M/S. AHAD BROTHERS

v.

STATE OF M.P. AND ANR.

NOVEMBER 19, 2004

[SHIVARAJ V. PATIL AND B.N. SRIKRISHNA, JJ.]

Land Acquisition Act. 1894:

Section 18—Acquired land—Question of title—Jurisdiction of Reference Court to determine—Land Acquisition Officer considered the person whose land was acquired as the owner of the acquired land and passed an award of compensation—Reference Court concluded that the State failed to establish that the owner was a lessee/licensee—However, High Court reversed the finding of the Reference Court without dislodging the reasons recorded by it in support of its conclusion and held that the owner was entitled only to the extent of leasehold interest in the acquired land—Correctness of—Held: Question of title could not be decided under S. 18—High Court erred in reversing the finding of the Reference Court—Hence, High Court's judgment cannot be sustained.

Section 3(b)—"Person interested"—Held: State is not a "person interested" in agitating any claim under S. 18 or S. 30.

Sections 4 & 6—Land owned by State—Acquisition of—Held: There is no question of State acquiring its own land:

Section 23—Compensation—Developmental charges—Deduction of—Reference Court awarded compensation at a certain rate after due consideration of oral and documentary evidence but did not deduct developmental charges—However, High Court without considering the material on record and the reasons recorded by the Reference Court reduced the rate—Correctness of—Held: High Court erred in interfering with the Reference Court's determination—Reference Court also erred in not deducting the developmental charges—Considering the location and surroundings of the acquired land it would be just and appropriate to deduct 30% towards developmental charges out of the compensation payable to the owner.

A *Code of Civil Procedure. 1908:*

Order 8 Rule 9—Written statement—Amendment of—Not challenged—Effect of—Defendant filed an application to amend its written statement that the plaintiff was not the owner of the land but only a licensee/lessee—
B *High Court allowed the application—Plaintiff did not challenge this order—Held: Merely because permission was granted to amend the written statement did not mean that the plaintiff could not resist the claim of the defendant as regards its right as the owner of the acquired land.*

Words & Phrases:

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"Person interested"—Meaning of—In the context of S. 3(b) of the Land Acquisition Act, 1894.

The Land Acquisition Officer, pursuant to the notification issued
D **under Section 4(1) of the Land Acquisition Act, 1894, acquired the appellant's land considering him as the owner of the said land and after fixing the market value of the land acquired, awarded a certain amount as compensation. Not being satisfied with the amount of compensation, the appellant sought for reference under Section 18 of the Act. The Reference Court rejected the said reference. Aggrieved by the order of**
E **the Reference Court, the appellant filed an appeal before the High Court. The High Court allowed the appeal, set aside the order of the Reference Court and remanded the matter to it to decide the reference afresh.**

F **The Reference Court enhanced the compensation. The respondent-State filed an appeal before the High Court challenging the said enhancement. During the pendency of the appeal, the State Government made an application for amendment in the written statement to the effect that the appellant was not the owner of the land and was a licensee or a lessee. The State Government also made an application seeking**
G **permission to file additional evidence. The High Court, after allowing the applications set aside the Award made by the Reference Court and remitted the matter again to it for determining the rights of the appellant in the land and to determine the market value of those rights on the date of the notification. On the basis of the material available on record the**
H **Reference Court held that the appellant was having ownership rights**

in the acquired land and further enhanced the compensation. A

The State Government for the second time filed an appeal in the High Court questioning the validity and correctness of the order made by the Reference Court. The appellant also filed cross objections claiming enhancement of the compensation for the land acquired. The High B Court partly allowed the appeal filed by the State and dismissed the cross objections filed by the appellant. The High Court further held that the appellant was entitled for compensation only to the extent of leasehold interest in the acquired land and that he was not the owner of the land and reduced the market value of the land. Hence the appeal.

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The following questions arose before the Court:—

(1) Whether the High Court was right in going into the question of title over the property acquired by the State and in recording a finding that the appellant had only a leasehold interest in the said land? D and

(2) Whether the High Court was right in interfering with the market value of the land determined by the Reference Court?

