

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on April 12, 2012
Pronounced on April 23, 2012

+ **LA.APP No.6/2005**

SARVODYA COOPERATIVE HOUSING SOCIETY
Appellant

Through: Mr. N.K. Jain, Senior Advocate with
Mr.J.S.Goel & Mr. Vikas Kumar,
Advocates

versus

UNION OF INDIA Respondent

Through: Mr.Sanjay Kumar Pathak, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
23.04.2012

1. This appeal for enhancement of compensation arises out of acquisition of appellant's land in Village Mohammedpur Munirka, New Delhi, in pursuance to Notification under Section 4 of the *Land Acquisition Act* issued in the year 1957. Vide Award No.883 *land acquisition collector* had fixed the market value of the land in question @ ₹12000/- per bigha and said Award was challenged by the appellant before a civil court, who had set aside the acquisition of the land in question and the appeal against it also failed. However, it is not in dispute that vide order of 21st August, 1961, civil court exercising appellate jurisdiction who was seized of aforesaid Notification of the year 1957, had left the question of fresh acquisition of the land in question open. It is also not in

dispute that the possession of the land in question was taken by the respondent and compensation amount was paid to the appellant, who had accepted it under protest qua its quantum.

2. With a view to retain the possession of the land in question, respondent had again issued a Notification under Section 4 of the *Land Acquisition Act* on 14th July, 1981, which was followed by Award No.61/82/83, whereby market value of the land in question was fixed by the *land acquisition collector* @ ₹15000/- per bigha. Reference Court vide impugned judgment of 18th May, 2004, has maintained the compensation amount granted by the *land acquisition collector* @ ₹15000/- per bigha, while holding that the quashing of the earlier Notification of the year 1957 by the civil court was a nullity and that after the civil court decision the compensation of the land in question had remained with the respondent and compensation received by the appellant was not returned.

3. The evidence led before the Reference Court comprises of Award No.5/2001-02 (Ex.P-1) of Delhi Patti, Punjabi Bagh area relating to Notification issued on 8th August, 2000 under Section 4 of the *Land Acquisition Act*, certified copy of Award No.1/DCW/2001-02 (Ex.P-2) of Village Basai Darapur, pertaining to Notification under Section 4 of the *Land Acquisition Act* issued on 5th April, 1999. Regarding instances of sale of plots of different sizes in the adjoining land in the year 1980-81, there is deposition of the concerned official (PW-1) of the Delhi Government and in respect of *Office Order of 23th October, 1981* (Ex.P-2/A) issued by the Ministry of Works and Housing notifying the land rates fixed by the government in respect of different colonies in Delhi for the

period from the year 1981 to 1985, there is deposition of another official PW-2 from Government's Land and Development Department. The Patwari (PW-3) of the Village in question had deposed before the Reference Court to the effect that as per record quarters were built on the land in question during the years 1979 to 1983, which was shown as '*gair mumkin abadi*'. PW-4- *Joint Secretary of the appellant-society* had deposed regarding the land in question being agricultural land, when it was acquired in the year 1957 and that there was no development on the land in question till its acquisition and after its acquisition in the year 1957, it was developed by CPWD. As per the deposition of this witness (PW-4) government residential quarters were built upon the land in question.

4. To claim enhancement of compensation @ ₹30,000/- per bigha, it was deposed by appellant's witness-PW-4 that Hyatt Regency Hotel and Bhikaji Cama Place had come up in the vicinity of the land in question. Respondents had relied upon deposition of the Executive Engineer (RW-1) of CPWD regarding development cost of the land in question being @ ₹39.60 per sq. meter as on 23rd April, 1981.

5. In all, aforesaid was the evidence, which was led before the Reference Court. It is true that the impugned judgment has not considered afore-noted evidence, but has proceeded to rely upon the decision of the Apex Court in *State of Bihar Vs. Dharendra Kumar & Ors.* 1995 (4) SCC 229, to hold that the order of the Civil Court setting aside the earlier Notification of the year 1957 was a nullity and since the possession of the land in question was retained by the respondent and the compensation amount determined vide

earlier Award, which was received by the appellant, had remained with the appellant, therefore the appellant was not entitled to any enhancement of compensation.

