State of Bihar and Another

Vs

Kundan Singh and Another

Civil Appeal No. 219 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

25.04.1963

JUDGMENT

GAJENDRAGADKAR J. –

This appeal arises out of proceedings under the Land Acquisition Act, 1894 (No. 1 of 1894) (hereinafter called 'the Act'). The respondents owned an area of 0.12 acre of land in village Bermo No. 18 in the district of Hazaribagh. This land was required for the construction of Aerial Rope-way for Bokaro Thermal Power Plant, and so, in order to acquire the said land, a declaration under s. 4 of the Act was made on August 9, 1952. The property of the respondents which stands on this plot consists of two buildings, one is the main structure and the other is made up of out-houses together with an open space of land in front of these structures. The notification showed that the Government thought it necessary, to acquire a space of 50 ft in width for the electric wire to run over and this included a portion of open space as also the out-houses of the respondents. Under the proceedings taken under the relevant provisions of the Act, the Land Acquisition Officer fixed the compensation to be paid to the respondents at Rs. 4,451/5/6; according to him, the said amount represented a fair and reasonable compensation for the land together with the out-houses under acquisition.

The respondents were not satisfied with this award, and so, they applied for reference under s. 18 of the Act. One of the grounds taken by the respondents in para 1(d) of their petition for reference was that the other lands and buildings contiguous to the land and building acquired which belonged to them had not been acquired, and in consequence, they had to suffer a huge loss; the rope-line passes close to the rest of the property, and so, it could not be used for fear of its being dangerous for human habitation. On this basis, the respondents alleged that they were entitled to recover as compensation amount Rs. 21,765/8/- which they had spent on the construction of the principal building. Besides, they urged that the monthly rent of Rs. 160/- which they were receiving from the tenants in respect of the said principal building would also be lost and they were entitled to adequate compensation on that account. In other words, one of the grounds raised by the respondents in their petition was referable to s. 23(3) of the Act.

The Deputy Commissioner of Hazaribagh then proceeded to make the reference as claimed by the respondents. In his letter of reference, he stated that the respondents were claiming additional compensation on the ground that the other lands and buildings contiguous to the land and building acquired which they owned had not been acquired and thereby they had to suffer a huge loss.

On reference, the District Judge of Hazaribagh heard the matter. It appears that before the District Judge, Kundan Singh, respondent No. 1, gave evidence and stated that on October 22, 1952, he had put in an application that the other quarters belonging to him which had not been acquired should

also be acquired, because the said quarters were contiguous to the land acquired and had become useless to the respondents. The learned District Judge considered the point raised by the respondents and held that since only a narrow strip of land had been left in front of the larger building, it had affected the utility of the said building and the other unacquired land of the respondents, and so, he directed that in addition to the amount of Rs. 4,451/5/6 which had been determined as the amount of compensation by the Land Acquisition Officer, Rs. 1000/- should be paid to the respondents. In his opinion, the amounts determined by the Acquisition Officer for the property actually acquired was quite appropriate and all that was needed to be done was to award an additional amount of Rs. 1,000/- on the ground that the unacquired property was adversely affected by the acquisition in question.

The respondents then preferred an appeal before the High Court of Patna under s. 54 of the Act. In their appeal, the only ground which they urged was that the rope-way having completely spoiled the main building, the Land Acquisition Officer could not acquire the out-houses without acquiring the main building. Accordingly, they claimed a declaration that the Land Acquisition Officer should acquire the main building along with the other properties under acquisition. When this plea was raised before the High Court, the appellants, the State of Bihar and the Deputy Commissioner, Hazaribagh, contended that it was not open to the respondents to claim a declaration for the acquisition of other properties in their appeal, because the said appeal arose out of a reference under s. 18 of the Act and a plea like the one raised by the respondents which could be made under s. 49 of the Act, was foreign to the present enquiry. It was also contended that this point had not been taken by the respondents either before the Land Acquisition Officer or before the District Judge. These arguments were rejected by the High Court and a direction has been issued by the High Court and a direction has been issued by the High Court calling upon the Land Acquisition Officer to take over the remaining area and the building and assess the compensation thereon in due course according to law. The High Court has ordered that when the said assessment is thus determined, the additional compensation of Rs. 1,000/- which has been allowed by the District Judge should be deducted and the balance paid to the respondents. It is against this order that the appellants have come to this Court with a certificate issued by the High Court; and the principal question which has been raised before us by Mr. Sen on behalf of the appellants is that the High Court was in error is allowing s. 49 to be invoked in the appeal before it.

