

Neutral Citation No. - 2024:AHC:190636

Reserved on 14.11.2024

Delivered on 05.12.2024

A.F.R.

Court No. - 36

Case :- FIRST APPEAL No. - 388 of 2015

Appellant :- Natthan Singh

Respondent :- State of U.P. and Others

Counsel for Appellant :- Madan Mohan, Rakesh Pande, Shailesh K Upadhyay, Shailesh Upadhyay

Counsel for Respondent :- Ashok Mehta, Prabhat Tripathi, S.C., Subodh Kumar

Connected with

Case :- FIRST APPEAL No. - 357 of 2016

Appellant :- Ganga Ram And Others

Respondent :- State of U.P.

Counsel for Appellant :- Madan Mohan, Shailesh Upadhyay

Counsel for Respondent :- S.C., Subodh Kumar

and

Case :- FIRST APPEAL No. - 1104 of 2003

Appellant :- State of U.P.

Respondent :- Nathan

Counsel for Appellant :- S.C., Manoj Kumar Singh, Subodh Kumar, Udit Chandra

Counsel for Respondent :- Rakesh Pande, Shailesh Upadhyay

and

Case :- FIRST APPEAL No. - 1138 of 2003

Appellant :- State

Respondent :- Ganga Ram

Counsel for Appellant :- S.C., Subodh Kumar, Udit Chandra

Counsel for Respondent :- Rakesh Pande, Shailesh Upadhyay

Hon'ble Kshitij Shailendra,J.

APPEALS ARISING OUT OF LAND ACQUISITION
REFERENCES

1. Heard Shri Shailesh Upadhyay, learned counsel appearing for the claimants/tenure holders in all matters and Shri Subodh Kumar alongwith Shri Udit Chandra, learned counsel appearing for C.P.W.D. as well as U.O.I. at length.
2. Since common questions of fact and law are involved in all the matters, the same are being decided by common judgment. Distinguishing features of individual cases, if any, would reflect at appropriate places in this judgment or in the judgment/order passed in such matters separately. For the convenience sake, First Appeal No. 388 of 2015 is being treated as the leading appeal.
3. The instant appeal is directed against the judgment and order dated 30.03.1991 passed by learned Additional District Judge, Ghaziabad in Land Acquisition Reference No. 29 of 1987. The land in dispute situates in village Raispur, Tehsil and District Ghaziabad. The description of area and all gatas number does not seem to be relevant as the issue involved in all these matters

revolves around few orders passed by this Court earlier in other matters and few orders passed by Hon'ble Supreme Court. As a matter of fact, these appeals are to be decided in the light of effect of those decided proceedings.

BRIEF FACTS AND PROCEEDINGS

4. The land of tenure holders, namely, Ran Singh, Ganga Ram, Nathhan Singh, Khoob Singh, Ram Kishan etc. was acquired by the State of U.P. for the purposes of development by the Central Public Works Department (hereinafter referred to as "C.P.W.D."). Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 28.12.1963 that was published on 04.01.1964. It was followed by notification under Section 6 of the Act published on 24.07.1965. A corrigendum was issued on 10.10.1972 regarding certain plots that were skipped in the earlier notifications and, consequently, the left-out plots were also included in the acquired land. State Government took possession over the acquired land on 09.03.1973. An award was published by the Special Land Acquisition Officer (hereinafter referred to as "S.L.A.O.") on 22.09.1986 awarding compensation at the rate of Rs. 1.90/- per Sq. Yd.

5. Five land owners filed Land Acquisition References (hereinafter referred to as "L.A.Rs.") seeking enhancement of compensation. These L.A.Rs. were clubbed together with following details and were jointly decided by the reference court by judgment dated 30.03.1991 enhancing compensation from Rs.1.90/- per Sq. Yd. to Rs. 8/- per Sq. Yd.:-

(i) L.A.R. No. 25 of 1987 (Ran Singh and others vs. State of U.P.)

(ii) L.A.R. No. 26 of 1987 (Ganga Ram and others vs. State of U.P.)

(iii) L.A.R. No. 27 of 1987 (Ram Kishan vs. State of U.P.)

(iv) L.A.R. No. 29 of 1987 (Natthan and others vs. State of U.P.)

(v) L.A.R. No. 30 of 1987 (Khoob Singh and another vs. State of U.P.)

6. Three (3) land owners, out of five (5), filed following First Appeals before this Court:-

(i) First Appeal No. 809 of 1993 (Ran Singh vs. State of U.P.)

