

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 95 of 2011**

1. South Eastern Coalfields Limited, Through The Chief General Manager, Chirimiri, P.O. West Chirimiri, Colliery, Distt. Korea Chhattisgarh

---- Appellant**Versus**

1. Mohd. Sohail Siddiquee, S/o Late Afzal Ahmad, aged 27 Years
2. Yasmin Begum W/o Sabi Akhatar Ali, aged 35 years
3. Shaheen Siddiquee W/o Sabiullah, aged 32 years
4. Ishrat Jabi W/o Zabir Khan, aged 29 years

All R/o Chhoti Bazar, Thana Cirmiri, Dist. Korea (CG).

---- Respondent

For Appellant

Shri R.K. Gupta, Advocate with Shri B.S. Rajput, Advocate

For Respondents

Shri Vikram Dixit, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****By****Prashant Kumar Mishra, J.****19/07/2017**

1. Appellant-SECL would assail the order passed by the Reference Court i.e. 1st Additional District Judge,

Manendragarh, answering the reference in favour of the respondents, who are the legal heirs of the deceased namely; Afzal Ahmad, whose land was subjected to grant of surface right to the appellant for extraction of mineral.

2. On account of grant of surface right the compensation to the land holder was required to be fixed under the provisions of Section 247 (4) of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the CGLRC'), which reads as under :

247. Government's title to minerals.--

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

(4) If, in the exercise of the right herein referred to over any land, the rights of any person are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub Divisional Officer or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894 (I of 1894).

3. Amongst other lands belonging to different holders, respondents' land admeasuring 10028 sq.ft. (23 decimal) was subjected to proceedings under Section 247 (4) of the CGLRC

for fixation of compensation. The calculation sheet available on record would indicate that for the respondents' lands the amount of compensation was fixed at Rs.4,600/-; for house Rs.1,31,243/-; and for trees Rs.3,020/-. Thus, total amount of Rs.1,38,863/- was fixed. It appears, on addition of compensation on some other head the final amount of compensation payable to Shri Afzal Ahmad was fixed at Rs.1,41,620/-, as mentioned in the reference order passed by the Collector, Korea.

4. The respondent moved an application for reference under Section 18 of the Land Acquisition Act, 1894 (henceforth 'the LA Act') with the plea that the amount of compensation for land is wrongly calculated by treating the same as *abadi* whereas he has already been granted *bhoomiswami* rights over the land, therefore, the land being situated within the Township and having a residential construction over it, the calculation should have been made on sq.ft. basis in terms of the value fixed by the Sub Registrar, Manendragarh for the relevant year.
5. In the reference order, the Collector has mentioned the subject land to be the *abadi* land. The Reference Court has accepted the plea raised by the respondents duly supported with the

revenue papers to conclude that the subject land was *bhoomiswami* land, therefore, the holder was entitled for compensation for land on sq.ft. basis at the rate of Rs.18/- per sq.ft. fixed by the Sub Registrar, Manendragarh, for the relevant year.

6. Shri R.K. Gupta, learned counsel appearing for the appellant, would submit that the trial Court has passed the order on reference as if it has issued a decree of declaration of title, which is not permissible in law. Learned counsel would further submit that such declaration could not have been granted without impleading or hearing the State of Chhattisgarh with whom Afzal Ahmad was in contest in relation to the title over the land, thus, the submission of Shri Gupta is that the Reference Court has travelled beyond the scope of reference or the order of reference. Learned counsel would also submit that the award of interest at the rate of 30% is exorbitant and arbitrary. Learned counsel would next submit that the Reference Court has admitted xerox copies of the revenue documents in evidence, which is not permissible. If those documents are not considered, there is no evidence in support of the respondents plea that the subject land was *bhoomiswami* land.

