

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 121 of 2008**

1. State of Chhattisgarh, through the Secretary, Department of Revenue, D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. The Collector (Land Acquisition Officer) District – Raipur (C.G.)

---- Appellants**Versus**

1. (A) Abdul Salam Khan, aged about 55 years
(B) Abdul Haneef Khan, aged about 50 years,
Both are Son of Taj Khan
(C) Julekha Bee, aged about 57 years, Wd/o Taj Khan,
All are resident of Gariyaband, Tahsil Gariyaband, District Raipur (CG) through Legal representative Abdul Salam, S/o late Taj Khan, R/o Gariyaband, District Raipur (CG)
2. (A) Minor Kishore, aged about 13 years, S/o Neelkanth Rao, through local guardian Grand-mother Smt. Renuka Lambe.
(B) Smt. Renuka Lambe, W/o Late Shri Hemantrao, aged about 65 years.
Both are resident of Gariyaband, Tahsil Gariyaband, District Raipur (CG) through legal representative Pradeep Lambe, S/o late Hemantrao, R/o Gariyaband, District Raipur (CG)
3. (A) Mohd. Yusuf, aged about 50 years
(B) Abdul Quadar, aged about 45 years,
Both are son of Ahmad Bhai Musalman, R/o Gariyaband, District Raipur (CG)
Mohd. Yusuf through legal representative Abdul Quadar, S/o Ahmad Bhai Musalman, R/o Gariyaband, District Raipur (CG)
4. I. Mohd. Farookh, aged about 42 years,

II. Mohd. Saleem, aged about 39 years,

III. Mohd. Naseem, aged about 36 years

IV. Mohd. Abdul Hameed, aged about 32 years,

V. Hasinabai, aged about 50 years,

VI. Faridabai, aged about 44 years,

VII. Yasmin, aged about not known.

Respondents No.I to IV are S/o and Respondents No.V to VII are D/o Late Musabhai, All R/o of Gariyaband, Tahsil Gariyaband, District Raipur (CG)

Respondents No.I and III to VII through legal representative Mohd. Saleem Warsi, S/o late Musabhai, R/o Gariyaband, District Raipur (CG)

5. Manohar Rao, aged about 59 years, S/o Shri Govindram Brahman, R/o Gariyaband, District Raipur (CG)

6. Najhat Nasreen Khan, aged about 55 years, W/o Shri Yusuf Saifullah Khan, C/o Nalraj Khan Building, Near Hamdard Dispensary, Third Floor, Baijnath Para, Raipur, District Raipur (CG)

---- Respondent

For Appellants : Shri Ramakant Mishra, Deputy Advocate General.
For Respondents 3(A) & (B), 4(I) to (VII) & 5 : Shri Sunil Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By Prashant Kumar Mishra, J.

21/07/2017

1. The State has preferred this appeal under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') to challenge the reference order passed by the Additional District Judge,

Gariyaband, District Raipur enhancing the amount of compensation in favour of the respondents/land holders on the rate applicable on square feet basis.

2. Indisputably, the State proceeded to acquire the lands belonging to the respondents for public purpose i.e. for construction of 100 bedded hospital at Gariyaband. In a duly drawn acquisition proceeding the validity of which was never challenged by the land holders, an award was passed by the Land Acquisition Officer on 21.4.2003 allowing compensation at the rate of Rs.1,64,493/- for '**Dhanha**' agricultural land and at the rate of Rs.1,93,878/- for '**Bharri/Bhatha**' agricultural land.
3. Being dissatisfied with the amount of compensation, the present claimants/respondents (including legal heirs of some of the holders) moved an application under Section 18 of the Act before the Collector, Gariyaband for making reference to the principal civil Court of original jurisdiction for determination of adequate compensation. It is to be noted that out of 9 holders affected by the acquisition proceeding, only 6 holders made reference application under Section 18 of the Act. Out of the remaining 3, one land holder accepted the land in lieu of land and the remaining 2 did not move either under Section 18 or prayed for land in lieu of land.

Thus, they were satisfied with the quantum of compensation offered to them.