6. At the hearing of this appeal, the impugned judgment is assailed by Mr. Neeraj Jain, learned Senior Advocate for the appellant, while relying upon the Apex Court decisions in ***Smt. Tribeni Devi & Ors. Vs. Collector of Ranchi*** (1972) 1 SCC 480 and ***Chiman Lal Hargovind Das Vs. Special Land Acquisition Officer, Poona & Anr.*** (1988) 3 SCC 751, to assert that it is clear mandate of Section 23(1) of the *Land Acquisition Act, 1984* that the Court has to determine the market value of the acquired land as on the date of publication of the Notification under Section 4 of the *Land Acquisition Act, 1984* and by no stretch of imagination, the Reference Court could have vested itself with jurisdiction to determine the market value of the land in question with reference to the earlier Notification of the year 1957.

7. On behalf of the appellant, reliance was placed upon decision in ***Hindustan Oil Mills Ltd. & Anr. Vs. Special Deputy Collector, Land Acquisition*** (1990) 1 SCC 59 to contend that the market value of the acquired land is required to be assessed with reference to the Notification of the year 1981 and not by relying upon the earlier notification of the year 1957, which is no longer in existence. It was urged on behalf of the appellant that the decision of the Civil Court quashing the Notification of the year 1957 has become final *inter se* the parties and so, decision in ***Dhirendra Kumar (Supra)***, has no application to the facts of the instant case and thus, the aforesaid civil court decision operates as *res judicata*. To contend so, reliance is placed upon decisions in ***Mohan Lal***

Goenka vs. Benoy Kishan Mukherjee AIR 1953 SC 65 & *Shankara Coop. Housing Society Lt. Vs. M. Prabhakar* (2011) 5 SCC 607.

8. It was vehemently contended by learned senior counsel for the appellant that respondent had accepted the aforesaid civil court decision and had issued fresh Notification under Section 4 of the *Land Acquisition Act* in the year 1981 and since the *land acquisition collector* has awarded compensation by relying upon the subsequent Notification of the year 1981, and so the Reference Court could not have ignored this aspect to fall back upon earlier Notification of the year 1957 to hold that the market value of the acquired land, as in the year 1957 has to be considered. Reliance is placed upon the decision of the Apex Court in *Mafat Lal Industries Vs. Union of India* (1997) 5 SCC 536, to contend that the decision which has attained finality between the parties cannot be reopened, as it would lead to grave public mischief.

9. To seek determination of market value of the land in question, as on the date of Notification of the year 1981, reliance was placed by learned counsel for the appellant upon decisions in *R L Jain (D) by LRs vs. DDA and Ors.* (2004) 4 SCC 79 & *Thakur Kuldeep Singh vs. Union of India* (2010) 3 SCC 794. Thus, enhancement of compensation @ ₹500/- per sq. yard has been sought in this appeal, while urging that the impugned judgment deserves to be set aside as being contrary to the settled law.

10. The impugned judgment was defended by Mr. S.K. Pathak, learned counsel for the respondent, while asserting that the real and effective Notification with respect to the land in question is of the year 1957 and the subsequent Notification of the year 1981 had

only rectified the technical errors in the earlier Notification and since the possession of the land in question was taken in pursuance to the earlier Notification and compensation in respect thereof was also paid to the claimants after passing of the Award, which was obviously prior to the subsequent Notification, therefore, assessment of the compensation in respect of the land in question, has been correctly made by the *land acquisition collector* on the basis of the rates pertaining to undeveloped lands as in the year 1981. So, it is asserted on behalf of the respondent that the decisions relied upon by learned senior counsel for the appellant have no application because the Award of the *land acquisition collector* assessing compensation in relation to the subsequent Notification has been upheld by the impugned judgment which does not suffer from any illegality, as the aforesaid civil court decision relied upon by the appellant has not been placed on record and in any case, the said decision has been rightly held in the impugned judgment to be nullity in view of the decision of the Apex Court in ***Dhirendra Kumar*** (*Supra*). Thus, it is submitted that since the instances relied upon by the appellant are not comparable, therefore, no case for enhancement of compensation is made out, rendering this appeal bereft of merit.

11. In the light of the rival submissions advanced, the record of this case and the decisions cited have been perused and thereupon, it emerges that in the absence of aforesaid civil court decision, being there on record, Reference Court has rightly opined in the impugned judgment that why the earlier Award (based on the earlier Notification) was set aside, is not known. This would be of importance because the Apex Court in ***Hindustan Oil Mills***

(*Supra*), on the aspect of an unamended and amended Notifications under Section 4 of the *Land Acquisition Act* has declared as under:-

'In our opinion where there is a notification, which purports to be by way of an amendment, the question whether it is really one rectifying certain errors in the earlier one or whether its nature is such as to totally change the entire complexion of the matter would have to be considered on the terms of the relevant notifications. In the present case, as we have already said, it appears to us, on a proper construction of the notifications, that the real and effective notification in respect of the lands presently in question in survey No.135/1, was only the notification dated February 28, 1963.'

