

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LA.APP. 523-536/2005**

Reserved on : 18.03.2010

Pronounced on: 01.07.2010

IN THE MATTER OF :

INDRAJ (DECEASED) THROUGH LR'S AND ORS. .... Appellants  
Through: Mr. B.P. Gupta, Advocate

versus

UNION OF INDIA AND ANR. .... Respondents  
Through: Mr. Sanjay Poddar, Advocate with  
Mr. Ramesh Ray, Advocate for respondent  
No.1/Union of India.  
Mr.Amit Mehra, Advocate for Mr. Ajay Verma,  
Advocate for respondent No.2/DDA.

#### **CORAM**

\* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in the Digest?                | Yes |

#### **HIMA KOHLI, J.**

1. The appellants are aggrieved by a judgment and order dated 02.04.2005 passed by the learned Additional District Judge on a reference received by him under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act**'), in respect of the land situated in the revenue estate of village Kilokari under Award No.1457 pronounced on 03.01.1963, pursuant to issuance of a notification under Section 4 of the Act dated 13.11.1959, followed by a declaration under Section 6 of the Act, dated 17.08.1962.

2. Under the aforesaid Award dated 03.01.1963, the Land Acquisition Collector (LAC) divided the acquired land into two blocks, Block I & Block II. The market value of the acquired land, falling in Block I, i.e., land which was situated near the built up area, was determined @ Rs.4,500/- per bigha and land falling in Block II, which was under cultivation, was determined @ Rs.2,500/- per bigha. The possession of the acquired land was taken by the respondents after passing of the Award. Dissatisfied by the determination of the prevalent market value of the land, the predecessors-in-interest of the appellants preferred a reference petition under Section 18 of the Act on 02.12.1963, claiming *inter alia* that the market value at the relevant time was Rs.30/- per sq. yard.

3. As per the predecessors-in-interest of the appellants, Sh.Indraj and Smt. Ram Devi, they had filed an application for enhancement of compensation and prayed *inter alia* that the awarded compensation be paid to them, which they would be willing to accept under protest. On 26.06.1963, compensation @ Rs.4,000/- per bigha was duly received by the said landowners. However, it was not mentioned on the receipt that the said amount was being received by them under protest. As a result, although the reference petition filed by them was received in the office of the LAC on 4.12.1963, he refused to forward the same to the learned ADJ for adjudication on the ground that the compensation was received by Sh.Indraj and Smt. Ram Devi without any protest. Aggrieved by the said refusal on the part of the LAC to forward the reference petition to the Additional District Judge, Delhi, for enhancement of compensation, the predecessors-in-interest of the appellants filed a Civil Writ Petition in this Court, registered as

Civil Writ Petition No.387/1984. After considering the submissions of the petitioners in the aforesaid petition, a single Judge of this Court held that since late Shri Indraj and Smt. Ram Devi had already filed an application lodging their protest, it was not necessary for them to lodge their protest on the pay bill and that the LAC ought to have at least heard them before refusing to make a reference under Section 18 of the Act. Accordingly, the rejection order of the LAC dated 03.10.1983 was set aside and he was directed to forward the reference petition to the District Judge for proper adjudication in accordance with law.

4. Pursuant to the aforesaid order dated 10.11.1986, the reference petition filed by late Shri Indraj and Smt. Ram Devi was forwarded by the LAC to the Reference Court. In the reference petition, the predecessors-in-interest of the appellants claimed an enhancement in the compensation for the acquired land @ Rs.30/- per sq. yard, apart from other statutory benefits. The Reference Court framed the issues on 16.09.1987 in the following manner:-

- “1. To what enhancement in the amount of compensation, if any, are the claimants entitled?
2. Relief.”

5. After considering the documentary evidence produced by the appellants/claimants in the form of certified copies of some judgments including the decision of the High Court in RFA No.117/94, that of the ADJ in LAC No.40/87 and the compensation granted in Award No.220/86-87, pertaining to village Kilocari, involving notification of the land under Section

4 of the Act dated 13.11.1959, the Reference Court concluded that the fair market value of the land on the date of the notification under Section 4 of the Act could be assessed @ Rs.26,000/- per bigha. However, the aforesaid enhancement in compensation was declined to the appellants on the ground that the said amount was beyond the rates claimed by their predecessors-in-interest before the LAC. As a result, issue No.1 was answered against the appellants by holding that they were not entitled to any enhancement in compensation. Aggrieved by the said order and judgment, the appellants have preferred the present appeal.

6. Counsel for the appellants relied upon a judgment of the Division Bench of this Court dated 10.10.1984 in **RFA 117/1974** entitled, "Angoori Devi vs. Union of India & Anr.", in support of his submission that the appellant therein was identically placed as the appellants herein and hence, his clients were also entitled to the same relief of enhancement in compensation as granted to her in the said case. In the case of Angoori Devi (supra), the claimant was granted compensation @ Rs.26,000/- per bigha for identical land situated in village Kilokari, covered under the same award. Support was sought to be drawn from a judgment in the case of State of Punjab vs. Karnail Singh & Ors. reported as **1965 PLR Vol.LXVII 788**, to state that the Reference Court ought to have considered the circumstances of the case at hand and permitted the appellants enhancement in compensation @ Rs.26,000/- per bigha. Pleadings before the Reference Court were also pointed out to urge that in its written statement the respondent/UOI had not opposed grant of compensation to the appellants and hence could not be permitted to take the ground that as

the claimants did not specify any amount in compensation in response to notices issued under Sections 9 & 10 of the Act and had simply stated that the land be released from acquisition, they were not entitled to receive enhancement in compensation. It was, therefore, submitted that failure to frame a specific issue in this regard has resulted in depriving the appellants of their right to lead evidence on the point. In support of the said submission, reliance was placed on the following judgments:

(i) Mohan Lal vs. Anandibai and others **AIR 1971 SC 2177**

(ii) Bhag Singh and others vs. Union Territory of Chandigarh **(1985) 3 SCC 737**

(iii) Sanjay Gera vs. Haryana Urban Development Authority and Anr. **2005 (2) CCC 97 SC**

7. In support of his plea that once the court had taken a view that the claimants were entitled to payment of enhanced compensation, they should not be denied the same on technical grounds, the decision of the Supreme Court in the case of Chandrashekhar & Ors. vs. Additional Special Land Acquisition Officer reported as **2009 VII AD (SC) 829** was cited by the counsel for the appellants.

8. On the other hand, counsel for the respondent/Union of India supported the impugned judgment and order and submitted that the Reference Court was justified in arriving at the conclusion that notices under Sections 9 and 10 of the Act were duly served on the appellants on 28.09.1962 and in view of the fact that they had not led any evidence to the contrary or disputed their service as per the statement under Section 19 of the Act, either in the reference petition, or in the present appeal, the

embargo placed under the unamended provisions of Section 25 of the Act would apply. He relied on a decision of the High Court in the case of Land Acquisition Officer-cum-DSWO, A.P. vs. B.V. Reddy & Sons reported as **(2002) 3 SCC 463** to urge that the Reference Court did not have the jurisdiction to award an amount in excess of the amount claimed by the claimants and as in the present case, the predecessors-in-interest of the claimants only sought release of the acquired land but did not mention any compensation, they could not claim enhanced compensation beyond the amount awarded by the LAC. It was also stated that the appellants did not seek any indulgence of the Court for the omission on their part to make such a claim for enhancement in the awarded amount for invoking sub-clause (3) of Section 25 of the unamended Act.

9. I have heard the counsels for the parties and carefully considered their respective submissions.

10. From a narration of the facts as noted above, it is not in dispute that the compensation granted by the LAC in respect of the land situated in village Kilokari and acquired under Award No. 1457, was enhanced by the Reference Court to Rs.26,000/- per bigha. The only issue is as to whether the appellants are entitled to any enhancement beyond the rates claimed by them before the LAC.

11. It is an undisputed position that Smt. Angoori Devi, the appellant in RFA 117/1974, owner of Khasra Nos.574/1, 580 and 754 situated in village Kilokari, had not claimed any amount towards compensation payable in the wake of notices issued to her under Sections 9 and 10 of the Act. Instead, she sought release of the acquired land. This is borne out from a

perusal of the Award No.1457, wherein the land holdings of Smt. Angoori Devi find mention at serial nos. 8, 10 & 15 under the details of the Khasra nos. of the acquired land and the ownership. While dealing with the case of individual land owners who appeared before the Collector pursuant to notices issued under Sections 9 and 10 of the Act, the name of Angoori Devi features at serial no.2, wherein it was recorded that she did not mention any amount of compensation but stated that the land in question be released.

12. Despite the aforesaid position, upon a reference petition submitted by Smt. Angoori Devi, vide order dated 03.11.1973, the learned ADJ, Delhi assessed the market value of the acquired land @ Rs.8,500/- per bigha for Block-I and Rs.7,500/- per bigha for Block-II, apart from other statutory benefits. Aggrieved by the said determination of market value, Smt. Angoori Devi preferred an appeal in the High Court. The said appeal was decided by a Division Bench, vide order dated 10.10.1984, and the compensation was awarded to the appellant @ Rs.26,000/- per bigha, for the same reasons as recorded in an earlier decision dated 08.03.1984 in **RFA 381/1970** entitled Chand Behari vs. UOI which was in respect of the same land in the same village covered under the same notification issued under Section 4 of the Act, dated 13.11.1959.

13. All the attendant facts and circumstances of the case in hand are identical to those in the case of Angoori Devi (supra). The lands in both the cases are situated in the same village, i.e., village Kilokari. They were acquired under the same Award bearing No.1457. Just as is the case in the present appeal, Smt. Angoori Devi had also not claimed any enhancement in compensation, after receipt of notices under Sections 9 and 10 of the Act

and had sought release of the acquired land. In spite of the same, she was finally awarded enhancement in the compensation @ Rs.26,000/- per bigha by the High Court.

14. In view of the aforesaid decision, there is no reason as to why this Court should travel further or examine any other plea raised by the parties. Rather, the aforesaid judgment ought to be followed and compensation be directed to be granted to the appellants herein on parity with the case of Angoori Devi (supra).

15. Therefore, without going into the issue of the application of the unamended provision of Section 25 of the Act, or any other issue, in the peculiar facts and circumstances of the present case, the appellants are held entitled to the grant of compensation @ Rs.26,000/- per bigha, apart from all other statutory benefits and interest in accordance with law. Whatever amount has already been paid to the appellants, shall of course be deducted while making the calculations. Decree sheet be drawn accordingly.

16. Appeal is allowed with costs.

JULY 1, 2010  
rkb

**(HIMA KOHLI)**  
JUDGE