(ii) First Appeal (Defective) No. 322 of 1992 (Natthan and others vs. State of U.P.) (subsequently registered as regular First Appeal No. 388 of 2015, i.e. the instant leading appeal).

(iii) First Appeal (Defective) No. 248 of 1992 (Ganga Ram and others vs. State of U.P.) (subsequently registered as regular First Appeal No. 357 of 2016)

7. State of U.P. also filed five (5) First Appeals against Reference Court's order dated 30.03.1991 with following details:-

(i) First Appeal (Defective) No. 612 of 1991 (State of U.P. vs. Ran Singh) (subsequently renumbered as First Appeal No. 1140 of 2003)

(ii) First Appeal (Defective) No. 614 of 1991 (State of U.P. vs. Ram Kishan) (subsequently renumbered as First Appeal No. 1119 of 2003)

(iii) First Appeal (Defective) No. 609 of 1991 (State of U.P. vs. Khoob Singh) (subsequently renumbered as First Appeal No. 1143 of 2003)

(iv) First Appeal (Defective) No. 613 of 1991 (State of U.P. vs. Natthan) (renumbered as First Appeal No. 1104 of 2003)

(v) First Appeal (Defective) No. 611 of 1991 (State of U.P. vs. Ganga Ram) (renumbered as First Appeal No. 1138 of 2003)

8. First Appeal No. 809 of 1993 (Ran Singh vs. State of U.P.) (herein-after referred to as “Ran Singh’s case”) was allowed by this Court by judgment dated 10.01.2002 enhancing compensation from Rs.8/- per Sq. Yd to Rs. 84/- per Sq. Yd. In the meantime, some affected land holders filed applications under Section 28-A of Land Acquisition Act, 1894 that were allowed by the S.L.A.O. and an award was declared on 16.08.1992. Being aggrieved, Union of India preferred Writ Petition Nos. 31447 of 1992, 31448 of 1992, 31449 of 1992, 31450 of 1992 that were allowed by a Division Bench of this Court by a common order dated 27.03.2003, the award dated 16.08.1992 was quashed with further observation that “applications under Section 28-A shall be kept pending by the Collector/Land Acquisition Officer and shall be decided in accordance with law after the decisions in pending first appeals”, i.e. above-referred first appeals filed by the State of U.P.

9. Challenging the aforesaid order dated 10.01.2002 passed in Ran Singh’s case enhancing compensation from Rs.8/- per Sq. Yd to Rs. 84/- per Sq. Yd, the State of U.P. filed Special Leave

Petition No. 5022 of 2004 (*S.L.P. No. at some places is described as 3022 but the case is same*) before the Supreme Court that was rejected on the ground of delay on 19.07.2004. The State of U.P. filed Review Application No. 227 of 2005, which was also rejected on 15.02.2005 after condoning the delay. Thereafter, C.P.W.D. filed a review application alongwith impleadment application before this Court seeking review of the order dated 10.01.2002 passed in Ran Singh's case. The said applications were rejected by this Court on 12.08.2009 as barred by time and after making certain other observations. Challenging the order dated 12.08.2009, C.P.W.D. filed S.L.P. Nos. 16202-16203 of 2010, which were dismissed by the Supreme Court on 18.07.2011 with observation that the question whether the acquiring body was a necessary party or not, was not gone into S.L.Ps..

10. Taking aid of observations made in order dated 18.07.2011, C.P.W.D. and U.O.I. filed impleadment applications in the pending appeals and the same were allowed. Consequently, in the appeals filed by the State of U.P., C.P.W.D. and U.O.I. were impleaded as appellants whereas in the appeals filed by the tenure holders, they were impleaded as respondents. The orders allowing impleadment applications were never challenged and, therefore, these appeals were heard by and against the said impleaded parties. The Court may observe here that in orders dated 01.11.2017 passed in First Appeal Nos. 1104-2003 and 1138-2003 it has already been observed that State had chosen not to press these appeals and the appeals shall remain only at the instance of C.P.W.D./Union of India.

11. When the appeals came up for joint consideration on merits, this Court, after taking into consideration the above-referred orders passed by this Court and the Supreme Court in Ran Singh's case, dismissed the First Appeal No. 1119 of 2003 (State of U.P. vs. Ram Kishan) by order dated 06.11.2012 observing finality attached to the determination of market value of the property and non-filing of any cross-objections or cross appeals against the award of the Reference Court.

