

Supreme Court of India

Santosh Kumar & Ors vs Central Warehousing Corporation ... on 11 March, 1986

Equivalent citations: 1986 AIR 1164, 1986 SCR (1) 603

Author: O C Reddy

Bench: Reddy, O. Chinnappa (J)

PETITIONER:

SANTOSH KUMAR & ORS.

Vs.

RESPONDENT:

CENTRAL WAREHOUSING CORPORATION & ANR.

DATE OF JUDGMENT 11/03/1986

BENCH:

REDDY, O. CHINNAPPA (J)

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MADON, D.P.

CITATION:

1986 AIR 1164

1986 SCR (1) 603

1986 SCC (2) 343

1986 SCALE (1) 1265

ACT:

Constitution of India, 1950 - Article 226.

Land Acquisition Act., 1894 - Sections 11, 18, 25 and 50(2).

HEADNOTE:

Award of Collector under s.11 - Whether Government, Company or local authority can seek a reference under s. 18, except on grounds of fraud, corruption or collusion - Whether petition under Article 226 filed by Government or anyone claiming through it, challenging the Collector's order declining to make reference under s.18 maintainable.

Pursuant to the awards made under s.11 of the Land Acquisition Act, 1894 by the Collector determining the compensation proposed to be paid to appellants for the acquisition of their lands, the appellants sought reference under s.18 for enhancement of compensation.

The Central Warehousing Corporation, at whose instance the land was acquired, also felt aggrieved by the amount of compensation determined by the Collector and sought a reference to the Civil Court under s.18 for reducing the amount. The Collector rejected this request on the ground that such a reference was barred by the proviso to s.50(2) of the Act.

In the writ petition under Article 226, the Corporation challenged the awards. The High Court set aside the awards and itself determined the compensation at a reduced rate.

Allowing the appeals of the land-owners to this Court,

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HELD : 1. The High Court was wrong in entertaining the writ petitions challenging awards made by the Collector under

604

the Land Acquisition Act, 1894 and claiming that the amount awarded was excessive. [609 F]

2. The scheme of the Act is that, apart from fraud, corruption or collusion, the amount of compensation awarded by the Collector under s.11 may not be questioned in any proceeding either by the Government or by the Company or Local Authority at whose instance the acquisition is made. Section 50(2) and s.25 lead to that inevitable conclusion. What may not be done under the provisions of the Act may not be permitted to be done by invoking the jurisdiction of the High Court under Article 226. Article 226 is not meant to avoid or circumvent the processes of the law and the provisions of the statute. [607 E-G]

3. When s. 50(2) expressly bars the company or local authority at whose instance acquisition is made from demanding a reference under s.18 notwithstanding that such company or local authority may be allowed to adduce evidence before the Collector, and when s. 25 expressly prohibits the Court from reducing the amount of compensation while dealing with the reference under s.18, it is clearly not permissible for the company or local authority to invoke the jurisdiction of the High Court under Article 226 to challenge the amount to compensation awarded by the Collector and to have it reduced. [ 607 G-H; 608 A]

4. The Collector, in making an award, acts as an agent of the Government, and the legal character of the award made by the Collector is that of a tender or offer by him on behalf of the Government and, therefore, the Government or anyone who could but claim through the Government cannot question the award apart from fraud, corruption or collusion. [608 C-E]

Ezra v. Secretary of State for India, (32 Indian Appelas 93 = I.L.R. 32, Calcutta 605); Harish Chandra v. Deputy Land Acquisition Officer, [1962] 1 S.C.R. 676; Mohammad Hasnuddin v. State of Maharashtra, [1979] 2 S.C.R. 265 at 274; Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors., [1971] 2 SCC 821 relied upon.

Abdul Karim Allarkha v. State of Rajasthan, A.I.R. 1982 SC 61; Town Improvement Trust, Gwalior v. Sahajirao., A.I.R. 1978 MP 218 distinguished.

605

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 928- 930 of 1986.

From the Judgment and Order dated 17th January, 1983 of the Madhya Pradesh High Court in Misc. Petition Nos. 397, 540 and 566 of 1980.

