

State Of Karnataka & Anr vs Sangappa Dyavappa Biradar & Ors on 30 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2204, 2005 AIR SCW 1775, 2005 AIR - KANT. H. C. R. 1086, (2005) 2 ALLMR 495 (SC), (2005) 3 MAD LJ 95, 2005 (2) ALL MR 495, 2005 (3) SCALE 424, 2005 (4) SCC 264, (2005) 29 ALLINDCAS 760 (SC), 2005 (5) SRJ 40, (2005) 4 JT 24 (SC), 2005 (29) ALLINDCAS 760, 2005 (3) SLT 437, 2005 (2) ALL CJ 1359, (2005) 4 MAD LW 549, (2005) 99 REVDEC 223, (2005) 3 SCJ 689, (2005) 2 LACC 1, (2005) 3 ANDHLD 52, (2005) 59 ALL LR 631, (2005) 3 CIVLJ 503, (2005) 2 KER LT 580, (2005) 2 ALL WC 1752, (2005) 2 CIVILCOURTC 307, (2005) 4 KANT LJ 216, (2005) 3 LANDLR 9, (2005) 3 SUPREME 151, (2005) 2 RECCIVR 371, (2005) 3 SCALE 424, (2005) 4 KCCR 2809

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Bench: N. Santosh Hegde, S.B. Sinha

CASE NO. :

Appeal (civil) 2266-2268 of 2005

PETITIONER:

State of Karnataka & Anr.

RESPONDENT:

Sangappa Dyavappa Biradar & Ors.

DATE OF JUDGMENT: 30/03/2005

BENCH:

N. Santosh Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (Civil) Nos.5216-5218 of 2004] S.B. SINHA, J :

Leave granted.

These appeals are directed against the judgment and order dated 18.2.2003 passed by a Division Bench of the High Court of Karnataka, Bangalore in Writ Appeal Nos. 1677, 2500 and 2501 of 2000 whereby and whereunder the writ appeals filed by the Respondents herein were allowed, reversing the judgment and order passed by a learned Single Judge of the said court dismissing the writ petitions filed by the

Respondents herein.

Keeping in view the point involved in these appeals, it is not necessary to state the fact of the matter in great details. Suffice it to point out that for the purpose of submergence and construction of canal for the Upper Krishna Project, the Appellant State intended to acquire some lands including the lands belonging to the Respondents herein. The parties entered into negotiations as regard the price of the lands; pursuant where to and in furtherance where of consent awards were passed by the Special Land Acquisition Officer. The amount of compensation awarded in terms of the consent award was also received by the Respondents in full satisfaction of their claim. The Respondents, however, filed applications for reference to the Civil Court in terms of Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") claiming enhanced compensation. The said prayer was rejected by the Collector by an order dated 23.8.1999. The Respondents thereafter filed writ petitions before the High Court which were marked as Writ Petition Nos. 41354, 36840 and 36748 of 1999 praying therein for quashing of the said order as also for a direction upon the Respondent No.2 to refer the applications filed by them to the Civil Court for determining the amount of compensation in respect of the acquired lands.

By reason of judgments and orders dated 6.1.2000 and 19.1.2000, the said writ petitions were dismissed on the ground that the parties having entered into settlement as regard the price of the lands acquired and as a consent award had been passed pursuant thereto, recourse to Section 18 of the Act was impermissible. The Respondents herein filed writ appeals against the said judgments. The Division Bench of the High Court rejected the contention of the Respondents herein to the effect that the agreement between the parties had not been drawn up in terms of the form prescribed under Rule 10(b) of the Land Acquisition Rules and furthermore did not conform to the requirements of Article 299 of the Constitution of India. It, however, allowed the said writ appeals on the premise that the amount of compensation was not paid to the Respondents herein in terms of the agreement entered into by and between the parties and in any event, the Respondents could not have been deprived of their statutory right of obtaining solatium and interest in terms of the Act, directing :

" We direct the respondents to compute the balance amounts payable to the claimants within an outer limit of twelve weeks from today and to disburse the same to the claimants immediately thereafter. With these directions, the appeals to stand disposed of. Parties to bear their own costs.

We clarify, that the claimants would be entitled to not only the statutory benefits but whatever interest that they are lawfully entitled to."

