
Satendra Kumar Gupta and Another Vs Banaras Improvement Trust

Civil Miscellaneous Ref. No. 296 of 1955

Court: Allahabad High Court

Date of Decision: Nov. 17, 1958

Acts Referred:

Constitution of India, 1950 " Article 14#Land Acquisition Act, 1894 " Section 23(1)

Citation: AIR 1959 All 513 : (1959) 29 AWR 195

Hon'ble Judges: O.H. Mootham, C.J; Raghubar Dayal, J

Bench: Division Bench

Advocate: G.P. Bhargava and S.K. Varma, for the Appellant; J. Swarup, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is a reference u/s 113 of the CPC made by the Improvement Trust Tribunal, Banaras. The circumstances in which the reference is made

can be stated shortly.

2. u/s 3 of the U. P. Town Improvement Act, 1919, a statutory body known as The Banaras Improvement Trust was created for the purpose of

carrying out the provisions of that Act. The Trust was authorised to frame improvement schemes to provide for a number of matters, including

schemes known as "street schemes" for the purpose, inter alia, of improving existing means of communication and facilities of traffic. u/s 56 of the

Act the Trust was further empowered, with the previous sanction of the State Government, to acquire land under the provisions of the Land

Acquisition Act, 1894, as modified by the Town Improvement Act for the purpose of giving effect to an improvement scheme. Section 57 required

a Tribunal to be constituted for the purpose of performing the functions of the court in reference to the acquisition of land for the Trust under the

Land Acquisition Act, and the Tribunal which has made the present reference was a Tribunal so constituted.

3. In May 1951 the State Government sanctioned an improvement scheme which had been prepared by the Banaras Improvement Trust. This

scheme involved the widening of a road in Varanasi, and for the purpose of carrying the scheme into effect the Trust, with the previous sanction of

the State Government, acquired a number of pieces of land and certain buildings which abutted on the existing road. Included among such

properties was a strip of land averaging 76 feet wide covering an area of 1.41 acres which belonged to the applicants. By an order dated 25-9-

1952 the Land Acquisition Officer awarded the applicants the sum of Rs. 21,349-6-7 as compensation for the strip of land acquired from them

and for a building standing on part thereof. The applicants did not accept this award and required a reference to be made to the Tribunal u/s 18 of

the Land Acquisition Act,

4. The compensation awarded by the Land acquisition Officer to the applicants had been determined in accordance with the provisions of the

Land Acquisition Act as modified by the Schedule to the Town Improvement Act. For our purpose the important modification is that made by

Sub-clause (3) of Clause 10 of the Schedule which, so far as is material, provides that at the end of Section 23 of the Land Acquisition Act the

following shall be deemed to be added, namely:

(3) For the purposes of clause first of Subsection (1) of this section

(a) the market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the

market value is to be determined under that clause.

The effect of this amendment is to exclude the potential value of the land acquired when determining its market value which is calculated with

reference only to the use to which the land is put on the relevant date.

5. It was contended by the applicants before the Tribunal that this sub-clause contravened the provisions of Article 14 of the Constitution and was

invalid. The Tribunal was of opinion that this contention ought to be upheld and it has accordingly made this reference.

6. A preliminary objection had been taken to the hearing of this reference. It is that the Tribunal is not a "court" within the meaning of the CPC and

was accordingly not competent to state a case u/s 113 of that Code. We think there is no force in this objection, Section 57 of the Town

Improvement Act provides that a Tribunal shall be constituted for the purpose of performing the functions of the court in reference to the

acquisition of land for the Trust under the Land Acquisition Act, 1894, and Clause (a) of Section 58 provides that the Tribunal shall, except for the

purposes of Section 54 of the Land Acquisition Act with which we are not concerned, be deemed to be the court under that Act. Section 53 of

the latter Act provides that, save in so far as they may be inconsistent with anything contained therein, the provisions of the CPC shall apply to all

proceedings before the court under that Act.

Reliance was placed on Section 63(1) of the Town Improvement Act which empowers the State Government to make rules "not repugnant to the

CPC for the conduct of business by Tribunals and it was argued that this provision implied that the provisions of the CPC did not apply to these

Tribunals. On the contrary it appears to us that Section 63 (1), when read with Section 53 of the Land Acquisition Act, assumes that the

provisions of the CPC will be applicable to such Tribunals. We hold that the Tribunal is a Court within the meaning of Section 113 of the Code of

Civil Procedure, and this appears also to have been the view of the Calcutta High Court in Adhar Kumar Mitter and Others Vs. Radha Madan

Mohan Jin and Others, . The reference is therefore competent and the preliminary objection is overruled.

7. The contention of the applicants is that the amended Sub-section 23 (1) involves discrimination against the person whose property is acquired

under the Town Improvement Act. It appears to us that the contention is not well founded. The Town Improvement Act makes provision for the

payment of compensation for land acquired by an Improvement Trust, and it is conceded that those provisions cannot be challenged as involving

any contravention of Article 31 of the Constitution. It is only because the Land Acquisition Act is also in force, and contains provisions for

compensation which are more liberal than those to be found in the Town Improvement Act, that it is said that the latter involves an infringement of

Article 14. It is true, of course, that both Acts are in force in the district of Varanasi and that land may be acquired under either.

The acquiring" authority is however different under the two Acts. Under the Land Acquisition Act the acquisition must be by the Government;

under the Town Improvement Act the acquiring authority is the Improvement Trust itself. The position is, therefore, that in an area in which both

Acts apply compensation for an acquisition of property by the Government will be determined pursuant to the provisions of the Land Acquisition

Act, while compensation for an acquisition by an Improvement Trust will be assessed in accordance with the provisions of the Town Improvement

Act. It is not suggested that there is any discrimination inter se between persons whose land is acquired under either Act; and we cannot see that a

person whose property is acquired by an Improvement Trust under the Town Improvement Act can legitimately complain that it was not acquired

by another authority under the Land Acquisition Act. If anyone can have a ground of complaint it would appear to be the body (such, for example,

as a company or Municipal or District Board) on behalf of which the Government acquires land, and which will have to pay the Government

therefore a larger amount in respect of compensation than would have been payable had the acquisition been one made under the Town

Improvement Act.

8. It is also to be noted that u/s 66 of the Town Improvement Act, read with Clause (a) of Section 8(1) of the Municipalities Act, whenever a

municipal board or other local authority acquires land with the object, inter alia, of ""laying out new public streets and acquiring land for the

purpose....."" the notifications of the Land Acquisition Act contained in the Schedule to the Town Improvement Act shall apply to such acquisition.

Laying out a new public street includes, in our opinion, the widening of an existing street -- certainly to the extent to which it is widened it is new

street -- and accordingly in the present case the applicants would have not obtained any additional compensation had the acquisition of their

property been made at the instance of the Varanasi Municipal Board.

9. In our judgment the reference must be answered in the negative.