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Court : Madhya Pradesh

Decided On : Sep-21-1964

Reported in : AIR1965MP93; 1965MPLJ153

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : Land Acquisition Act, 1894 - Sections 49(1)

Appeal No. : Misc. Petn. No. 62 of 1964

Appellant : Deepchand and anr.

Respondent : Land Acquisition Officer and anr.

Advocate for Def. : Y.S. Dharmadhikari, Adv. for Respondent No. 2

Advocate for Pet/Ap. : R.K. Tankha, Adv.

Disposition : Petition allowed

Judgement :

Dixit, C.J.

1. This petition under Articles 226 and 227 of the Constitution is directed against an award dated 13th January 1964 which the Land Acquisition Officer, Rajgarly, gave under Section 11 of the Land Acquisition Act, 1894 (hereinafter called the Act), and also against the taking of possession of 400'x268' of land out of S. Nos.

285, 286 and 287, total area 2.46 acres, of village Biaora following that award.

2. The facts so far as they are necessary for disposal of this petition may be shortly stated. At the instance of Municipal Committee, Biaora (respondent 2), proceedings were initiated for acquiring land for a bus stand at Biaora. Notifications were duly issued under Sections 4 and 5 of the Act. Thereafter, notices were issued to the petitioners under Section 9 of the Act and they submitted, as required, a statement of their claim. On 8th January 1964, they made an application under Section 49 of the Act widen, as amended for this State reads:

'1. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any tiouse, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under Section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shell be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(1-a). For the purpose of Sub-section (1), land which is field with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house.

(2). If, in the case of any claim under Section 23, Sub-section (1) thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is

unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the fund first sought to be acquired forms a part,

(3). In the case last hereinbefore provided for, no fresh declaration or other proceedings under Sections 5 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under Section 11.' instead of making a reference, as required by Section 49, the Land Acquisition Officer himself proceeded to enquire into the matter and held on 13th January 1964 that the land sought to be acquired was not a part of the factory and office buildings and that Section 49 had, therefore, no application, on the same day, he gave the Impugned award and, as directed, possession of the land was alsotaken on that very day.

3. In support of this petition, it is urged that, since the petitioners had expressed a desire that the whole factory and office buildings be acquired, it was not open to the respondents to proceed to acquire only 400'x268' of the land attached to the factory and office buildings and reasonably necessary for their enjoyment. Further, if there was any question whether the land did or did not form part of the factory and office buildings, they were bound to make a reference as contemplated by the second proviso to the section and had in that matte? no option. Shrj Dharmadhikari, who appears for the respondent 2, does not dispute that this is the legal position: State of Dinar v. Kundan Singh, AIR 1964 SC 350, He, however, contends that the petitioners did not express in their application dated 8th January 1961 any desire that the whole factory and office buildings be acquired. We have carefully considered that application and we are of opinion that Shri Dharmadhikari's argument is not well founded. In the first paragraph of that application, the petitioners state that the land sought to be acquired, is an integral part of the factory and office buildings,. In the second paragraph, they say that if it be necessary to acquire the land, a reference be made to the Stats Government under Section 49(2) of the Act so that the entire land may be acquired. In the third paragraph, they go on to say that if there be any question whether the land sought to be acquired does or does not form a part' of the factory and office buildings, a

reference should be made under the second proviso to Section 49(1) of the Act. In our opinion, although Section 49(2) was unnecessarily mentioned by mistake, there can be no doubt upon reading the application as a whole that the petitioners did express a desire that the entire land including the factory and the office buildings should be acquired. That being so, it was not open to the Land Acquisition Officer to proceed to adjudicate upon that application or to dismiss that application on Ms own view of the matter. As required by the second proviso to Section 49(1), he was bound to refer the question to the Court and to refrain from taking possession of the land until that question had been determined.

4. The result is that the petition succeeds and is allowed. The award D/- l3th January 1964 is quashed. The respondent 1 is directed to refer, under the second proviso to Section 49(1) of the Act, the question whether the land acquired forms part of the petitioners' factory and office buildings. Further, both the respondents are directed to restore possession of the land to this petitioners. In the circumstances of the case, the respondent 2 shall bear its own costs and pay those Incurred by the petitioners to whom the security amount shall be. refunded. Hearing fee Rs. 100A.

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