12. Thereafter, successors of late Ram Kishan, i.e., respondents in First Appeal No. 1119 of 2003, filed delay condonation application, leave to press an abatement application accompanied by review application with the contention that the appeal could not be decided on merits as factum of death of Ram Kishan was not brought to the notice of the Court and, hence, the appeal had stood abated by operation of law. This Court, by order dated 02.02.2016, allowed the review application, recalled the order dated 06.11.2012 and another order dated 26.08.2015 earlier dismissing the application seeking leave to press an abatement application, restored the said application to its original number, allowed the abatement application and dismissed the appeal as abated. This Court, however, made it clear that order dismissing the appeal as abated would be read in relation to the First Appeal No. 1119 of 2003 (State vs. Ram Kishan) only and insofar as other four connected appeals are concerned, the order dated 06.11.2012 would remain operative. It is needless to mention that on 06.11.2012 when First Appeal No. 1119 of 2003 (State vs. Ram Kishan) was dismissed on merits, connected First Appeal Nos. 1140 of 2003 (State vs. Ran Singh) 1143 of 2003

(State vs. Khaoob Singh) were also dismissed for the reasons given in the order deciding First Appeal No. 1119 of 2003.

POINTS FOR DETERMINATION

13. Having heard learned counsel for the parties, following points for determination arise for consideration in these appeals:-

1. “Whether in view of the judgment/order of this Court dated 10.01.2002 passed in First Appeal No. 809 of 1993 (Ran Singh’s case) having travelled upto the Supreme Court, C.P.W.D. and/or U.O.I, have been left with any say in the matter and can determination of compensation as Rs.84/- per Sq. Yd. be set aside/reduced by this Court ignoring doctrine of merger?”

2. Whether the tenure holders having not raised a claim pursuant to notice issued under section 9 of the Land Acquisition Act, 1894, as it then existed, they are, at all, entitled for any amount over and above the one awarded by the S.L.A.O. in view of bar contained in section 25?

ARGUMENTS ON BEHALF OF TENURE HOLDERS

14. Shri Shailesh Upadhyay, learned counsel appearing for the tenure-holders, vehemently argued that once this Court enhanced compensation from Rs.8/- per Sq. Yd. to Rs. 84/- per Sq.Yd. and the said judgment was carried upto the Supreme Court by the State of U.P. and also by C.P.W.D. and U.O.I. and the Supreme Court dismissed the S.L.Ps. as well as review application granting no relief to either State of U.P. or C.P.W.D. or U.O.I., no contrary view can be taken by this Court against the

determination of compensation at the rate of Rs.84/- per Sq. Yd. and, hence, all the appeals filed by C.P.W.D. and U.O.I. are liable to be dismissed and those filed by the tenure-holders are entitled to be allowed determining compensation at the rate of Rs. 84/- per Sq.Yd. It was also argued that when the Reference Court decided five L.A.Rs. by judgment dated 30.03.1991, the Special Land Acquisition Officer, Joint Organization, Ghaziabad wrote a letter dated 13.05.1991 to the concerned Engineer of C.P.W.D., Hinden, Ghaziabad asking him to furnish his opinion regarding filing of appeal against the order of Reference Court and associated aspects like expenses qua the same. Responding to the said letter, the concerned Engineer of C.P.W.D. sent a communication dated 27.06.1991 to the S.L.A.O stating that since the Department was not a party to the proceedings and was informed at the very last stage, it was not possible for the Department to prefer appeal, until and unless the Department was arrayed as a party. The Engineer asked the S.L.A.O to file an appeal at his own end. Submission is that once C.P.W.D. expressed its reluctance to challenge the decision of the Reference Court and asked State to prefer appeal and, once, the State preferred appeals and lost from this Court and, then, upto the Supreme Court, C.P.W.D. cannot make any submission against the determination which has attained finality. It has further been argued that even if C.P.W.D. has made submissions in this case, since all the tenure holders are identically placed and their land was also acquired under same notifications, they are entitled for the same rate of compensation as has been determined in Ran Singh's case.

ARGUMENTS ON BEHALF OF C.P.W.D. AND
U.O.I.

15. Per contra, Shri Subodh Kumar alongwith Shri Udit Chandra, learned counsel for C.P.W.D. and U.O.I., vehemently opposed each and every submission advanced on behalf of tenure holders. Their arguments are as under:-

(i) C.P.W.D. and U.O.I. not being parties to the proceedings, determination made on the contest made by the State of U.P. would not affect their rights and contentions and, in view of decision of the Supreme Court in **Uttar Pradesh Awasth Vikas vs. Gyan Devi (deceased), 1995 (2) SCC 326**, they have their own legal right to contest and press the matter.

