

Court No. - 19

Case :- FIRST APPEAL No. - 26 of 1997

Appellant :- State of U.P.

Respondent :- Ashok Marketing Ltd.

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- T.N. Shukla,A.K. Jauhari,Ajai Kumar Nigam,Anurag Srivastava,P.N. Mathur

Hon'ble Jaspreet Singh,J.

1. The instant first appeal has been filed by the State assailing the award dated 12.05.1982 passed in reference under Section 18 of the Land Acquisition Act, 1894, registered as Misc. Case No.397/1978 whereby the Reference Court has awarded a sum of Rs.4,77,252/- as compensation for the land acquired along with solatium amounting to Rs.71,587.80 NP along with 6% interest per annum from the date of possession till the date of actual payment.

2. Shri Devendra Mohan Shukla, learned Standing Counsel for the appellant while assailing the aforesaid award has primarily raised a solitary issue stating that the land in question which was the subject matter of acquisition was a Nazul Land. It is submitted that the said land was leased out to the private-respondent and as such while making acquisition, the Collector had made an award computing the compensation and further holding that 10% shall be available to the lease-holder and 90% shall be payable to the Nazul Department. This apportionment of the award was challenged by the private-respondent in reference before the Court below and the Court concerned after hearing the parties not only enhanced the amount of compensation from Rs.10/- per square feet to Rs.20/- per square feet and thereafter reversed the apportionment inasmuch as 10% of the

enhanced amount was payable to the State and remaining 90% was to be paid to the private-respondent.

3. Being aggrieved, the State has challenged the said award in the instant appeal.

4. Learned standing counsel further submits that there is not ample material before the Reference Court to have enhanced the compensation from Rs.10/- per square feet to Rs.20/- per square feet and moreover once it was held that the land in question was on lease with the holder, consequently, there was no occasion for the Reference Court to have apportioned 90% in favour of the lease-holder and 10% in favour of Nazul Department. This is an error which has vitiated the award. In support of his submission, he has relied upon a decision of the Apex Court in **Inder Parshad v. Union of India and others, (1994) 5 SCC 239**.

5. Though the notice on the respondent was served, yet none put in appearance on behalf of the private-respondent to argue. In this view and also noticing that the appeal is of the year 1997 and listed under the heading "These Cases Shall Not Be Adjourned", the Court has proceeded to hear the appeal in absence of the private-respondent.

6. The only issue before this Court is whether the Reference Court was justified in enhancing the compensation and granting 10% of the amount to the Nazul Department and 90% to the private-respondent.

7. Certain brief facts, relevant to decide the above appeal, are being noticed hereinafter.

8. The subject matter of the appeal relates to the land measuring

26514.16 square feet, out of which 6700 square feet was covered as garden lease and the remaining portion was on perpetual lease executed in favour of the private-respondent. The land came to be acquired and the Collector while making the award granted only 10% of the amount to the private-respondent and 90% was awarded to the Nazul Department.

9. Being aggrieved, the lease holder preferred reference which came to be registered as Misc. Case No.379/1978. The award passed by the Collector dated 03.02.1973 was made the subject matter and the Reference Court upon exchange of the pleadings, framed two issues primarily as to (i) Whether the compensation awarded was adequate and (ii) Whether the apportionment of the compensation between Nazul Department and the lease holder was appropriate?

10. After the evidence was led, the Reference Court found that the lease in question was in amidst of the land which was developed. The application of belting method was not appropriate and it recorded that in the vicinity of the land acquired, there were two positive aspects, a Mall Road and the exemplar which was filed indicated that the lease in an around the vicinity of acquired land was being sold at a higher rate.

11. Noticing the testimony of PW-1 and PW-2 including the statement of Shri Musaddilal, Retired Chief Engineer of Local Self Department, the Reference Court came to be conclusion that the land acquired was not appropriately dealt with and thus the compensation was enhanced to Rs.20/- per square feet. The Reference Court also found that since the lease made by the Nazul Department in favour of the lease holder was of perpetual nature which was as good as being in the ownership of the

private-respondent, hence, it is ordered that 10% of the compensation shall be payable to the Nazul Department and the remaining to the lease holder. It is this award dated 12.05.1982, which is under challenge.

12. Insofar as the valuation is concerned, learned standing counsel could not dispute that the Reference Court has taken note of the evidence which was led which indicated that the land the subject matter of the acquisition was in the vicinity of developed area and the manner in which the Collector had ascertained the compensation by adopting belting method was not appropriate. The exemplar indicated that the land area was being sold at a higher price and taking overall view, the Reference Court enhanced the compensation from Rs.10/- per square feet to Rs.20/- per square feet. The manner in which the issue No.1 was decided by the Reference Court cannot be said to be bad in the eyes of law since it is based on evidence and cogent reasons has been ascribed and it could not be demonstrated that the findings recorded are perverse or that no reasonable person would arrive at such a conclusion. In view of the aforesaid, the contention of the learned standing counsel that the compensation of the acquired land has been arbitrarily enhanced by the Reference Court does not find favour with this Court.

