State of U.P. and ors. Vs. Raj NaraIn Singh and anr.

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SooperKanoon Citation : sooperkanoon.com/469327

Court : Allahabad

Decided On : Dec-05-1985

Reported in : AIR1986All321

Judge : N.D. Ojha and ;N.N. Mithal, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4, 23, 23(2) and 28; Code of Civil Procedure (CPC) , 1908 - Order 41, Rules 22 and 33; Land Acquisition (Amendment) Act, 1984 - Sections 54

Appeal No. : F.A. No. 119 of 1974

Appellant : State of U.P. and ors.

Respondent : Raj NaraIn Singh and anr.

Advocate for Def. : V.K.S. Chaudhary, Adv.

Advocate for Pet/Ap. : Standing Counsel

Judgement :

N.D. Ojha, J.

1. This appeal has been preferred by the State of U. P., the Collector, Ballia and the Land Acquisition Officer, Ballia, against the judgment dt 25-9-1973 in Misc. Reference 3 of 1971 under Section 18 of the Land Acquisition Act.

2. Some land belonging to the claimant-respondent 1 was acquired under the Land Acquisition Act (hereinafter referred to as the Act). The relevant notification under Section 4 was issued on 4-11-1965. The notification under Section 6 was issued on 1-12-1965, and possession taken on 10-10-1966. Being dissatisfied with the amount of compensation awarded by the Land Acquisition Officer, the claimant-respondent prayed for a reference being made to the District Judge and reference No, 3 of 1971 mentioned above was made. Reliance before the District Judge was placed on behalf of the claimant-respondent on certain sale deeds as exemplars. The District Judge was of the view that the sale deed dt. 3-8-1965 executed by Badri Lal in favour of Smt. Sujan Kumar in respect of 10 acres of land for a sum of Rs. 4500/- was the best exemplar, inasmuch as it was executed a few months before the Notification under Section 4, of the Land Acquisition Act and the land sold by it was barely one furlong from the land acquired and was of the same nature as the land acquired.

Relying on the statement of Bhagwati Datt Tewari (P.W. 4) who stated that the value of the land at the time of its acquisition was Rs. 1000/- per Katha, the District Judge came to the conclusion that the proper compensation to be awarded in respect of the land of the claimant-respondent would be at the rate of Rs. 30,770/- per acre. This he did in view of the fact that the sale deed dt. 3-8-1965 which was found by him to be the best exemplar was in respect of a small area whereas the land acquired under the Notification under Section 4 referred to above was more than 20 acres in area.

3. It has been urged by the Standing Counsel, appearing for the appellants that the amount of compensation awarded by the District Judge is excessive. On the other hand it has been urged by the counsel for the claimant-respondent that the amount as awarded by the District Judge represented just compensation and that the claimant-respondent was also entitled to solatium at the rate of 30% and interest at the rate of 9% in place of 6% in view of the Land Acquisition (Amendment) Act 1984 (hereinafter referred to as the Amending Act).

4. Having heard counsel for the parties we find it difficult to agree with the submission made by the counsel for the appellants that the compensation as

awarded by the District Judge is excessive. The reasons for holding that the sale deed dt. 3-8-1965 constituted the best exemplar are cogent reasons and as such it cannot be said that the District Judge committed any such error in determining the compensation on the basis of the said sale deed which may justify interference in the present, appeal. It is true that the said sale deed was of a small piece of land measuring .10 acres, but in that regard it would be useful to keep in mind the following observations of the Supreme Court in Smt. Kausalya Devi Bogra v. Land Acquisition Officer, Aurangabad, AIR 1984 SC 892 :

'Two principles relating to the matter of fixation of compensation relevant for the present purpose may be kept in view. When large tracts are acquired, the transaction in respect of small properties do not offer a proper guideline. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property (see Prithvi Raj Taneja v. State of Madhya Pradesh, (1977) 2 SCR 633 : AIR 1977 SC 1560, Padma Uppal v. State of Punjab, (1977) 1 SCR 329 : AIR 1977 SC 580). In certain other cases this Court indicated that for determining the market value of a large property on the basis of a sale transaction for smaller property a deduction should be given. In Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty, (1959) Suppl (1) SCR 404 : AIR 1959 SC 429, a reduction of 25% was indicated while there are certain other cases where the view is that the reduction should be to the extent of 1/3. Again, in the very scheme for fixation of compensation provided by the Land Acquisition Act there is bound to be some amount of arbitrariness."

5. Calculated at the rate on which the land which was the subject-matter of sale deed dt. 3-8-1965 was sold, the amount of compensation comes to Rs. 45,000/- per acre. If a deduction to the extent of 1/3 is made as observed by the Supreme Court in the case of Smt. Kausalya Devi (AIR 1984 SC 892) (supra) the amount of compensation comes to Rs. 30,000/- per acre. As seen above the District Judge has awarded compensation at the rate of Rs. 30,770/- per acre and on the evidence on record we are of opinion that no case has been made out for reducing the amount of compensation awarded by the District Judge, inasmuch as the deduction to be made is not necessarily to be to the extent of 1/3. It may vary

between 1/4 and 1/3 even according to the case of Smt. Kausalya Devi (supra).