Disposing of the appeal, the Court E

HELD: 1. The Reference Court, referring to various documents in the light of the oral evidence, concluded that the respondent-State failed to establish that the appellant is only a lessee/licensee when all along the appellant was shown as the owner and even the Land Acquisition Officer F treated the appellant as the owner. The High Court committed a serious error in reversing this finding of the Reference Court without dislodging the reasons recorded by the Reference Court in support of its conclusion on this point. [198-D-E]

2. The contention that it was not open to the appellant to urge that G the Reference Court could not consider the question of title over the land since the appellant had not challenged the order made by the High Court earlier permitting the amendment of the written statement, has no force. Merely because permission was granted to amend the written statement did not mean that the appellant could not resist the claim of the respondent- H

A **State as regards its right as the owner over the land acquired. [198-F-G]**

3.1. If the State was the owner of the land in question. there was no reason for it to acquire its own land. The State cannot be said to be a "person interested" in agitating any claim either under Section 18 or
B **under Section 30 of the Act. The court exercising jurisdiction under Section 18 could not decide the question of the title of the State over the acquired land. [199-A-B]**

Sharda Devi **v.** *State of Bihar,* **[2003] 3 SCC 128, relied on.**

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3.2. It is not the case of the respondent-State that the title of the appellant had come to an end on the happening of any event or change taking place after making of the award by the Collector. The decision in this appeal does not preclude the State from pursuing such other legal remedy before any other forum, if available in law and if such a claim
D **is maintainable in law. The High Court committed an error in taking a view that the question of title could be decided in the proceedings arising under Section 18 of the Act. [200-A-B]**

Sharda Devi **v.** *State of Bihar,* **[2003] 3 SCC 128, relied on.**

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3.3. Hence, the finding recorded by the High Court in the impugned judgment that the appellant had only a leasehold interest in the land cannot be sustained. [200-B-C]

F **4. The Reference Court, after due consideration of oral and documentary evidence, rightly determined the market value of the land acquired but it committed an error in not giving any deduction towards the developmental charges. The High Court committed an error in reducing the compensation without considering the material on record in order to determine the proper market value and even without considering**
G **the reasons recorded by the Reference Court. [200-C-D; 201-C]**

5. Having regard to the location and the surroundings of the acquired land, it would be just and appropriate to deduct 30% towards developmental charges out of the amount of compensation payable to
H **the appellant. [201-G-H]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6276 of 1999.

From the Judgment and Order dated 22.1.99 of the Madhya Pradesh High Court in F.A. No. 185 of 1991.

M.R. Rajendran Nair, Mohd. Taiyab Khan, Anurag Singh and Shakil Ahmed Syed for the Appellant.

Sakesh Kumar and Satish K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. : Pursuant to the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') an extent of 16.81 acres of land comprised in Khasra Nos. 870, 871, 872, 973 and 1623/873 was acquired. The Land Acquisition Officer, considering the appellant as the owner, passed Award fixing the market value of the land acquired at the rate of Rs. 450 per acre and awarded a sum of Rs.15,307.58 paise as compensation. Not being satisfied with the amount of compensation, so awarded, the appellant sought for reference under Section 18 of the Act for enhancement of compensation claiming a sum of Rs. 32,91,771.50. The Reference Court accepted the Award made by the Land Acquisition Officer holding that the compensation awarded was adequate. Consequently, it rejected the reference. Aggrieved by the order of the Reference Court the appellant filed First Appeal No. 82 of 1969 in the High Court. The High Court allowed the appeal, set aside the order of Reference Court and remanded the matter to it to decide the reference afresh. The learned District Judge (Reference Court) framed an additional issue as to what was the market value of the land acquired on the date of Notification issued under Section 4(1) of the Act. On the basis of the evidence recorded learned District Judge recorded a finding that the market value of the land was Rs. 2 per square foot and awarded a sum of Rs. 14,64,480 as compensation for the land and Rs. 6,600 as compensation for the trees standing thereon with solatium and interest. The State, aggrieved by the order of the Reference Court, filed First Appeal No. 141 of 1980 in the High Court. The appellant also filed cross objections seeking further enhancement of the compensation as per the claim. During the pendency of the appeal State Government made application for amendment in the written statement to the effect that the appellant was

