

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **L.A.A. No.954/2008**

Decided on : 28.10.2009

IN THE MATTER OF :

HARI CHAND & ORS

..... Appellants

Through: Mr. L.C. Chechi, Adv.

versus

UOI & ORS.

..... Respondents

Through: Mr. Sanjay Poddar with

Mr. N.S. Benipal, Adv. for UOI.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

HIMA KOHLI, J. (ORAL)

1. The present appeal arises out of a judgment dated 13.5.2008 passed by learned ADJ in LAC No.76/1993. The appeal pertains to land belonging to the appellants situated in village Tughlakabad, Delhi. The factual matrix of the case is that a notification under Section 4 of the Land Acquisition Act (in short '**the Act**') was issued by the respondent, UOI on 23.1.1965. This was followed by a declaration dated 13.1.1969 issued under Section 6 of the Act. On 24.3.1970, the Land Acquisition Collector passed an Award No.50/69-70, assessing compensation payable @ Rs.2,000/-

per bigha in respect of the land belonging to the affected land owners.

2. Before the Land Acquisition Collector, the appellants herein had claimed a sum of Rs.25/- per sq. yards as compensation, pursuant to Sections 9 & 10 notices. However, before the Reference Court, the appellants initially claimed a sum of Rs.20,000/- per bigha towards market value of the land, Rs.1,000/- per bigha towards crops and Rs.10,000/- lump sum for each claimant on account of unemployment. Thereafter, the appellant sought an amendment in the petition and claimed a sum of Rs.50,000/- per bigha as enhanced compensation for the land. The said amount was later sought to be further enhanced by the appellants to Rs.1,00,000/- per bigha, by preferring an application under Order 6 Rule 17 CPC. The said application was dismissed by the Reference Court, vide order dated 20.3.2006, by relying upon a judgment of the Supreme Court, reported as **AIR 2002 SC 1045** entitled "Land Acquisition Officer-cum-DSWO, A.P. vs. M/s B.V. Reddy & Sons", wherein while examining the un-amended and the amended provisions of Section 25 of the Act, the court arrived at a conclusion that the amended provision of Section 25 of the Act not being retrospective in nature, would not apply to acquisitions made prior to 24.9.1984, but only to acquisitions made subsequent to 24.9.1984, the date on which Act 68 of 1984 came into force. The Reference Court noticed that in the present case, the award in question was passed on 24.3.1970, i.e., prior to the amendment of the provisions of the Act in the year 1984. Hence, the application of the

appellants claiming enhanced compensation @ Rs.1,00,000/-, was rejected. Thereafter, the impugned judgment dated 13.5.2008 came to be passed.

3. In the Reference Petition filed under Section 18 of the Act, four issues were framed by the learned ADJ, which are reproduced herein below:

"1. Whether the petitioners have any title to seek enhancement of compensation in the land mentioned in the statement u/S 19 L.A. Act?

2. What was the market value of the acquired land at the time of notification u/S 4 of the land Acquisition Act?

3. To what enhancement in compensation the petitioner is entitled, if so, at what rate?

4. Relief."

4. Later on, an additional issue was framed, which is as below:

"1. Whether the petitioners as referred in statement u/S 19 are not entitled to claim enhancement in the present reference u/S 18, as reference with respect to some of the petitioners is stated to have been withheld by LAC, since compensation was received without protest? OPP"

5. As per the findings of the Reference Court in respect of issue No.2, relying on the judgment in the case of Chandan & Ors. vs. Union of India reported as **DRJ 1992 (23)**, the market value of the land on the date of the notification issued under Section 4 of the Act was fixed at Rs.40,000/- per bigha. Insofar as the finding in respect of issue No.3 was concerned, the Reference Court observed that since

the petitioners claimed only Rs.25,000/- per bigha before the Land Acquisition Collector, as per unamended Section 25 of the Act, they were not entitled to compensation beyond the aforesaid amount. The Reference Court held that the appellants were entitled to enhancement in compensation @ Rs.23,000/- per bigha, as the Land Acquisition Collector had granted enhanced compensation @ Rs.2,000/- per bigha. In other words, the Reference Court granted a total compensation @ Rs.25,000/- per bigha in favour of the appellants. Apart from granting the aforesaid compensation, the following relief was granted to the appellants :

