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JUDGMENT

P.K BHASIN, J:

This is an appeal under Section 54 of the Land Acquisition Act, 1894 against the judgment dated 19.10.2006 passed by the learned Additional District Judge whereby the compensation to be awarded to the appellants on account of acquisition of their land in village Bahapur was enhanced to Rs.19,000 per bigha but only in respect of some part of the land while for the remaining part of the land it was fixed @ Rs.4500/- per bigha.

2. The facts of the case are that the late Sh.Ravi Shankar, who is now being represented by his children, had taken on ninety nine years lease some land falling in khasra nos. 628/1/2 and 628/2/1/2 in village Bahapur from one Mahant Ram Nath and then both of them had entered into an agreement to share the compensation of the land, in case of its acquisition. Out of the total leased land admeasuring 27 bighas 3 biswas late Sh.Ravi Shankar had sub-let 13 bighas 8 biswas land to different persons and remaining land had remained in his possession.

3. On 13.11.1959 a notification under section 4 of the Land Acquisition Act,1894('the Act' in short) was issued for acquisition of 60 bighas 16 biswas of the land in the village Bahapur which included the land belonging to late Shri Ravi Shankar also. Declaration under Section 6 of the Act was issued on 16.01.1968 and vide Award no. 2219 dated 23.3.1969 compensation @ Rs.2500/- per bigha was fixed by the Land Acquisition Collector and accordingly payment was made to the deceased claimant and Mahant Ram Nath but in respect of part of the acquired land. Since there was some dispute about the entitlement of late Sh. Ravi Shankar for the compensation in respect of the land which he had sub-let, and thereafter the Land Acquisition Collector had made a reference under Sections 30-31 to the District Judge in respect of that land and had also deposited in Court the compensation in respect of the disputed land, Sh. Ravi Shankar was not satisfied with the compensation fixed @ Rs.2500/-

per bigha and so he got a reference made to the court of District Judge under section 18 of the Act. In view of the pendency of the Reference Court under section 30-31 of the act the claimant had on 21—8-75 got stayed the proceedings till the disposal of the reference court under section 30-31. That Reference under Section 18 was finally disposed of on 3rd May, 1984. In its judgment the learned Reference Court had fixed the market value of the acquired land @ Rs.4500/- per bigha. That decision was, however, confined to the deceased Ravi Shankar's land about which there was no dispute regarding his entitlement for the compensation. Though the Reference under Sections 30 & 31 of the Act had been decided by that time on 27—2-79 against late Ravi Shankar but since he had filed appeal in this Court against the judgment of the Reference Court no decision was given in respect of that disputed land. However, while deciding the Reference under Section 18 the learned Reference Court had observed in its judgment dated 3rd May, 1984 that:

“..... of course, the claimant shall be entitled to apply to this Court, if law permits, for further compensation in case the High Court awards him some more share.....”

4. It appears that the appeal against the Reference Court's judgment in the proceedings under Sections 30-31 came to be decided by this Court on 12.07.02 in favour of the deceased Ravi Shankar. Since Ravi Shankar had died by that time his legal heirs moved an application on 10-03-05 under

Section 151 of the Code of Civil Procedure before the Reference Court for revival of the LAC No. 131/1983 in which earlier compensation had been determined @ Rs.4500/- per bigha and for the amendment in the judgment dated 03-05-84. It was claimed in that application that this Court had in some other appeals filed by some land-owners (being LPA No. 190/1979 decided on 11.10.96) fixed the market value of the land in village Bahapur @ Rs.19,000/- per bigha. The learned Reference Court allowed that application and revived the Reference taking note of the fact that this Court had fixed the market value of the land in village Bahapur @ Rs.19,000/- per sq.yd. and it was observed that the applicants would be deprived of their rights in case the reference was not revived.

