

Narbada Devi, Etc. Vs. Union of India

Narbada Devi, Etc. Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/708271

Court : Delhi

Decided On : Apr-25-1996

Reported in : 91(2001)DLT574

Judge : Mahinder Narain and; J.B. Goel, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17; [Land Acquisition Act, 1894](#) - Sections 4 and 6

Appeal No. : C.M. No. 16 of 1996 in R.F.A. No. 266 of 1984

Appellant : Narbada Devi, Etc.

Respondent : Union of India

Advocate for Def. : S.S. Sabharwal and ; M.K. Sharma, Adv.

Advocate for Pet/Ap. : Om Prakash, Adv

Disposition : Application allowed

Judgement :

C.M. 16/96:

Mahinder Narain, J.

1. By this application, the appellants seek to modify the amount of their claim of market value of the land in their grounds of appeal. The appellants have moved under Order VI Rule 17 of the Code of Civil Procedure, and say that they be permitted to modify the memorandum of appeal so that when this Court pronounces its judgment after hearing the appellants, true market value of the land can be awarded to them.

2. In support of their contention, the Counsel for the appellants refer to : AIR 1983 SC43 , Harcharan v. State of Haryana . In this case, six years after filing the memorandum of appeal, the appellants had sought to amend the grounds of appeal by claiming a higher market value. The Supreme Court while dealing with the appeal held that the best evidence of market value is the judgment of the Court and upon determination of market value of similarly situate land, the petitioner having asked for less than the market value determined by Court, they are entitled to seek an amendment of the appeal. As the appellants had approached the Supreme Court prior to disposal of their appeal, the amendments were allowed.

3. The appellants also rely upon : AIR 1985 SC1576 , Bhag Singh and Ors. v. Union Territory of Chandigarh , which is a three-Judge Bench judgment of Justice P.N. Bhagwati, Justice A.N. Sen and Justice D.P. Madon. The Supreme Court held there that 'Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value.'

'The Supreme Court further held that 'it would not be fair and just to deprive the holder of this land without payment of true market value when law in so many terms, declares that he shall be paid such market value. The State Government

must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen'.

4. The reference, in the aforesaid observations of what the State Government is required to do, is to ensure compliance with the statutory liability, under Section 23 of the Land Acquisition Act to pay the market value. In the aforesaid judgment of the Supreme Court, the petitioners were permitted to claim a higher amount.

5. Reference has also been made to a judgment of the Supreme Court reported as 1991 SC 730, *The Scheduled Caste Cooperative Land Owning Society Ltd., Bhatinda v. Union of India and Ors.* In this case, after a lapse of six years from the date of judgment, the appellants had sought to claim a higher amounts as market value. The Supreme Court did not permit the appellants, in the facts and circumstances of that case, to claim a higher amount. The Supreme Court was of the view that where party claiming enhanced market value keeps the matter alive, then before the decision of the appeal he would be entitled to get the market value claim amended to a higher amount, but where the matter had already been decided, then the permission to have the market value claim amended would be denied.

6. There is no dispute in the instant case that the appeal in which the market value is sought to be increased by this amendment application under Order VI Rule 17, PC is still pending, and that the real question in controversy between the parties is to determine what the market value of the acquired land was on the date of Section 4 Notification.

7. Mr. Sharma, on behalf of the respondent has referred to a judgment of the Supreme Court reported as 1995 AIR SCW 3014, *Buta Singh (Dead) by Lrs. v. Union of India* . In this Constitution Bench case, the Supreme Court held that the decision in *Chand Kaur's* case is 'per incuriam' as it has failed to notice the decision of the Supreme Court in *Bhag Singh's* case (supra).

8. In Chand Kaur's case, which is also : (1994)4SCC663 , a Division Bench of the High Court in a Letters Patent Appeal had rejected an application seeking permission to make up deficiency in Court-fee on enhanced amount of compensation claimed. In this case, the Supreme Court held that 'while the Letters Patent Appeal was pending, and admittedly the judgment in the letters Patent Appeal had not been announced, an application came to be filed by the appellants seeking permission to make up the deficiency in the Court-fee paid on the enhancement claimed in the Letters Patent Appeal. That application was rejected by order of the Division Bench of the High Court dated 30.1.1989. That order has been put in issue before us in this appeal'. The Supreme Court had granted two months' time from the date of its judgment to the appellants to make up the deficiency in Court-fee in Letters Patent Appeal which had been filed by them while setting aside the order of the Division Bench dated 30.1.1989.

9. The Constitution Bench of the Supreme Court, however, approved the judgment of three-Judge Bench of the Supreme Court in Bhag Singh v. Union of Territory of Chandigarh (supra), some of the relevant observations of which judgment have been extracted hereabove, and the Constitution Bench, therefore, approved giving of opportunity to the appellants to claim enhanced compensation by a proper application before the decision of their appeal and also approved observations of the three-Judge Bench, that State is bound to pay the market value.

10. After the Constitution Bench judgment of the Supreme Court, Buta Singh's case again went back to another Bench of the Supreme Court comprising Justice Ramaswamy and Justice Hansaria, who expressed the view that applications which had been made after arguments are heard and the judgment reserved and applications for amendment which had been filed after the judgment has pronounced, are not to be allowed.

11. In our view, the observations of the Supreme Court in Buta Singh's case (supra), have no application to the case in hand. As stated above, the application under Order VI Rule 17, CPC has been made in this case before the appeal come up for hearing and as such, this case would be covered by the observations of the

Supreme Court in AIR 1984 SC 1576, according to which this application for amendment has to be allowed.

12. We, accordingly, allow this application and direct that deficiency in Court-fee be made up within two weeks from today, if not already made up.

R.F.A. 266/84:

Renotify on 21st May, 1996.

13. Application allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com