The first point which must be considered in dealing with the appellants' argument is whether the respondents had made an application to the Land Acquisition Officer under s. 49 of the Act as alleged by respondent No. 1 in his evidence before the District Judge. We have already noticed that respondent No. 1 stated in his evidence that on October 22, 1952 he had put in an application that the other quarters should also be acquired. In other words, his plea was that the said application had been made invoking the provisions of s. 49 of the Act after the date of the notification and before the award was made on November 27, 1952. The judgment of the District judge shows that he did not accept this plea, and so, he proceeded to deal with the case on the basis that respondents were claiming additional compensation either under the third or the fourth clause of s. 23(1) of the Act. If he had held that an application had been made by the respondents under s. 49 of the Act before the award was made and they were asking for relief under that provision, he would, undoubtedly, have considered the matter and recorded his conclusion on it. Therefore, it would not be unreasonable to assume that the District Judge did not attach any importance to the statement made by respondent No. 1 that he had put in an application under s. 4, or it may be that the respondents merely pressed their claim for additional compensation under s. 23 before the learned District Judge.

When the matter was argued before the High Court, the appellants seriously disputed the allegation

of the respondents that an application had been made to the Land Acquisition Officer under s. 49. It is true that the statement of respondent No. 1 that he had made such an application was not challenged in cross-examination, but it is remarkable that the said statement does not appear to have been pressed before the District Judge and when it was attempted to be pressed before the High Court, the application alleged to have been made by respondent No. 1 was not produced before or shown to the High Court at all. In fact, no such application has been printed in the paper-book prepared for this Court in the present appeal. The High Court also does not appear to have made any definite finding that the statement of respondent No. 1 could be accepted. It has, however, held that the claim made by the respondents when they asked for reference under s. 18 showed that they were asking for protection under s. 49 of the Act and it is on the basis of the said claim contained in para. 1(d) of the respondents' petition under s. 18 of the Act that the High Court came to the conclusion that the respondents had relied upon s. 49 before the Land Acquisition Officer. We have already referred to the ground taken by the respondents in para 1(d) of their petition and have noticed that the claim made under the said ground was under s. 23 of the Act and not at all under s. 49; and so, we are not prepared to accept Mr. Iyenger's argument that the present appeal should be dealt with on the basis that the respondents had made an application to the Land Acquisition Officer under s. 49 of the Act before he pronounced his award. By their application for reference, the respondents merely claimed additional compensation under s. 23(1) and that is how their claim was considered and decided by the learned District Judge. It is in the light of this finding that we have to determine the question as to whether the High Court could have entertained the respondents' plea under s. 49 in the appeal preferred before it by the respondents against the decision of the District Judge in reference proceedings taken before him under s. 18 of the Act.

In determining the question about the scope of the enquiry under s. 18, it is necessary to consider the relevant provisions of the Act. Section 4 of the Act deals with the publication of a preliminary notification in regard to the acquisition proceedings proposed to be taken. Section 5-A deals with the hearing of objections. Section 6 provides for the declaration that a particular land is required for a public purpose. Section 9 requires notice to be given to the persons interested in the said property. Section 11 prescribes the manner of the enquiry and provides for the making of the award by the Collector. Section 12 lays down that the award, when made, shall be filed in the Collector's office and shall be final, as therein prescribed. Section 16 empowers the Collector to take possession of the property acquired, and s. 18 deals with reference to Court. In dealing with the claim for compensation made by the owner of the property, the Court has to consider the matters specified in s. 23. The third clause of s. 23(1) provides that in determining the amount of compensation, the Court shall take into account the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; and the fourth clause requires the Court to take into account the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings.

