Smt. Tribeni Devi and Others

Vs

Collector of Ranchi and Vice Versa

Civil Appeals Nos. 661 and 1380 of 1967, and 1885-1886 of 1967

(K. S. Hegde, P. Jagmohan Reddy, K. K. Mathew JJ)

25.01.1972

JUDGMENT

JAGANMOHAN REEDY, J. -

1. These appeals are by certificate against the judgment of the Patna High Court in land acquisition appeals. Two notifications, dated July 7, 1954, under Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894), (hereinafter called 'the Act'), were issued one in respect of a portion of Plot Nos. 178 and 1784 admeasuring 2.65 acres and the other in respect of the whole of the Plot No. 1783 admeasuring 2 acres situated in Ward No. 3 of Ranchi Municipality. Section 6, notification in respect of these lands was published on September 7, 1954 and possession was taken on September 23, 1954 under Section 17(1) after making a declaration under Section 17(4) that the provisions of Section 5-A shall not apply. The Collector awarded compensation of Rs. 1,20,419-6-11 in respect of the first acquisition and Rs. 47,648-13-6 in respect of the second. Thereafter, at the instance of the claimant, a reference under Section 18 of the Act was made to the Judicial Commissioner of Chhota Nagpur, Ranchi, who, while maintaining the market-value of the land, awarded by the Collector, gave further compensation for severance at the rate of 5% and 10% in respect of potential value of the land. The Judicial Commissioner, however, did not grant the 15% solatium under Section 23(2) of the Act. Being dissatisfied, the claimants preferred appeals to the High Court. The High Court revised the compensation and awarded Rs. 90,000/- per acre and 15% as solatium on the market-value under Section 23(2) of the Act but did not grant them the 5% towards severance. Interest at 6% per annum on the amount of enhanced compensation from September 23, 1954, together with costs was also decreed. Against the judgment and decree, the claimants have filed Civil Appeals 661 and 1380/67, while the State has filed Civil Appeals 1885-86/67.

2. The lands in question which have been acquired were earlier leased on September 22, 1944 to the Military authorities on a rent of Rs. 600/- per month for a period of 6 months under a registered lease deed with option to renew for a maximum period of 10 years which period expired on September 21, 1954. One of the conditions of the lease was that on the termination of the lease, the lessor would exercise the option given under the lease to purchase all buildings, structures, gardens and any other structures constructed by the lessee during their occupation of the leased property, at 75% of the valuation that would be determined by the Superintending Engineer, Chhota Nagpur Circle, and in case the lessors refused to purchase, the lessee was entitled to dismantle and take away the materials. Towards the end of the lease period, the Government of Bihar decided to acquire the property for the State Soldiers, Sailors and Airmen's Board and initiated proceedings as aforesaid.