(ii) S.L.P. No. 5022 of 2004 preferred by the State of U.P. against the judgment and order dated 10.01.2002 passed in Ran Singh's case was dismissed only on the ground of delay by order dated 19.07.2004, which order would not amount to merger of the order of this Court, at least adversely affecting the rights of C.P.W.D. and U.O.I.

(iii) Order dated 15.02.2005 rejecting the Review Application No. 227 of 2005 filed by the State even after condoning the delay would not result in closure of rights of C.P.W.D. and U.O.I. to lay their challenge to the determination made at the rate of Rs.84/- per Sq. Yd.

(iv) Though, C.P.W.D.'s/U.O.I.'s review application in Ran Singh's case, was dismissed on 12.08.2009 by this Court on the ground of delay and S.L.Ps. No. 16202-16203 of

2010 filed their-against, were dismissed by the Supreme Court on 18.07.2011, since the Supreme Court clearly observed that the question of acquiring body being a necessary party had not been gone into in the said S.L.Ps. and, subsequently, the C.P.W.D. and U.O.I. have been impleaded in these proceedings, they have their own say in the matter and, hence, their rights cannot be curtailed merely on the basis of determination made in Ran Singh's case. Further in none of the S.L.Ps., leave was granted by Supreme Court, therefore, doctrine of merger would not apply in the instant case.

(v) Judgment dated 10.01.2002 passed in Ran Singh's case runs on absolutely wrong premise recording entirely different facts having no concern with the present lis. This Court began judgment in Ran Singh's case with the statement that "the Ghaziabad Development Authority framed a scheme for development of the City within the municipal limits and for that purposes the land of the appellants and of other persons was acquired", whereas the instant case has no concern with Ghaziabad Development Authority nor did the said Authority ever frame any scheme; rather it was the State of U.P. that acquired land for the project, namely, 'Central Public Works Department for constructions of quarters of Government Employees'.

(vi) In Ran Singh's case, this Court described notification under Section 6 of the Act having been issued on 22.09.1986, whereas, in the instant case notification under Section 6 is 21 years old and is dated 20.07.1965.

(vii) In Ran Singh's case, acquisition was referred to in relation to development of two colonies within the municipal limits of Ghaziabad whereas, in other cases, the construction of houses for employees of C.P.W.D. was to be made over 31 acres of Mauza Sahari, Pargana Loni, District Meerut, 353 acres of Mauza Harson, Pargana Dasna, district Meerut and 371 acres of Mauza Raispur, Pargana Dasna, District Meerut.

(viii) In Ran Singh's case, basis of the order was location of land of Sewak Ram and Anoop Singh situated in village Jatwara Kalan, District Ghaziabad for development of some colonies, though notification under Section 4 regarding land of Jatwara Kalan was issued on 18.06.1962, Section 6 notification was dated 27.10.1964, possession was taken on 22.12.1964 and the award was declared on 26.06.1967. However, the issues involved in the present case arise out of acquisition made by the State of U.P. pursuant to the notifications of other dates in relation to other land having a different identity and location, possession whereof was taken on different dates and award was also made on a different date.

(ix) Judgment dated 10.01.2002 is based upon the judgment of Anoop Singh and others, who had filed First Appeal No. 288 of 1985 against the decision of Reference Court dated 31.05.1984 in L.A.Rs No. 376 of 1982 and the said appeal was decided by this Court on 05.02.1993 awarding compensation at the rate of Rs.84/- per Sq. Yd. Anoop Singh's case arose from acquisition made by the Improvement Trust, Ghaziabad that had framed scheme for

planned development in relation to village Jatwara Kalan and the discussion made in the judgment of the Reference Court as well as this Court was entirely on different parameters, particularly, when the Court had found user of the land acquired for commercial purposes, which is not the case here.

(x) In Anoop Singh's case, the land acquired was found to be in close vicinity of Basant Cinema, Chaudhary Market, Power House, Shops, Halwara Residential Colony, Chaudhary Hammer Factory and other commercial properties having higher value, which is not the case here.

(xi) Any adjudication based on suppression or non-disclosure of relevant material documents and facts would amount to nullity and, therefore, the decision in Ran Singh's case would not prejudice rights and contention of C.P.W.D./U.O.I., i.e. acquiring body.

(xii) C.P.W.D. has already deposited compensation in favour of Additional District Judge, Vth Ghaziabad and the same was disbursed to the land owners of First Appeal No. 809 of 1993 (Ran Singh and others vs. State of U.P. and others) and no parity can be claimed in alive matters.

