

Executive Engineer, Phe Dvn. Vs. Tarseem Lal

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Court : Jammu and Kashmir

Decided On : Oct-20-1999

Reported in : 2003(3)JKJ40

Judge : O.P. Sharma, J.

Acts : Jammu and Kashmir Land Acquisition Act - Sections 9, 18, 25, 26 and 30;
;Jammu and Kashmir Code of Civil Procedure (CPC) , Svt. 1977 - Order 27, Rules
1 and 3; ;Jammu and Kashmir Constitution - Section 104

Appeal No. : CIMA No. 174/98

Appellant : Executive Engineer, Phe Dvn.

Respondent : Tarseem Lal

Advocate for Def. : R.P. Bakshi, Adv.

Advocate for Pet/Ap. : Seema Shekhar, GA

Judgement :

O.P. Sharma, J.

1. This appeal is Under Section 52 of the Land Acquisition Act. Land measuring 3 kanals 15 marlas comprising Kh. No. 2237/792 in village Nonath Tehsil Hiranagar was acquired by the State for construction of a Pump Room and Chowkidar

quarter by the department of PHE. The Deputy Commissioner (Collector approved the compensation @ Rs. 9,000 per kanal. However, land owner was not satisfied and, therefore, applied for reference Under Section 18 of the Land Acquisition Act (for short the Act). The Collector made reference and the reference court vide award dated 27.3.98 enhanced the compensation from Rs. 9000 to Rs. 80,000 per kanal.

2. The appellant challenges the award on the ground that respondent having claimed Rs. 50,000 per kanal in response to notice Under Section 9 of the Act, the award could not exceed the amount demanded in view of the bar of Section 25 of the Act. It is also challenged on the ground that market rate of the land in inferior cannot be determinative of market rate of Land abutting the main road. Mrs. Seema Shekhar appearing for the appellant argued that the award is illegal because it is violative of Section 25 of the Act. It is also bad because the market price of the land in the adjoining village has not been taken into account, to determine the market rate of acquired land. Mr. Bakshi raised a preliminary objection to the maintainability of the appeal on the ground that Executive Engineer was not competent to file the appeal. He next argued that respondent had claimed Rs. 50,000 per kanal subject to certain conditions, and therefore, it cannot be construed as a demand Under Section 9. Objection with regard to the maintainability of appeal has to be examined with reference to Section 52 of the Act which reads as follows:

'Subject to the provisions of law in force for the time being in the State relating to the procedure in civil action applicable to appeals from original decrees, an appeal shall lie to the State High Court from any part of the award of the Court in any proceedings under this Act.

3. Obviously section makes procedure prescribed in the Code of Civil Procedure applicable to the appeals. Section 26 of the Act however, makes a departure insofar as requirement of preparation of a separate decree is concerned, to the extent that award is itself a decree. So requirement of Or. 41 Rule-1 CPC so far as it provides that appeal shall be accompanied by a copy of decree is not attracted to appeal Under Section 52 of the Act, but all other requirements of the court are

to be satisfied. Or. 27 of the CPC lays down the procedure to be followed in CPC by or against Govt. Rules 1 to 3 of Or. 27 being relevant are extracted below:

'1. Suits by or against Govt.- In any suit by or against the Govt., the plaint or written statement shall be signed by such person as the Govt. may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Govt. may so appoint and who is acquainted with the facts of the case.

2. Persons authorised to act for Govt.- Persons being ex-officio or otherwise authorised to act for the Govt. In respect of any judicial proceedings shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Govt.

3. Plaints in suits by or against Govt. - In suits by or against the Govt., instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words the State of J&K.;

4. A bare perusal of this provision would have put the Senior Additional Advocate General on right guard. It appears the appeal was drafted in hurry without noticing the mandatory provisions. Assuming that the Public Health Department is the Indenting Department, even then appeal had to be filed by the Govt. through head of the department who is Secretary to Govt. and not by the Executive Engineer. All this could have been avoided if the appeal was filed by the Collector, who alone was party being the agent of the Govt. So this appeal on the face of it is not competent. Faced with this, Mrs. Shekhar, argued that assuming the appeal is not maintainable, this Court in exercise of its supervisory power Under Section 104 of the Constitution should correct the illegality because the award is against the mandate of Section 25 of the Act. To substantiate this she referred to the application EXPTL/2 dated 18.2.92 filed by respondent-2 in response to notice Under Section 9 of the Act. Respondent according to her had claimed Rs. 50,000 per kanal as compensation whereas the reference court awarded Rs. 80,000 per kanal. This it is, argued was not permissible. There is much force in the contention. Last two paragraphs of this application read as under:

'As regards market value of the land under acquisition the said land is situated on the National Highway. The cost of the said land in the open market is not less than Rs. 4,000 per marla because the land in question is capable to be put for commercial purposes. However, we are not in position to litigate in the law courts. To support our claim we are enclosing a photo stat copy of sale deed executed in the year 1982 which represents sale of two marlas of land in consideration of Rs. 3000. The cost of land in between the period 1982 to 1992 has been considerably increased.

However, we are willing to part with the said land on payment of its cost at Rs. 2600 per marla i.e. 50,000 per kanal. In addition to the land compensation we may be paid interest at 18% from the date of notification issued Under Section 4 upto the date of realisation of the awarded amount.'

5. The first para is general statement regarding the market rate of the land abutting the National Highway. He has not demanded the same rate. Rate has been demanded by him in the last para at the rate of Rs. 2500 per marla. The question is whether the compensation could exceed this amount and if it has exceeded which can be corrected in exercise of supervisory jurisdiction by recourse to Section 104 of the Constitution. Section 9(1) and (2) read as under:

'(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that the claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than 2 (fifteen days) after the date of publication of notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under Section 8. The Collector may, in any case, require such statements to be made in writing and signed by the party or his agent.'

6. It is pursuant to this notice that application EXPTL/2 demanding Rs. 26000 per marla as compensation was filed by the respondent so he has claimed specific amount for the land with 18% interest. Payment of statutory interest therefore, does not quantify the compensation. He has thus demanded specific amount of compensation for the land at the aforesaid rate. The question arises whether the District Judge could award more than what was claimed by the respondent in response to notice Under Section 9, the answer is provided in Sub-section (1) of Section 25 which reads as under:

'25. Rules as to amount of compensation. -- (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court, shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.'

7. Scope of this sub-section falls for consideration of their Lordships in *Gobardhan Mahta v. State of Bihar*, AIR 1979 SC 1246 and it has been held:

'8. It is urged by the learned counsel that at any rate, there was not justification for the High Court for reducing the compensation awarded for the well. The short answer to this contention is to be found in the provisions of Section 25 of the Land Acquisition Act. By Sub-section (1) of that section, when an applicant makes a claim to compensation pursuant to a notice given to him under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed. By Sub-section (2) of Section 25, when the applicant has refused to make such claim or has omitted without sufficient reason to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector. It is common ground that in pursuance of the notice given Under Section 9, the appellant contended himself by saying that there was a deep and wide well on the land. He did not ask for any specific amount as representing the value of the well. The learned District Judge would appear to have overlooked the provisions of Section 25(2) and in any case, his judgment does not show that he had come to the conclusion that the appellant was prevented by any sufficient reason from making a claim for compensation in respect of the well.'

8. So the award in so far as it exceeds the amount claimed by the land owner is illegal and against law laid down by the Apex Court. So while the appeal is not maintainable, the award is modified in exercise of jurisdiction Under Section 104 of the Constitution and the amount reduced to Rs. 52,000 per kanal @ 2600 per marla as claimed by the respondent. It needs hardly to be reiterated that power under Section 104 can be exercised by this Court to remove the illegality in the interest of justice. This principle was laid down by the Apex Court in Achutananda Baidya v. Prafulla Kumar Gayon and Ors., AIR 1997 SC 2077 holding that:

'10. The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the judgment of the subordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.'

'11. If the evidences on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior Court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact.'

9. In view of the above the appeal is held to be not maintainable and the amount awarded is reduced from Rs. 80,000 to Rs. 52,000 per kanal which will be payable within two months with 6% interest from the date of the award less the amount already paid and 12% interest if the award is not satisfied within two months till the amount is finally paid.

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