7. Shri Vikram Dixit, learned counsel appearing for the respondents, *per contra*, would defend the order on submission that in order to fix the price of land to determine the compensation admissible to the respondents it was necessary for the Reference Court to record the finding on the nature of title in favour of Afzal Ahmad. Learned counsel would further submit that the Reference Court has not granted any decree of declaration, therefore, the State of Chhattisgarh was not a necessary party in such proceedings under Section 18 of the LA Act.
8. We have heard learned counsel appearing for the parties and perused the record of the Court below.
9. True it is that the revenue papers submitted by the respondents were xerox copies, which are not primary evidence and no permission for leading secondary evidence has been sought for in respect of those documents wherein Afzal Ahmad's name has been recorded as *bhoomiswami*, however, the record also contains certified true copies of the calculation sheet in Form 'A' (पत्रक "अ") prepared by the Land Acquisition Officer including Afzal Ahmad, S/o Abdul Basheer in the list of *bhoomiswamis* in whose favour the compensation has been calculated. The

record also contains Form 'B' (पत्रक "ब"), which is maintained for such persons who have occupied the Government land. This list does not contain the name of Afzal Ahmad. The record further contains Form 10 (पत्रक "10") again mentioning the name of Afzal Ahmad as *bhoomiswami*. Similarly, Form 11 (पत्रक "11") carries column No.3 about the nature of right, in which, as against the name of Afzal Ahmad the nature of right is mentioned as *bhoomiswami*. Similarly, Form 13 (पत्रक "13") also carries a similar column of nature of right mentioning against Afzal Ahmad's name that he is a *bhoomiswami*.

10. Additional copies of Forms 10 & 11 are also available mentioning the name of Afzal Ahmad along with other *bhoomiswamis* and the said documents bear signature of the Revenue Inspector and Patwari Halka with a note appended to the document that the document has been prepared on the basis of patwari records. Thus, once the documents are prepared on the basis of Patwari records i.e. revenue records, the certified true copy of which is issued by the Tahsildar, Manendragarh, whose original is available in the record of the case before the Reference Court, there is no doubt that at the relevant time Afzal Ahmad was a *bhoomiswami* of the subject

land. Therefore, even if the revenue document produced by Afzal Ahmad could not be read in evidence as those were not proved by leading secondary evidence, the other document of unimpeachable character filed by the SECL, which are true copies of the original calculation sheet drawn by the Land Acquisition Officer, the finding recorded by the Reference Court that the subject land was *bhoomiswami* land in the hands of Afzal Ahmad need not be unsettled.

11. In so far as the argument that the Reference Court has passed a decree of declaration while answering the reference, it is to be seen that the Reference Court has not drawn any decree on the basis of evidence recorded in the reference order.
12. The jurisdiction under Section 18 of the LA Act has been conferred on the Reference Court to decide the quantum of compensation, therefore, if in the proceedings before the Civil Court, the Court is required to decide about the nature of title in a collateral manner, it has all the jurisdiction to record such, *prima facie*, finding albeit it may not pass a decree in favour of one or other party.
13. The jurisdiction under Section 18 or for that matter under Sections 30 or 31 of the LA Act to decide the quantum of

compensation has been conferred on the Civil Court of original jurisdiction as defined under Section 3 (d) of the LA Act and, as such, the Civil Court has all the powers to go into the question of title to, *prima facie*, conclude about the right or entitlement to receive the compensation or the quantum thereof.

14. We may now consider the award of interest at the rate of 30%. In this context, provisions contained in Section 23 (1A) of the LA Act needs reference, which says that in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Sub-section (2) of Section 23 of the LA Act further provides that in addition to the market-value of the land, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.
15. On a reading of the reference order particularly para 13 thereof, it appears the Court wanted to grant solatium as mandated in

sub-section (2) of Section 23, but has wrongly referred the same as interest on the amount of award. The interest of 30% is, therefore, treated as solatium under Section 23 (2) of the LA Act. Since the rate of 30% is statutory in nature, the same cannot be reduced.

16. Needless to say that the amount of solatium is calculated and applied on the amount of award and no further interest is payable for the period from 6-5-2006 to 15-4-2009 as directed in para 14 of the order in reference. In other words, the interest at the rate of 30% shall be calculated on the enhanced amount of compensation i.e. Rs.1,75,000/- only once and not on year to year basis. The respondents would, thus, be entitled to a sum of Rs.1,75,000/- and 30% on this amount. The respondents would be entitled to interest @ 12% per annum on the total awarded amount. The amount awarded by the Reference Court stands modified accordingly.
17. As an upshot, the appeal is allowed in part, leaving the parties to bear their own cost(s).

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Arvind Singh Chandel