(2016) 08 JH CK 0040

JHARKHAND HIGH COURT

Case No: First Appeal Nos. 89 and 88 of 2009 (Against the award prepared on 30th April, 2009 in Arbitration Case Nos. 3 and 1 of 2008 by the sole Arbitrator Hon''ble Mr. Justice Vikramaditya Prasad (Retd.))

Union of India	APPELLANT
Vs	
Smt. Urmila Devi	RESPONDENT

Date of Decision: Aug. 5, 2016

Acts Referred:

- Requisitioning and Acquisition of Immovable Property Act, 1952 - Section 8(1)(B)
- Requisitioning and Acquisition of Immovable Property Rules, 1953 - Rule 9

Citation: (2016) 3 JLJR 711

Hon'ble Judges: Mr. D.N. Upadhyay, J.

Bench: Single Bench

Advocate: Mr. Rajiv Sinha, ASGI, for the Appellants; M/s. H. K. Mehta and Arbind Kr. Sinha, Advocates, for the Respondents

Final Decision: Partly Allowed

Judgement

D.N. Upadhyay, J. - F.A. No.89 of 2009 has been preferred against the award prepared on 30th April, 2009 in Arbitration Case No.3 of 2008 by the sole Arbitrator Hon''ble Mr. Justice Vikramaditya Prasad (Retd.) under Section 8(1)(B) of the Requisition and Acquisition of Immovable Property Act, 1952, whereby an award of Rs.2,38,81,236/- has been passed in favour of the claimants/respondents.

F.A. No.88 of 2009 has been preferred against the award prepared on 30th April, 2009 in Arbitration Case No.1 of 2008 by the sole Arbitrator Hon''ble Mr. Justice Vikramaditya Prasad (Retd.) under Section 8(1)(B) of the Requisition and Acquisition of Immovable Property Act, 1952, whereby an award of Rs.31,83,478/- has been passed in favour of the claimants/respondents.

F.A. No.89 of 2009:

2. The brief facts of the case is that the land, measuring an area of 37.72 acres was requisitioned during the 2nd World War by the Defence Estate Officer, Bengal Circle, Calcutta under the Defence of India Act, 1939 and Rules made thereunder. The land was under the occupation of the Army since it was requisitioned. Army proposed that the said land was permanently required for use of the Army at Ranchi.

3. In the year 1987, the land, mentioned above, was acquired under L.A. MTY (Project Khajatoli) Case No.8 of 1986-87 along with other lands of adjacent villages, namely, Khijri, Kutiatu, Lodhma and Tumbagutu for establishment of Khojatoli Camp.

The property, in question, was acquisitioned in the year 1986-87, but assessment award was prepared under the signature of the Deputy Commissioner, Ranchi in 1989. Against the amount of award assessed, the interested persons filed objections, which were not considered. Thereafter, a writ petition, being CWJC No.1386 of 1989, was filed in which son of the claimant no.1 was a party in representative capacity. The said writ petition was allowed by order dated 1st November, 1989, directing the Deputy Commissioner, Ranchi to pass an appropriate order after complying the provisions of Section 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952. When the order was not complied, a contempt application was filed and Rs.500/- was awarded against the Deputy Commissioner. The Deputy Commissioner found no merit in the objection against the award fixed earlier vide order dated 4th March, 1992. The claimants received the amount under protest in the year 1992 and no agreement as required under Form-K was reached between the parties, it was the duty of the Union of India to appoint an arbitrator under Section 8(1)(b) of the Act.

4. Since no arbitrator was appointed, a writ petition, being CWJC No.33 of 1999 (R), was filed for appointment of an arbitrator. The said writ petition was disposed of vide order dated 13th September, 2007 by which the appellant was directed to appoint an arbitrator within three months in accordance with the provisions of Section 8(1)(b) of the Act.

The said order was not complied with, and, thereafter, a contempt case, being Cont. Case (Civil) No.236 of 2008, was filed before this Court and in pursuant to that, Hon''ble Mr. Justice Vikramaditya Prasad (Retd.) was appointed as an Arbitrator, who, after recording evidence of the appellant as well as claimants/respondents and also after granting hearing to them passed the impugned award published on 30th April, 2009.

F.A. No.88 of 2009:

5. The brief facts of the case is that the land, measuring an area of 5.98 2/3 acres was requisitioned during the 2nd World War by the Defence Estate Officer, Bengal Circle, Calcutta under the Defence of India Act, 1939 and Rules made thereunder. The land was under the occupation of the Army since it was requisitioned. Army

proposed that the said land was permanently required for use of the Army at Ranchi.

