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Court : Madhya Pradesh

Decided On : Feb-28-2003

Reported in : 2003(3)MPHT301; 2003(3)MPLJ428; 2009AIRSCW604

Judge : Dipak Misra and ;Ajit Singh, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 17(1), 23(1A), 23(2) and 28; Land Acquisition (Amendment) Act, 1984

Appeal No. : First Appeal No. 212 and 222 of 1994

Appellant : Ramdas

Respondent : State of M.P.

Advocate for Def. : Sanjay K. Yadav, Govt. Adv.

Advocate for Pet/Ap. : V.S. Shroti, Sr. Adv. and ;A.P. Shroti, Adv.

Judgement :

Dipak Misra, J.

1. These two appeals preferred under Section 54 of the [Land Acquisition Act, 1894](#) (hereinafter referred to as 'the Act') being interlinked and interconnected and having arisen out of a singular award dated 5-4-1994 passed in M.J.C. No. 64/85 by the learned Second Additional District Judge, Hoshangabad were heard

analogously and are disposed of by this common judgment. In First Appeal No. 212/1994 the claimant-land owner is the appellant who is assailing the award passed by the Reference Court and in the other appeal the State of Madhya Pradesh has called in question the defensibility of the same.

2. The facts which are essential to be stated for the disposal of both the appeals are that the State Government issued a notification under Sections 4 and 17(1) of the Act on 26-9-75 for acquisition of land admeasuring 6.56 acres of land forming a part of Khasra Nos. 49, 52/1, 52/2, 84 and 88/2 situated in Village Rasulia, District Hoshangabad. The land of the claimant admeasuring 2294 sq. ft. was also included in the aforesaid notification. The notification under Section 6 of the Act was published in the official gazette on 23-4-76 and the possession of the land was taken by the competent authority on 21-1-1976. The Land Acquisition Officer after noticing the interested parties determined the compensation of the land by passing an award on 6-8-77. The claimant/appellant claimed compensation at the rate of Rs. 5/- per sq. ft. but the Land Acquisition Officer awarded compensation at the rate of Rs. 2/- per sq. ft. It was claimed that the land was diverted long back. Interest at the rate of 6% per annum on the amount of compensation was awarded alongwith 15% solatium for compulsory acquisition under Section 23(2) of the Act. As setforth a total sum of Rs. 5,865/- was awarded in favour of the claimant.

3. The claimant/appellant preferred an application under Section 18 of the Act seeking reference to the Civil Court and accordingly a reference was made. The Reference Court increased the compensation by fixing the rate at Rs. 4/- per sq. ft. and granted solatium at the rate of 30% under Section 23(2) of the Act. Interest at 9% per annum from the date of taking over of possession was awarded on the additional amount. Thus, a sum of Rs. 3310.05 p., was additionally awarded together with interest at 9% per annum from 21-1-76 to the date of payment alongwith the solatium of 30%. Being aggrieved by the said award the appellant has visited this Court in appeal.

4. In First Appeal No. 222/94 the State of Madhya Pradesh has impugned the award as there has been enhancement of compensation on the ground that there is no evidence on record warranting such enhancement. It is putforth that the rate

of Rs. 4/- per sq. ft. has been fixed on surmises and conjectures and not on proper assessment of material brought on record.

5. We have heard Mr. V.S. Shroti, learned Senior Counsel alongwith Mr. A.P. Shroti for the claimant in both the appeals and Mr. Sanjay K. Yadav, learned Government Advocate for the State.

6. Assailing the award Mr. V.S. Shroti, learned Senior Counsel, has advanced the following contentions :--

(i) That the State has acquired 30927 sq. ft. of land of the claimant/appellant out of Khasra No. 52/1 which is clearly noticeable from the award passed by the Land Acquisition Officer inasmuch as he has fixed the compensation at the sum of Rs. 17,136.55 P., but the Reference Court has totally erred in not noticing the said aspect and confined the award to an area of 2294 sq. ft.

(ii) The Reference Court has committed gross illegality by fixing the rate of Rs. 4/- per sq. ft, though there is substantial material on record to show that the land in question was within the municipal limits of Hoshangabad town and was diverted way back in the year 1965-66 and hence, minimum of Rs. 5/- per sq. ft. ought to have been awarded.

(iii) The Reference Court has lost sight of the amended provision contained in Section 23(1-A) of the Act by not awarding interest at the rate of 12% per annum on the market value of the land from the date of publication of notification under Section 4(1) of the Act.

