

Harbans Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Sep-08-2000

Reported in : 2000(4)AWC2975; (2000)3UPLBEC2388

Judge : Sudhir Narain and ;Onkareshwar Bhatt, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 6, 9, 11, 18, 23, 25, 25(1), 27(2) and 28; Land Acquisition (Amendment) Act, 1984 - Sections 17 and 22(2)

Appeal No. : First Appeal No. 1024 of 1988

Appellant : Harbans

Respondent : State of U.P. and Another

Advocate for Def. : B.D. Mandhyan, Adv.

Advocate for Pet/Ap. : Ravi Kant, Adv.

Judgement :

Sudhir Narain, J.

1. This appeal is directed against the award dated May 30, 1987, passed by reference court in Land Acquisition Reference Case No. 40 of 1979.

2. Briefly stated the facts are that for establishing market yard for Krlsht Utpadan Mandi Samiti at Shamti, district Muzaffarnagar, the State Government issued

notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act) on 6.11.1975. The plots of the appellant numbered as 282M, 284M, 285 and 286 total area 5 bigha, 11 biswansis were sought to be acquired. This notification was followed by another notification under Section 6 of the Act. The State Government took possession of the land in question from the appellant on 16.1.1976. Notices under Section 9 of the Act were issued requiring the persons interested in the land forming subject matter of the declaration to submit their claims for compensation for acquisition of their land. The appellant submitted the claim petition before the Special Land Acquisition Officer and he made an award on 18.10.1977 awarding compensation at Rs. 10,303,05 per bigha and solatium at 15% and interest at 6%.

3. The appellant, aggrieved against the award of the Special Land Acquisition Officer, sought reference under Section 18 of the Act. Various other claimants, whose lands were adjoining to the land of the appellant and were acquired by the same notification, also sought reference. All the references were consolidated by the Court and heard together. During the pendency of the reference, the Land Acquisition (Amendment) Act. 68 of 1984 came into force by which certain provisions were inserted and substantial changes were made. The said Act has an impact on the pending proceedings and as a consequence thereof, the appellant moved an application before the Court that the compensation be awarded as envisaged by the amending provisions.

4. In the reference proceedings, documentary as well as oral evidence was led by the parties. The State did not choose to file any exemplar except one relied by the Special Land Acquisition Officer pertaining to the year 1973, i.e., more than two years earlier than the notification under Sections 4 and 6 of the Act. The Court, considering the evidence, recorded a finding that the market value of the land was more than Rs. 20,000 per bigha but since compensation was claimed at the rate of Rs. 15,000 per bigha, it allowed the claim at the aforesaid claimed rate. The solatium was awarded at 30% and interest at 12% per annum. The appellant was not awarded the cost.

5. The appellant has filed the appeal for enhancement of the compensation. The first submission of the learned counsel for the appellant is that though the Court has recorded a finding that the market value of the land was more than Rs. 20,000 per bigha but awarded the compensation at the rate of Rs. 15,000 per bigha simply on the ground that the appellant had claimed compensation at the rate of Rs. 15,000 per big ha before the Land Acquisition Officer without considering the amended provisions of Section 25 of the Act. Section 25 of the Act before amendment read as under:

'25. Rules as to amount of compensation.--(1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

6. Sub-section (1) of Section 25 of the Act clearly prohibited the Court from awarding compensation in excess of the amount so claimed. Secondly, this restricted the power of the Court to entertain any claim when aggrieved person has not submitted any claim before the Collector. To remove this mischief. Section 17 of the amending Act (Act 68 of 1984) was introduced. Section 25 as substituted reads as under :

'25. Amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.'

7. The embargo which was placed upon the Court limiting its right to award higher compensation than the claimed before the Collector was removed and the Court

was in a position to award higher claim if the parties lead evidence and prove the market value of the acquired property. In *Sharad Chandra v. State of Gujarat and others*, AIR 1987 Guj 55, the Court in para 10 of the judgment considered the similar question and held that the Court can award compensation in excess of the amount claimed by the claimant before the Land Acquisition Officer. This decision was followed by the Full Bench of Karnataka High Court in *Special Land Acquisition Officer (N.H.W.) Dharwad v. Kallangouda and others*, AIR 1994 Kar 112, wherein the Full Bench held that after the amendment of the provisions of Section 25 of the Act, the claimant was entitled to seek higher amount than what he had claimed before the Special Land Acquisition Officer. The Court observed as under :

'While the law of course expects him to make good the claim made before Court by producing ample evidence, it has nonetheless thought fit to remove all barriers that may prevent or preclude him from claiming the market value of the land. Thus, we find Section 25 as it now stands, totally liberates the claimant from all restraints that held him in check earlier from making a claim before Court for the first time even where he had not made any claim before the Collector and even if he had made some claim the section in its new orientation gives him full liberty to hike his claim before Court without furnishing any reasons or affording an explanation for making a lower claim before the Collector.'

8. There were two reasons assigned to this conclusion. Firstly, Section 25(1) of the unamended Act specifically provided that the Court shall not award the amount in excess so claimed but this provision has been deleted and if this provision was deleted. It will not be fair to put similar restriction on the claim made by a person before the Court underreference under Section 18 of the Act. The second reason is that the proceeding before the reference court under Section 18 of the Act is treated as an original proceeding for the purpose of determining market value afresh on the basis of the material produced before it. The Supreme Court emphasised this aspect in *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona*, AIR 1988 SC 1652. The following principles were laid down :

'(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court.