The Appellants are, thus, before us.

Mr. Sanjay R. Hegde, the learned Counsel appearing on behalf of the Appellants, would submit that the Division Bench of the High Court committed a gross error in passing the impugned judgment insofar as it failed to take into consideration the scope, object and purport of Section 18 of the Act. Relying on the judgments of this Court in State of Gujarat and Others vs. Daya Shamji Bhai and

Others [(1995) 5 SCC 746] and Ishwarlal Premchand Shah and Others vs. State of Gujarat and Others [(1996) 4 SCC 174], the learned counsel would contend that as the awards passed by the Land Acquisition Officer were consent awards, reference to the Civil Court in terms of Section 18 thereof was impermissible.

Ms. Kiran Suri, the learned counsel appearing on behalf the Respondents, on the other hand, would contend that the reference in terms of Section 18 of the Act was maintainable as the Respondents were made to sign certain forms which contained blank columns as regard the amount of compensation payable to them. The learned counsel would submit that the Respondents were, in any event, entitled to the amount of solatium as also interest on the awarded amount. Even in relation to a consent award, it was argued, the Land Acquisition Officer is required to exercise a statutory power in terms of the provisions of the Act and the same having not been done, the Appellant was entitled to obtain an order of reference to the Civil Court. Reliance, in this connection, has been placed on Assam Railways & Trading Co. Ltd. vs. The Collector of Lakhimpur and Another [(1976) 3 SCC 24].

By reason of the Government Order No. Kam.E.140 AKW 98 dated 19.6.1998, it was directed that the lands should be classified mainly into two categories i.e. dry land and wet land, the amount of compensation payable therefor were specified therein. The parties thereafter entered into agreements culminating in passing of the consent awards, the relevant stipulations whereof are as under :

"Whereas the S.L.A.O. has negotiated the market price of the land to be acquired with the owner of the above land and the owner has agreed to the rate of Rs.1,14,000/- per acre for the land in question, including the other statutory benefits of 30% solatium and 12% additional market value which rate fixed as above and it does not include the compensation payable to the owner for the structures, trees and other improvements made on the land in question. Which compensation would be subsequently assessed by the competent technical authority and the value so arrived at would be added to the price of the land determined through this consent.

The above compensation has been arrived at by mutual consent and as a consequence the owner hereby agrees to execute an indemnity bond and also agrees with the Government as follows :

1. The owner is agreeable to the rate of Rs.1,14,000/- inclusive of 30% Solatium and 12% Additional Market Value per acre which is fixed by mutual consent between the Government and the owner.

The owner binds himself to this compensation and undertakes not to seek any enhancements hereafter."

After the said consent awards were passed, statements were also made by the respective villagers declaring that they would not approach 'any court for enhancement of the compensation for any

other reason'.

It is not in dispute that in terms of the said consent awards, the amount of compensation included solatium and additional market value. The landholders, as noticed hereinbefore, also waived their right to file any application for enhancement of the amount of compensation.

The sole question, thus, which arose for consideration before the High Court was as to whether the applications filed by the Respondents herein in terms of Section 18 of the Act before the Special Land Acquisition Officer seeking reference to the Civil Court for determination of quantum of compensation, were maintainable.

Section 18 of the Act reads as under :

"18. Reference to Court .(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-

section (2); or within six months from the date of the Collector's award, whichever period shall first expire."

A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the Civil Court. An agreement between the parties as regard the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc, or are against public policy but it is another thing to say that without questioning the validity thereof, the Respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the Respondents were for quashing the order dated 23.8.1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the Civil Court. The High Court while exercising its jurisdiction under Article 226

of the Constitution of India, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regard the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the Respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution of India or had not been drawn up in the prescribed proforma.

An award under the Act is passed either on consent of the parties or on adjudication of rival claims. For the purpose of passing a consent award, it was not necessary to comply with the provisions of Article 299 of the Constitution of India. An agreement between the parties need not furthermore be strictly in terms of a prescribed format.

The Respondents having accepted the award without any demur were estopped and precluded from maintaining an application for reference in terms of Section 18 of the Act. It is also trite that by reason of such agreement, the right to receive amount by way of solatium or interest etc. can be waived.