A not the owner of the land and was a licensee or a lessee. The State Government also made an application seeking permission to file additional evidence. The High Court allowed the applications made for amendment as well as for taking the additional evidence. The High Court after allowing the said applications set aside the Award made by the District Court and remitted B the matter again to the Additional District Judge for determining the right of the appellant in the land and to determine the market value of those rights on the date of Notification issued under Section 4(1) of the Act. However, after the remand the State Government did not amend its written statement as directed by the High Court. But the learned District Judge in compliance of the order of the High Court framed additional issues and took additional C evidence. On the basis of the material available on record the learned District Judge recorded findings that the appellant was having ownership rights in the acquired land. He determined the market value of the land acquired at Rs. 16,64,480 and Rs. 6,600 as compensation for the trees and solatium at the rate of 15% as also interest at the rate of 3% per year from the date of D taking possession of the land. The State Government for the second time filed appeal in the High Court questioning the validity and correctness of the order made by the learned District Judge. The appellant also filed cross objections claiming enhancement of the compensation for the land acquired at the rate of Rs. 5 per square foot. The High Court partly allowed the appeal filed by the State and dismissed the cross objections filed by the appellant E by the impugned judgment. In the impugned judgment the High Court fixed market value of the land acquired at the rate of Rs. 2 per square yard as against the market value fixed by the Reference Court at the rate of Rs. 2 per square foot. Further, the High Court held that the appellant was entitled for compensation only to the extent of lease hold interest in the acquired F land and that they were not owners of the land. Hence the appellant is before this Court aggrieved by the impugned judgment and order passed by the High Court.

The learned counsel for the appellant strongly contended that (1) the G jurisdiction of the civil court in deciding reference under Section 18 of the Act is limited and is of special nature; reference proceedings could not be converted into a suit for adjudication for title over the land acquired; the High Court committed an error in deciding the question of title and holding that the appellant had only lease hold interest in the land acquired. (2) The High Court should have appreciated the fact that the respondent-State had H throughout acknowledged the title of ownership of the appellant over the

land right from the date of issuance of Notification under Section 4(1) of the Act; respondent-State was bound by their conduct and they were estopped from claiming otherwise at later stage, i.e., after the whole acquisition proceedings were completed, Award had been passed and that too in the second round before the High Court. (3) The High Court committed a serious error in interfering with the well-reasoned and justified findings recorded by the District Judge on proper appreciation of both oral and documentary evidence; the High Court did not dislodge the reasons recorded by the District Court in recording findings. (4) No material was placed on record to establish that the appellant was only a lessee and not the owner; the State had accepted the appellant as the owner of the land and it was bound by the same; even otherwise the State failed to establish by placing any material on record to show that the appellant was only a lessee. In support of his submissions the learned counsel placed reliance on few decisions of this Court.

Per contra, the learned counsel for the respondents made submissions supporting the impugned judgment adopting the very reasons recorded in favour of the State in the impugned judgment.

The learned counsel further submitted that when on an earlier occasion the High Court had permitted the State Government to file written statement to raise a plea as regards the right of the appellant only as a lessee or a licensee over the property in question and that having not been challenged by the appellant any further, it was not open to the appellant to contend that the Reference Court could not consider the question of title over the land acquired.

In the light of the rival contentions advanced and the submissions made on behalf of the parties, the two questions arise for consideration — (1) whether the High Court was right in going into the question of title over the property acquired by the State and in recording a finding that the appellant had only leasehold interest in the said land; (2) whether the High Court was right in interfering with the market value of the land determined by the Reference Court.