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the Court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.'

9. The principles laid down in *Chimanlal Hargovinddas's* case had been applied in various decisions vide *Special Tehsildar, Land Acquisition, Yerraguntla v. Kamalagangi Reddy and others*, AIR 1990 AP 124 and *Special Land Acquisition Officer (N.H.W.) Dharwar v. Kallangouda*, AIR 1994 Kar 112.

10. The Court while interpreting the provisions of an amending Act has to apply the principles laid down in *Heydon's case*. (1584) 3 Co. Rep. 7a, p. 7b : 76 ER 637, which is also known as 'Purposive Construction' or 'Mischief rule'. The Court has to consider four matters in construing such provision : (i) What was the law before making of the Act, (ii) What was the mischief for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the Courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. The rule

was explained in the Bengal Immunity Co. v. State of Bihar, by S. R. Das. C.J., as follows : 'It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided. The Heydon's case, was followed in various decisions of this Court vide Dr. Wolfram Waman Hiray v. Mr. Justice B. Lentin, AIR 1988 SC 2267, CIT, Patiala v. Shahzada Wand and Sons, AIR 1966 SC 1342 and M/s. Goodyear India Ltd. v. State of Haryana, AIR 1990 SC 781.

11. The provision of Section 25 of the Land Acquisition Act was amended as to permit the claimant to raise the dispute before the reference court as to the amount irrespective of the claim he had made before the Collector and even if he had not made such claim he can make it before the reference court.

12. The parties are free to lead evidence to prove the market rate. A claimant might have made claim before the Land Acquisition Officer on the basis of his own assessment without finding out various exemplars when it receives notice under Section 9 of the Act for submitting the claim before the Land Acquisition Officer but if he finds the exemplars and other material evidence to show that the value of the land is higher than what he had claimed, the Court has to determine it on the basis of the material evidence produced before it and is not confined to the claim as made before the Collector.

13. Learned counsel for the respondent has relied upon the decision of the Supreme Court in Ujjain Vikas Pradhikaran (Ujjain Development Authority) v. Tarachand and another, JT 1996 (7) SC 206, wherein (their Lordships observed that even after the deletion of sub-section (2) of Section 22 by amending Act 68 of 1984. It would be always open to a party to claim a particular amount and having claimed at that rate, the Court should not allow compensation higher than the amount claimed by him with the following observations :

'It would be obvious that if one party claims compensation at a particular rate, he assesses the market value of the land at that particular rate and seeks compensation on that basis. Having assessed the compensation at that particular rate, the question emerges : whether the Court could grant higher compensation than was assessed by the party? We find answer in the negative. This principle

squarely applied to the facts in these cases. The party having limited the compensation to Rs. 20,000 per bigha in the memorandum of appeal filed in the High Court. It would be obvious that the respondents claimed that they were entitled to the maximum of compensation @ Rs. 20,000 per bigha.'

In this case in the grounds of appeal submitted before the High Court, the compensation was claimed at the rate of Rs. 20,000 per bigha and the High Court enhanced the amount of compensation at the rate of Rs. 26,000 per bigha. It was not a case before the reference court. The appellant himself limited his claim before the High Court. It was held that the High Court was not entitled to enhance the compensation at a rate higher than claimed in the memorandum of appeal. The claimant before the reference court leads evidence in regard to valuation of the land acquired and when he files appeal before the High Court, he is fully aware of the materials on the record in regard to valuation of the acquired land and on appeal being filed by him, if he limits his claim, the High Court, in both the circumstances, would not be justified to enhance the value of the property over and above the value fixed in the memo of appeal. Here in the present case higher claim was made before the reference court and the parties led evidence. The reference court itself came to the conclusion on appraisal of evidence that the market value of the land was more than Rs. 20,000 per bigha and there is no justification on the facts and circumstances of the present case not to award the amount at the market value as assessed itself by the reference court. The appellant shall be entitled to get compensation at the rate of Rs. 20,000 per bigha from the respondents.

14. The next submission of the learned counsel for the appellant is that he is entitled to interest at the rate of 15% in view of the amended provision of Section 28 of the Act. The Court has allowed interest at 12% per annum from the date of delivery of possession till the date of award. It is contended that according to the proviso to Section 28 of the Act where reference court directs excess amount to be paid and if such amount is paid after the date of expiry of a period of one year from the date on which the possession is taken, the interest at the rate of 15% per annum shall be paid 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 the Court

before the date of such expiry but the appellant has not been awarded interest at the rate of 15%.The proviso to Section 28 of the Act leaves no discretion to the Court to award interest less than 15% per annum. The appellant is, therefore, entitled to interest at the rate of 15% on the amount determined by the Court.

15. The last submission of the learned counsel for the appellant is that the Court has not awarded cost without assigning any reason. Subsection (2) of Section 27 of the Act provides that when the award of the Collector is not upheld the cost shall ordinarily be paid by the Collector unless Court is of the opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his cost should be made or he should pay a part of Collector's cost. In this case the appellant had submitted the claim before the Collector at Rs. 15,000 per bigha but he was awarded at the rate of Rs. 10,303,05 per bigha and it has been enhanced to Rs. 15,000 per bigha by the Court below, the Court should have awarded the cost to the appellant.

16. In view of the above the appeal is allowed. The order of the reference court dated 30.5.1987 is modified. The amount of compensation shall be calculated by the reference court keeping in view the observation made above and the decree shall be prepared accordingly.

17. The cost of this appeal shall, however, be borne by the parties.

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