(iv) The learned Additional District Judge has erred in law by awarding interest at the rate of 9% per annum under Section 28 of the Act, though the claimant was entitled to 15% per annum inasmuch as the award amount was deposited into the Court after the date of expiry of period of one year from the date on which compensation was taken. It is urged by him under Section 28 of the Act 15% is payable from the date of expiry of one year on such excess amount or part thereof which has not been deposited into the Court before the date of such expiry.

To bolster his submission the learned Senior Counsel has placed reliance on the decisions rendered in the case of K.S. Paripoorana v. State of Kerala, AIR 1995 SC 581, Special Deputy Collector and Anr. v. Kurra Sambasiva Rao and Ors., AIR 1997 SC 2625, Manipur Tea Co. Pvt. Ltd. v. Collector of Hailakandi, AIR 1997 SC 1779 and Krishi Utpadan Mandi Samiti v. Kan-haiyalal, (2000) 7 SCC 756.

7. Mr. S.K. Yadav, learned Government Advocate, sounding a contra note, has contended that the State has assailed the decision of the Reference Court in fixing the rate at Rs. 4/- per sq. ft. as there is no adequate material on record for such fixation. It is urged by him that the Land Acquisition Officer has not determined the market value as per law and there was no justification on the part of the Reference Court to raise the rate on unacceptable grounds. It is further contended by him that the claimant was not entitled to the solatium at the rate of 30% as the award had already been passed on 17-8-77 by the Land Acquisition Officer. It is also put forth by him that if some land has been left out by the Reference Court the same cannot be adjudicated by this Court in an appeal without proper evidence as that would totally amount to guess work.

8. Before we advert to the extent of area involved and fixation of rate we think it appropriate to deal with other facets, namely, entitlement of the interest by the claimant under Section 23(1-A), solatium under Section 23(2) and interest under Section 28 of the Act. We have thought it seemly to deal with this aspect first as the learned Government Advocate called in question the propriety of the grant of solatium by the Reference Court.

9. We will first proceed to deliberate on entitlement of interest under Section 23(1-A) of the Act. It is not disputed at the Bar that notification under Section 4 read with Section 17(1) of the Act was brought into existence in the mid of 1975. Land Acquisition Officer passed the award on 17-8-1977. The Reference Court passed the award on 5-4-1994. In this factual chronology the question that falls for adjudication is whether the claimant is entitled to the interest at the rate of 12% per annum at market value of the land from the date of the publication of the notification. The possession has been taken over on 21-1-1976. The Constitution Bench of the Apex Court in the case of K.S. Paripoornan v. State of Kerala, 1995

AIR SCW 1004, scanned the transitory provision contained in the amending Act and expressed the view as under:--

'54. If Sub-section (1-A) of Section 23 is construed in the light of the provisions contained in Sub-section (1) of Section 30 of the Amending Act there is no escape from the conclusion that Section 23(1-A), by itself, has no application to proceedings which had commenced prior to the enactment of the amending Act and the applicability of the said provision to pending proceedings is governed exclusively by Sub-section (1) of Section 30 of the Amending Act. A perusal of Sub-section (1) of Section 30 of the Amending Act shows that it divides the proceedings for acquisition of land which had commenced prior to the date of the commencement of the amending Act into two categories, proceedings which had commenced prior to April 30, 1982 and proceedings which had commenced after April 30, 1982. While Clause (a) of Section 30(1) deals with proceedings which had commenced prior to April 30, 1982, Clause (b) deals with proceedings which commenced after 30, 1982. By virtue of Clause (a) of Section 23(1-A) has been made applicable to proceedings which had commenced prior to April 30, 1982 if no award had been made by the Collector in those proceedings before April 30, 1982. It covers (a) proceedings which were pending before the Collector on April 30, 1982 wherein award was made after April 30, 1982 but before the date of the commencement of the Amending Act, and (b) such proceedings wherein award was made by the Collector after the date of the commencement of the Amending Act. Similarly Section 30(1)(b) covers (a) proceeding which had commenced after April 30, 1982 wherein award was made prior to the commencement of the Amending Act, and (b) such proceedings wherein award was made after the commencement of the Amending Act. It would thus appear that both the Clauses [(a) and (b)] of Sub-section (1) of Section 30 cover proceedings for acquisition which were pending on the date of the commencement of the Amending Act and to which the provisions of Section 23(1-A) have been made applicable by virtue of Section 30(1). If Section 23(1-A) independently of Section 3(1) is applicable to all proceedings which were pending on the date of the commencement of the Amending Act Clauses (a) and (b) of Section 30(1) would have been confined to proceedings which had commenced prior to the commencement of the Amending Act and had concluded before such commencement because by virtue of Section

15 the provisions of Section 23(1-A) would have been applicable to proceedings pending before the Collector on the date of commencement of the Amending Act. There was no need to so phrase Section 30(1) as to apply the provisions of Section 23(1-A) to proceedings which were pending before the Collector on the date of the commencement of the Amending Act. This only indicates that but for the provisions contained in Section 30(1). Section 23(1-A) would not have been applicable to proceedings pending before the Collector on the date of commencement of the Amending Act.