In *Daya Shamji Bhai (supra)*, this Court held :

"The right and entitlement to seek reference would, therefore, arise when amount of compensation was received under protest in writing which would manifest the intention of the owner of non-acceptance of the award. Section 11(2) opens with a non-obstante clause "notwithstanding anything contained in sub- section (1)" and provides that "if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. By virtue of sub-section (4), "notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act". The award made under Section 11(2) in terms of the agreement is, therefore, an award with consent obviating the necessity of reference under Section 18."

In *Ishwarlal Premchand Shah (supra)*, it was held :

"8. It is true that on determination of compensation under sub-section (1) for the land acquired, Section 23(2) enjoins to award, in addition to the market value, 30% solatium in consideration of compulsory nature of acquisition. Equally, Parliament having taken notice of the inordinate delay in making the award by the Land Acquisition Officer from the date of notification published under Section 4(1) till passing the award under Section 11, to offset the price pegged during the interregnum, Section 23(1-A) was introduced to award an amount calculated @ 12% per annum on such market value, in addition to the market value of the land, for the period commencing on and from the date of the publication of Section 4(1)

notification to the date of award of the Collector or date of taking possession of the land whichever is earlier. Under Section 28, interest was directed to be paid on the excess compensation at the rate specified therein from the date of taking possession of the land to the date of deposit into court of such excess compensation. These three components are in addition to the compensation determined under sub-section (1) of Section 23. They intended to operate in different perspectives. One for compulsory acquisition, the other for the delay on the part of the Land Acquisition Officer in making the award and the third one for deprivation of the enjoyment of the land from the date of taking possession till determination of the compensation. The three components are in addition to the determination of market value under sub-section (1) of Section 23. They are not integral to determination of compensation under sub-section (1) of Section 23 but in addition to, for the circumstances enumerated hereinbefore. In a private sale between a willing vendor and a willing vendee, parties would arrive at consensus to pay and receive consolidated consideration which would form the market value of the land conveyed to the vendee. For public purpose, compulsory acquisition under the Act gives absolute title under Section 16 free from all encumbrances. Determination of the compensation would be done under Section 23(1) on the basis of market value prevailing as on the date of the publication of the notification under Section 4(1). It would, therefore, be open to the parties to enter into a contract under Section 11(2), without the necessity to determine compensation under Section 23(1) and would receive market value at the rates incorporated in the contract signed under Section 11(2) in which event the award need not be in Form 14.

9. This Court in *State of Gujarat v. Daya Shamji Bhai*¹ had considered the similar contentions and held that once the parties have agreed under Section 11(2) of the Act, the Land Acquisition Officer has power under Section 11(2) to pass the award in terms thereof and that the award need not contain payment of interest, solatium and additional amount unless it is also part of the contract between the parties. The same ratio applies to the facts in this case. In view of the above clauses in the agreements the appellants are not entitled to the payment of additional amounts by way of solatium, interest and additional amount under the provisions of the Act."

Assam Railways & Trading Co. Ltd. (supra) whereupon Ms. Suri placed reliance is not applicable to the fact of the present case. Therein negotiations had taken place between the parties whereupon the Railway Administration became prepared to pay Rs.2500/- per bigha towards the sale price of the land but the transaction was not completed, having regard to the fact that under the State Railway Rules, land from private parties could be acquired only by taking recourse to acquisition proceedings. Thereafter, in the land acquisition proceedings, an award was made by the Land Acquisition Collector allowing compensation at the rate of Rs.1000/- per bigha. It is in that situation, the negotiation between the parties was highlighted stating that although the same did not fructify into a binding contract, there was at least a "gentleman's agreement" regarding the price which indicated what a willing purchaser was ready to pay for the land. In the factual backdrop of that case this Court observed :

" Assuming this was an agreement which bound the parties, the Collector had still the jurisdiction to determine the market value of the land..."

Keeping in view the fact that the condition precedent for maintaining application for reference under Section 18 is non-acceptance of the award by the awardee, in our considered opinion, the Division Bench acted illegally and without jurisdiction in passing the impugned judgment. The learned Single Judge was right in concluding that the writ petitions were not maintainable.

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.