

The Collector Vs. Smt. Ram Devi

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Court : Himachal Pradesh

Decided On : Mar-08-1961

Reported in : AIR1961HP40

Judge : C.B. Capoor, J.C.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 15, 18 and 20

Appeal No. : Misc. First Appeal No. 12 of 1960

Appellant : The Collector

Respondent : Smt. Ram Devi

Advocate for Def. : H.C. Anand., Adv.

Advocate for Pet/Ap. : R.N. Malhotra, Adv.

Disposition : Appeal partly allowed

Judgement :

C.B. Capoor, J.C.

1. This appeal by the Collector, Bilaspur, is directed against an order of the Additional District Judge, Bilaspur, whereby on a reference made under Section 18 of the Land Acquisition Act, hereinafter to be referred as 'the Act', a sum of Rs. 540/- was awarded as compensation for loss of earnings to the respondent.

2. No compensation for loss of earnings was awarded to the respondent by the Collector. The reference made at the instance of the respondent was opposed by the Collector on the grounds that the respondent did not carry on any business in house No. 48 at the relevant time and that in any case the amount of compensation claimed was excessive. No evidence was, however, led on behalf of the Collector in support of his case.

The respondent besides herself examined four witnesses, namely Kishan Singh, Paras Ram, Sant Ram and Ram Kishan and on that evidence the Court held that the respondent did carry on the profession of a tailor in her house No. 48 which admittedly has been acquired by the Government in connection with the construction of the Bhakra Dam reservoir and that her daily income was Rs. 1/8/-. The Court further held that the respondent should be awarded one year's income as compensation.

3. The aforesaid findings have been challenged on behalf of the appellant and it has further been contended that the Union of India was a necessary party to the reference and that the award made by the Court was vitiated.

4. The first question that arises for decision is as to whether the Union of India was a necessary party to the reference and the award made by the Court was vitiated for want of its non-joinder. None of the sections of the Land Acquisition Act specifically provides for the impleader of the Government to a reference under Section 18 of the Act. On the other hand, Section 20 of that Act inter alia provides that when a reference relates to the amount of compensation or the area of the land acquired notice of the reference shall be issued by the Court to the Collector.

By Section 3(c) of the Act the expression 'Collector' means the Collector of a district, includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. If it were the intention of the Legislature that over and above the Collector the State or the Government should also be a party to a reference under certain circumstances nothing would have been easier for it than to have given expression to that intention explicitly.

A reference to Sections 27 and 28 of the Act further makes it clear that when the award of the Collector is not upheld by the Court the costs are ordinarily to be paid by the Collector and that in certain circumstances the Court may also direct the Collector to pay interest on the amount of compensation which it may award in excess of the amount of compensation awarded by the Collector. It is significant that under the Act the award of the Collector is not challengeable by the Government. It, therefore, follows that for the purposes of the award of compensation, payment of interest thereon and payment of costs the Collector functions as the agent of the Government at least.

5. In order to support a finding in his favour the learned counsel for the appellant relied upon the following rulings: Secretary of State v. Shyamapada Banerjee, AIR 1940 Cal 56; Naresh Chandra Bose v. State of West Bengal, (S) AIR 1955 Cal 398; Collector and Chairman District Board v. Hira Nand. AIR 1929 Lah 10(2); Nihal Chand v. District Board, Mianwali, AIR 1936 Lah 564 and B. Ranga Reddy v. Collector, Hyderabad District, AIR 1956 Hyd 202.

6. Briefly stated, the facts of AIR 1940 Cal 56 were as below: The tribunal on reference by Collector on the amount of compensation made a declaration that one K, who was one of the claimants, was entitled to enhanced amount of compensation. The aforesaid finding was based on two petitions of compromise by which the compensation awarded was divided between K and the other claimants and K was given the right to get the excess amount of compensation that may be awarded by the tribunal. The Secretary of State for India was not a party to the petitions of the compromise and it does not appear from the facts of the aforesaid case that the Collector was a party either to the reference or to the petitions of compromise.

It was in the aforesaid setting of facts that the learned Judges held that the Secretary of State for India was the only person interested in opposing K's claim to enhanced amount of compensation and hence he was not only a proper party but also a necessary party. It is a matter of speculation as to what would have been the decision of their Lordships if the Collector had been a party to the reference. I am prone to think that if the Collector had been a party to the reference then in

view of Section 20 of the Act the Secretary of State for India would not have been held to be a necessary party.

7. In (S) AIR 1955 Cal 398, a reference relating to the valuation and references relating, to apportionment were lumped together and deprecating that procedure their Lordships of the Calcutta High Court had observed that the Government was neither interested nor was a proper party in an apportionment reference or appeal therefrom and that it was only in the valuation reference that the Government was a necessary party.

It does not appear from a perusal of the facts of that case that the Collector was a party to the reference; rather the State of West Bengal figured as a party instead of the Collector and this was not objected to presumably as Section 20 of the Act was substantially complied with. I do not think that it can reasonably be inferred from the aforesaid decision that even though the Collector may have been a party to a reference the Government or the State will also be a necessary party thereto.