5. After revival of the Reference proceedings the learned Reference Court once again fixed the case for evidence of the parties and then passed a fresh judgment on 19th October, 2006, which is now under challenge in the present appeal, and enhanced the compensation Rs.19,000/- per bigha in respect of the land which was the subject matter of Reference under Sections 30 and 31 and no compensation had been awarded earlier to Ravi Shankar in the judgement dated 03.05.84 while the compensation already fixed @ Rs.4500/- per bigha in respect of the land about which there was no dispute of title was not touched by observing that in the earlier judgment dated 3rd May, 1984 the only liberty given to the deceased Ravi Shankar was to apply for further compensation in the event of his getting

more share in the land by the High Court in the appeal filed against the decision of the Reference Court in the Reference under Section 30-31 of the Act. The claimants were also not given any interest on the enhanced compensation for the period from during which interest for the period was denied in the earlier judgment dated 3-5-84 also. The proceedings had remained sine-die. They were also not awarded interest for the period for 13-07-02 to 09-03-05 since they had filed the application for the re-opening of the case only on 10-03-05 even though the appeal in respect of the case under section 30-31 was disposed of on 12-07-02.

6. The appellants felt that they should have been awarded compensation @ Rs.19,000/- per bigha even in respect of their undisputed land for which earlier the compensation had been determined @ Rs.4500 per bigha. Since the Reference Court did not give them that relief they filed the present appeal.

7. It was contended by Shri K.C. Mittal, the learned counsel for the appellants his only grievance against the impugned judgment was that there was no justification in not awarding compensation to them @ Rs.19,000/- per bigha determined by this Court in respect of the land in village Bahapur about which there was no dispute of title while awarding that much compensation in respect of the land which was the subject matter of the Reference under Sections 30-31 of the Act.

8. On the other hand, Shri Sanjay Poddar, learned counsel for UOI submitted that there is no error committed by the learned Reference Court in not enhancing the market value of the land which had already been fixed @ ₹ 4500 per bigha in the earlier judgment dated 03-05-1984 since that judgment had not been challenged by the predecessor-in-interest of the appellant late Shri Ravi Shankar. In support of the argument that since the earlier decision dated 03-05-1984 of the Reference Court had attained finality the Reference Court could not have after many years reviewed that decision Mr. Poddar cited some judgments of the Supreme Court. He also contended that, in fact, learned Reference Court was not justified in fixing the compensation @ ₹ 19,000 per bigha even in respect of the land which was earlier the subject matter of the proceedings under Sections 30 and 31 of the Act relying upon some judgments of this Court, which had been rendered subsequently in the appeals filed by the other land owners since the learned Reference Court had fixed the market value of the land but had only kept in abeyance the matter of entitlement of the deceased claimant in respect of the disputed land. It was further contended that despite the fact that the Government had not challenged the impugned judgment fixing the market value of the land @ ₹ 19,000 per bigha this Court should not give its approval to the illegality committed by the learned Reference Court by re-opening the entire matter and reviewing its earlier decision rendered way back in the year 1984.

9. After having given my due consideration to the rival submissions, I am of the view that grievance of the appellants is justified inasmuch as there cannot be different market values of the land belonging to the same land owners acquired vide same notification and Award. The learned Reference Court itself having decided to re-open the entire case and having fixed the market value of the land, for which it was earlier not determined, @ ₹ 19,000 per bigha was not justified in not increasing the market value of the remaining land in respect of which the market value had earlier been fixed @ ₹ 4500 per bigha. In case, the respondent – UOI had felt that the learned Reference Court could not have re-opened the case and reviewed the earlier judgment and increased the market value to ₹ 19,000 per bigha it could have very well challenged that decision of the Reference Court but that was not done. This Court thus, in the absence of any challenge to the impugned judgment by the Government will not be justified in deciding the legality or the propriety of that decision to re-open the case and to review the earlier judgment and which decision was rendered in favour of the landowners whose land had been acquired.

10. This appeal is accordingly allowed and the impugned judgment of the Reference Court is modified to the extent that the market value of the land in respect of which compensation had been fixed vide judgment dated 3rd May, 1984 @ Rs.4500/- per bigha shall also stand enhanced to @ ₹

19,000 per bigha. In the facts and circumstances of the case, parties are left to bear their own costs of this appeal.

P.K. BHASIN,J

AUGUST 03, 2011
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