3. In these appeals the only question that has to be determined is : What is the market-value of the

property as on the date of Section 4 notification ? In the valuation report given by the Land Acquisition Officer, Ranchi, Ext. 1, the principle of capitalisation on the basis of 20 times the annual rental of Rs. 7,200/- at the rate of Rs. 600/- p.m. was adopted as the price of the lands. In that report it was also pointed out that the sale price of 1.085 acres out of the premises of the Ranchi Club as per register saledeed, Ex. G-1, dated April 1, 1953, was Rs. 41.470/- per acre, which was not fair. Apart from these 25 other sale transactions in respect of portions of Plot No. 1789 between 1952 and 1953 were also referred in that report. Some of those lands were situated opposite to the Ranchi Club and the sale price came to Rs. 1,092/- per katha, which is about Rs. 60,000/- per acre. It was further pointed out that some other lands a little further away from the main road but belonging to the same Plot No. 1789 were sold at the rates between Rs. 250/- to Rs. 800/- per katha. This report formed the basis of the award made by the Collector. The High Court took judicial notice, and in our view rightly so, that after the termination of the Second World War in 1945 there was a rise in land values due to the increased demand of homestead lands for building purposes. It also considered various sale-deeds produced and proved on behalf of the claimants along with the oral evidence to determine the market-value of the land. The objections from both the appellant and the respondent were taken into account in respect of each of these and most of them were considered as not furnishing a proper or adequate valuation either having regard to the distance of the lands which were the subject-matter of the sale or the inadequacy of the information pertaining thereto. The High Court, however, adopted the price in the sale-deed Ex. C-1 executed on May 6, 1953 by the Ranchi Club Ltd., in favour of the President of India in respect of 1.085 acres 3 bighas 5 kathas 10 chhataks in Plot No. 1221 for Rs. 45,000/- as the basis for arriving at the market-value of the acquired land. Though the land in question was situated on the main Ranchi-Chaibasa Road, a strong objection was taken against adopting the price as a basis because it was not only 1/2 mile away from the land under acquisition but what was sold was only the lease-hold right in the land. These objections were rejected on the ground that for all practical purposes the interest that was held or sold by the Ranchi Club under Ex. C-1 was not inferior to an absolute title. The area of the land, the subject-matter of the sale, was considered to be fairly large being more than 1 acre and the situation was also the same as the land under acquisition except that it was further away from it. In these circumstances, the High Court thought, after a proper allowance is made for the difference in distance, the transaction yields a more acceptable guide for determining the market-value of the land under acquisition and accordingly, it adopted twice the price as charged for the land in Ext. C-1 as indicating a fair market value of the land in question. The High Court further added Rs. 7,060/- per acre as the difference between tenure rights and lease-hold rights that were held by the President of India and awarded Rs. 90,000/- per acre. This, it did notwithstanding the fact that it was conscious that there was no definite date for the two additions that have been made, because in its view, in cases of this nature a certain amount of estimate has to be made which may even be arbitrary. Accordingly, it awarded compensation for the 4.65 acres of land which was acquired by the Government at Rs. 90,000/- per acre together with 15% solatium payable under clause (2) of Section 23 of the Act. 5% compensation for severance of land from the claimants' other portion of the land that remained with them after acquisition, which was awarded by the Judicial Commissioner, Chhota Nagpur, was disallowed on the ground that there was an entrance to the back portion of the land which was left with the owners and also because there was no evidence to show that in fact there had been any depreciation in the value of the remaining area and if so, to what extent. On the other hand, it maintained the 10% on the market-value of the land awarded by the Land Acquisition Court on account of the increase in the potentialities of the land. The basis adopted by the High Court is challenged on the ground that they are contrary to the well established principles applicable for determining the value of lands acquired under the Act.

4. The general principles for determining compensation have been set out in Section 23 and 24 of the Act. The compensation payable to the owner of the land is the market-value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensations is bound to make an estimated judged by the objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration under Section 4 of the Act but its potential value also must be taken into account. The sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market-value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method. This Court had in Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty, [1959 Supp 1 SCR 404 : AIR 1959 SC 429 : 1959 SCJ 431 : 1959 Cr LJ 526] indicated at page 412 the methods of valuation to be adopted in ascertaining the market-value of the land on the date of the notification under Section 4(1) which are : (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible an estimate of the market-value. In arriving at a reasonably correct market-value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have material from which that valuation can be accurately determined.

