Raghubans Narain Singh

Vs

The Uttar Pradesh Government Through Collector of Bijnor

Civil Appeal No. 82 of 1964

(K. N. Wanchoo, J. M. Shelat, G. K. Mitter JJ)

23.09.1966

JUDGMENT

SHELAT, J.

This appeal by certificate from the High Court at Allahabad involves the question as to the valuation of a piece of land belonging to the appellant and situate outside the town Nehtaur, in District Bijnor, U.P. The land admeasures 6 pucca bighas and is grove land having in all 123 trees of which a number are mango and naspati trees.

The notification under s. 4 of the Land Acquisition Act, 1 of 1894 was issued on December 22, 1945 in which it was stated that the land was being acquired for a public purpose, viz., the construction of a hostel etc., of S.N.S.M. High School at Nehtaur. Possession of the land was taken from the appellant on July 4, 1947. The Collector of Bijnor made his award under s. 11 of the Act fixing Rs. 1167-4-0 as compensation for the trees, Rs. 1050-12-0 as compensation for the land and adding 15% solatium awarded the total sum of Rs. 2218/-. A reference was thereafter made under s. 18 at the instance of the appellant to the District Judge, Bijnor. Both the appellant and the Government led oral evidence and also adduced evidence of certain specimen of exemplar sales. Besides the oral evidence, the appellant relied on two sale deeds, one dated March 20, 1926 and another dated January 5, 1934. He also led the evidence of one Syed Nisar Haider Zaidi, a Deputy Collector who had just retired and who prior to his retirement had written two letters to the appellant dated October 14, 1945 and November 20, 1945 expressing his desire to purchase the land in question with a view to build a residential house for himself so that he could live therein after his retirement. In these letters he had offered Rs. 18,000/- but that offer was not accepted by the appellant as he wanted Rs. 24,000/- as the price of the land. On behalf of the Government also reliance was placed on three specimen sales being Exhibits A1, A2 and A3. The evidence disclosed that the land acquired was at a distance of about 2 furlongs from the town Nehtaur which at that time had a population of about 18,000 souls. The land abuts on the main road from Moradabad to Bijnor and is next to the said school. Nearby is a fairly large size pond. The evidence of Murari Singh, one of the witnesses examined by the Government, was that besides the appellant's grove there were some other groves nearby on the other side of the road, that the town was a growing town in the sense that electricity was available, there was a branch of the Bharat Bank and there were 5 or 6 mills and a crusher working in the town since the last few years. The mills referred to by the witness obviously must be some small scale industries. The witness however stated that only 2 or 4 new houses had been constructed in the town during the last about 10 years though one more school had been opened in the town about 3 years ago. As against his evidence there was some evidence, that some houses were constructed in the grove lands nearby. But there was no evidence to show that there was any building activity nearby of any substantial nature or that there was any

definite trend of development in the direction of the acquired land. As regards the income from the land there was the evidence of Pushkar Nath that the fruit trees grown in the land yielded approximately an annual income of Rs. 500/-, about 49 mango and naspati trees being fruit bearing at that time. It appears that the grove had been laid only about two or three years ago. But the evidence of the Village Patwari clearly disclosed that the grove would yield about Rs. 1,000/- a year when all the trees started bearing fruits. Besides the income from the trees the land also yielded an income of about Rs. 200/- a year by way of sale of Bind pullas.

The District Judge discarded the evidence of specimen sales produced by both the sides as being of no assistance for the reasons stated by him. It is not necessary to examine those reasons as there is no dispute that he was right in rejecting them and the High Court also agreed with him that that evidence was of no help in arriving at the correct valuation. The District Judge, however, was impressed with the evidence of witness Zaidi and accepting the offer conveyed by him as genuine and bona fide held on the basis of that offer that the value of the land could be safely assessed at Rs. 18,000/-; and adding to that sum the solatium at 15% he awarded Rs. 22,700/- as compensation. He also held that the appellant was entitled to interest under s. 28 but allowed interest at 3% per annum observing that since the acquisition was for an educational institution, interest at that rate was proper.

Against the said judgment and order the Government filed an appeal before the High Court at Allahabad and the appellant also filed his cross-objections. As already stated the High Court agreed with the District Judge that the evidence of specimen sales was of no assistance. But regarding the evidence of witness Zaidi it commented as follows :-

> "It is not possible for us to say as to whether the approach made by Syed Nisar Haider Zaidi was a genuine one or not; but even if we take it to have been a genuine approach there can be no doubt that the price that he was going to offer was a price which he fixed because of the peculiar circumstances in which he was placed the circumstances having been that he was, upon retirement, desirous of going back to his native place and to take up residence there and to build a house outside the populated area. The price which such an exceptional purchaser is going to offer will not afford a true test about the value of the property."