Section 18(1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. It is thus clear that the scope of the enquiry under s. 18(1) is specifically indicated by the section itself. The objections which the Court can consider on a reference made to it under s. 18 may be either in respect of the measurement of the land, the amount of compensation, the persons to whom it is payable, and the apportionment of the compension

among different persons. In dealing with the question about the amount of compensation, the Court may have to take into account the matters specified in s. 23. As was observed by the Privy Council in Pramatha Nath Mullick v. Secretary of State for India ((1929) L.R. 57 I.A. 100.), the section clearly specifies four different grounds of objection which can be the subject-matter of an enquiry in reference proceedings. Therefore, it is very difficult to accede to Mr. Iyengers' argument that in dealing with the reference proceedings under s. 18(1), the Court can also consider the pleas raised by the owner of the property under s. 49 of the Act. It does appear that the owner of property under acquisition may claim additional compensation on the ground that the portion of the property acquired so materially affects the value or the utility of his other property not acquired as to justify a claim for additional compensation under s. 23, and if such a claim is made, it would legitimately form the subject-matter of an enquiry in a reference under s. 18(1), but if the owner of the property wants to claim that the whole of his property should be acquired, and in that connection relies on the provisions of s. 49, that cannot be introduced in an enquiry under section 18; such a claim must form the subject-matter of different proceedings taken by the owner under s. 49 itself.

That takes us to s. 49. Section 49 reads thus :

> "(1) The Provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired :
>
> Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :
>
> Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken reasonably required for the full and unimpaired use of the house, manufactory or building.

> (2) If, in the case of any claim under section 23, sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the (appropriate Government) is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.
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> (3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the (appropriate Government) to the person interested, and shall thereafter proceed to make his award under section 11.

The provisions of s. 49(1) prescribe, inter alia, a definite prohibition against putting in force any of

the provisions of the Act for the purpose of acquiring a part only of any house, if the owner desires that the whole of such house shall be acquired. This prohibition unambiguously indicates that if the owner expresses his desire that the whole of the house should be acquired, no action can be taken in respect of a part of the house under any provision of the Act, and this suggests that where a part of the house is proposed to be acquired and a notification is issued in that behalf, the owner must make up his mind as to whether he wants to allow the acquisition of a part of his house or not. If he wants to allow the partial acquisition, proceedings would be taken under the relevant provisions of the Act and an award directing the payment of adequate compensation would be made and would be followed by the taking of possession of the property acquired. If, on the other hand, the owner desires that the whole of the house should be acquired, he should indicate his desire to the Land Acquisition officer and all further proceedings under the relevant provisions of the Act must stop. This provision thus seems to suggest that if an objection is intended to be raised to the acquisition of a part of the house, it must be made before an award is made under s. 11. In fact, it should be made soon after the initial notification is published under s. 4; otherwise, if the proceedings under the relevant provisions of the Act are allowed to be taken and an award is made, it would create unnecessary confusion and complications if the owner at that stage indicates that he objects to the acquisition of a part of his house; at that stage, it would no doubt be open to him to claim adequate compensation in the light of the material provisions of s. 23 of the Act, but that is another matter.

The first proviso to s. 49(1) also leads to the same conclusion. If the owner has made his objection to the acquisition of a part of his house, it is open to him to withdraw or modify his objection before an award is made under s. 11; and if he withdraws his objection, further proceedings will follow and if he modifies his objection, steps will have to be taken as indicated in the other provisions of s. 49. This proviso therefore, suggests that the objection of the owner to acquisition of a part of his house has to be considered and dealt with before an award is made under s. 11.

It would be noticed that if an objection is made by the owner under s. 49(1), the Collector may decide to accept the objection and accede to the desire of the owner to acquire the whole of the house. In that case, further proceedings will be taken on the basis that the whole of the house is being acquired. In some cases, the Collector may decide to withdraw acquisition proceedings altogether, because it may be thought not worthwhile to acquire the whole of the house; in that case again, nothing further remains to be done and the notification issued has merely to be withdrawn or cancelled. But cases may arise where the Collector may not accept the claim of the owner that what is being acquired is a part of the house; in that case, the matter in dispute has to be judicially determined, and that is provided for by the second proviso to s. 49(1). Under this proviso, the Collector is under an obligation to refer the matter to the Court and he shall not take possession of the land under acquisition until the question is determined by the Court. In dealing with this matter, the Court has to have regard to the question as to whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house.