4. In course of reference proceeding, the Court below framed issues and recorded evidence of the parties and eventually concluded that for diverted land, the land holders are entitled for compensation at the rate of Rs.70/- per square feet and at the rate of Rs.20/- per square feet to those whose lands are situated more than 50 feet away from the main road.
5. Assailing the impugned order, Shri Ramakant Mishra, learned Deputy Advocate General would submit that the land holders accepted the award without raising any protest, therefore, in view of the law laid down by the Supreme Court in the matter of **Wardington Lyngdoh and Others Vs. Collector, Mawkyrwat**¹, the reference application was not maintainable. He would further submit that even if no such issue was framed by the trial Court, the State is entitled to raise the same at the appellate stage, as the issue is purely legal. In the alternative, he would submit that even if reference application was maintainable, quantum of compensation enhanced by the reference Court is arbitrary and without any material.

¹ (1995) 4 SCC 428

6. Per contra, Shri Sahu learned counsel for the respondents would refer to the judgments of the Supreme Court in the matters of **V. Chandrasekaran and Another Vs. Administrative Officer and Others**² and **Chandra Bhan (Dead) through legal representatives and Others Vs. Ghaziabad Development Authority and Others**³ to put-forth his case that if the reference application is preferred within time, that itself is treated as non acceptance of the award amount or raising protest with the amount offered to the land holders, therefore, the reference was maintainable. He would also support the impugned judgment on merits.
7. True it is that in view of the judgment of the Supreme Court in the matter of **Mohammed Hasnuddin Vs. The State of Maharashtra**⁴, as also for the reason that the issue regarding maintainability of the reference application itself being purely a legal issue, the State is entitled to raise the same at the appellate stage, however, if we consider the ground urged on this score, we are not convinced with the argument that the reference application was not maintainable. In concluding so, we would like to discuss the first judgment on the issue rendered by the Supreme Court in the matter of **Ajit Singh and Others Vs. State of Punjab and**

² (2012) 12 SCC 133

³ (2015) 15 SCC 343

⁴ AIR 1979 SC 404

Others⁵ wherein the making of application under Section 18 of the Act within a period of limitation was treated to be implied protest to the dissatisfaction with the amount under award. In the subsequent judgment on the issue in the matter of **Wardington Lyngdoh** (Supra), it was held that no person who had received the amount otherwise than under protest is entitled to make application under Section 18. In other words, receipt of amount under protest is the condition precedent to make application under Section 18 within limitation prescribed under proviso to sub-section (2) of Section 18 together with the grounds on which objections have been taken.

8. In subsequent judgment in the matter of **V. Chandrasekaran** (Supra), the Supreme Court noted cleavage of opinion in para-33 and 34 but did not approve any of the two judgments and proceeded to deal with the matter on the basis of its own facts. In the said matter, as mentioned in paras 1 to 3, the appellants were challenging the acquisition itself and, therefore, the Supreme Court was not considering the language of Section 18 of the Act, as the same never fell for consideration nor was an issue before the Supreme Court.

9. All the above judgments in the matter of **Ajit Singh, Wardington**

⁵ (1994) 4 SCC 67

Lyngdoh and **V. Chandrasekaran** (Supra) have been delivered by a Bench of Two Hon'ble Judges of the Supreme Court. Thereafter a Three Judge Bench of the Supreme Court in the matter of **Chandra Bhan** (Supra) considered the issue about maintainability of the reference application and by quoting the judgment in the matter of **Ajit Singh** (Supra), it was held thus in para-11:-

“11. The principal contention urged by the learned counsel for GDA was that since the compensation was accepted by the claimants without any protest, the reference was not maintainable. In our opinion, this contention is without any substance for several reasons. In **Ajit Singh** (Supra) it was held that since the appellants therein had filed an application for reference under Section 18 of the Act, it manifested their intention. Consequently, the protest against the award of the Collector was implied notwithstanding the acceptance of compensation.”