16. Shri Subodh Kumar, learned counsel has raised another argument with quite vehemence, based upon Section 25 read with Section 9 of the Land Acquisition Act, 1894, as applicable at the time of issuance of notifications. He submits that Section 25 provides that when the applicant has made a claim for compensation pursuant to any notice under Section 9 of the Act, the award shall not exceed the amount so claimed nor would it be

less than the amount awarded by the Collector under Section 11 of the Act, however, in case the applicant has refused or omitted to make such claim, the amount awarded by the Court shall, in no case, exceed the amount awarded by the Collector. The contention, therefore, is that since none of the claimants in these appeals ever made a claim for enhanced compensation after S.L.A.O. had declared the award and in pursuance of notice under Section 9, amount of compensation in relation to such non-objectors would not exceed Rs.1.90/- per Sq. Yd. He further submitted that notice under Section 9 of the Act was issued to all affected tenure-holders on 20.01.1973 fixing 05.02.1973 as the date for hearing their objections but none of the claimants responded to the notice and the award itself shows that the objections of the tenure-holders other than the claimants involved in these appeals were filed and considered. Shri Subodh Kumar, in support of his argument based upon applicability of Section 25 of the Act, placed reliance upon certain authorities, reference whereof would come in the later part of this judgment. The Court may also observe here that when the appeal was heard by a Co-ordinate Bench of this Court on 22.05.2017, this Court passed an order granting adjournment to the claimants' counsel to prepare the matter in the light of provisions contained in unamended Section 9 read with Section 25 of the Land Acquisition Act.

17. As regards arguments of Shri Subodh Kumar in relation to Section 25 of the Act, Shri Shailesh Upadhyay, learned counsel for tenure holders vehemently argued that the tenure holders had filed objections before the S.L.A.O and he specifically referred to Objection No. 4 mentioned in the award. In this regard, Shri

Subodh Kumar submitted that one of the objectors to the Objection No. 4 was Ram Kishan Pradhan, who did not object in relation to the amount of compensation, rather, he stated that there was a public rasta in certain Khasras, which should also be acquired. As regards other objections, though it is mentioned that 56 objections were filed, Shri Subodh Kumar submits that they were not in pursuance of the notice issued to the tenure holders under Section 9 of the Act, rather, the award specifically mentions that these objections were filed under Section 5-A of the Act pursuant to the notification issued under Section 4(1) of the Act.

ANALYSIS OF RIVAL CONTENTIONS AND DISCUSSION
ON POINTS FOR DETERMINATION

FIRST POINT:

“Whether in view of the judgment/order of this Court dated 10.01.2002 passed in First Appeal No. 809 of 1993 (Ran Singh’s case) having travelled upto the Supreme Court, C.P.W.D. and/or U.O.I, have been left with any say in the matter and can determination of compensation as Rs.84/- per Sq. Yd. be set aside/reduced by this Court ignoring doctrine of merger?”

18. First of all, the Court may observe that Ran Singh’s case was decided on 10.01.2002 against which State filed Special Leave Petition No. 5022 of 2004 that was rejected on the ground of delay on 19.07.2004 and review also met the same fate. In view of above, it is apparent that it was the State of U.P that has lost the matter before the Supreme Court in terms of dismissal of its S.L.P. on the ground of delay without granting leave to file appeal and, hence, the present matter is not being heard and

decided inter se State and tenure holders. Though, it is true that C.P.W.D./U.O.I. had also approached the Supreme Court after their review application in Ran Singh's case was rejected by this Court, the Supreme Court, while dismissing the S.L.Ps. No. 16202-16203 of 2010, clearly observed that the question whether acquiring body is a necessary party or not, has not been gone into by the Supreme Court in the said S.L.Ps. Apparently, dismissal of these S.L.Ps. was also in view of order dated 19.07.2004 passed in State's S.L.P., i.e. on the ground of delay. Question of grant of leave, therefore, did not arise in case of C.P.W.D./U.O.I. too. For a ready reference, all the orders passed by the Supreme Court are quoted hereunder: -

Special Leave Petition No. 5022 of 2004 (U.P. State vs Ran Singh and others), order dated 19.07.2004:

“The special leave petition is dismissed on the ground of delay.”

Review Petition No. 227 of 2005 (U.P. State vs. Ran Singh and others), order dated 15.02.2005:

“ Delay condoned.

We have carefully gone through the review petition and the annexures thereto. We do not find any merit in the same. Hence, the review petition is dismissed.”