5. Bearing these principles in mind, we do not think that the High Court was justified in adopting the registered sale-deed, Ext. C-1 executed by the Ranchi Club, in favour of the President of India, because that land is further away not only from the land acquired but from the town though it is on the main Ranchi-Chaibasa Road. Even the High Court recognised that there was no definite date for the two additions that have been made and in our view it would not be a proper method of ascertaining the value of the land acquired. The only two documents that may be considered are Ext. 10 and Ext. 11 which are in respect of the lands situated in the vicinity and on either side of the land acquired. The other sale-deeds are of smaller areas and do not furnish a proper basis for ascertaining the market-value and have been quite properly not relied upon by the learned advocate for the claimants. The annual rental value of the land acquired, namely, Rs. 7,200/- will also not furnish a proper method of computation because that was a rent fixed in 1944, when that land was not of such great value as it had acquired at the time when Section 4 notification was issued. A perusal of the correspondence between the owners of the land and the Deputy Commissioner of Ranchi would show that the land-owners had given it at concessional rate to the Military authorities having regard to the purpose for which it was being put to use. On behalf of the claimants great reliance is placed on Ext. 11 which is a sale-deed executed on December 16, 1946 by the claimants to the Ranchi Automobiles of an area of 1 bigha 17 kathas equal to. 617 acres for Rs. 1,45,000/-. After deducting Rs. 15,403/- the price of the structures according to the Engineer's report in 1959 (Ext. 25), the net value of the land is Rs. 1,29,697/-. This value would work out to Rs. 2,08,135.70 per acre. The High Court rejected this computation on the ground that though the land was contiguous to the land under acquisition, neither the value of the pump and the other structures belonging to Burmah Shell nor the value of the structures that might have been on the land on the date of the sale which were built

by the vendees as lessees could be ascertained either from the sale-deed or the evidence. Ext. 10 is a lease in respect of 1/3 acre granted by the owners to Thakur Chandra Bali Shah and others executed on February 20, 1950, on a monthly rent of Rs. 157/-. The High Court calculated the monthly rental of the land under acquisition at that rate to be not less than Rs. 2,000/- per month or Rs. 24,000/- per year. On the basis of 20 times the annual rent it computed Rs. 4,80,000/- as the market-value which works out at Rs. 1,03,226/- per acre. It is, however, pointed out on behalf of the claimants that the High Court made a mistake in thinking that the rent for the land leased under Ext. 10 was Rs. 157/- p.m. and on that basis it calculated the annual rental value of 4.65 acres of the acquired land. We have checked the figures from the original lease and find that in fact the rent is Rs. 175/- and not Rs. 157/-. On this basis the rent per acre of 20 times annual rental value would come to Rs. 1,26,000/-. Even if Ext. 11 is to be taken as the basis and the value of the structures as given by the Engineer in Ext. 25 is to be accepted that cannot furnish a proper basis because the land in question is a small area of .617 acres or just over 1/2 an acre. A smaller area such as this on a main road would certainly fetch a higher price compared to a larger undeveloped area even though it may have a frontage on the main road. In order to develop that area atleast the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities. On this basis, the value of the land at Rs. 2.08,135.70 per acre would, after deduction of 1/3, come to Rs. 1,38,757/- per acre. On the basis of the rental of Rs. 175/- p.m. in Ext. 10, the value at 20 times the rental will work out as already seen at Rs. 1,26,000/-. Allowing for an increase in rents from 1950 to 1954, the date of Section 4 notification, say at 5% the value per acre may be Rs. 1,33,000/- or thereabout. If we taken the average of Ext. 10 and Ext. 11 as computed by us the value per acre would come to about Rs. 1,35,878/-. In our view, Rs. 1,35,000/- per acre would be a reasonable rate at which compensation could be awarded to the claimants. The High Court was not justified in giving 10% towards potential value because that element is inherent in the fixation of the market-value of the land and could not be assessed separately. The High Court was also not justified in disallowing 5% awarded by the Judicial Commissioner, Chhota Nagpur as compensation for severance merely because there was an entrance to the land. When a portion of the land is acquired and a large portion left out there would be a diminution in the value of the land that is left out for which some compensation has to be allowed. The 5% allowed by the Judicial Commissioner, Chhota Nagpur is reasonable. In this view, the claimants would be entitled to a decree as follows in respect of the lands acquired :

(1) At the rate of Rs. 1,35,000/- per acre for 4.65 acres;

(2) 5% severance and 15% solatium on the market-value computed as in (1);

(3) Interest at 6% from the data of taking possession.

6. The appeals of the claimants are allowed to the extent of the variation and those by the Government are dismissed with costs. The claimants will be entitled to proportionate costs on the difference between the amounts decreed and those that are now awarded in each of the two appeals filed by them.

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