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SHAKUNTLA DEVI

v.

STATE OF H. P. AND OTHERS

(Civil Appeal No. 2043 of 2011)

B

MARCH 02, 2016

[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

C

Land Acquisition Act, 1894: s.18 – Land acquisition proceedings taking long time and as a result, authorities proposing settlement of the compensation on negotiation – Negotiated award passed stating that land value is fixed on negotiation and appellant shall not be entitled for seeking any enhancement of market value u/s.18 but appellant shall be entitled for market value for the structures and trees separately – Supplementary Negotiated award for building and trees fixed with a condition therein that valuation was negotiated as full and final rates and no statutory benefits under the Act would be admissible over and above – The award further stated that it was enhanced in absentia and, therefore, notice u/s.12(2) be issued to interest holders immediately – Claim for statutory benefits – High Court held that the writ petitioners having accepted the land value on negotiated settlement was not justified in seeking any statutory benefits – Held: Appellant had not accepted the award – Filing of writ petition before the expiry of six months from the date of the Negotiated award would also show that the appellant had taken steps to vindicate her grievances regarding insufficiency of compensation by approaching High Court u/Art.226 – In the peculiar facts and circumstances of the case and for doing complete justice, the appellant is given an opportunity to make a request for reference u/s.18 of the Act before the Land Acquisition Collector for enhancement of compensation and for all other original benefits in respect of the Supplementary Negotiated Award – If such an application for reference is made before the Collector who passed the Award within four weeks, the same shall be referred to the Court of competent jurisdiction within a month thereafter and the said Reference Court shall dispose of the reference expeditiously and preferably with a period of six months thereafter.

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Disposing of the appeal, the Court

HELD: 1. The appellant-writ petitioner had not accepted the Award; if so, she would not have pursued the inadequacy of compensation before the High Court in the writ petition. Section 18 of the Act entitles interested persons who had not accepted the Award to seek a reference to the Court. No doubt, as per Section 18(2) of the Act, the reference should be made within six weeks from the date of receipt of notice from the Collector under Section 12(2) of the Act or within six months from the date of Collector's Award, whichever period shall first expire. The Negotiated Supplementary Award seems to have been made on 18.12.2009 and the writ petition was filed on 20.05.2010. That apart, in the State of H.P., the Collector is entitled to extend the period for receipt of the application for reference beyond six weeks and upto six months, in case he is satisfied that the applicant was prevented by sufficient cause for making the application. [Para 8] [147-H; 148-A-C]

2. This is an Award announced in absentia and there is a direction to serve notice under Section 12(2) of the Act. It is also seen from the counter affidavit filed by the State before the High Court that the amount awarded, as per the Supplementary Negotiated Award, had been received by the appellant only on 01.06.2010, after filing the writ petition before the High Court on 20.05.2010. Thus, it is clear that the appellant had not accepted the Award, there being an objection with regard to amount of compensation, particularly regarding statutory benefits. It was specifically stipulated in the Negotiated Award pertaining to the land, announced on 11.09.2008 that ".....The interested persons are not entitled for seeking enhancement of market value of land under Section 18 of the Act ...". Such a stipulation is conspicuously absent in the Supplementary Negotiated Award on the structures and trees announced on 18.12.2009, impugned before the High Court in writ petition. Filing the writ petition before the expiry of six months from the date of the Negotiated Award, would also show that the appellant had taken steps to vindicate her grievance regarding insufficiency of compensation, by approaching the High Court under Article 226 of the Constitution of India. That step taken by the appellant is, in any case, within six months. In these circumstances, in the peculiar facts and circumstances of the case and for doing complete justice,

A **the appellant should be given an opportunity to make a request for reference under Section 18 of the Act before the Land Acquisition Collector for enhancement of compensation and for all other original benefits in respect of the Supplementary Negotiated Award. [Paras 9, 10-11] [148-E-H; 149-A-B]**

B **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2043 of 2011**

From the Judgment and Order dated 01.11.2010 of the High Court of Himachal Pradesh at Shimla in CWP No. 2535 of 2010

Ravi Bakshi, (For Yash Pal Dhingra), Adv. for the Appellant.

C Ms. Pragati Neekhra, Karamveer Jindal, Advs., for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J.: 1. We have heard learned counsel for the parties.

D **2. This appeal by special leave is directed against the judgment dated 01.11.2010 of the High Court of Himachal Pradesh at Shimla in C.W.P. No. 2535 of 2010 whereby the High Court dismissed the writ petition.**

E **3. A notification under Section 4(1) of the Land Acquisition Act, 1894 (in short, 'the Act') was issued at the instance of the State of Himachal Pradesh—Respondent No. 1 for the purpose of widening of Theog Kotkhai-Hatkoti road (T.K.H.) on 13.06.2008. Being a time bound project, having found that acquisition proceedings might take a long time, the respondents proposed settlement of the compensation on negotiations and acquired the land accordingly. It appears that in respect of the land**