L.N. Sinha, T.U. Mehta, B.R.L. Iyengar and P.P. Juneja for the Appellants.

K.C. Mittal, M.C. Bhandari, Miss Asha Rani Jain and Tara Chand Sharma for the Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. These appeals by special leave of this Court raise the same question and may, therefore, be disposed of by a common judgment. For the purpose of constructing godowns for the Central Warehousing Corporation and at the instance of the Corporation, the Collector, Khandwa District published a notification under section 4 of the Land Acquisition Act proposing to acquire certain land belonging to the appellants. The declaration under section 6 was duly made and possession of the land was also taken from the appellants. The Collector made Awards under sec. 11 of the Land Acquisition Act in January and February, 1980 determining the compensation proposed to be paid to the appellants. The appellants sought references under s. 18 of the Land Acquisition Act for enhancement of compensation and we are told that the references are awaiting adjudication by the Civil Court. The Central Warehousing Corporation was also aggrieved by the amount of compensation determined by the Collector and sought a reference to the Civil Court under s. 18 of the Land Acquisition Act for reducing the amount. The Collector rejected the request for making a reference on the ground that such a reference as was sought by the Central Warehousing Corporation was barred by the proviso to s. 50(2) of the Land Acquisition Act. Thereupon the Corporation filed writ petitions under Art. 226 of the Constitution in the High Court of Madhya Pradesh challenging the awards. The High Court set aside the awards and itself determined the compensation at a reduced rate. The erstwhile owners of the land have filed appeals after obtaining special leave from this Court under Art. 136 of the Constitution.

The principal submission of the learned counsel for the appellants was that the High Court was wholly in error in entertaining writ petitions to challenge Awards made by the Collector under the Land Acquisition Act on the ground that the amount awarded was excessive and that too not at the instance of the Government but at the instance of the Corporation at whose request the acquisition was made. The learned counsel argued that the Award of the Collector constituted, in law, an offer by the Government to pay a certain price for the land proposed to be acquired. It was open to the person entitled to accept the determination by the Collector and receive the compensation or to object to the amount determined by the Collector and seek a reference to the Civil Court for proper determination of the compensation. The Award by the Collector being in the nature of an offer by the Collector, there would be no question of the Collector or the Government on whose behalf the acquisition was made challenging the award in any proceeding by way of reference to the Civil Court or otherwise. What the Government and the Collector were not entitled to do, obviously, the person at whose instance the acquisition was made would also not be entitled to do. We have no doubt

about the correctness of the submissions made by the learned counsel for the appellants.

Section 4 of the Land Acquisition Act enables the Government, whenever land is needed for any public purpose or for a company to publish a notification to that effect in the official Gazette. After hearing objections, or straightaway, where such hearing is dispensed with on account of urgency, the Government is required by sec.6 of the Act to make a declaration that any particular land is needed for a public purpose or for a company. Thereafter the Collector is required to invite claims to compensation for all interests in such land. The Collector is then required by sec.11 of the Act to enquire into the objections and the claims and determine and apportion the compensation by making an award. A proviso added by way of an amendment in 1984 stipulates that no award shall be made by the Collector without the previous approval of the Government or of the officer authorised by the Government in that behalf. Section 18 enables any person interested who has not accepted the award to require the Collector to refer the matter for the determination of the court, 'whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.' Here we must refer to s. 50(2) of the Act and the proviso thereto which are as follows :-

"Section 50(2). In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that no such local authority or Company shall be entitled to demand a reference under section 18."

Section 25 further prescribes that the amount of compensation awarded by the court shall not be less than the amount awarded by the Collector under s.11. Section 54 provides for an appeal to the High Court from the award, or from any part of the award, of the Court but it does not prescribe who may appeal to the High Court.

