

# SUPREME COURT OF INDIA

Kamrul Islam Alvi

Vs.

State of M.P.

C.A.No.7312 of 2009

(V.S. Sirpurkar and Deepak Verma JJ.)

04.11.2009

## JUDGEMENT

**Deepak Verma, J.**

1. Leave granted.

2. Appellant's land admeasuring 3.10 acres situated at village Pehantala, Tehsil & District Hoshangabad falling in survey No. 15, was acquired for construction of Bagda Branch Canal. A notification was issued under Section 4 of the *Land Acquisition Act, 1894* (for short 'the Act') on 9.11.1973. The Land Acquisition Officer passed an award dated 21.2.1975 determining the amount of compensation payable to the appellant. He assessed the compensation at Rs. 6,523.95. The said compensation was accepted by the appellant under protest and reference was sought to be made to the Reference Court by filing an application under Section 18 of the Act.

3. Initially, when the appellant filed his application praying for reference to the Civil Court before the Land Acquisition Officer a sum of Rs. 25,000/- was claimed on account of water reservoir and sluice gate constructed thereon, which was in addition to a claim of compensation of Rs. 15,500/- in respect of the acquired land. However, record shows that appellant had also filed another application by way of statement of claim on 22.3.78 before the Land Acquisition Officer, Hoshangabad, praying therein that compensation for water reservoir and sluice gate installed thereon should be payable at Rs.6,46,579.95.

4. Accepting the contention of the appellant that the Land Acquisition Officer had not awarded compensation with respect to the water reservoir and the sluice gate, the Reference Court, while noting that it cannot exercise the original jurisdiction of Land Acquisition Officer, vide order dated 05.07.1983, remitted the matter to the Land Acquisition Officer for fixation of compensation with respect to water reservoir and sluice gate.

“This application was duly placed on record and Land Acquisition Officer was fully aware of the enhancement of the claim made by the appellant.”

5. However, the Land Acquisition Officer vide his award dated 28.10.1983 even though considered that appellant had claimed Rs. 6,46,579.95, as compensation towards water reservoir and sluice gate but in his wisdom accepting the evaluation report of the Irrigation Ministry and rejecting that of an Engineer he awarded a sum of Rs.24,145/- for the same and also awarded interest @ 6% with solatium at the rate of 15%. Thus, the total amount came to be Rs.43,463.75.

6. Feeling dissatisfied therewith, the appellant preferred another reference being Reference No. 46/84.

7. It is also pertinent to mention here that before the Reference Court, that is, First Additional District Judge, Hoshangabad in Reference Case No. 46/84 in the statement of claim filed by the appellant on 24.11.1984, he had specifically claimed a sum of Rs.6,46,579.95 as compensation for the water reservoir and sluice gate installed therein.

8. Order dated 05.07.1983 passed by Reference Court makes it clear that award was contested mainly on two grounds. Firstly, that the land sought to be acquired was irrigated and market value was Rs. 5000/- per acre and secondly, the compensation regarding Bandhan i.e. water reservoir and sluice gate should have been fixed at Rs. 6,46,579.95. The Reference Court was of the opinion that the compensation for the water reservoir and sluice gate had not been assessed, therefore, matter deserved to be remanded to the Land Acquisition Officer.

9. Following is the relevant and operative part of the order dated 5.7.1983:

“In the result the reference is sent back to the Land Acquisition Officer with direction that it shall fix the compensation regarding the acquired Bandhan and gates. The evidence adduced in the Court will be read as evidence before the Land Acquisition Officer after fixing the compensation it is contested by the applicant then the Land Acquisition Officer may again make reference as per law. Parties to appear before Land Acquisition Officer.”

( Sd/- ) First Addl.Judge to the Court of District Judge.

Hoshangabad.”

10. After remand by Reference Court to the Land Acquisition Officer, fresh award came to be passed on 26.10.1983. In the same, despite specific direction issued by Reference Court, as noted earlier, the amount of compensation for water reservoir and sluice gate was again fixed only at Rs. 43,463/-. The appellant herein once again filed application under Section 18 of the Act praying for reference to the Civil Court for grant of adequate and proper compensation for the said reservoir and sluice gate.