"17. In view of my findings on above issues, the petitioners are entitled to enhancement @ Rs.23,000/- per bigha along with solatium at the rate of 30% as present case was pending at the time of LAC (Amendment) Act 1984 as per decision in Union of India Versus Raghbir Singh **1989 (2) S.C.C. 754**. They would be entitled to interest @ 6% per annum from the date of award or taking possession whichever is earlier till the date of making payment. Since there was gap of more than three years between the date of notification u/S 4 LA Act and date of notification u/S 6 LA Act, the petitioner will also be entitled to interest @ 6% per annum from three years after the date of notification u/S 4 LA Act provided there is no over lapping in the interest u/S 28 LA Act and the said interest. However the petitioner will not be entitled to additional amount u/S 23 (1A) Act as the award was passed on 19.6.1980 i.e. prior to introduction of bill of LA amendment Act in the Parliament on 30.4.1982 as per decision of the Hon'ble Supreme Court in K.S. Paripurna **AIR 1995 SC 1012** and division bench decision of our own Hon'ble High Court in Ram Kumar Versus Union of India in RFA No.46/87 decided on 3.1.2003. The petitioners will also be entitled to interest on solatium as per decision of Hon'ble Supreme Court in Sunder Versus Union of India **93 (2001) DLT 569**.

18. However the counsel for the petitioner submitted that the petitioner is entitled to interest for the period the proceedings remained stayed due to pendency of reference u/S 30-31 LA Act in spite of order dated 09.02.1972 laying condition that the petitioner will not be entitled to interest for the period of stay. He submitted that the stay order was passed by the court suo moto without any request from the petitioner to that effect. In support of his submission, he relied upon full bench decision of our own Hon'ble High Court in Chander Versus Union of India **122 (2005) DLT 517**. The said decision does not support the arguments advanced by the counsel for the petitioner. Hence, it is directed that interest for the period during which the proceedings remained stayed will also be paid to the petitioners. The copy of the award be sent to LAC with directions to remit the amount within three months. Decree Sheet be prepared accordingly. File be consigned to Record Room."

6. Counsels for the parties jointly state that insofar as the relief granted by the Reference Court in respect of statutory benefits is concerned, the same is not very happily worded and needs to be recast, to overcome any ambiguity in that regard. Accordingly, with the consent of the parties, the statutory benefits granted to the appellants, are re-worded in the following manner :

- (a) The appellants shall be entitled to grant of statutory benefits @ 30% solatium on market value of Rs.25,000/- per bigha, under Section 23 (2) of the Act ;
- (b) Interest under Section 28 of the Act shall be payable to the appellants for the first year @ 9% per annum from the date of dispossession, and thereafter, @ 15% per annum till the date of tender of compensation, which includes the benefit granted in the case of Sunder vs. UOI reported as **(93)**

2001 DLT 569 ; and

- (c) The appellants will also be entitled to interest under Section 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967 @ 6% p.a. on the market value of the land from the date of expiry of three years from the date of the notification under Section 4(1) of the Act, till the date of tender or the date of payment of compensation awarded by the Collector.

7. Next, counsel for the appellants submits that the judgment of the trial court is liable to be set aside for the reason that the unamended provision of Section 25 of the Act was declared void by the High Court of Andhra Pradesh in a judgment in the case of Kotla AppaleSwami & Ors. vs. Sub-Collector and Land Acquisition Officer, Vizianagaram reported as **AIR 1984 Andhra Pradesh 381** and hence could not have been applied to the appellants for restricting grant of enhanced compensation to them. He states that in view of the observations made in the aforesaid judgment by a Single Judge of the Andhra Pradesh High Court that the provisions of Section 25 of the Act are unconstitutional insofar as it relates to actual tillers of soil, the appellants being actual tillers of soil, are entitled to compensation equivalent to the market value prevailing at the time of acquisition, as determined in the case of Chandan (supra), i.e., @ Rs.40,000/- per bigha.

