

State of U.P. Vs. Hemendra Kumar and ors.

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Court : Uttaranchal

Decided On : Mar-23-2005

Reported in : 2005(4)AWC3114(UHC)

Judge : Rajesh Tandon and; J.C.S. Rawat, JJ.

Acts : Uttar Pradesh Land Acquisition Act, 1894 - Sections 4, 6, 9, 17, 18, 23(1A), 23(1A)(4), 50 and 50(2); [Constitution of India](#) - Article 226

Appeal No. : A.O. No. 692 of 2001

Appellant : State of U.P.

Respondent : Hemendra Kumar and ors.

Advocate for Def. : Sharad Sharma and; V.N. Agarwal, Advs.

Advocate for Pet/Ap. : U.P.S. Negi, Addl. A.G. and; Bhupendra Singh, S.C.

Disposition : Appeal allowed

Judgement :

Rajesh Tandon, J.

1. This is an appeal against the Judgment and decree dated 9.3.1998, passed by the District Judge, Nainital in Land Acquisition Reference No. 221 of 1986.

2. Briefly stated the facts giving rise to the present appeal are that an agriculture farm measuring 29.41 acres was acquired by the State. This land is situated about 10 km. away from Kashipur towards Ramnagar on Kashipur-Ramnagar motor road. This land was acquired by the U.P. State Industrial Development Corporation Ltd. for Belwal Spinning Mills Ltd. A notification under Section 4 of the U. P. Land Acquisition Act was published on 24.2.1984, followed by another notification under Section 6 of the Act on 25.2.1984. The provisions of Section 17 of the aforesaid Act were also applied and possession over the land was taken on 26.5.1984. A notice under Section 9 of the Act was also served on the respondent. A writ petition was filed before the Allahabad High Court by the respondent challenging the notification under Sections 4 and 6 of the Act, which was dismissed on 24.5.1984. The possession over the land was taken by U. P. State Industrial Development Corporation. The Special Land Acquisition Officer awarded a sum of Rs. 3,55,510.50 at the rate of Rs. 1,875 per bigha. A sum of Rs. 46,564 was awarded as compensation for the houses and another sum of Rs. 1049.54 was awarded as compensation for the trees. On the total amount of Rs. 4,03,126.04 a sum of Rs. 1,20,937.80 ps. was awarded as solatium @ 30%. A sum of Rs. 2,783.22 was awarded as additional compensation under Section 23 (1A) (4) of the Act and a sum of Rs. 50,285.47 was awarded for the crop standing thereon. Thus, a total sum of Rs. 5,77,132.53 was awarded as compensation.

3. The respondent felt aggrieved filed a written application before the Collector for making a reference to the District Judge under Section 18 of the Act.

4. Both the parties filed their written statements. The contention of the respondent throughout was that compensation awarded is grossly inadequate and a portion of the land upto the depth of 15mt. from the pucca Kashipur-Ramnagar road is a potential building site and it could 'easily fetch sale price of Rs. 100 per sq. feet in the open market. This abadi site extends upto 600 meters along the road and compensation of that land comes to a minimum amount of Rs. 9,00,000. The land was bounded by roads on two sides. Besides the metalled Kashipur-Ramnagar road on its West it is bounded by another road on its south which leads to the village. The land is very fertile and it yielded rich crops.

5. The learned District Judge after framing issues allowed the reference and enhanced the compensation and directed the appellant to pay to the applicant a compensation of Rs. 10,09,350 for 29.41 together with Rs. 1,00,000 as compensation for the two houses, Rs. 15,000 as compensation for three tube wells (borings) and two huts, Rs. 50,258.47 as compensation for the standing crops and Rs. 1,249.44 as compensation for the trees standing on the land. On the aforesaid amount except the amount for crop, solatium @ 30% and additional compensation under Section 23 (1A) for 21 days @ 12% was awarded. The respondents were also awarded interest @ 9% per annum from the date of dispossession.

6. Feeling aggrieved by the aforesaid judgment and decree the State has filed the present appeal.

7. We have heard the learned counsel for the parties and have perused the record of the case.

8. The learned counsel for the appellant urged that admittedly the land was acquired at the instance of U. P. State Industrial Development Corporation Ltd. for Belwal Spinning Mills Ltd. ; and since the acquiring body was not impleaded as a party to the reference proceedings, therefore, the decree passed by the reference court is liable to be quashed.

9. The record is available to us and we have perused the order of the reference court. State of U. P. through Collector was impleaded as a party under Section 18 of U. P. Land Acquisition Act. The learned counsel for the respondent urged that although the U. P. State Industrial Corporation had not been properly impleaded as a party in the proceedings under Section 18 of the Act but before the Special Land Acquisition Officer he was given opportunity to lead evidence. The learned counsel for the appellant submitted that in view of the law laid down by the Apex Court unless the acquiring body has not been impleaded as a proper party and opportunity is not given to him to contest the reference proceedings, the order passed by the reference court cannot be sustained. The learned counsel for the appellant has placed reliance on the case of U. P. Avas Evam Vikas Parishad v. Gyan Devi, (1995) 2 SCC 326, where it has been held that the local authority

would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award.