11. The Reference Court vide order dated 20.06.1994, after considering the evidence available on record and relying on a decision of the High Court of Punjab & Haryana in the case of *Radhey Shyam vs. State of Haryana*<sup>1</sup> fixed a sum of Rs.5,45,738 as compensation for the reservoir and sluice gate together with 30% solatium and interest as required to be paid to the appellant under the provisions of the Act.

12. Feeling aggrieved by the said order/award passed in Reference Case No. 46/84 (old No. 1/77) on 20.6.1994, respondent -the State of Madhya Pradesh preferred an appeal in the High Court of Madhya Pradesh at Jabalpur under Section 54 of the Act.

13. Vide the impugned judgment and order dated 2.4.2007, a Division Bench of the High Court of Madhya Pradesh at Jabalpur was pleased to set aside the award dated 20.06.94 passed by Reference Court in favour of the appellant and the compensation of Rs.43,463 for water reservoir and sluice gate, as was fixed by the Land Acquisition Officer after remand, has been upheld.

14. Hence this appeal.

15. Critical examination and perusal of the impugned order passed by the High Court shows that it proceeded on the assumption that appellant had not claimed amount of Rs. 6,46,579.95 as compensation for water reservoir and sluice gate and he had confined his claim only at Rs. 25,000/- for the same.

16. It appears to us that the learned Government Advocate, who appeared before the Division Bench, had probably due to bona fide mistake not brought to the notice of the Court, appellant's application/statement of claim dated 22.3.1978 claiming specifically a sum of Rs. 6,46,579/- as compensation for water reservoir and sluice gate.

17. Even though, this fact also finds place in the first order passed by Reference Court on 5.7.1983 wherein, in the second part of the said order, which is relevant for the purpose of deciding the said appeal, it has been mentioned as under:

“The applicant has contested the award on two grounds firstly the acquired land was irrigated one and the works value of it at the time of acquisition was Rs. 5000/- per acre hence he is entitled to Rs. 15,500/- as compensation for the land, and secondly, the land acquisition officer has not fixed the compensation regarding the Bandhan and its sluice gates fixed in the said Bandhan for which the appellant is entitled to Rs.6,46,579.95 P as compensation.”

18. It is not disputed before us that against the said order passed by Reference Court on 5.7.1983, no appeal was preferred by the State and the said order had attained finality. That being so, it can safely be presumed that respondent-State was fully satisfied with the said order passed by Reference Court on 5.7.1983. In the said order, it is categorically mentioned by the learned Judge of the Reference Court that the amount claimed by appellant for water reservoir and sluice gate be assessed at Rs.6,46,579.95.

19. Once this order came to be passed and matter stood remitted to the Land Acquisition Officer, obviously, the parties went to trial with the clear understanding that what has been claimed by the appellant herein for the water reservoir and sluice gate was as mentioned hereinabove and not at the rate of Rs.25,000/- only as was claimed earlier.

20. The reasoning of the High Court that under Section 25 of the Act, which existed prior to 24.9.1984, only those amounts would be payable to the appellant which have been claimed specifically, does not appear to be borne out from the record. In the teeth of the order dated 5.7.1983, appellant's application dated 22.3.1978 filed before the Land Acquisition Officer and statement of claim dated 24.11.1984 filed by the appellant, it was crystal clear that a sum of Rs.6,46,579.95 was claimed for water reservoir and sluice gate. Thus, the reasoning of the High Court does not appear to be legally tenable.

21. Obviously, it appears to be a bona-fide mistake on the part of the learned Government Advocate who did not notice the Order dated 5.7.1983 and the appellant's earlier application filed before the Land Acquisition Officer on 22.3.1978 wherein a specific claim was made for awarding compensation for the water reservoir and sluice gate at Rs. 6,46,579.95. That being so, we are of the opinion that looking to the matter from any angle, the impugned judgment cannot be sustained in law. It is hereby set aside and quashed. The award of the Reference Court dated 20.6.1994 in Reference Case No. 46/84 (old No. 1/77) is hereby restored with all consequential benefits as mentioned therein.

22. The appeal stands allowed to the aforesaid extent with costs throughout. Counsel's fee Rs. 10,000/-.

<sup>1</sup>*AIR 1981 (P&H) 57*