8. On the other hand, counsel for the respondent denies the applicability of the aforesaid judgment to the case in hand and instead relies on a judgment rendered by a three-Judges Bench of the Supreme Court in the case of M/s B.V. Reddy & Sons (supra) and states that the same is squarely applicable to the facts of the present case. He points out that the said judgment was delivered in an appeal preferred by the State of Andhra Pradesh against a judgment of the Division Bench of the Andhra Pradesh High Court in a Letters Patent Appeal. In the judgment passed by the Division Bench of the Andhra Pradesh High Court, they arrived at a conclusion that Section 25 of the Act was procedural in nature and the amendments made in the said provision would apply to pending appeals and that as there was no bar to awarding compensation more than the amount claimed by the claimants under the amended provisions, the court would be justified in enhancing the compensation if the market value was determined at a higher rate.

9. The appeal preferred in the Supreme Court against the judgment of the Division Bench of the Andhra Pradesh High Court, was initially listed before a Bench of two Judges. Placed before the said Bench, was an earlier decision of the Supreme Court in the case reported as **(2000) 7 SCC 756** entitled Krishi Utpadan Mandi Samiti vs. Kanhaiya Lal and it was argued that since the award in the case in hand was made between the period 30th September, 1982 and 24th September, 1984, compensation could be awarded under the amended

provisions of Section 25 of the Act. As the two-Judges Bench was of the opinion that the said decision required reconsideration, the matter was placed before a three-Judges Bench of the Supreme Court, who formulated five questions for consideration, which are reproduced hereinbelow :

(1) Can the provision of Section 25 of the Land Acquisition Act be construed to be procedural in nature or substantive?

(2) If it is held to be substantive in nature, then can the amended provisions of Section 25 of the Act would apply to a case where the award of the Land Acquisition Collector had been made much prior to the amendment in question?

(3) Whether the Judgment of this Court in Krishi Utpadan Mandi Samiti's case can be held to be correctly decided?

(4) Whether at all it would be appropriate for this Court to lay down the law and yet not to interfere with the judgment of the Division Bench of Andhra Pradesh High Court with regard to the quantum of compensation awarded?

(5) Whether the petition under Article 32 can be entertained for deciding the validity of un-amended provisions of Section 25?

10. It may be pointed out that the fifth question was framed by the Supreme Court in view of the fact that a petition under Article 32 of the Constitution of India was filed by the respondent therein, challenging the validity of the unamended provisions of Section 25 of the Act.

11. The first question was answered by the Supreme Court by concluding that the provision of Section 25 of the Act is substantive in nature. The second question was answered by the Supreme Court by making the following observations :

“6. Coming to the second question, it is a well settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24.9.84, the date on which Act 68/1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30.4.82 and came into operation with effect from 24.9.84..... In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act.”

12. The third question was answered by the Supreme Court by holding that the judgment in the case of Krishi Utpadan Mandi Samiti (supra) was required to be corrected to the extent that the issue with regard to the transitional provisions, i.e., Section 30(2) of the Amendment Act 68 of 1984, had no relevance to the provision of Section 25 of the Land Acquisition Act. The fourth question was answered by holding that interference was necessary in the judgment of the Division Bench of the Andhra Pradesh High Court with regard to

its findings pertaining to the quantum of compensation awarded. The last and final question with regard to the petition filed by the respondent therein under Article 32 of the Constitution of India was answered by the Supreme Court in the following manner:

“9. So far as the last submission is concerned, we are afraid that the validity of unamended provision of Section 25 of the Land Acquisition Act which was there on the statue book since inception can at all be examined at a point of time when that provision no longer subsists since 24.9.84, the date on which Act 68/1984 came into force. We, therefore, decline to entertain the petition under Article 32 at the behest of the claimants.....”