Sub-s. (2) of s. 49 seems to contemplate that where land is acquired and it is shown to form part of a house, it would be open to award to the owner of the house additional compensation under the third clause of s. 23, and so, this sub-section deals with cases where the claim made by the owner of the house under the third clause of s. 23 is excessive or unreasonable, and provides that the appropriate Government may decide to acquire the whole of the land of which the land first sought to be acquired forms a part rather than agree to pay an unreasonable or excessive amount of compensation as claimed by the owner. This provision also emphasises the fact that where land is acquired and it results in the acquisition of a part of the house connected with the land, the owner can make a claim for additional compensation under s. 23, or he may require, before the acquisition has taken place,

that the whole of the house should be acquired. These are two alternative remedies available to the owner; if he wants to avail himself of the first remedy under s. 23, he may make a claim for additional compensation in that behalf and such a claim would form the subject-matter of an enquiry under s. 18; if, on the other hand, he claims the other alternative remedy provided by s. 49(1), that must form the subject-matter of another proceeding which has to be dealt with under s. 49 itself. It is true that in cases of dispute, this matter also goes to the same Court for its decision on a reference by the Collector; but though the Court is the same the proceedings taken are different and separate and must be adopted as such. A claim under s. 49 which can be properly tried by the Court on a reference made to it by the Collector under the second proviso to s. 49(1), cannot be mixed up with a claim which can be made in reference proceedings sent to the Court under s. 18 by the Collector.

Section 49(3) merely dispenses with the necessity of issuing a further fresh declaration or adopting other proceedings under sections 6 to 10 in regard to cases falling under s. 49(2).

Thus, it would be seen that the scheme of s. 49 is that the owner has to express his desire that the whole of his house should be acquired before the award is made, and once such a desire is expressed, the procedure prescribed by s. 49 has to be followed. This procedure is distinct and separate from the procedure which has to be followed in making a reference under s. 18 of the Act. In the present case, the respondents have taken no steps to express their desire that the whole of their house should be acquired, and so, it was not open to the High Court to allow them to raise this point in appeal which arose from the order passed by the District Judge on a reference under s. 18. That being our view, we do not think necessary to consider the respondents' contention that what is acquired in the present proceedings attracts the provisions of s. 49(1).

It now remains to consider two relevant decisions which were cited before us. In the Secretary of State for India in Council v. Narayanaswamy Chettier ((1931) I.L.R. 55 Mad. 391.), the Madras High Court appears to have taken the view that there is nothing in s. 49 requiring the claimant to put forward his particular claim, viz., that the whole of his house should be acquired, at any particular stage of the proceedings. Referring to s. 49(1). Ramesam Off. C.J., observed that the said clause cannot imply that the claims covered by it should be made before the Collector makes his award. Cornish J., who delivered a concurrent judgment agreed with this view. It appears that in coming to this conclusion, both the learned Judges referred to the special circumstances under which the claimant made his claim under s. 49 on September, 29, that is to say, after the award and those special circumstances clearly showed that the claimant was not to blame for the delay made by him in expressing his desire under s. 49(1). In our opinion, however, the scheme of s. 49 is clear. Section 49(1) has imposed a ban on taking any further action under any of the provisions of the Act where the owner expresses a desire that the whole of his house should be acquired, and that clearly indicates that after the relevant notifications are issued under sections 4 and 6, if it appears to the owner of the land under acquisition that a part of his house is being acquired, he has to express his desire before an award is made under s. 11; otherwise if the owner allows proceedings to be taken under the provisions of the Act and an award follows, it would lead to unnecessary complications if the owner is allowed to express his desire under s. 49(1) and the reference is then required to be made under the second proviso to s. 49(1). Logically, if an enquiry has to be made as contemplated by s. 49, it must precede any further action under the other provisions of the Act, and that is the main basis of the mandatory prohibition prescribed by s. 49(1). The said prohibition coupled with the first proviso to s. 49(1) leads to the conclusion that the owner cannot take recourse to s. 49 after an award is made under s. 11 of the Act. In our opinion, therefore, the High Court did not correctly interpret the effect of s. 49(1) when it held that the said section did not require the claimant to put forward his claim before the award was made.

In Krishna Das Roy v. The Land Acquisition Collector of Pabna ((1911) 16 C.W.N. 327.), the Calcutta High Court, on the other hand, seems to have taken the view and we think, rightly, that if the owner wants to make an application expressing his desire under s. 49(1), he has to make that application some time before the award is actually made.

The result is, the appeal is allowed, the order passed by the High Court is set aside and that of the District Judge restored. There will be no order as to costs.

Appeal allowed.

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