

Ujjain Vikas Pradhikaran

Vs

Tarachand and Another

Civil Appeals Nos. 9513 with 9515, 9514 and 9516

(K. Ramaswamy, G. B. Pattanaik JJ)

12.07.1996

JUDGMENT

1. The objection as regards abatement is overruled. Delay in filing the application for substitution is condoned. Abatement is set aside.

2. Substitution allowed.

3. Leave granted.

4. We have heard learned counsel on both sides.

5. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on February 16, 1979. Possession of the land was taken on May 19, 1979. The Land Acquisition Officer awarded compensation by his award under Section 11 on April 21, 1980 @ Rs. 27,500/- per hectare. On reference, the District Judge by his award dated November 10, 1987 enhanced the compensation to Rs. 50,000/- per hectare together with solatium and interest @ 15% and 6% respectively. On appeal, the High Court enhanced the compensation by judgment and decree dated August 26, 1992 in Appeal No. 17/88 and batch to Rs. 1,25,000/- per hectare which worked out @ Rs. 26,125/- per bigha. The High Court also enhanced the solatium and interest respectively at 30% and 9% from the date of taking possession for one year and 15% thereafter.

6. The first contention raised by Shri A. D. Chitale, learned Senior counsel for the appellant is that the respondents having confined their claim to enhancement of the compensation to Rs. 20,000/- per bigha in the memorandum in grounds filed in the High Court, the High Court was clearly in error in awarding compensation @ Rs. 26,125/- per bigha, i.e., at Rs. 1,25,000/- per hectare. We find force in the contention. Though Mr. S. K. Gambhir, learned counsel for the claimants, contended that there is no prohibition to the respondents to claim higher compensation after the Amendment Act 68 of 1984 had come into force, the High Court was justified in enhancing the compensation. We find no force in the contention.

7. It is true that that Section 22(2)* of the Act prior to the Amendment, the Court was prohibited to enhance the compensation in excess of the amount claimed pursuant to notices issued under Sections 9 and 10 of the Act. Since sub-section (2) of Section 22* was deleted by Amendment Act 68 of 1984, the limitation on the exercise of the power of the Court was taken away. Nonetheless, it would always be open to a party to claim a particular amount and having claimed at the rate, the

question arises: whether the Court could grant compensation higher than that claimed by the party? It would be obvious that when a party claims compensation at a particular rate, he assesses the market value of the land at that particular rate and seeks compensation on that basis. Having assessed the compensation at that particular rate, the question emerges: whether the Court could grant higher compensation than was assessed by the party? We find answer in the negative. This principle squarely applies to the facts in these cases. The party having limited the compensation to Rs. 20,000/- per bigha in the memorandum of appeal find in the High Court, it would be obvious that the respondents claimed that they were entitled to the maximum of the compensation @ Rs. 20,000/- per bigha. Thereby the Court was precluded to award compensation beyond the amount claimed by the party and award in excess thereof would be obviously illegal. The power of the Court would be confined to the difference of the amount awarded by the reference Court and the amount claimed in the memorandum of the appeal but not in excess thereof.

8. Considered from this perspective, we hold that the High Court was clearly in error in awarding compensation in excess of the amount claimed by the respondents.

9. The appeals of the Ujjain Vikas Pradhikaran are accordingly allowed to the above extent.

10. The appeal of the claimants is dismissed. The claimants are entitled to the compensation at Rs. 20,000/- per bigha with solatium and interest as awarded by the High Court. In the circumstances, there will be no order as to costs. Appeals allowed.