13. This Court has heard the counsels for the parties and considered their respective submissions and the judgments referred to by them. Having done so, this Court is not persuaded to follow the judgment of the learned Single Judge of the Andhra Pradesh High Court which in any case is not binding in nature, but only of persuasive value. Instead, the Court would rather follow the observations made by the Supreme Court in the later judgment in the case of M/s B.V. Reddy & Sons (supra). Guided by the aforesaid judgment, it is, therefore, held that the impugned judgment requires no interference on the issue of compensation granted to the appellants @ Rs.25,000/- per bigha for the reason that in the present case, the award was passed on 24.3.1970, whereas the amendment to Section 25 of the Act came into operation on 24.9.1984. As held by the Supreme Court, the amended provisions would not have any retrospective effect and could apply only to acquisitions made subsequent to the date,

24.9.1984. Thus, this Court concurs with the decision of the Reference Court that the case of the appellants shall be governed by the unamended provisions of Section 25 of the Act.

14. There is no other ground taken in the appeal to assail the impugned judgment. At this stage, counsel for the appellants states that though he has not raised any such ground in the appeal paper book, he may be permitted to urge that as the Reference Court decided the appeal on 13.5.2008, the said judgment ought to be treated as an `award' and by so treating it, the amended provisions of Section 25 of the Act should have been made applicable, thus granting enhanced compensation to the appellants @ Rs.40,000/- per bigha.

15. Counsel for the respondent seeks to rebut to the aforesaid argument raised on behalf of the appellants by referring to the same judgment of the Supreme Court in the case of B.V.Reddy (supra), followed by a judgment of the Division Bench of this Court, in the case reported as **119 (2005) DLT 682 (DB)**, entitled Kanta Devi Mittal & Ors. vs. UOI & Anr.

16. Further, in support of his submission that the applicability of Section 25 of the Act has to be seen at the time of the making of the award by the Collector, reliance is placed by the counsel for the respondent on the judgment reported as **(2005) 12 SCC 1**, entitled UOI vs. Pramod Gupta (Dead) by LRs & Ors.. In the aforesaid judgment, while dealing with the issue of applicability of Section 25 of

the Act, the Supreme Court observed as below :

"115. It is not in dispute that in the proceeding giving rise to Award No. 2040 dated 2.12.1967 a claim was made by the Respondent -- Smt. Pramod Gupta claiming compensation to the extent of 1/4th share in the entire land. It has also not been disputed before us that Section 25 contains a substantive provision of law and not a procedural one and, thus, the statutory provision as it existed prior to its amendment in the year 1984 shall apply."

17. In the case of Kanta Devi Mittal (supra), a Division Bench of this Court noticed the judgment in the case of M/s B.V. Reddy & Sons (supra) and also certain other judgments and after taking into consideration similar arguments addressed on behalf of the appellant therein, who contended that the amended Section 25 of the Act was applicable on the date when the Reference Court made an order and not necessarily on the date of the award made by the Collector, held that the appellant therein was not entitled to get more than what he/she claimed in view of the provisions contained in Section 25 of the Act, as applicable at the relevant time.

18. This Court is not persuaded by the arguments of the learned counsel for the appellants that the judgment of the Reference Court ought to be treated as an 'award' for the purpose of applicability of the amended provisions of Section 25 of the Act. The aforesaid submission of the counsel for the appellants is answered in the very same judgment of the Supreme Court in the case of M/s B.V. Reddy & Sons (supra), wherein it was amply clarified that the amended

provisions of Section 25 of the Act would only apply to acquisitions made subsequent to the date when the amendment came into operation, i.e., after the date, 24.9.1984. In the present case, the award was passed on 24.03.1970. Merely because the Reference Court decided the petition filed by the appellants under Section 18 of the Act, does not mean that the said decision ought to be treated as an award, for reckoning the date of acquisition. Accepting such an argument would amount to permitting the appellants to achieve indirectly that which they cannot achieve directly.

19. The aforesaid plea of the counsel for the appellants is therefore, turned down. The appeal is dismissed except to the extent as mentioned in para 6 hereinabove, with regard to clarification in respect of the statutory benefits granted to the appellants in the impugned judgment. There shall however, be no orders as to costs.

HIMA KOHLI,J

OCTOBER 28, 2009
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