1) of Section 19 of the Act. Section 31(2) second Proviso of the Land Acquisition Act creates a statutory bar to a person laying down that a person who has accepted the compensation without protest would be deemed to have waived his right to get higher compensation and his reference application in that event would not be maintainable. It, therefore, follows

that if a person intends to raise the question of compensation being inadequate as awarded by the Special Land Acquisition Officer, he should accept the compensation under protest. If he does not do so he would be deemed to have waived his right to higher compensation. This controversy has been a subject-matter of decision, in a number of cases. In *State of Punjab v. Smt. Harcharan Kaur* . a Full Bench held that a court can dismiss or decline the reference or. the around that the applicant has accepted the Collector's award by receiving the payment of compensation without any protest. The Full Bench held (at p. 68):--

'But there is a positive bar to a reference if the amount has been accepted without protest, under Section 31(2) Second proviso; and in any event, even if a reference is made in ignorance of that provision, as it appears from the present case. Section 20(b) clearly gives jurisdiction to the Court to non-suit the claimant if he has accepted the award without protest, that is he has accepted the amount awarded without protest. I see no escape from this conclusion. The view. I have taken of the matter, finds support from the observations of the Calcutta High Court in *Suresh Chandra Roy v. Land Acquisition Collector. Chinsurah* : AIR1964 Cal283 .'

In *Hazara Sinah v. State of Punjab*, (1972) 74 Pun LR 374. Mahajan. J. took the same view. The same is auoted below :

'In any event no application was competent under Section 18 in view of the fact that the claimant had accepted the compensation without protest. The Collector could pass no order under Section 18 and. therefore, there would be no valid reference before the District Judge. In any event the object of Section 31(2) Second Proviso, is that a person who accents compensation without protest in fact accepts the award and the compensation, and a person who has accepted the award and compensation given by the Collector cannot challenge that award. The rule of estoppel will step in.'

9. A similar view was taken in *Mrs. Thomas v. Collector of Madras* AIR 1958 Mad 136 (187). The learned Judge held that Section 31 speaks of a receipt without protest as debarring the claimant from making further claim.

10. In *Ananta Ram Banerjee v. Secretary of State* : AIR1937 Cal680 . Calcutta High Court held:

'If the question raised by the Secretary of State before the Special Judge is that the reference had been made by the Collector by mistake at the instance of a person who had accepted the award, the question of fact as to whether the claimant had accepted the award must be gone into by the Special Judge and if he decides that question in the affirmative, he must throw out the reference on that around.'

11. In *Suresh Chandra Roy v. Land Acquisition Collector. Chinsurah* : AIR1964 Cal283 the Calcutta High Court took the same view.

12. Recently this question was again considered in *Karnail Singh v. State of Punjab* .

13. In the instant case the learned District Judge held on the basis of 41 / C2 that the appellants had waived their right to challenge the compensation and as such their reference application was not maintainable. Independently of Ex. A-1 (41/C2) even if we have to examine the controversy stated above on the basis of Second Proviso to Sub-section (2) of Section 31, we find that the reference application was not maintainable. After examining the evidence led before him the learned District Judge held that there was nothing on the record to find that the compensation had been accepted under protest by the appellants. The learned counsel appearing for the appellants invited our attention to the reference made, by the Collector and urged that as the said reference made by the Collector recited that the compensation had been accepted by the appellants under protest, the court should hold that Second Proviso to Sub-section (2) of Section 31 was not applicable. There was nothing in the record of the Collector or the Special Land Acquisition Officer indicating that the compensation awarded had been accepted under protest. So far as the note in the statement under Section 19 of the Land Acquisition Act was concerned, the learned District Judge held that the same was noted under a mistake and in a routine manner. In the absence of any evidence on the record indicating that compensation was accepted under protest. no other conclusion was possible. Making of a wrong note by the office in the absence of

any proof under which the compensation had been accepted by the appellants (sic) the Second Proviso to Sub-section (2) of Section 31 was clearly applicable.

14. The learned counsel for the appellants submitted before us that 41 /C2 (Ex. A-1) was not a compromise as it was not signed by two sides and further it had not been entered into in accordance with Article 299 of the Constitution. Be that as it may the facts of receiving the compensation of the two khatas by the appellants and making a note that they would not prefer any appeal against the compensation awarded by the Land Acquisition Officer goes to show that the appellants had accepted compensation without protest. Making of protest is a formal declaration by a person interested or concerned in some act about to be done or already performed, whereby he expresses his dissent or disapproval. The object of such a declaration is generally to save some right which would be lost to him if his implied assent could be made out or to exonerate him from some responsibility which would attach to him unless he expressly negated his assent. The Land Acquisition Act permits the question of compensation determined by the Special Land Acquisition Officer to be challenged by means of a reference only when the person concerned or interested has done under protest. If it is accepted without protest, the person would be deemed to have waived or voluntarily relinquished his right. Ex. A-1 (41/C2) proves that compensation had been accepted by the appellants without protest. That being so independently of Ex. A-1 being not a compromise, we hold that under the law the appellants were debarred from filing the reference application.

15. In the result the appeal is dismissed with costs to the State of U. P.

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