6. As regard the submission made by the counsel for the claimant-respondent about solatium and interest on the basis of the Amending Act, it was urged by the standing counsel that since no cross-object ion had been filed, the claimant-respondent was not entitled to either of these amounts. The Amending Act came into force on 24-9-1984. It is by this Amending Act that the amount of solatium was raised to 30% and of interest to 9%. The present appeal was filed in the year 1974 and apparently no cross-objection could have been filed by the claimant-respondent on the basis of the Amending Act. In Panna Lal v. State of Bombay, AIR 1963 SC 1516 it was held : 'We are not, at present advised, prepared to agree that if a party who could have filed a cross-objection under Order 41 Rule 22 of the Civil P.C. has not done so, the Appeal Court can under no circumstance give him relief under the provisions of Order 41, Rule 33 of the Code.'

7. In view of the aforesaid observations of the Supreme Court relief under Order 41, Rule 33 CPC, can be granted even in those cases where a cross-objection could have been filed, but was not filed if the circumstances justify granting relief under the said provision. In the instant case, as already pointed out above, no cross-objection could have been filed by the claimant-respondent. Rule 33 of Order 41, CPC, inter alia contemplates that the Appeal Court shall have power to pass or make such further or other decree or order as the case may require. In Bhag Singh v. Union Territory of Chandigarh, AIR 1985 SC 1576, while construing the provisions of the Amending Act it was held that under Section 30 Sub-section (2) of the Amending Act the provisions of the amended Section 23 Sub-section (2) and Section 28 are made applicable, to all proceedings relating to compensation pending on 30th April 1982 or filed subsequent to that date, whether before the Collector or before the Court or the High Court or the Supreme Court, even if they have finally terminated before the enactment of the Amending Act.

It would not be a correct interpretation of Section 30 Sub-section (2) to say that the provisions of the amended Section 23 Sub-section (2) and Section 28 would be applicable in relation to an order passed by the High Court or Supreme Court only if the order is passed in appeal against an award made by the Collector or Court

between 30th April 1982 and the commencement of the Amending Act. Even if an award is made by the Collector or Court on or before 30th April 1982 and an appeal against such award is pending before the High Court or the Supreme Court on 30th April 1982 or is filed subsequent to the date, the provisions of the amended Section 23 Sub-section (2) and Section 28 would be applicable in relation to an order passed in such appeal by the High Court or the Supreme Court. In this view of the matter we are of opinion that it is a fit case where the claimant-respondent may be given the benefit of the Amending Act in exercise of the power conferred on this Court by Order 41, Rule 33, CPC.

8. Counsel for the claimant-respondent then urged that in view of the proviso inserted in Section 28 of the Act by the Amending Act the claimant-respondent was entitled to 15% interest on the excess amount of compensation awarded by the District Judge. We, however, find it difficult to agree with this submission. The proviso so added to Section 28 reads as hereunder :--

'Provided that the award of the Court may also direct that where such excess or any part thereof is paid into court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into court before the date of such expiry'.

Even a plain reading of the proviso makes it clear that a direction in regard to payment of 15% merest would be justified only if the excess amount of compensation awarded by the court, namely the District Judge is not paid within one year from the date on which possession is taken. In the instant case, as seen above, possession was taken on 19-10-1966. The reference was decided by the District Judge on 25-9-1973 and it is by this judgment that compensation in excess of the amount awarded by the Collector was awarded. In other words the determination about the excess amount of compensation by the District Judge was made after about seven years of possession having been taken. When the excess amount had itself not been determined by the District Judge within one year of the possession being taken it would be requiring the Collector to perform an

impossible task to deposit the excess amount within the said period of one year. It is thus apparent that when the excess amount of compensation was determined after about seven years of the taking of possession the said amount obviously could by no stretch of imagination have been deposited within one year of the taking of possession. It does not need any authority for the proposition that law does not require a person to perform an impossible task.

9. The matter may be looked into from another angle. In those cases where possession is taken under Section 17 of the Act award is invariably given on some date subsequent to the taking of possession which may itself take about a year. In those cases also where award is given and possession is taken thereafter and a reference is made, in the normal course such a reference is not decided before the expiry of one year. As such, whenever the District Judge awards an amount of compensation in excess of the amount awarded by the Collector it would be after a year of the taking of possession whether the possession is taken under Section 17 or after giving the award The obvious result would be that the amount in excess awarded by the District Judge would be impossible to be deposited within one year of taking possession in almost every case, and if the submission made by the couasel for the claimant-respondent is accepted, the rate of interest in every case will for all practical purposes get substituted from 9% to 15%. This obviously does not seem to us to be the intention of the legislature even on a plain reading of the proviso in question. On the other hand the intention of the legislature in amending Section 28 seems to be to award interest at the rate of 9% in place of 6% and reco urse to award of 15% interest under the proviso is to be taken only in these exceptional cases where the requirements of the said proviso are fulfilled. In our opinion, therefore, the claimant-respondent is not entitled to 15% interest.

10. In the result even though the appeal fails and is dismissed, the judgment appealed against passed by the District Judge is modified to this extent that the claimant-respondent shall be entitled to solatium on the market value of the land acquired as determined under Section 23(1) of the Act at the rate of 30% and interest On the excess amount of compensation awarded by the District Judge at the rate of 9% from the date of taking over possession, namely, 19th Oct., 1966 till the date of payment of compensation. In the circumstances of the case there shall,

however, be no order as to costs.