F **of the appellant, a Negotiated Award dated 11.09.2008 was passed wherein it was stated that the land value had been fixed on negotiations and the appellant shall not be entitled for seeking any enhancement of the market value under Section 18 of the Act. It was also specifically stated in the said Negotiated Award that "... But they are entitled for**

G **the market value for the structures and trees (if any) separately, as per the market value which will be determined by the expert agencies in due course of time at the time of announcement of Supplementary Award along with the market value of the land, which will be notified by the government under Section 4(1) of the Act if required to be acquired at a later stage. ..."**

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4. Thereafter, according to respondents, a supplementary Negotiated Award was passed on 18.12.2009, in continuation of the Negotiated Award dated 11.09.2009 in respect of the land. It is stated therein that, as per the valuation report provided by the Superintending Engineer (PWD) and the Deputy Director (Horticulture), total value of the building and trees was fixed at Rs.37,34,264/-, which according to the respondents and as stated in the Negotiated Award, “this valuation was negotiated as full and final rates and no statutory benefits under the Act will be admissible over and above.” However, it is also stated in the said Award that “this award was enhanced *in absentia*, therefore, the notice under Section 12(2) of the Act be issued to interest holders immediately”.

5. It is the case of the appellant that the said Negotiated Supplementary Award dated 18.12.2009 is not a negotiated one and the rates have been fixed unilaterally. That it is not negotiated is evident from the Award itself wherein it is stated that the rates have been fixed as per the report of the Superintending Engineer (PWD) and Deputy Director (Horticulture) and still further that the Award has been so passed *in absentia*, it was specifically stated in the Supplementary Award that notice under Section 12(2) would be issued.

6. The High Court, in the impugned judgment took the view that the writ petitioner, having accepted the land value on negotiated settlement, was not justified in seeking any statutory benefits. However, it was noted at paragraph 3 of the judgment that:

“3. As far as the payment compensation for structures and trees is concerned, it is obvious that the settlement was only with regard to the value of the land and not with regard to the structure and trees and, therefore, supplementary award in this regard was passed.”

7. Learned counsel appearing for the State, however, submits that the Negotiated Supplementary Award is only in continuation of the original Award for land, and therefore, Supplementary Negotiated Award should be read as part of the Award on land value. It is also contended that having accepted the compensation, there is no justification in turning down and seeking further benefits.

8. We are unable to appreciate the contentions advanced by the learned counsel for the State. One thing to be noticed is that the appellant-writ petitioner had not accepted the Award; if so, she would not have

A pursued the inadequacy of compensation before the High Court in the writ petition. Section 18 of the Act entitles interested persons who had not accepted the Award to seek a reference to the Court. No doubt, as per Section 18(2) of the Act, the reference should be made within six weeks from the date of receipt of notice from the Collector under Section 12(2) of the Act or within six months from the date of Collector's Award, whichever period shall first expire. The Negotiated Supplementary Award seems to have been made on 18.12.2009 and the writ petition was filed on 20.05.2010. That apart, in the State of H.P., the Collector is entitled to extend the period for receipt of the application for reference beyond six weeks and upto six months, in case he is satisfied that the applicant was prevented by sufficient cause for making the application. By virtue of Himachal Pradesh Act 17 of 1986, w.e.f., 22.07.1986, Section 18 of the Act was amended by adding a proviso. The said proviso reads as follows:

D "Provided further that the Collector may entertain an application under this section after the expiry of the period of six weeks but within a period of six months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time."

E 9. As we have noted above, this is an Award announced *in absentia* and there is a direction to serve notice under Section 12 (2) of the Act. It is also seen from the counter affidavit filed by the State before the High Court that the amount awarded, as per the Supplementary Negotiated Award, had been received by the appellant only on 01.06.2010, after filing the writ petition before the High Court on 20.05.2010.

F 10. Thus, it is clear that the appellant had not accepted the Award, there being an objection with regard to amount of compensation, particularly regarding statutory benefits. It was specifically stipulated in the Negotiated Award pertaining to the land, announced on 11.09.2008 that "... The interested persons are not entitled for seeking enhancement of market value of land under Section 18 of the Act...". Such a stipulation is conspicuously absent in the Supplementary Negotiated Award on the structures and trees announced on 18.12.2009, impugned before the High Court in writ petition. Filing the writ petition before the expiry of six months from the date of the Negotiated Award, would also show that the appellant had taken steps to vindicate her grievance regarding

insufficiency of compensation, by approaching the High Court under Article 226 of the Constitution of India. That step taken by the appellant is, in any case, within six months. A

11. In the above circumstances, we are of the view that in the peculiar facts and circumstances of the case and for doing complete justice, the appellant should be given an opportunity to make a request for reference under Section 18 of the Act before the Land Acquisition Collector for enhancement of compensation and for all other original benefits in respect of the Supplementary Negotiated Award. B

12. If such an application for reference is made before the Land Acquisition Collector who passed the Award within four weeks, the same shall be referred to the Court of competent jurisdiction within a month thereafter and the said Reference Court shall dispose of the reference expeditiously and preferably with a period of six months thereafter. C

13. The appeal is accordingly disposed of. There shall be no order as to costs. D

Devika Gujral

Appeal disposed of.