Having thus rejected the evidence of the specimen sales and also the offer evidence of witness Zaidi the High Court fell back on the net annual income from the land which it estimated at Rs. 650/- and multiplying it by 20 fixed the value of land at Rs. 13,000/-. Adding to that figure the solatium at 15%, the High Court awarded in all Rs. 15,000/-. As regards interest the High Court rejected the appellant's contention that he was entitled to interest at the rate of 6% per annum on two grounds : (1) that the question as to the rate of interest was not specifically raised in his cross-objections and (2) that s. 28 was discretionary, and therefore the District Judge could fix the rate of interest up to 6% per annum and that it was not incumbent upon the court to award interest at 6% per annum as contended by the appellant. The appellant has challenged in this appeal the correctness of the judgment and the order of the High Court both on the question of valuation and the rate of interest.

The first contention raised on behalf of the appellant is that the High Court's Judgment suffered from an infirmity in that it failed to take into account the potential value of the land as a building site in view of the evidence as to the town's recent development. This contention, in our view, has no substance. Market value on the basis of which compensation is payable under s. 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due

regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. As observed in South Eastern Rail Co. v. L.C.C ([1915] 2 Ch. 252.).

> "The value to be ascertained is the price to be paid for the land with all its potentialities, and with all the use made of it by the vendor."

Dealing with the doctrine of potential value this Court in N.B. Jeejabhoy v. The District Collector, Thana (C.A. Nos. 313 to 315 of 1965, decided, Aug. 30, 1965.) observed as follows :-

> "A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value, but the objective factor namely, whether the said potentiality can be turned to account within a reasonably near future..... The question therefore turns upon the facts of each case. In the context of building potentiality many questions will have to be asked and answered : whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution."

It is clear that there is no evidence on record of any building activity of a substantial nature being carried on in the neighbourhood of the acquired land at about the time when the notification was issued in 1945. There is equally no evidence of any trend of development of the town in the direction of the acquired land. The only evidence was as to the existence of the school nearby, of the land abutting on the road and of some houses having been built on the opposite side of the road in some of the grove lands. Such evidence however would not constitute an ascertainable trend of development of the town in the direction of the acquired land or of any active building activity nearby. Clearly, therefore, no question of the valuation having to be made on the basis of the potentiality of the land as building site can possibly arise. The contention of Mr. Mishra in this regard therefore must be rejected.

But the next contention urged by him is a substantial one and requires consideration. He argued that the High Court fell into error in rejecting the evidence of witness Zaidi accepted as reliable by the District Judge and in substituting that finding by its own estimate of the annual income derived from the land. The evidence of witness Zaidi being the evidence of an offer made by him cannot of course be equated in importance with the evidence of proper specimen sales of properties in the neighbourhood. Obviously an offer does not come within the category of sales and purchases but nonetheless if a person who had made an offer himself gives evidence such evidence is relevant in that it is evidence that in his opinion the land was of a certain value. But the evidence that the owner refused an offer so made amounts to this only that in his opinion his land was worth more than the figure of value named or that the offer was for some other reason such that he was not willing to accept. (cf. Government of Bombay v. Merwanji Muncherji (10 Bom. L.R. 907.). It has also been held that an agreement to sell is a relevant matter and can be used in relation to fixing the value of

the acquired land. (cf. Governor-General in Council v. Ghiasuddin) (3 P.L.R. 212.). There can however be no doubt that apart from Zaidi's offer being relevant it was not an offer similar to an offer made by an irresponsible broker as commented in Government of Bombay v. Merwanji Muncherji (10 Bom. L.R. 907.). There is nothing also to show that he or the appellant knew that a notification for acquisition was about to be issued or that he colluded with the appellant to fabricate evidence of an offer to enable the appellant to get better compensation. There is not even a faint suggestion in the cross-examination on behalf of the Government that his offer was not genuine or that it was irresponsible. What is more significant is that no suggestion was made in his cross-examination that the offer was excessive or that it was not bona fide or that he had made it without properly considering it or without regard to the situation and the suitability of the land. There was therefore no justification in the remark made by the High Court that it could not be said whether his offer was genuine or not. The District Judge accepted it as genuine and if the High Court did not agree with his assessment of his evidence it ought to have given reasons for such disagreement. It is impossible thus to treat the evidence of Zaidi either as unacceptable or irrelevant. The second criticism by the High Court of Zaidi's evidence that his offer was made in exceptional circumstances and therefore cannot be regarded as one of a willing prospective purchaser is also not correct. At the time when Zaidi made his offer he was about to retire. He wanted to retire in his native place and desired to have a house which would be situate outside the town. His offer was for a grove-land with plenty of trees some of which were already bearing fruits and the rest were likely to yield fruit in the near future. The land abutted on the road, was next to the school and some houses had already been built on the other side of the road. In these circumstances it is difficult to appreciate why the High Court thought that the offer was not of a willing prospective buyer. There were other groves nearby and Zaidi had therefore an opportunity to select, if he wanted to, there being nothing to show that the owners of the other such lands were not willing on sell. Probably he selected this land because it was situated next to the school and abutted on the road. In view of these facts it is difficult to see how the High Court came to the conclusion that he made the said offer in special circumstances, agreeing to purchase the land under compulsion or stress of circumstances. Since his evidence was not challenged either on the ground that his offer was not bona fide or that he offered to buy under compulsion or under any special circumstances there was no valid reason why the High Court should have refused to accept the appreciation of his evidence by the District Judge and resort to a method of valuation not always adequate, viz., the annual crop value. Such a method of valuation is not adequate at least for two reasons : (1) that the owner may not have so far put his property to its best use or in the most lucrative manner and (2) in a case like the present the grove had not yet started giving the maximum yield. Such a method of valuation by ascertaining the annual value of the produce can and should be resorted to only when no other alternative method is available. We are of the view that the District Judge was right in accepting the evidence of Zaidi and in treating his offer as one of a willing prospective purchaser. The valuation made by the District Judge rested on a better footing in the circumstances on the case and ought to have been accepted by the High Court.