6. In the year 1987, the land, mentioned above, was acquired under the provisions of the Act.

The property, in question, was acquisitioned in the year 1986-87, but assessment award was prepared under the signature of the Deputy Commissioner, Ranchi in 1989. Against the amount of award assessed, the interested persons filed objections, which were not considered. Thereafter, a writ petition, being CWJC No.1386 of 1989, was filed. The said writ petition was allowed by order dated 1st November, 1989, directing the Deputy Commissioner, Ranchi to pass an appropriate order after complying the provisions of Section 7(1) of the Act. When the order was not complied, a contempt application was filed and a cost of Rs.500/- was awarded against the Deputy Commissioner. The Deputy Commissioner found no merit in the objection against the award fixed earlier vide order dated 4th March, 1992. The claimants received the amount under protest in the year 1992 and no agreement as required under Form-K was reached between the parties, it was the duty of the Union of India to appoint an arbitrator under Section 8(1)(b) of the Act.

7. Since no arbitrator was appointed, a writ petition, being CWJC No.2286 of 1998 (R), was filed for appointment of an arbitrator, which led to a contempt and by order dated 13th February, 2007 this Court directed to appoint an arbitrator within three months in accordance with the provisions of Section 8(1)(b) of the Act. Accordingly, Hon''ble Mr. Justice Vikramaditya Prasad (Retd.) was appointed as an Arbitrator, who, after recording evidence of the appellant as well as claimants/respondents and also after granting hearing to them passed the impugned award published on 30th April, 2009.

8. The appellant has challenged the impugned award on the ground that no objection, as required under Rule 9(5)(i) of Requisitioning and Acquisition of Immovable Property Rules, 1953 (herein after to be referred as the ''Rules'') was made by the claimants/respondents within 15 (fifteen) days. Further case of the appellant is that the amount which was paid to the claimants was full and final and it was received without raising any objection. There is no provision to pay solatium or interest on the amount awarded.

The appellant has relied on the judgments of the Hon''ble Supreme Court reported in (1995)Suppl.4 SCC 660 [Union of India & Ors. v. Munsha & Ors.].

It has been further argued that the Hon''ble Arbitrator has wrongly considered the case of Senath Munda and committed an error in passing the award in favour of the claimants because said case was not decided on merit, rather it was dismissed on the ground of delay. The documents relied upon for deciding the value of the land is not sufficient and, therefore, the findings of the Hon''ble Arbitrator is liable to be set aside.

9. On the other hand, learned counsel appearing for the claimants/respondents has relied on catena of decisions of the Hon''ble Apex Court as well as Hon''ble High Courts, including this Court.

It was argued that Hon''ble Apex Court has relied on all important judgments while deciding the case of Dilawar Singh & Ors. v. Union of India & Ors., reported in (2010)14 SCC 357. By referring the aforesaid judgment, it was submitted, where inordinate delay has occurred in appointing the Arbitrator, appropriate solatium and interest should be paid on the amount of compensation awarded against the acquisition/requisition of the lands.

Learned counsel for the claimants/respondents has also referred Rule 9(5)(ii) of the Rules in support of the contention that amount paid to the claimants was 80% of the compensation against the land belonging to her. It is admitted case of the appellant that no agreement either in Form-K or in Form-L was ever executed by and between the parties.

It was the duty of the appellant to refer the matter to the Government with all details so that the Arbitrator should have been appointed within a reasonable period, but it was not done and, therefore, the ancestors of the claimants made correspondence and raised their objections and requested to appoint Arbitrator to solve the dispute. The appellant kept silent for a long time and they did not wake up even after filing of the writ petition and the Arbitrator was appointed only after contempt proceeding was initiated before the High Court. Almost after 29 years of acquisition of the land, the matter was decided by the Arbitrator and, therefore, the claimants/respondents have rightly been given solatium and interest on the amount of compensation against the land so acquired/requisitioned. There is no merit in this appeal and as such, the same is liable to be dismissed.

10. Having heard both sides and also after going through the impugned award, the admitted facts are as follows:-

(i) The appellant has failed to bring on record any offer letter sent to the claimants/respondents/interested persons, as required under Rule 9(3) of the Rules;

(ii) The claimants/respondents have also failed to bring on record any objection raised by them, as required under Rule 9(5)(i) of the Rules.

In view of the above, the admitted situatioin is that neither the provisions of Rule 9(3) of the Rules was complied with by the appellant nor the claimants/respondents had responded by raising objections as required under Rule 9(5)(i) of the said Rules.

