

CASE NO.:
Appeal (civil) 2045 of 2003

PETITIONER:
Vijayadevi Navalkishore Bhartia & Anr.

RESPONDENT:
Land Acquisition Officer & Anr.

DATE OF JUDGMENT: 05/03/2003

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:

O R D E R

Heard learned counsel for the parties

Leave granted.

The appellants are the owners of the land situated in Akola district, Maharashtra. The State Government issued a notification under Section 4 of the Land Acquisition Act (the Act) proposing to acquire the lands belonging to the appellants. A notice was also issued to the appellants under Section 9 of the Act for submitting their claim to compensation in respect of the area under acquisition. The appellants submitted their claim contending that the land under acquisition was converted to non-agricultural use by the order of the Sub-Divisional Officer, Akola, dated 3.3.1983. The appellants also pointed out that by the said order, residential lay outs were sanctioned in the lands sought to be acquired and plots were also demarcated. The appellants also pointed out that the lands in question were surrounded by developed colonies with residential quarters, industries, marketyards and other commercial complexes in the near vicinity. The appellants also contended that the land is close to national highway and State bus-stand. On the said basis the appellants claimed a compensation @ Rs.1.75 per sq. ft. Based on the claim of the appellants, the Collector who held an inquiry under Section 11 of the Act, called for information report from the Assistant Director of Town Planning for determination of the compensation payable. The said Asstt. Director of Town Planning in turn referred the matter to the Director, Town Planning, Pune, who as per his letter dated 20.10.2000 taking into consideration the non-agricultural potentiality of the lands and other prevailing factors, directed that the lands in question should be valued taking into consideration the non-agricultural potentiality of the land. Based on the said recommendation of the Director of Town Planning, the Asstt. Director, Town Planning, evaluated the land and held that the total value of the land is Rs.21,76,622/- per hectare. The said finding was given also taking into consideration the sales transactions of the lands in the near vicinity. The Land Acquisition Officer (the Collector) on the basis of the said report, prepared a proposed award wherein he fixed the plot area as 53,991 sq. meters and fixed the valuation at Rs.130/- per sq. meter. From the said valuation, he deducted 8% towards the period of 2 years which would be required for selling of the plots by the appellants and after giving deduction to such deferred payment, he fixed the compensation payable to the appellant at Rs.1,82,29,048/-.

The said proposed award was sent to the Commissioner,

Amravati Division, respondent No.2 herein, as required under the proviso to Section 11(1) of the Act for his approval. The said Commissioner as per his order dated 28.3.2001 after reappreciating the material on record, came to the conclusion that the lands in question remained to be agricultural lands, therefore, the value fixed by the Collector treating the same as potentially non-agricultural land, was erroneous and he came to the conclusion that the value should be Rs.72,400/- per hectare. He also reconsidered the additions and deductions made by the Collector and came to the conclusion that the valuation made by the Collector was improper hence directed the Collector to refix the compensation as directed in his order dated 28.3.2001.

It is against this order of the Commissioner made under the proviso to Section 11(1) of the Act that the appellants filed a writ petition before the High Court of Mumbai, Nagpur Bench, contending that the Commissioner acting under the proviso to Section 11(1) of the Act had no jurisdiction to reappreciate the material found in the records of the Collector as an appellate authority. It was also contended that the authority of the Commissioner acting under the said provision of law was only to approve or not to approve the award made by the Land Acquisition Officer (the Collector). The High Court rejected this contention holding that the Commissioner under the Act when required to give prior approval for the award can re-appreciate the material relied on by the Collector, hence the High Court held that the order of the Commissioner did not call for interference, hence, dismissed the writ petition. The High Court also held that if the appellants were aggrieved by the reduction in the market value, they could approach the Reference Court under Section 18 of the Act.

Mr. V A Mohta, learned senior counsel appearing for the appellants, reiterated the contention of the appellants urged before the High Court and further contended that under the Scheme of the Act, the proceeding before the Collector under section 11 is a quasi-judicial proceeding wherein the Land Acquisition Officer is statutorily required to make an award taking into consideration the factors enumerated in the said section after giving notice to the interested persons. In the said proceedings, the determination of the market value or the compensation payable to the claimants is to be done on the satisfaction of the Collector based on the material on record and not based on any other authority's satisfaction. Learned counsel contended that the requirement of prior approval found in the proviso to Section 11(1) is not an appellate power but only an administrative act of accepting or not accepting the proposed award made by the Collector, therefore, the Commissioner had no jurisdiction to reappreciate the evidence. While exercising the said authority of approval of the Collector's award the Commissioner at the most may not grant approval of the said award, but he can not sit in appeal against the said award.

Mr. V.B. Joshi, learned counsel for the respondents contended that the very fact that there is a statutory requirement of obtaining prior approval would ipso facto mean that the approving authority in the instant case the Commissioner, had to examine the correctness of the finding of the Collector therefore in that process he has every right to disagree with the Collector based on material on record hence there is no error or want of jurisdiction as contended by the appellants when the Commissioner remanded the matter to the Collector to refix the market value and compensation payable based on the directions issued by him. He alternatively contended that assuming that the Commissioner had no appellate power, such power is definitely available to the appropriate Government under

Section 15A of the Act which power can also be exercised by the Commissioner.

The issue in this appeal centres around the question of the authority of the Commissioner exercising a power under the proviso to Section 11(1) of the Act to reconsider the material on record and to disagree with the finding of the Collector and further to issue directions to the Collector to fix the market value/compensation in a manner he thinks appropriate. While the appellants contend no such power vests with the Commissioner, the respondents contend that the Commissioner is vested with such power.