55. Merely because Sub-section (1) of Section 30 only refers to award made by the Collector while Sub-section (2) of Section 30 also refers to an award made by the Court as well as the order passed by the High Court or the Supreme Court in appeal against such award does' not mean that Section 23(1-A) was intended to have application to all proceedings which were pending before the Civil Court on the date of the commencement of the Amending Act. The difference in the phraseology in Sub-sections (1) and (2) of Section 30 only indicates the limited nature of the retrospectivity that has been given to provisions contained in Section 23(1-A) under Section 30(1) as compared to that given to the provisions of Sections 23(2) and 28 under Section 30(2). The limited scope of the retrospectivity that has been conferred in respect of Section 23(1-A) under Sub-section (1) of Section 30 does not lend support to the contention that the scope of such retrospectivity should be enlarged by reading such further retrospectivity into the provisions of Section 23(1-A). For the reasons aforementioned we are of the view that in relation to proceedings which were initiated prior to the date of the commencement of the Amending Act Section 23(1-A) would be applicable only to those cases which fall within the ambit of Clauses (a) and (b) of Sub-section (1) of Section 30 of the Amending Act.'

11. In this context we may profitably refer to the decision rendered in the case of Land Acquisition Officer, Punjab v. Anudeep Kaur and Ors., AIR 1996 SC 2885, wherein Their Lordships expressed the view as under :--

'2. The controversy is no longer res integra as regards entitlement to payment of additional amount under Section 23(1-A) of the [Land Acquisition Act, 1894](#), as

amended by Act 68 of 1984. The award of the Land Acquisition Officer is dated July 30, 1981. Therefore, Section 23(1-A) has no application to the award in question. Under these circumstances, the Civil Court has no jurisdiction to amend the award and decree awarding additional amount under Section 23(1-A).'

12. In this context we may also profitably refer to the recent decision rendered in the case of *State of Kerala v. Paily Mani and Ors.*, (2002) 9 SCC 562, wherein Their Lordships in Paragraph 5 expressed the view as under:--

'5. The respondents are served. No one has appeared to contest these proceedings when the matter was called out. The question involved in these proceedings is squarely covered against the respondents by a decision of this Court in the case of *K.S. Paripoornan v. State of Kerala*. In view of this decision the benefit of Section 23(1-A) of the Land Acquisition (Amendment) Act, 1984 (for short 'the Act') granted to the respondent claimants cannot be sustained for the simple reason that the award of the Collector was passed on 5-4-1980 and from such award, even though reference before the Court might have been disposed of later on, benefit of Section 23(1-A) of the Act would not be available as held in the aforesaid decision of this Court. Following the said decision, therefore, these appeals are allowed. The award of the compensation passed by the Trial Court and as confirmed by the High Court is modified to the limited extent that benefit under Section 23(1-A) of the Act will not be available to the claimants concerned. Rest of the award will stand confirmed.'

13. In view of the aforesaid enunciation of law there is no trace of doubt that the claimant is not entitled to the benefit under Section 23(1-A).

14. The next two issues can be dealt with in one compartment. They relate to grant of solatium under Section 23(2) and grant of interest under Section 28 of the Act.

15. In this context we may profitably refer to the case of *K.S. Paripoornan (II)* (supra), wherein a three Judge Bench of the Apex Court after referring to Paragraph 31 of the decision rendered in the case of *Union of India v. Raghubir Singh (dead) by L.Rs.*, (1989) 2 SCC 754, in Paragraphs 4 and 5 came to hold as

under :--

'4. This Court thereby clearly held that even in the pending reference made before April 30, 1982, if the Civil Court makes an award between April 30, 1982 and September 24, 1984, Section 30(2) gets attracted and thereby the enhanced solatium was available to the claimants. Since Section 30(2) deals with both the amendment under Section 23(2) and the amendment to Section 28 of the Principal Act by Section 15(b) and Section 18 respectively by parity of the reasoning the same ratio applies to the awards made by the Civil Court between those dates. The conflict of decisions as to whether Section 23(2) as amended by Section 15(b) of the Amendment Act through Section 30(2) of the transitory provisions would be applicable to the pending appeals in the High Court and the Supreme Court was resolved in the Raghbir Singh's case (AIR 1989 SC 1933) by the Constitution Bench holding that the award of the Collector or the Court made between April 30, 1982 and September 24, 1984 would alone get attracted to Section 30(2) of the transitory provision. The restricted interpretation would not be understood to mean that Section 23(2) would not apply to the awarded decree of the Civil Court pending at the time when the Act has come into force or thereafter. In this case, admittedly the award of the Civil Court was after the Act has come into force, namely, February 28, 1985.