12. Applying the ratio of the Apex Court decision in ***Hindustan Oil Mills*** (*Supra*), it is required to be considered as to whether the subsequent Notification of the year 1981 in the instant case merely rectifies technical errors or it totally changes the entire complexion of the earlier Notification of the year 1957. To adopt such a course is permissible as Apex Court in ***Dhirendra Kumar*** (*Supra*), has held that civil suit for challenging the Notification / Award under the *Land Acquisition Act*, is not maintainable. Thus, in the considered opinion of this Court, the Reference Court has rightly relied upon the aforesaid Apex Court decision in ***Dhirendra Kumar*** (*Supra*), to hold that the aforesaid civil court decision (*strongly relied upon by the appellant without placing its copy on record*) is a nullity.

13. In the light of the view taken as aforesaid, appellant cannot be heard to say that the aforesaid civil court decision being final, operates as *res judicata* and so, the decision in ***Mohan Lal Goenka*** (*Supra*), holding that even an erroneous decision on question of

law operates as *res judicata* between the parties to it and the decision in *Shankara* (Supra) and the decision in *Mafatlal* (Supra), highlighting the applicability of the principle of *res judicata* and constructive *res judicata*, have no application to the instant case.

14. The pertinent observations made by the Apex Court in *R.L. Jain* (Supra), are as under:-

'In a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent and damages for use of property to which the landowner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.'

15. It would be relevant to note that in the instant case, an issue to claim *mesne* profits for the period intervening the first Notification of the year 1957 and the subsequent Notification of the year 1981 was claimed and the finding returned on this issue in the impugned judgment is as under:-

Issue No.2:

Whether petitioners are entitled to mesne profit as claimed and if so, to what effect? OPP

Finding:

Onus of proof to prove this Issue was on the petitioner. However, petitioner has not produced any evidence on this issue. Even otherwise this issue was not pressed by the petitioner's counsel at the time of final arguments. Hence, this issue is decided against the petitioner for want of evidence on the point. This issue stands decided accordingly."

16. As already noted above, in the absence of the afore-noted civil court decision being on record, it cannot be determined as to whether the earlier Notification of the year 1957 had a technical or substantial defect and so, the earlier Notification of the year 1957, has to be treated as effective one, for the reason that it is this Notification, which was acted upon by the parties, that is to say, in pursuance to this Notification of the year 1957, the possession of the land in question was taken by the respondent and in lieu thereof, compensation was paid to the appellant. Whereas, upon issuance of the subsequent Notification of the year 1981, which was in the nature of an amended Notification, no effective proceedings i.e. either taking of the possession of the acquired land or accepting compensation in lieu thereof, had taken place. Therefore, it has to be assumed that the subsequent Notification of the year 1981, had merely rectified the technical errors appearing in the earlier Notification and had not substantially changed the earlier Notification of the year 1957.

17. As it cannot be said that the subsequent Notification of the year 1981 had materially changed the earlier Notification of the year 1957, so on account of afore-noted civil court decision being a nullity, the earlier Notification of the year 1957 would hold the

field. It is so said, because the Apex Court in *Hindustan Oil Mills (Supra)*, has declared in no uncertain terms that there is no general proposition that it is the last of the Notification under Section 4 of the *Land Acquisition Act* which can be taken to be as effective Notification.

18. On the strength of the aforesaid dictum of the Apex Court in *Hindustan Oil Mills (Supra)*, I unhesitatingly uphold the impugned judgment and dismiss this appeal being without merit as the appellant cannot rely upon decisions in *Tribeni Devi (Supra)*; *Chiman Lal (Supra)* and *Thakur Kuldeep Singh (Supra)*, to claim assessment of compensation while relying upon the subsequent Notification of the year 1981, as the crucial Notification is the earlier one i.e. of the year 1957. For want of cross-objection or challenge to the impugned judgment by the respondent, assessment of compensation by *land acquisition collector* while relying upon the subsequent Notification is not being interfered with in this appeal.

19. This appeal stands disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 23, 2012

n/rs