From the Scheme of the Act, it is seen that the power of inquiry under Section 11 vests with the Collector who has to issue notice to the interested persons and hear the interested persons in the said inquiry. He also has to determine the measurements of the land in question and on the basis of material on record decide the compensation which in his opinion should be allowed for the land and if need be, he can also apportion the said compensation amongst the interested persons. The nature of inquiry which statutorily requires the interested parties of being heard and taking a decision based on relevant factors by the Collector shows the inquiry contemplated under Section 11 is quasi-judicial in nature, and the said satisfaction as to the compensation payable should be based on the opinion of the Collector and not that of any other person. Section 11 under the Act has not provided an appeal to any other authority as against the opinion formed by the Collector in the process of inquiry conducted by him. What is provided under the proviso to Section 11(1) is that the proposed award made by the Collector must have the approval of the appropriate Government or such officer as the appropriate Government may authorise in that behalf. In our opinion, this power of granting or not granting previous approval cannot be equated with an appellate power. Black's Law Dictionary, 6th Edition, defines 'approval' to mean an act of confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. In the context of an administrative act, the word 'approval' in our opinion, does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. It will be doing violence to the Scheme of the Act if we have to construe and accept the argument of learned counsel for the respondents that the word approval found in the proviso to Section 11(1) of the Act under the Scheme of the Act amounts to an appellate power. On the contrary, we are of the opinion that this is only an administrative power which limits the jurisdiction of the authority to apply his mind to see whether the proposed award is acceptable to the Government or not. In that process for the purpose of forming an opinion to approve or not to approve the proposed award the Commissioner may satisfy himself as to the material relied upon by the Collector but he cannot reverse the finding as if he is appellate authority for the purpose of remanding the matter to the Collector as can be done by an appellate authority; much less can the Commissioner exercising the said power of prior approval give directions to the statutory authority in what manner he should accept/appreciate the material on record in regard to the compensation payable. If such a power of issuing direction to the Collector by the Commissioner under the provision of law referred to hereinabove is to be accepted then it would mean that the Commissioner is empowered to exercise the said power to substitute his opinion to that of the Collector's opinion for the purpose of fixing the compensation which in our view is

opposed to the language of Section 11 of the Act. Therefore, we are of the opinion that the Act has not conferred an appellate jurisdiction on the Commissioner under Section 15(1) proviso of the Act. This conclusion of ours is further supported by the scheme of the Act and Section 15A of the Act which is also introduced in the Act simultaneously with the proviso to Section 11(1) under Act 68 of 1984. By this amendment, we notice that the Act has given a power akin to the appellate power to the State Government to call for any records or proceedings of the Collector before any award is made, for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the irregularity of such proceedings and to pass such other order or issue such direction in relation thereto as it may think fit. Therefore it is not as if the acquiring authority namely the appropriate Government even if aggrieved by the fixation of compensation by the Collector it has no remedy. It can very well exercise the power under Section 15A and pass such orders as it thinks fit, of course, after affording an opportunity to such person who is likely to be prejudicially affected by such order of the appropriate Government, therefore, it is clear that the statute when it intended to give appellate or revisional power against the finding of the Collector in the fixation of compensation it has provided such power separately in Section 15A of the Act. Therefore, in our opinion, if the Commissioner while considering the proposed award of the Collector under the proviso to Section 11(1) of the Act to grant or not to grant approval if he thinks that the order of the Collector cannot be approved, he can at the most on the administrative side bring it to the notice of the appropriate Government to exercise its power under Section 15A of the Act, but he cannot as in the present case on his own exercise the said power because that power under Section 15A is confined to the appropriate Government only. Therefore we have to negative the argument of Mr. Joshi that it is open to the Commissioner while considering the grant of approval to exercise the power either found in Section 15A of the Act or similar power exercising his jurisdiction under proviso to Section 11(1) of the Act.

The power under Section 15A of the Act is exercisable by the appropriate Government and the same cannot be exercised by the Commissioner who is otherwise empowered to grant approval under Section 11(1) proviso. In the said view of the matter, we are of the considered opinion that the power vested with the Commissioner under proviso to Section 11(1) of the Act is limited power which is administrative in nature, hence, he cannot sit in appeal against the proposed award made by the Collector under Section 11(1) of the Act.

However, we notice a somewhat different view has been taken by this Court in the case of State of Bihar and Ors. vs. Prem Kumar Singh & Ors., a judgment rendered in the civil appeal arising out of S.L.P. No. 7837 of 1993, decided on 30.11.1993 (reported only in 1998 (2) SCC 573). In that case, this Court held that the Officers authorised by the State Government by notification under proviso to sub-section (1) of Section 11 for approval of the award could reduce the compensation fixed by the Collector. This Court followed the judgment in the case of Prem Kumar Singh (supra) in a later case in the case of State of Bihar & Ors. vs. D. N. Singh (Dead) by LRs. & Ors. [1998 (2) SCC 572] in Civil Appeal No. 7695 of 1997 decided on 13.11.1997. In both the above-cited judgments of this Court, we find the Court has not considered the nature of power exercised by the Commissioner under proviso to Section 11(1) of the Act nor has the Court considered the effect of introducing Section

15A of the Act. However, since the view taken by this Court in those two judgments is somewhat in conflict with the view we have expressed in this case, to settle the law in question, we think it appropriate that this matter should be referred to a larger Bench. Therefore, the papers in this appeal shall be placed before Hon'ble the Chief Justice of India for necessary orders.

Ordered accordingly.

JUDIS