

CASE NO.:
Appeal (civil) 1327-1335 of 2002

PETITIONER:
KARNATAKA ELECTRICITY BOARD

Vs.

RESPONDENT:
THE STATE OF KARNATAKA AND OTHERS

DATE OF JUDGMENT: 19/02/2002

BENCH:
M.B. Shah, B.N. Agrawal & Arijit Pasayat

JUDGMENT:

Shah, J.

Leave granted.

Question involved in these appeals is whether award passed by the Land Acquisition Officer (hereinafter referred to as "LAO") is in conformity with the agreement between the parties. As such, there is not much difference between the two but for one or the other reason parties including the LAO have taken unjustified stand. Hence this litigation.

Appellant Karnataka Electricity Board challenged the order dated 26.7.2000 passed by the learned Single Judge rejecting its Writ Petition No.4804 of 1999, before the Division Bench of the High Court of Karnataka at Bangalore by filing Writ Appeal Nos.6027-35 of 2000 (LA). Those appeals were dismissed by the impugned judgment and order dated 10.1.2001. Hence these appeals.

In Writ Petition No.4804 of 1999, appellant challenged the award dated 27.7.1998 passed by the LAO granting compensation @ Rs.14,250/- per gunta as agreed between the parties and also directing the appellant to pay solatium as well as interest on the said amount @ 9% per annum for the first year and @ 15% per annum for the subsequent years from the date of issue of notification under Section 4(1). The LAO also directed that compensation amount should be 50% of the total value as directed by the Member Secretary, Urban Development Authority, Cauvery as the land was undeveloped area, despite the agreement that compensation was to be paid for 2/3rd land and 1/3rd was to be deducted on the ground that it was undeveloped. The writ petition was disposed of by the learned Single Judge by holding that there was not much difference between the amount awarded by the LAO and the amount payable under the Agreement. The Court also held that award was strictly in accordance with the Land Acquisition Act. The appeals were also dismissed by the Division Bench of the High Court on the ground that as the appellant was not willing to sign and submit form-D and had raised certain objections with regard to the payment of solatium, the LAO was justified in passing the award in accordance with law. The court observed that appellant even though a statutory body resiled from the agreement and committed its breach.

For dealing with the contentions raised in these appeals, we would narrate the facts in brief. Admittedly, an agreement dated 2nd February, 1995 was entered into between the appellant and respondent Nos. 2 to 6 (claimants) for acquisition of 21 acres 14 guntas of land belonging to the claimants, situated in R.S. No.222 and 226, Haveri Town for the purpose of establishing a 220 K.V. capacity electricity power station. The said agreement inter alia provides that

(a) appellant was looking for land in Haveri town for the use of Karnataka Electricity Board (hereinafter referred to as 'KEB') and to install power station for public purpose;

(b) appellant and claimants negotiated for the purpose of acquisition of land and consideration was fixed by mutual discussion at Rs.14250/- (rupees fourteen thousand two hundred and fifty only) per gunta;

(c) it was expressly made clear that the claimants have agreed to receive consideration @ Rs.14,250/- per gunta only for the 2/3rd area of the scheduled property and hand over the entire scheduled property to K.E.B.

(d) claimants have agreed voluntary to accept the considerations as it was a profitable consideration per gunta and it was fair market value of the property;

(e) appellant and claimants have agreed to apply to the Land Acquisition Officer, Haveri to acquire the land and to pay the compensation to the claimants and also to hand over the land to K.E.B. in the manner prescribed under the Land Acquisition Act, 1894.

In pursuance to the aforesaid agreement, parties inter alia covenanted as under: - (As per the agreement, 1st Party is claimants and 2nd Party is K.E.B.): -

1. that the first party agreed that the market value of the property of the schedule property is Rs.14,250/- per gunta and it shall not exceed at any cost more than Rs.14,250/- per guntas;

2. that the first party has agreed to receive consideration at a rate of Rs.14,250/- per gunta only for the 2/3rd area of the schedule property and to hand over the entire schedule property to the second party;

3. ..

4. that the first party agreed that he will receive the agreed consideration amount through land acquisition officer in the manner prescribed by law and also agree to hand over the possession of the property immediately on execution of this agreement. Second party may enter into the schedule property to install the power station according to their requirements or utilise the said property in any manner as it deems fit;

Similarly, K.E.B. agreed as under: -

1. ..