Petition(s) for Special Leave to Appeal (Civil) No. 16202-16203 of 2010 (Union of India and another vs. Ran Singh and others) Order dated 18.07.2011:-

“ Delay condoned.

The Special Leave Petitions are dismissed in view of order dated 19.07.2004 passed in SLP (C) No. 3022/2004. The question whether the acquiring body is a necessary party or not is not gone into in the present SLPs.”

(It appears that S.L.P. No. 3022/2004 is a typographical error. Correct number appears to be 5022 of 2004.)

19. It is, therefore, clear that the Supreme Court did not examine the effect of non-impleadment of C.P.W.D./U.O.I. as a party in the proceedings decided upto the Supreme Court and all the matters, whether of State or of C.P.W.D./U.O.I. were not entertained on the ground of delay except that rejection of Review Petition No. 227 of 2005 filed by the State is after condoning delay in filing review but that would not, with due respect, amount to an order granting leave to file appeal against final order dated 10.01.2002 passed in Ran Singh's case. Ultimately, the impleadment applications filed by C.P.W.D./U.O.I. in the pending proceedings were allowed, orders to which effect have never been assailed. Hence, right of hearing in toto has been given to C.P.W.D./U.O.I.

20. On the question of merger, reliance was placed by Shri Subodh Kumar on Supreme Court's judgment in **State of U.P. and another vs. Virendra Bahadur Katheria and others, 2024 (3) SLJ 1**, where doctrine of merger, in a case where special leave petition was dismissed in *limine*, was dealt with in the light of various judicial precedents and it was held that such a dismissal would not amount to merger. Relevant paragraphs of **Virendra Bahadur Katheria** (supra) are reproduced hereunder:-

.....(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not

amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

[Emphasis supplied] ”

21. On the question of decision for want of disclosure of relevant material documents, Shri Subodh Kumar placed reliance upon the judgment of Supreme Court in **Ram Kumar vs. State of U.P. and others, AIR 2022 SC 4705**, paragraph 21 whereof reads as under:-

“21. This Court, in the case of *S.P. Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and others (1994) 1 SCC 1*, has held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed.”

22. As far as distinguishing features in between the case of Ran Singh and those involved in the present appeals are concerned, a bare perusal of the judgment dated 10.01.2002 passed in Ran Singh’s case would reflect that the said judgment runs on entirely different facts having no concern with the

present lis. This Court began judgment in Ran Singh's case with the statement that "the Ghaziabad Development Authority framed a scheme for development of the City within the municipal limits and for that purposes the land of the appellants and of other persons was acquired" whereas the instant case has no concern with Ghaziabad Development Authority nor did the said Authority ever frame any scheme, rather it was the State of U.P. that acquired land for the project, namely, 'Central Public Works Department for constructions of quarters of Government Employees'. In Ran Singh's case, this Court described notification under Section 6 of the Act having been issued on 22.09.1986, whereas, in the instant case notification under Section 6 was issued 21 years ago, i.e. on 20.07.1965. In Ran Singh's case, acquisition was referred to in relation to the development of two colonies within the municipal limits of Ghaziabad, whereas, in other cases the construction of houses for employees of C.P.W.D. was to be made over 31 acres of Mauza Sahari, Pargana Loni, District Meerut, 353 acres of Mauza Harson, Pargana Dasna, district Meerut and 371 acres of Mauza Raispur, Pargana Dasna, District Meerut. In Ran Singh's case, basis of the order was location of land of Sewak Ram and Anoop Singh situated in village Jatwara Kalan, District Ghaziabad for development of some colonies, though notification under Section 4 regarding land of Jatwara Kalan was issued on 18.06.1962, Section 6 notification was dated 27.10.1964, possession was taken on 22.12.1964 and the award was declared on 26.06.1967, whereas the issues involved in the present case arise out of acquisition made by the State of U.P. pursuant to the notifications of altogether different dates in relation to land having a different identity and location, possession whereof was taken on different

dates and award was also made on a different date. Judgment in Ran Singh's case is based upon the judgment of Anoop Singh and others, who had filed First Appeal No. 288 of 1985 against the decision of Reference Court dated 31.05.1984 in L.A.Rs No. 376 of 1982 and the said appeal was decided by this Court on 05.02.1993 awarding compensation at the rate of Rs.84/- per Sq. Yd. Anoop Singh's case arose from acquisition made by the Improvement Trust, Ghaziabad that had framed scheme for planned development in relation to village Jatwara Kalan and the discussion made in the judgment of the Reference Court as well as this Court was entirely on different parameters. In Anoop Singh's case, the land acquired was found to be in close vicinity of Basant Cinema, Chaudhary Market, Power House, Shops, Halwara Residential Colony, Chaudhary Hammer Factory and other commercial properties having higher value, which is not the case here.