11. Before adverting opinion, I feel it desirable to refer Rules 9(3), 9(5) and 9(6) of the Requisitioning and Acquisition of Immovable Property Rules, 1953, which read as under:-

"Rule 9. Compensation:-

(1) .....

(2) .....

(3) The competent authority shall, as soon as may be practicable after the making of a requisitioning order or the servie of a notice of acquisition, communicate to each person interested an offer of what, in the opinion of the competent authority, is a fair amount of compensation payable to such person in respect of the property requisitioned or acquired.

(4) .....

(5)(i) Every person interested to whom an offer is made under sub-rule (3) shall, within fifteen days of the receipt of the offer, communicate in writing to the competent authority his acceptance, or otherwise of the offer. If he accepts the offer, the competent authority shall enter into an agreement with him on behalf of the Central Government in Form ''K''.

(ii) In the following circumstances, the competent authority may, at his discretion, make to all eligible claimants ''on account'' payment upto 80 percent of the amount which, in his opinion, is likely to be assessed as compensation or recurring compensation as the case may be:-

(a) when there is likely to be delay in assessing compensation;

(b) where the competent authority has made an assessment but there is delay in reaching an agreement though there is a reasonable prospect of agreement being reached; or

(c) where it is clear that an agreement cannot be reached.

(iii) If the competent authority makes an ''on account; payment under clause (ii), he shall enter into an agreement with the person to whom payment is made on behalf of the Central Government in form ''L'' with such modifications as the nature of the case may require.

(6) If any person to whom an offer is made under sub rule (3) does not accept the offer or does not within fifteen days of the receipt of the offer communicate in writing to the competent authority his acceptance or otherwise of the offer, the competent authority shall, as soon as may be, submit to the Central Government a report setting forth the full facts of the case, particularly as regards the nature and extent of disagreement between himself on the one hand and the said person on the other hand and he shall also forward with the report all connected papers. The competent authority shall at the same time deposit in Court the amount offered by him to the said person under sub rule (3)."

12. The appellant has challenged that ''the finding of the Hon''ble Arbitrator in deciding the value of the land is not correct''. In this regard, I have gone through the

impugned award. The Hon''ble Arbitrator has discussed all aspects with regard to location of the land and its potentiality of development. The documents produced by the claimants/respondents have also been considered to decide the value of the land. The appellant did not adduce evidence or produce documents to controvert the value of land as claimed by the claimants/respondents. I do not find any merit in this arguments and, therefore, the findings of the Hon''ble Arbitrator needs no interference.

13. I have gone through the judgments of the Hon''ble Supreme Court reported in (2010)14 SCC 357 (Supra). The Hon''ble Apex Court has relied upon all important judgments like Dilawar Singh (Supra), which has been decided after placing reliance on the judgments viz. Union of India v. Hari Krishan Khosla [(1993) Supp. (2) SCC 149], Union of India v. Chajju Ram [(2003)5 SCC 568], Harbans Singh Shanni Devi v. Union of India [Civil Appeal Nos.470-71 of 1985, decided on 11.2.1985], Prabhu Dayal v. Union of India [(1995) Supp. (4) SCC 221], Union of India v. Parmal Singh [(2009)1 SCC 618 : (2009)1 SCC (Civ) 1925 AC 520 (HL)], Inglewood Pulp and Paper Co. v. New Burnswick Electric Power Commission [1928 AC 492 (PC)] and Shankar Singh v. Union of India [(1988)1 PLJR 163].

14. It is indicated in the preceding paragraphs that the claimants/ respondents have failed to bring on record any objection required to be raised under Rule 9(5)(i) of the Rules 1953, but the facts remain that amount of award was received under protest in the year 1992. The appellant even thereafter did not take steps for appointment of Arbitrator. It were the claimants/respondents in F.A. Nos.88 & 89 of 2009, who again knocked the door of the High Court in the year 1998 and 1999, respectively, and after initiation contempt, Arbitrator was appointed. In the circumstances, the interest, which has been ordered to be paid from the date of acquisition of the land is required to be modified to the extent that the interest shall be payable since thereafter i.e. from 1992. So far rest part of the Award is concerned, it is hereby upheld and the claimant shall be entitled to withdraw the ordered amount as per the schedule appended with the Award with modification in the interest which shall be payable since the year 1992.

15. If the amount deposited by the appellant shall fail to satisfy the modified award passed by this Court, the appellant shall deposit rest amount within 60 days from the date of this judgment.

16. With the aforesaid modification in the award, these appeals are partly allowed.