2. that the second party shall pay consideration amount at Rs.14,250/- per gunta of only 2/3rd area of the schedule property and to take possession of the entire schedule

property;

3. that the second party shall bear all the incidental expenditure required to acquire the schedule land;

4. that the second party agreed to pay to the first party solatium amount to be fixed by the land acquisition officer.

The agreement was signed by both the parties on 2nd February, 1995. On the basis of the said agreement and on the joint request of the parties, the State Government issued the Notification under Section 4 of the Land Acquisition Act on 08.9.1995, Enquiry under Section 5A of the Act was held and Section 6 Notification was issued on 26.9.1996. Before that, appellant was directed to deposit a sum of Rs.57,62,402/- by letter dated 3.5.1996 on the basis of agreed amount and hence on 4.7.1996 appellant deposited the same by demand draft dated 29.6.1996.

In the present case, the dispute arises mainly because of unjustified stand taken by the parties including the LAO in not passing an award on the basis of the written agreement which was produced before him. Firstly, it was unjustified stand taken by the officers of the appellant that claimants were not entitled to solatium. As quoted above, it was specifically mentioned in the covenant that the appellant had agreed to pay to the claimants solatium amount to be fixed by the LAO. Solatium amount is required to be fixed under Section 23(2) of the Land Acquisition Act @ 30%. After agreeing to pay the solatium, it was totally unreasonable on the part of the officers of the appellant to contend that they were not bound to pay the solatium as there was no compulsory acquisition.

Secondly, the LAO also took an unjustified stand that appellant should sign the Form of agreement as prescribed under the rules (as provided under sub-section (2) of Section 11 of the Land Acquisition Act), even though the agreement signed by both the parties was produced before him and at the request of parties, the land acquisition proceedings were initiated. The learned Additional Solicitor General has produced before us the Form-D prescribed under Rule 10B of the Rules framed by the State Government under the Land Acquisition Act. The said form only contemplates the signatures of the land owners i.e. claimants and that of an officer authorised under Article 299 of the Constitution of India on behalf of and under the direction of the Governor of Karnataka. The Form also prescribed indemnity bond which is required to be executed by the claimants. This prescribed Form nowhere provides that the person for whose benefit the property is acquired, should sign the said form. Thirdly, it is also to be stated that the claimants took unjustified stand that they were entitled to recover interest on the amount as provided under Section 23(1)(a).

In our view, the learned Additional Solicitor General rightly contended that undisputedly there was a written agreement between the parties, which was produced before the LAO and the LAO was bound to pass award in accordance with the agreement. Law on this subject is settled. Granting of interest, solatium and additional amount would depend upon contract between the parties. {Re: State of Gujarat and others vs. Daya Shamji Bhai and others [(1995) 5 SCC 746]; Ishwarlal Premchand Shah and others vs. State of Gujarat and others [(1996) 4 SCC 174]; Abdul Aziz Abdul Razak and another vs. Municipal Corporation of Greater Bombay and another [(1996) 8 SCC 126]}.

We also agree with the learned Single Judge that the difference in the compensation awarded by the LAO and the agreement is not

much. Further, as the appellant had agreed to pay to the claimants solatium amount to be fixed by the LAO, therefore, award granting solatium cannot be said to be, in any way, illegal or erroneous. However, as there is no specific agreement on payment of interest in the facts of the present case, the award passed by the LAO granting the same cannot be justified. Further, as the appellant had agreed to pay consideration amount at the rate of Rs.14,250/- per gunta for 2/3rd area of the schedule property, it was not open to the LAO to award compensation for one half area of the schedule property.

In this view of the matter, award passed by the LAO requires to be modified accordingly. It is ordered that the claimants shall be paid compensation at the agreed rate of Rs.14,250/- per gunta for 2/3rd area of the schedule property and not 50% thereof. As directed by the LAO, claimant also would be entitled to get 30% of solatium and on the said amount of solatium they would be entitled to have interest in view of the decision rendered by the Constitution Bench of this Court in *Sunder vs. Union of India* [(2001) 7 SCC 211]. However, the award directing that the appellant shall pay interest @ 9% per annum for the first year and @ 15% per annum for the subsequent years from the date of issue of notice under Section 4(1) of the Land Acquisition Act on the amount of compensation is set aside.

The appeals stand allowed accordingly. There shall be no order as to costs all-throughout.

J.
(M.B. SHAH)

J.
(B.N. AGRAWAL)
....J.
(ARIJIT PASAYAT)

February 19, 2002.