The IVth Addl. District Judge, Bhopal (Reference Court) on proper consideration and appreciation of both documentary as well as oral evidence recorded a finding that the respondent-State could not prove that the appellant

A was only the licensee on the acquired land. One Aadh Narayan (DW1) examined on behalf of the respondent-State in his evidence stated that he was employed in the office of the Director of Land Records. He was not able to support the case of the respondent that the appellant was a lessee or licensee. He admitted in his evidence that there was no lease deed B executed between the parties as per the records available in the office. There was also no record to show that the appellant was a licensee. In his cross-examination, he admitted that he could not tell whether the acquired land belonged to the State or it was acquired by State later on. Abdul Rahuf Khan (PW3) examined in support of the case of the appellant in his evidence stated that no lease deed was executed by State and that no lease amount was paid C to the State and his firm was the owner of the land acquired. He further stated that he had obtained this land in 1950 from the State for the purpose of establishing bone mill; the appellant-firm is recorded as owner in revenue records of the State; the Land Acquisition Officer also treated the appellant as owner and made the award showing the appellant as the owner in the D notification issued to acquire the land. The learned Addl. District Judge, referring to various documents in para 9 of the judgment in the light of the oral evidence concluded that the respondent-State failed to establish that the appellant is only a lessee/licensee when all along the appellant was shown as the owner and even the Land Acquisition Officer treated the appellant E as owner. The State contending otherwise had to establish its case that the appellant was only lessee/licensee, failed to do so. The High Court, in our view, committed a serious error in reversing this finding of the Reference Court without dislodging the reasons recorded by the Reference Court in support of its conclusion on this point.

F The contention that it was not open to the appellant to urge that the Reference Court could not consider the question of title over the land having not challenged the order made by the High Court earlier permitting the amendment of the written statement, has no force. Merely because permission was granted to amend the written statement did not mean that the appellant G could not resist the claim of the respondent-State as regards its right as owner over the land acquired. The respondent-State itself has treated the appellant all along as the owner of the land. Not only in the notification acquiring the land, name of the appellant is shown as owner, even the revenue records also show the appellant as owner. Further the Land Acquisition Officer passed award in respect of this land treating the appellant H

A as owner entitled to receive compensation. If the State was owner of the land in question, there was no reason for it to acquire its own land. The State cannot said to be a person interested to agitate any claim either under Section 18 or under Section 30 of the Act. The court exercising jurisdiction under Section 18 could not decide the question of the title of the State over the

B acquired land. The position of law is clear in this regard by recent judgment of this Court in *Sharda Devi* v. *State of Bihar & Anr.*, [2003] 3 SCC 128. The sole question that arose for consideration in that case was — when the State proceeds to acquire land on an assumption that it belongs to a particular person, can the award be called into question by the State seeking a reference under Section 30 of the Act on the premise that the land did not belong to

C the person from whom it was purportedly acquired and was a land owned by the State having vested in it. In para 36 of the said judgment, having considered various aspects and the scheme of the Act, this Court has concluded thus:-

D > "36. To sum up, the State is not a "person interested" as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression "parties to the litigation" carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject matter
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> E of acquisition by the State. The Question of deciding the ownership of the State or holding of any interest by the State Government in proceedings before the Collector cannot arise in the proceedings before the Collector [as defined in Section 3(c) of the Act]. If it was government land there was no question of initiating the proceedings
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> F for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the civil court for determination either under Section 18 or Section 30 of the Act. The reference made by the Collector to
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> G the court was wholly without jurisdiction and the civil court ought to have refused to entertain the reference and ought to have rejected the same. All the proceedings under Section 30 of the Act beginning from the reference and adjudication thereon by the civil court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so."

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A In the present appeal, it is not the case of the respondent-State that the title of the appellant had come to an end on happening of any event or change taking place after making of the award by the Collector. As stated in para 37 in the case of *Sharda Devi* (supra), the decision in this appeal does not preclude the State from pursuing such other legal remedy before any other B forum, if available in law and if such a claim is maintainable in law. In the light of the judgment of this Court afore-mentioned, in our view, the High Court committed an error in taking a view that the question of title could be decided in the proceedings arising under Section 18 of the Act. Hence, the finding recorded by the High Court in the impugned judgment that the appellant had only leasehold interest in the land cannot be sustained.