23. This Court is conscious of the fact that it is not deciding a review application against the order dated 10.01.2002 but, at the same time, since C.P.W.D./U.O.I. were not parties to the lis culminating into the order dated 10.01.2002, the contentions raised by them, pursuant to their impleadment in the light of order of Supreme Court in S.L.Ps. filed by C.P.W.D./U.O.I., cannot be shut down or given a go by and effect of order dated 10.01.2002 on matters not decided by then or thereafter has to be seen, particularly inter se C.P.W.D./U.O.I. and tenure holders looking at all aspects involved. This is also for the reason that doctrine of merger would not apply in this case and the points that were not raised by the State of U.P. nor could it be raised by

it, cannot be restricted to be raised by the acquiring body, i.e., C.P.W.D./U.O.I.

24. The first point, therefore, is decided in favour of C.P.W.D./U.O.I. holding that the adjudication made by this Court in Ran Singh's case would not amount to merger or confirmation of this Court's judgment dated 10.01.2002 in the Supreme Court's orders, at least affecting or prejudicing any right of acquiring body, i.e. C.P.W.D./U.O.I., to get the determination of compensation as Rs.84/- per Sq. Yd. Set aside/reduced.

SECOND POINT:

“Whether the tenure holders having not raised a claim pursuant to notice issued under section 9 of the Land Acquisition Act, 1894, as it then existed, they are, at all, entitled for any amount over and above the one awarded by the S.L.A.O. in view of bar contained in section 25?”

25. Now coming to the arguments based upon Sections 9 and 25 of the Act of 1894 as existing at the time of issuance of notifications giving rise to these cases, it would be significant to note that the said aspect has remained untouched in Ran Singh's matter. It is apt to quote the said provisions for a ready reference:-

“9. Notice to persons interested- (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.”

"25. Rules as to amount of compensation- (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector."

26. It has been found in these matters that the objector in the Objection No. 4 was one Ram Kishan Pradhan, who did not object in relation to the amount of compensation, rather, he stated that there was a public rasta in certain Khasras, which should also be acquired. As regards other objections, though it is mentioned that 56 objections were filed, the Court finds that they were not in pursuance of notice issued under Section 9 of the Act, rather, the same were under Section 5-A of the Act. Scope of objections under both provisions of law is altogether different and this Court, by no stretch of imagination, can substitute objection under one statutory provision by an objection under another statutory provision, particularly when the appeal does not arise out of challenge to the acquisition made but is an appeal challenging the judgment of Reference Court. Therefore, this Court is of the view that the claimants involved in these appeals had not made any claim pursuant to notice issued under Section 9 of the Act. Even no dispute regarding service of notice has been raised before this Court. Therefore, this Court cannot ignore the rider contained in Section 25 in clear and unambiguous terms restricting the rights of such claimants to make any claim over and above the one contained in award passed by the Collector/S.L.A.O.

27. Reference to judgment of Supreme Court cited by Shri Subodh Kumar as reported in **Dadoo Yogendranath Singh and others vs. The Collector, Seoni** , 1977 (2) SCC 1, can be made

here. In paragraph No. 6 of the said judgment, Hon'ble Supreme Court held as under:-

“6. On merits, we find, in agreement with the High Court, that the District Judge was palpably wrong inasmuch as he awarded compensation at a rate far higher than what had been claimed by the appellants themselves, pursuant to the notice under Section 9 of the Act. The learned Additional District Judge acted contrary to the legislative mandate contained in Section 25 (1) of the Act, according to which, the Court "shall not award" compensation to an applicant in excess of the amount claimed by him pursuant to any notice under Section 9.”

28. On the same issue, the matter again travelled up to Supreme Court in **Gobardhan Mahto vs. State of Bihar, 1979 (4) SCC 330** in paragraph 8 whereof the Supreme Court held as under:-

“8. It is urged by the learned counsel that, at any rate, there was no justification for the High Court for reducing the compensation awarded for the well. The short answer to this contention is to be found in the provisions of Section 25 of the Land Acquisition Act. By sub-section (1) of that section, when an applicant makes a claim to compensation pursuant to a notice given to him under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed. By sub-section (2) of Section 25, when the applicant has refused to make such claim or has omitted without sufficient reason to make such claim, the amount awarded by the court shall in no case exceed that amount awarded by the Collector. It is common ground that in pursuance of the notice given under Section 9, the appellant contented himself by saying that there was a deep and wide well on the land. He did not ask for any specific amount as representing the value of the well. The learned District Judge would appear to have overlooked the

provisions of Section 25(2) and in any case, his judgment does not show that he had come to the conclusion that the appellant was prevented by any sufficient reason from making a claim for compensation in respect of the well.”