8. So far as AIR 1929 Lah 10(2) and AIR 1936 Lah 564 are concerned, they, far from lending support, negative the contention advanced on behalf of the appellant. The prop of the appellant's contention was that as the compensation money was to be paid out of the coffers of the Government the Union of India was a necessary party. In the aforesaid Lahore cases land was acquired for a District Board. In AIR 1929 Lah 10(2) an appeal was filed by the District Board concerned and it was held that it had no right to file an appeal. In the latter case the District Board figured as a respondent and the following observation was made by their Lordships:

'From Section 50, Land Acquisition Act, it is clear that the party for whom the land is acquired can only assist the Collector on the question of the amount of compensation to be paid to the claimant. It cannot apparently assist the Collector, on the question of the area acquired though this may affect the amount of compensation. The Secretary of State through the Collector is, therefore, a necessary party'.

The scheme of the Land Acquisition Act does not contemplate that the person or body from whose coffers the compensation money is to be paid would be a necessary party and the contention advanced on behalf of the appellant cannot be accepted, howsoever attractive on the face of it it may appear to be.

9. Adverting to the Hyderabad case one finds that it turned on the interpretation of the provisions of the Hyderabad Land Acquisition Act and inter alia that Act differed from the Land Acquisition Act under consideration in the following two respects: (i) while the former Act provided for the issue of notice to the Collector of a reference to the Court in which the objection is in regard to the amount of compensation it was silent as to whom notice will be issued of a reference in which the objection is in regard to the area of the land as well, (ii) Secondly that Act provided that in case the award made by the Collector is not upheld the Court may award costs against the 'Sarkar', i.e. the State. One of the questions that had arisen in the aforesaid Hyderabad case was as to whether the Government was a necessary party to a reference in which the objection was with regard to the area of the land and the answer given was in the affirmative. The aforesaid decision is, for the reasons already assigned, distinguishable from the facts of the instant case.

10. The ruling reported in AIR 1950 Bom 243, *In re Jerbai Framji Metha* which in all fairness the learned counsel for the appellant placed before me is directly opposed to the contention advanced by him. In that case the Collector was a party to the reference and it was contended that the Government or the State was also a necessary party. The contention, if I may say so with respect, in a well-reasoned judgment was repelled. The learned Judge surveyed the various relevant provisions of the Act and examined the scheme of the Act and came to the conclusion that the only person who is entitled to appear in a reference relating to compensation as the Collector as denned in Section 3(c) of the Act and hence the Government had no locus standi and in cases relating to apportionment neither the Collector nor the Government had any locus standi whatever. In the course of his judgment he observed that after a declaration under Section 6 the Local Government recedes in the background in the matter of acquisition and the Collector alone comes on the scene. It may be mentioned with advantage that the aforesaid case was distinguished in AIR 1956 Hyd 202 and not dissented from.

11. It may further be observed that in opposition to the reference under Section 18 no objection was filed on behalf of the Collector that the Union of India was a necessary party.

12. The position boils down to this that while AIR 1950 Bom 243 is directly opposed to the contention advanced on behalf of the appellant none of the rulings cited by him except AIR 1956 Hyd 202 is such, in which the Collector may also have been a party to the reference. The Hyderabad case, as has already been noticed, is clearly distinguishable from the instant case. I am, therefore, in respectful agreement with the view expressed in the aforesaid Bombay case and repel the contention advanced on behalf of the appellant.

13. The second question that arises for decision is as to whether the respondent carried on work as a seamstress in the aforesaid house No. 48. 'Of the witnesses examined on behalf of the respondent Kishan Singh was a member of the Badol Gram Panchayat and was previously a Jamadar in the Army. Paras Ram (P. W. 2) was also a member of the aforesaid Gram Panchayat. Nothing was elicited in the cross-examination of the aforesaid witnesses to justify the rejection of their testimony. It has already been noticed that the appellant did not adduce any evidence in rebuttal. The learned Court was, therefore, perfectly justified in placing reliance on the testimony of the witnesses examined on behalf of the respondent.

14. The next question that awaits consideration is as to whether the daily income of the respondent was determined at an excessive figure by the learned Additional District Judge. The answer to this question must also be against the appellant for 'the reasons already assigned, namely that the appellant did not adduce any evidence whatsoever and the statements made by the witnesses for the respondent amply bore out the finding recorded by the Additional District Judge.

15. It has lastly to be seen as to whether the learned Court erred in awarding to the respondent one year's earnings as compensation. In dealing with other similar cases, I have held that normally it should take about six months time to an oustee businessman to re-establish himself and that an award of six months earnings would amply compensate him for the ouster resulting from the acquisition of the premises in which he carried on his business. The instant is a case of the normal

type and is not attended with any special or peculiar feature. The ends of justice would be amply met if a sum of Rs. 270/- is awarded to the respondent.

16. In conclusion, the appeal is accepted in part and in modification of the order made by the learned Additional District Judge a sum of Rs. 270/-is awarded to the respondent as compensation for loss of earnings. In the peculiar circumstances of the case, no order is made as to costs.

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