In our view there cannot be any possible doubt that the scheme of the Act is that, apart from fraud, corruption or collusion, the amount of compensation awarded by the Collector under s. 11 of the Act may not be questioned in any proceeding either by the Government or by the Company or Local authority at whose instance the acquisition is made. Section 50(2) and s. 25 lead to that inevitable conclusion. Surely what may not be done under the provisions of the Act may not be permitted to be done by invoking the jurisdiction of the High Court under Art. 226. Art. 226 is not meant to avoid or circumvent the processes of the law and the provisions of the statute. When s. 50(2) expressly bars the company or local authority at whose instance the acquisition is made from demanding a reference under s. 18 of the Act, notwithstanding that such Company or Local authority may be allowed to adduce evidence before the Collector, and when s. 25 expressly prohibits the court from reducing the amount of compensation while dealing with the reference under s. 18, it is clearly not permissible for the company or local authority to invoke the jurisdiction of the High Court under Art. 226 to challenge the amount of compensation awarded by the Collector and to have it reduced.

Long ago, it was held in *Ezra v. Secretary of State for India*, 32 Indian Appeals 93 = I.L.R. 32, Calcutta 605 and it has never been doubted since, 'that the 'Award' in which the enquiry by the Collector results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands' and that, 'if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court.' As pointed out by this Court in *Harish Chandra v. Deputy Land Acquisition Officer*, [1962] 1 S.C.R. 676, the observations of the Privy Council in *Ezra's* case indicate that the Collector, in making an award, acts as an agent of the Government and that the legal character of the award made by the Collector is that of a tender or offer by him on behalf of the Government (See also *Mohammad Hasnuddin v. State of Maharashtra*), [1979] 2 S.C.R. 265 at

274. If the Collector making an award was in law making an offer on behalf of the Government, it is difficult to appreciate how the Government or anyone who could but claim through the Government would be entitled to question the award, apart from fraud, corruption or collusion.

The learned counsel for the respondents invited our attention to *Abdul Karim Allarkha v. State of Rajasthan*, A.I.R. 1982 S.C. 61 to urge that "a reference may be had not only at the instance of a person interested, who has not accepted the award or the amount thereof, but also at the instance of the authority acquiring the land, that is, on whose behalf or the company for which the acquisition is being made. "The decision in this case turned on the express provisions of the Rajasthan Land Acquisition Act, sec. 18(1) of which expressly enabled 'the State Government department on whose behalf or the company for which acquisition is being made or any person interested who has not accepted the award to make a written application to the Collector requiring that the matter be referred by the Collector for the determination of the Court. This case is, therefore, of no assistance whatsoever to the respondents. The learned counsel for the respondents also drew our attention to *Town Improvement Trust, Gwalior v. Sahajirao*, A.I.R. 1978 M.P. 218. The decision in the case turned upon an interpretation of the expression 'person interested' defined in sec.3(b) of the Land Acquisition Act. In the first place, we are not satisfied that the definition is capable of the wide interpretation given by the learned judges and in the second place, the question does not really turn on the meaning of the expression 'person interested', but turns on the scheme of the Act and the scope of sections 25 and 50(2) of the Act. On the other hand, the decision of this court in the *Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel & Ors.*, [1971] 3 S.C.C. 821 appears to run along the same lines as that indicated by us. In that case certain lands belonging to the first respondent were notified for acquisition by the Government of Bombay "for school and neighbourhood work". The first respondent challenged the notification for acquisition by filing a writ petition in the High Court of Gujarat which was allowed. The Municipal Corporation of Ahmedabad preferred an appeal to the Supreme Court. A preliminary objection was raised regarding the maintainability of the appeal by the Municipal Corporation and the objection was sought to be met on the plea that the acquisition was for the use of the Municipal Corporation. The court upheld the preliminary objection observing, "The property, it is true, was notified for acquisition by the State Government for the use of the Municipal Corporation after it was acquired by the Government, but that, in our judgment, did not confer any interest in the Municipal Corporation so as to enable it to file an appeal against the order of the High Court allowing the petition". We are, therefore, firmly of the view that the High Court was wrong in entertaining writ

petitions challenging awards made by the Collector under the Land Acquisition Act and claiming that the amount awarded was excessive. The appeals are allowed with costs and the writ petitions filed in the High Court are dismissed.

A.P.J.

Appeals allowed.