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The Reference Court after due consideration of oral and documentary evidence determined the market value of the land acquired @Rs. 2 per sq.ft. as on the date of issuing notification under Section 4(1) dated 23.12.1962. The Land Acquisition Officer had awarded compensation @ 450 per acre D and also awarded a sum of Rs. 6600 as compensation for the trees that existed in the land. The Reference Court being conscious that the market value of the land had to be determined as on the date of 4(1) notification i.e. 23.12.1962 took into consideration sale deeds of the year 1954, 1955, 1960 and 1963 and also one sale deed of 1962. In para 22 of the judgment of the Reference Court, it is stated thus:-

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> "Therefore, it is proved from the statements given by claimant and his witnesses that Balawant Singh had sold the land attached to disputed land @ Rs. 2-5 per squire foot to Shyamlal in 1963 and Shyamlal purchased the land in New Market @ 2.20 per squire foot F in 1960. There is a difference in threats of land in Bhopal Mahanagar in 1960 and 1962, therefore, I am of the view that the rate of the disputed land was Rs. 2.5 per squire foot on the date of Notification u/s 4(1) of Land Acquisition Act got issued in the official Gazette."

G It is also noticed that the land acquired is situated on the State Highway of Bhopal-Jabalpur; it is one and half mile away from Hamidiya bus stand; BHEL factory is two and half miles away from this land; facilities like electricity, water and phone are available to this land; transportation is also available for passengers and goods and that the land in question is surrounded by other industrial establishments. It was not used as agricultural H land at the time of acquisition. The Reference Court in its order having

noticed above facts as observed thus:- A

> "In these circumstances, the reasoning of land acquisition Officer that disputed land should be valued by treating the agriculture is baseless. The disputed land is situated within the limits of Nagar Nigam of Bhopal Mahanagar and situated at bank of the Public Road which is in between Mahanagar and BHEL. It is in the interest of justice to find out that what would an ordinary purchaser have paid for the disputed land on 2.12.1962." B

Thus, on a proper appreciation of evidence, as already stated above, the Reference Court determined the market value of the land acquired @ Rs. 2 per sq. ft. The High Court in the impugned judgment without considering the material on record in order to determine the proper market value and even without considering the reasons recorded by the reference Court as to the market value has simply stated: - C

> "Thus, we are of the considered view that the price fixed by the Reference Court at the rate of Rs. 2 per sq. ft. does not deserve to be upheld." D

Thereafter the High Court held that "admittedly it had the potentiality on the date of publication of the notification under Section 4(1) of the Act, considering the proximity to the urban areas, its potentiality for development and its character, we think it appropriate to fix the price on the basis of square yard. Considering the entire gamut of facts, we think Rs. 2 should be the just price per square yard and accordingly, we so hold." E

The reference Court as well the High Court both have concurrently held that the land acquired, though was an agricultural land, was not being used for agricultural purpose as on the date of issuing 4(1) notification and it had potentialities for purpose of creating building sites. The Reference Court was right in determining the market value of the land acquired @ Rs. 2 per sq. ft. but it committed an error in not giving any deduction towards developmental charges. In our view, having regard to the location and surroundings of the acquired land, as already indicated above, it would be just and appropriate to deduct 30% towards developmental charges out of the amount of compensation payable to the appellant @ Rs. 2 per sq. ft. F G

In view of what is stated above, the impugned judgment and order H

A cannot be sustained. The impugned judgment is modified awarding the compensation to the appellant as owner of the land acquired @ Rs. 2 per sq. ft. after deducting 30% of the market value of the land calculated on the basis of Rs. 2 per sq. ft. The appellant is also entitled for all the statutory benefits on the amount of compensation so determined. The appeal is B disposed of accordingly. No costs.

V.S.S. Appeal disposed of.