13. The other issue relating to apportionment, this Court finds that it is not disputed that the land in question was leased out to the private-respondent on perpetual lease. The reliance placed by the learned standing counsel on the decision of the Apex Court in **Inder Parshad** (supra) if seen carefully would indicate that the same does not help the State. Paragraphs 4, 5 and 6 of the said report will be relevant to be noticed which read as

under:-

"4. It is seen that after making the award under Section 11 and deposit of the compensation, the Land Acquisition Collector is entitled under Section 16 of the Act to take possession of the land for that provision says that "the land shall thereupon vest absolutely in the Government free from all encumbrances". Thus by exercise of the power of eminent domain Government has divested the pre-existing right, title and interest held by the lessee of the land which stood vested absolutely in the Government free from all encumbrances thereafter. But, the Land Acquisition Officer in his award under Section 11 has fixed the compensation payable not only for the pre-existing right, title and interest of the lessee but also of the lessor the Government.

5. In this case admittedly the Government being the owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition. The contents of the award extracted hereinbefore clearly indicate that the Land Acquisition Collector could not determine compensation payable towards the leasehold interest held by the appellant. Being an owner the Government is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee its power to resume the land is subject to non-fulfilment of the terms and conditions of the lease by the lessee. So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances. Compensation becomes payable for the leasehold right or interest held by the lessee or grantee when the land is acquired. The point becomes clear from the following illustrations. Take a case where the Government granted lease of agricultural land on the annual payment of rent with a covenant that the Government is entitled to resume the land when needed for public purpose or as when the Government finds that the land is required for public purpose. In terms of the covenants, the Government is entitled to exercise its option to determine the lease though the lessee has been complying with the condition of payment of annual premium or rent and resume the land in accordance with terms of the grant. In that event the need to take recourse to acquisition and to make compensation does not arise. Take a case where the Government granted the lease of the open land with permission to the lessee to construct a building for his quiet enjoyment with appropriate covenants and the lessee with permission constructed the building and by complying with the covenants of the lease was in quiet enjoyment. The selfsame property, when required for public purpose, the Government cannot unilaterally determine the lease and call upon the lessee to deliver the possession. Therefore, the Government is required to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine the total

compensation, make an award and make a reference to the civil court under Section 30 for decision on appointment. Exactly that is the situation on the facts of this case. Take another illustration. The Government grants a patta of its land subject to payment of land revenue. Later, the land is required for public purpose. The payment of land revenue is at par with the payment of land revenue payable by a private owner to the State. By grant of patta, the title has been vested in the grantee. Therefore, the grantee is entitled to the full compensation of the acquired land.

6. The Land Acquisition Collector determined the compensation for the sum total of the right, title and interest held by the lessor and the lessee together and made a reference to the civil court under Section 30 to determine the proportion in which the lessor and the lessee are entitled to receive the compensation. In a given case where it is possible to determine the compensation payable towards leasehold interest, it could also be done and the compensation payable towards the interest held by the lessee could be deposited in the Court and paid subject to the provision in the Act. Since the Land Acquisition Collector was not in a position to determine the proportion in which the said compensation had to be paid to the appellant and the lessor-Government, he made a reference to the civil court under Section 30."

14. From a perusal of the aforesaid dictum, it would indicate that in cases where the lease has been granted to a person which belongs to the Government, the Government cannot unilaterally determine the lease and call upon the leaseholder to deliver possession. As in the instant case, a perpetual lease was executed in favour of the private-respondent and it is not the case of the State that the private-respondent had violated the terms of lease upon which they made efforts to resume/exercise the right of re-entry. Where the lease has been granted in perpetuity and in case if the Government requires the said land for public purposes then it has to exercise its powers of eminent domain.

15. In this view of the matter where the lease holder had utilized the said land for its purpose and it was being taken away by the State by exercising its powers of eminent domain also noticing the fact that the lease holder had paid premium/lease rent to the Nazul Department for acquiring the lease holder rights in perpetuity, in such circumstances, it cannot be said that the compensation as payable to the private-respondent would be 10%

and 90% would be of the Nazul Department. In fact the Nazul Department, who had already accepted the premium/lease rent from the lease holder at the time of execution of the lease in perpetuity and finding that the private-respondent had not violated any terms of the lease which other than the compulsory acquisition would have led the said land to remain with the private-respondents. Accordingly, in the aforesaid circumstances and noticing the definition of the word 'person interested' as used in Section 3 (b) of the Land Acquisition Act, 1894, rights of the lease holder were definitely disturbed and he being the interested person was liable to be get the compensation and since his lease was in perpetuity which was as good as the owner, hence, this Court does not find that there is any error in the award made by the Reference Court whereby 10% of the awarded sum is apportioned for the Nazul Department and 90% has been made payable to the private-respondent.

16. Thus, the dictum as laid down by the Apex Court in **Inder Parshad** (supra) does not help the appellant rather from a perusal of the Paragraph 5 to 8 as noticed above, it would come to the help to the private-respondent.

17. In view of the aforesaid, this Court does not find that there is any merit in this appeal. Accordingly, the first appeal is dismissed. No other point was pressed. In the facts and circumstances, there shall be no order as to costs. The record of the trial Court concerned shall be returned forthwith.

Order Date :- 16.10.2023

Rakesh/-