10. Similar view has been taken in the case of Kanak and Anr. v. U. P. Avas Euam Vikas Parishad, (2003) 7 SCC 693, where similar controversy came up for decision before the Apex Court, where the Apex Court, relying upon the judgment of U. P. Avas Evam Vikas Parishad v. Gyan Devi, (1995) SCC 326, has held as under ;

'32. It is not in doubt or dispute that no formal notice was served upon the respondent. A notice to a person, for whose benefit the land is acquired or who is responsible for payment of compensation amount, was mooted before the courts of law on the construction of Section 50 of the Land Acquisition Act. It was held that Sub-section (2) of Section 50 must be construed as conferring a right of notice on the local authority at the stage of determination of the amount of compensation before the Collector as well as the reference court. It is not in dispute that the respondent was not represented even before the Collector. In the aforementioned situation, this Court in Gyan Devi held :

'In other words the rights conferred under Section 50(2) of the L.A. Act carries with it the right to be given adequate notice by the Collector as well as the reference court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority under Section 50(2) of the L. A. Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the reference court and has not suffered any prejudice on account of failure to give such notice.

33. It is not correct to contend that by reason of non-service of notice the respondent was not prejudiced. The exception carried out by this Court in the matter of service of notice to the local authority is not only confined to its knowledge about the pendency of the acquisition proceedings before the Collector

or the reference court but also any prejudice on account thereof. The said two conditions are to be read conjunctively and not disjunctively.

34. The respondent filed a writ petition because it was seriously prejudiced. This Court in Gyan Devi envisaged the following legal situations :

(i) No notice was given to the local authority under subsection (2) of Section 50 of the L. A. Act and as a result the local authority could not appear before the Collector to adduce evidence ;

(ii) Notice was served on the local authority and in response to said notice the local authority appeared before the Collector ; and

(iii) Notice was served on the local authority but in spite of service of such notice the local authority failed to appear and adduce evidence before the Collector.

35. The Court laid down the criteria where the local authority would be a necessary party or proper party. It was observed :

'Since the amount of compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the L. A. Act, the local authority would be a person aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the local authority has failed to appear in spite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by mala fides or is perverse.³⁶ It was further held that presence of the local authority is necessary for a just decision on the question involved in the proceedings before the reference court as that would enable it to adduce evidence therein and as such it was entitled to be impleaded as a party.

38. However, having said so, in our opinion, the High Court should have remitted the matter back to the reference court with a direction that the respondent Parishad may be impleaded as a party so as to enable it to cross-examine the witnesses examined on behalf of the claimants and examine its own witnesses and bring on record such other materials as it may deem fit and proper. It goes without saying, it would also be open to the claimants to adduce evidence to . the contra.'

11. The Apex Court in the case, *Agra Development Authority v. Special Land Acquisition Officer*, (2001) 2 SCC 646, has held as under :

'6. It is next urged that the appellants were not given any opportunity to adduce evidence in the proceedings before the Collector for fixation of the cost of acquisition. It was fairly admitted that the appellants were aware of the proceedings. However, no notice had been issued to them and they had not been given any opportunity to adduce evidence for purposes of determining the amount of compensation.'

12. In the case of *Abdul Rasak v. Kerala Water Authority*, (2002) 3 SCC 228, the Apex Court by placing reliance on the case of *Agra Development Authority* (supra) has held as under ;

8. Learned counsel for the claimant-appellants also submitted that Superintending Engineer of KWA had appeared as a witness in the proceedings before the civil court and, therefore, it can be inferred that the authority was aware of the proceedings and if it did not promptly take steps for impleadment, it should not have been heard to complain before the High Court that it did not have notice of the proceedings and, that it was denied participation in the proceedings before the civil court. It has been held by this Court in *Agra Development Authority v. Special Land Acquisition Officer*, (2001) 2 SCC 646, that where land was acquired at the cost of local development authority, a notice to it was mandatory and simply because the local authority was aware of the proceedings and had participated in the meetings where matters as to compensation were discussed, was not a sufficient compliance with Section 50 of the Land Acquisition Act.'

13. Under Section 50 of the Land Acquisition Act, right of the local authority or company to appear and adduce evidence has been provided. Section 50 reads as under ;

50. Acquisition of land at cost of a local authority or company.--(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company the charges of and incidental to such acquisition shall be defrayed from or of such fund or company.

(2) In any proceeding held before a Collector or in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under Section 18.

14. Thus, in view of the provision of law the U. P. State Industrial Corporation was entitled to appear before the Collector or before the reference court and to adduce evidence. We, therefore, direct as under :

1. The parties are directed to appear before the reference court on 11th April, 2005.

1. The applicant respondent shall implead the U. P. State Industrial Corporation as a party to the proceedings before the reference court, who shall file its written statement.

2. The reference court shall afford opportunity to the parties to lead further documentary as well as oral evidence and to cross-examine the witnesses.

3. The reference court shall finally decide the matter by 30th July, 2005.

4. The compensation already paid to the respondents shall be given due credit at the time of passing decree by the reference court and shall not be recovered from them during pendency of the reference.

15. Accordingly the appeal is allowed. The judgment and decree dated 9.3.1988, passed by the District Judge, Nainital, is hereby set aside. The case is remanded to the reference court to decide it afresh in the light of the observations made above and according to law. There will be no order as to costs.

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