29. The Supreme Court, even earlier, in **Dilawarsab Babusab Mullasab and others vs. Special Land Acquisition Officer, 1975 (1) SCC 158**, had explained the aforesaid proposition based upon Section 25 of the Act and laid down that non-claimants would not be entitled for any compensation higher than what had been awarded by the Land Acquisition Officer. Placing reliance upon the Supreme Court’s judgment in **Dilawarsab** (supra), the Division Bench of Bombay High Court in **State of Maharashtra vs. Shanta Bai and another, AIR 1980 Bombay 36**, laid down the same proposition.

30. Shri Shailesh Upadhyay, learned counsel for tenure holders, however, has placed reliance upon the decisions of Supreme Court in **Ashok Kumar and another vs. State of Haryana, (2016) 4 SCC 544** and **Narendra Kumar and others vs. State of U.P. and others, 2017 (9) SCC 426** and he submits that Section 25 of the Act does not create a bar in award of higher compensation.

31. The Court finds that in **Ashok Kumar** (supra), the effect of non-filing of objections under Section 9 was not the matter in issue before the Supreme Court and the observation made in paragraph 10 of the report was based upon another judgment in the case of **Krishi Utpadan Mandi Samiti vs. Kanhaiya Lal and others, 2002 (7) SCC 756** observing that amended provisions of Land Acquisition Act would be applicable under which there is no restriction that award could only be upto the amount claimed

by the claimant. Similarly, in **Narendra Kumar** (supra), the matter had arisen out of notifications issued after the Land Acquisition Act had been amended w.e.f. 24.09.1984 and the Supreme Court clearly held that pre-amended provision puts a cap on the maximum, the compensation by Court should not be beyond the amount claimed and cannot be less than what was awarded by the Land Acquisition Collector. The Supreme Court also dealt with the effect of omission of cap on maximum amount by way of amendment made in the statute. With due regards to the decisions of Supreme Court in **Ashok Kumar** (supra) and **Narendra Kumar** (supra), they would be of no help to the tenure holders, inasmuch as the notifications in the instant case were issued 20 years prior to the amendment made in the Act and when Section 25 existed in the statute book. The facts of cited decisions being clearly distinguishable, with great respect, the said judgments have no application in the present case, rather they would be read against the tenure-holders.

32. In view of aforesaid discussion, this Court is of the considered view that Section 25 of the Act, as existed on the date of issuance of notifications, would operate as a statutory obstruction standing against the claimants to claim any higher compensation over and above Rs.1.90/- per Sq. Yd. as determined by the S.L.A.O. under the initial award. Further, the facts noted in the order dated 10.01.2002 based upon Anoop Singh's case and the adjudication made on all the parameters discussed in the said judgment, being totally irrelevant as far as the controversy involved in these pending appeals is concerned, this Court is of the view that C.P.W.D./U.O.I. has successfully established that no amount over and above Rs.1.90/- per Sq. Yd.

could be awarded as compensation. Second point is also, accordingly, decided in favour of C.P.W.D./U.O.I.

33. As a consequence of above discussion, following is the end result of these appeals:-

(i) First Appeal No. 388 of 2015 (Natthan Singh and others vs. State of U.P.) is dismissed.

(ii) First Appeal No. 357 of 2015 (Ganga Ram and others vs. State of U.P.) is dismissed.

(iii) First Appeal No. 1104 of 2003 (State of U.P. vs. Nathan) is allowed.

(iv) First Appeal No. 1138 of 2003 (State of U.P. vs. Ganga Ram) is allowed.

34. The initial award dated 22.09.1986 passed by the Special Land Acquisition Officer, Ghaziabad is upheld in favour of C.P.W.D./U.O.I. Judgment and order dated 30.03.1991 passed by learned Additional District Judge, Ghaziabad in L.A.R. Nos. 26 of 1987 and 29 of 1987 is set aside.

35. This Court records its all appreciation for Shri Shailesh Upadhyay, Shri Subodh Kumar and Shri Udit Chandra, learned Advocates, for very ably presenting the cases and assisting the Court in deciding these old matters arising out of acquisition made in the decade of 1960.

Order Date :- 05.12.2024
Sazia

(Kshitij Shailendra, J.)