On the question of interest, Mr. Mishra contended that under section 28 neither the District Judge nor the High Court had any discretion in allowing interest at a rate less than 6%. He argued that this question being purely one of construction and not depending on any finding of fact even though the question was not specifically raised in the appellant's cross-objections before the High Court the High Court ought to have allowed interest at 6%. Mr. Karkhanis, on the other hand, argued that what section 28 does is to provide for a ceiling of the rate of interest. And even if that is not so, since the section confers discretion on the court to grant or not to grant interest that discretion impliedly means that even where the court grants interest it can do so at any rate up to 6%. The

contention so put forward resolves itself into two questions : (1) whether in the absence of a specific objection as to interest in the appellant's cross-objections the High Court ought to have gone into that question and (2) whether on a proper interpretation of section 28 the Court has a discretion to grant interest at a rate less than 6%. The first point would not create any difficulty in the way of the appellant because the High Court did in fact go into the question of interest even though it was not specifically taken in the cross-objections and decided the question also on interpretation of section 28. Besides, the question is purely one of law and as Lord Watson said in Connecticut Fire Insurance Co., v. Kavanagh ([1892] A.C. 473.).

> "When a question of law is raised for the first time in a court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea."

Section 28 reads as follows :-

> "If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum" etc.

In its plain language the discretion that is conferred on the Court is whether in the given circumstances of a particular case the court should award interest or not. The words "may direct" mean that it is discretionary on the part of the court to grant or refuse to grant interest. But the words following those words, viz., "the Collector shall pay interest on such excess at the rate of six per centum per annum" would mean that once the discretion to grant interest is exercised there is no further discretion and the interest if awarded has to be at the rate of six per centum per annum. This also appears to be the construction of s. 28 so far understood. It is because the section leaves no discretion as regards the rate of interest that the Central Provinces Act XVII of 1939 by section 2 provides that the rate of interest shall be at a rate which shall be not less than 3% per annum and not more than 6% per annum in place of the words "at the rate of six per centum per annum" in section 28. Some of the other State legislatures such as Madras, Gujarat, Maharashtra and Punjab have instead of using the above-mentioned phraseology substituted 6% in s. 28 by "4% per annum". The result of these amendments is that whereas in the case of the Central Provinces (now Madhya Pradesh) the Court has a discretion to grant interest at anything between three to six per cent, in the case of the other States the court has to award interest at the rate of 4%. We are told that no such amendment has been carried out in U.P. The consequence is that section 28 as it stands must apply and therefore where the court exercises its discretion and grants interest the interest has to be at the rate of 6%. The construction which we are inclined to place on section 28 is to a certain extent supported by the same expression used in section 34 which also deals with interest and which provides that when the amount of compensation is neither paid nor deposited before taking possession of the acquired land "the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum" etc. It is a well-settled rule of construction that where the legislature uses the same expression in the same statute at two places or more the same interpretation should be given to that expression unless the context requires otherwise. That being so, there is nothing wrong in permitting the appellant to raise the point as to the rate of interest as that question depends only upon the construction of section 28. In the view that we have taken as to the interpretation of section 28 Mr. Mishra must also succeed on this question.

In the result, the appeal must be allowed and the judgment and order passed by the High Court set aside. The judgment and order of the District Judge by which he fixed the compensation at Rs. 20,700/- including solatium at the rate of 15% is restored. But we direct that the interest on the excess amount of Rs. 18,482/- should be paid to the appellant at the rate of six per cent per annum from July 4, 1947 up to the time of payment. The respondent, will pay to the appellant his costs throughout.

R.K.P.S.

Appeal allowed.

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