5. Therefore, if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the Court shall direct to pay interest on such excess at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess into the Court. By operation of the proviso, if such excess or any part thereof is paid into the Court after the date of expiry of a period of one year from the date on which compensation is taken, interest at the rate of 15% per annum shall be payable from the date 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. Accordingly, the appellant is entitled to the enhanced interest @ 9% from the date of taking possession, namely, January 15, 1981 and March 11, 1981 respectively for one year @ 9% and thereafter @ 15% till the date of the deposit made by the Collector.

Admittedly, the deposit of the enhanced compensation was made on October 20, 1986 and December 3, 1986 therefore, the interest shall be calculated at the enhanced rates for the aforesaid record.'

13. In this context we may usefully refer to the decision rendered in the case of Major Pakhar Suingh Atwal and Ors. v. State of Punjab and Ors., AIR 1995 SC 2185, wherein the Apex Court granted solatium at the rate of 30% on the enhanced compensation and interest at the rate of 9% from the date of taking possession for one year and after expiry of one year at the rate of 15% per annum till the date of payment or deposit of the additional compensation before the Tribunal whichever is earlier.

14. In this context we may refer with profit to another Constitution Bench decision rendered in the case of Sunder v. Union of India, (2001) 7 SCC 211, wherein it has been held as under :--

'26. We think it useful to quote the reasoning advanced by the Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana v. Kailashwati:

'Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a land owner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore, would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

27. In our view the aforesaid statement of law is in accord with the sound principles of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium.'

15. In the case at hand, admittedly the award has been passed by the Reference Court after the Amendment Act came into force. In view of the obtaining factual matrix there is no scintilla of doubt that the claimant would be entitled to solatium at the rate of 30% on the enhanced compensation and interest payable under Section 28 of the Act. In addition, the claimant would also be entitled to the interest as has been laid down in the case of *Sunder* (supra).

16. The next issue relates to rate fixed by the Reference Court. This aspect is questioned by both, namely, the claimant as well as by the State. Ordinarily we would have dealt with this aspect first but, a significant one, a different scenario is projected in this case. Submission of Mr. Shroti is that though more than thirty two thousand sq. ft. has been acquired, award has been passed by the Reference Court only in respect of 2294 sq. ft. Mr. Shroti endeavoured hard to persuade us to determine the rate and fix the amount of compensation. On a perusal of the order of the Reference Court we find the said award is absolutely silent on this score. The learned Counsel for the claimant/appellant has placed heavy reliance on the award passed by the land acquisition officer. It appears that some area has been left out. But the situation of the area, the evidence on record in that regard, the market value of whole area may depend upon many other factors. Mr. Yadav, is correct while submitting that entire exercise can not be done by this Court. We are inclined to accept the aforesaid submission. Mr. Shroti proposed that this Court may fix the rate and remit the matter for determination of the area. We are unable to accept the aforesaid submission as the area which has been left out, as submitted by the learned Counsel for the claimant/appellant is much larger than the area in respect of which the award has been passed. In view of this determination of rate in respect of small area may not be justified and hence, we are not disposed to deal with the rate. In this backdrop we are inclined to remit the matter to the Reference Court to deal with the area in question and determine the rate afresh keeping in view the concept of market value as stipulated under Section 23 of the Act. We hereby make it clear that we have not expressed any opinion in regard to the rate or the area in question. The Reference Court would be at liberty to deal with the same independently in accordance with law. We have only clarified the legal position that if the claimant would be entitled to enhanced compensation he would get the benefit of solatium at the rate of 30% and the

interest as envisaged under Section 28 as has been laid down by the Apex Court in the cases of K.S. Paripoornan (supra) and Sunder (supra). The Reference Court shall specially address to the decision rendered by the Constitution Bench in the case of Sunder (supra) and deal with the facet of interest.

17. Consequently, the award passed by the Reference Court is set aside and the matter is remitted to the Reference Court for decision keeping in view the law laid down hereinabove. As the matter has been pending since long the Reference Court shall dispose of the matter on priority basis within a period of three months from the date of receipt of this judgment. However, in the peculiar facts and circumstances of the case, the parties shall bear their respective costs in their respective appeals.

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