10. It is settled that if there is cleavage of opinion in the judgments rendered by the Supreme Court on the same issue, the one which is rendered by a Larger Bench would have binding precedent, as has been observed by the Supreme Court in the matter of **Official Liquidator Vs. Dayanand and Others** {(2008) 10 SCC 1} in paras 86 and 89 which are reproduced hereunder:-

“86. In *Central Board of Dawoodi Bohra Community v. State of Maharashtra* the Constitution Bench interpreted Article 141, referred to various earlier judgments including ***Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik***

*Sangha*⁶ and *Pradip Chandra Parija v. Pramod Chandra Patnaik*⁷ and held that

the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status — both would be immediate casualty (*Central Board of Dawoodi Bohra Community case*, SCC p. 682, paras 12 & 10).

89. It is interesting to note that in *Coir Board v. Indira Devi P.S.*⁸, a two-Judge Bench doubted the correctness of the seven-Judge Bench judgment in *Bangalore Water Supply & Sewerage Board v. A. Rajappa*⁹ and directed the matter to be placed before Hon'ble the Chief Justice of India for constituting a larger Bench. However, a three-Judge Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and observed that the two-Judge Bench is bound by the judgment of the larger Bench—*Coir Board v. Indira Devai P.S.*”

11. We are thus bound by the law laid down by the Supreme Court in the matter of **Chandra Bhan** (Supra). Thus, we hold that even if the award amount has been accepted without protest but the reference application has been moved within time prescribed in

6 (2001) 4 SCC 448

7 (2002) 1 SCC 1

8 (1998) 3 SCC 259

9 (1978) 2 SCC 213

law, that itself would imply that the holders are not satisfied with the amount offered to them and thus, the application under Section 18 of the Act is maintainable.

12. Reverting back to the merits of the matter, it is to be seen that the subject land is located very close to Gariyaband Town and is adjoining the existing jail. The major portion of the area under acquisition is on the road with some portion falling 50 feet away from the road. While allowing compensation on square feet basis, instead of per hectare/per acre basis granted by the Land Acquisition Officer, the trial Court has referred to the market value guidelines issued by the Collector, Raipur for the relevant year. The said guidelines are available in the record of the trial Court as Ex.-P/6. The guidelines clearly stipulate that for residential or commercial land of Gariyaband Township, from Super Market Chowk to Raipur Road/Petrol Pump, Rice Mill and Perry Colony area, the rate would be Rs.70/- per square feet when the land is located within 50 feet from the road. Similarly, when the land is located beyond 50 feet from the road, the rate would be Rs.60/- per square feet and for commercial plots, the rates would be Rs.140/- per square feet. In para-3 (स) of the claim petition filed by one of the holder Shri Pradeep Lambe, it is averred that the subject land is situated near Perry Colony and Gariyaband Basti. A petrol pump is

situated opposite to his land. The jail road is situated just 50 feet away from his land. As per the trial Court, the lands belonging to Manohar Rao and minor Kishore and Smt. Renuka Lambe, wife of Hemantrao are located adjoining to Gariyaband-Rajim main road, therefore, they are entitled for compensation at the rate of Rs.70/- per square feet. The lands belonging to other holders are located at a distance of 100-200 meter from the main road, therefore, they are entitled for compensation of Rs.20/- per square feet.

13.The market value guidelines (Ex.-P/6 & Ex.-P/8) nowhere indicates that for applying the rate on square feet basis the land should necessarily be diverted land. Therefore, if the land is capable of being used for residential purpose or commercial purpose, the rate would be applicable on square feet basis in view of the market value guidelines. The reference Court has not committed any illegality in awarding compensation on the said rates.

14.Thus, considering the material available on record, we have not found that the reference Court has recorded any perverse finding or has traveled outside the scope of material brought before it to award arbitrary or inflated amount of compensation to the land holders.

15. There is no legal infirmity in the impugned award insofar as it enhances the amount in favour of the land holders.

16. In the result, the Appeal fails and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)

Barve

HEADLINES

Reference under Section 18 of the Land Acquisition Act moved within time. Land holders are impliedly not satisfied with the award amount. Reference application maintainable even if protest not recorded at the time of acceptance of amount.