

Basdeo Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-01-2003

Reported in : 2004(1)AWC822

Judge : S.P. Srivastava and ;Ghanshyam Dass, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 12A, 13A, 18 and 23

Appeal No. : C.M.W.P. No. 52989 of 2003

Appellant : Basdeo Singh

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.D. Misra, Adv.

Disposition : Petition dismissed

Judgement :

S.P. Srivastava and Ghanshyam Dass, JJ.

1. Heard the learned counsel for the petitioner.
2. The learned standing counsel representing the respondents on advance notice has also been heard in opposition to the writ petition.

3. Perused the record.

4. The petitioner has prayed for a direction requiring the Special Land Acquisition Officer impleaded as respondent No. 2 to rectify, in accordance with the provisions contained in para 94 of the Land Acquisition Manual, exercising the Jurisdiction envisaged under Section 12A of the Land Acquisition Act, the award dated 6.6.2003 declared under the provisions of the Land Acquisition Act determining the amount of compensation in respect of the agricultural holdings of the petitioner which had been acquired under the provisions of the aforesaid Act.

5. At the out set it may be noticed that Section 12A of the Land Acquisition Act as applicable to the State of U. P. now stands superseded by the Central Act after the enforcement of the provisions to the identical effect by bringing on the statute book Section 13A providing for correction of clerical error, etc.

6. The provisions contained in Section 13A enables the Collector to rectify clerical or arithmetical mistake in the award subject to certain conditions. The provision contained in Section 13A of the Land Acquisition Act is to the following effect :

'13A. Correction of clerical errors, etc.--(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under Section 18 to make a reference to the Court, before the making of such reference by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority :

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under Sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the

same may be recovered as an arrear of land revenue'.

7. It may be noticed that in the absence of the provision now contained in Section 13A, the Collector could not even rectify a genuine clerical or arithmetical error in the award and since a provision to the aforesaid effect was felt immensely necessary so that even minor errors may be rectified, the various States had enacted similar provision like Section 12A enacted by the State of Uttar Pradesh. However, now since the Central Act has been amended, the provisions contained in Section 12A as applicable to the State of Uttar Pradesh stand superseded.

8. The petitioner claims that his agricultural holdings comprising of Plot Nos. 207, 316, 355, 356, 353 and 221 had been acquired in the proceedings initiated under the [Land Acquisition Act, 1894](#). The notification under Section 4(1) of the Land Acquisition Act in respect of the land in dispute which forms part of a large area had been published in the Official Gazette on 25.7.1998. Notification under Section 6 was published in the Gazette on 10.3.1999. In the proceedings initiated for the determination of the compensation for the land belonging to the petitioner, a detailed objection had been filed by the petitioner along with other tenure holders, a copy of which has been filed as Annexure-4 to the writ petition. In his objection, the petitioner had raised various objections in support of his claim for award of compensation at the enhanced rate.

9, The Special Law Acquisition Officer disposing of the objection had determined the amount of compensation at the rate of Rs. 1,54 (sic) 9.18 per acre negating the objections of the petitioner for the award of compensation at the rate of Rs. 5,00,000 per acre.

10. It may be noticed that in the award, a true copy of which has been filed as Annexure-5 to the writ petition, the Special Land Acquisition Officer had observed that the land sought to be acquired had been inspected on the spot and the compensation had been determined in accordance with the rules. In this connection, it may further be noticed that there is a presumption available in regard to the regularity of the proceedings under the Land Acquisition Act. The pleadings contained in writ petition do not indicate any such factor which may rebut the aforesaid presumption.

11. The learned counsel for the petitioner has strenuously urged that the award in question required rectification and the amount awarded deserved to be enhanced as claimed and the error in this connection which had been committed by the Special Land Acquisition Officer could be rectified exercising the jurisdiction envisaged under Section 12A as applicable to the State of Uttar Pradesh which provision, as noticed herein above now stands superseded by Section 13A of the Land Acquisition Act.

12. So far as the aforesaid aspect is concerned a perusal of the application filed before the Special Land Acquisition Officer by the petitioner wrongly invoking its jurisdiction under Section 12A of the Land Acquisition Act as applicable to the State of Uttar Pradesh which stands superseded, indicates that the only ground set forth in that application was that there had occurred an arithmetical mistake in determining the amount of compensation. This is obvious from the perusal of a true copy of the aforesaid application which has been filed as Annexure-6 to the writ petition. The expression 'Ganitiya Truti' used in that application refers to arithmetical error and not clerical error.

13. The question in regard to the ambit of the expression 'clerical mistake' and 'arithmetical mistake' had come up for consideration before the Apex Court in the case of Master Construction Co. (P.) Ltd. v. State of Orissa, AIR 1966 SC 1047, The Apex Court in its aforesaid decision had observed that arithmetical mistake is a mistake of calculation and a clerical mistake is a mistake in writing or typing,

14. In an other decision in the case of State of Punjab v. Darshan Singh, 2003 (7) Supreme 474, the Apex Court had considered the implications arising under the expression 'clerical or arithmetical' mistakes which find place in the provisions contained in Section 152 of the Civil Procedure Code, In that connection, it had been observed that the exercise of such power of correction of clerical or arithmetical mistakes in the judgments, decrees or orders contemplates only the correction of mistakes by the Court of its ministerial action and does not contemplate of passing effective judicial orders after the judgment, decree or order. It was emphasized that the powers under Section 152 of the Civil Procedure Code are neither to be equated with the powers of review nor can be said to be

akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it.

15. Though aforesaid observation was made with reference to Section 152 of the Civil Procedure Code which also contains the expression clerical or arithmetical mistake the ratio of the aforesaid decision can safely be applied to the expressions as used in Section 13A of the Land Acquisition Act.

16. We are clearly of the view that a clerical or arithmetical mistake envisaged under Section 13A of the Land Acquisition Act has to be taken to be that clerical or arithmetical mistake which is apparent on the face of the award. An error which has to be established by a long drawn process of reasoning on a point where there may be conceivably two opinions cannot be said to be an error on the face of the award. A decision on a point of law does not fall within the ambit of the expression a mistake apparent on the face of the award.

17. We are further of the view that an arithmetical mistake has to be taken to be a mistake of calculation and a clerical mistake has to be taken to be a mistake in writing or typing. A mistake requiring elaborate arguments on question of fact or law cannot be categorized as clerical or arithmetical mistake. The petitioner has sought to claim a right asserting that there was an error of decision. Such grievance could be raised only in a proceeding challenging the award after getting reference made as contemplated under Section 18 of the Act and not in the proceedings under Section 13A of the Act. The question of enhancement of the compensation as sought for in the present case has to be determined in the appropriate proceeding after the reference is made as contemplated under Section 18 of the Land Acquisition Act.

18. In our considered opinion, the claim of the petitioner could not by any stretch of imagination fall within the ambit of the mistakes envisaged under Section 13A of the Land Acquisition Act.

19. It may further be noticed that the quantum of compensation in respect of the acquired land has to be determined in accordance with the statutory provisions

contained in Section 23 of the Land Acquisition Act. The provisions contained in para 94 of the Land Acquisition Manual at the most could be taken to be providing only guidelines. The statutory provisions contained in Section 23 of the Act cannot be deemed to be superseded or their effect taken away in any manner by such guidelines which have to be taken to be of the nature of administrative instructions only.

20. Taking into consideration the facts and circumstances as brought on record in their totality, we are not satisfied that sufficient ground can be said to have been made out for issuing the direction of the nature as sought for while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

21. This writ petition, in the circumstances, deserves to be and is hereby dismissed.

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