

Union of India

Vs

Shri Ram Mehar and Others

Civil Appeal No. 1014 of 1971

(C. A. Vaidialingam, H. R. Khanna, Y. V. Chandrachud JJ)

(A. N. Grover, K. K. Mathew, A. K. Mukherjea JJ)

(J. M. Shelat, I. D. Dua, Y. V. Chandrachud JJ)

(A. N. Ray, D. G. Palekar, S. N. Dwivedi JJ)

(I. D. Dua, K. Jayachandra Reddy JJ)

(H. R. Khanna, K. K. Mathew JJ)

26.10.972

JUDGMENT

GROVER, J. -

1. The sole point for determination in this appeal by special leave from a judgment of the Delhi High Court relates to the true meaning and construction of the expression "market value" employed in Section 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967, hereinafter called the "Amending Act".

2. The facts may be briefly stated. By a notification, dated October 24, 1961, issued under Section 4 of the Land Acquisition Act, 1894, hereinafter called the 'principal Act' certain land in the revenue estate of Shakurpur was sought to be acquired. The land Acquisition Collector gave an award, dated March 1, 1967, fixing compensation at the rate of Rs. 3,500/- per Bigha. The respondents being dissatisfied with the award applied for a reference under Section 18 of the principal Act claiming enhancement in compensation. The Additional District Judge held that the market value of the Land on the relevant date was Rs. 5,000/- per Bigha and the claimants were entitled to enhancement at the rate of 1,500/- per Bigha. He also directed that interest should be awarded at 6% per annum on the market value of the land from October 24, 1964 till the date of tender of the payment of the amount awarded by the Collector. This was in view of Section 4(3) of the Amending Act since the date of the notification under Section 6 of the Principal Act was August 16, 1966 which was more than three years from the date of the notification under Section 4 of the Principal Act. He also awarded interest on the enhanced amount from the date of dispossession till the date of payment of the amount in court. The Union of Indian filed an appeal to the Delhi High Court. No dispute was raised with regarded to the interest awarded under Section 28 of the principal Act. The controversy was confined only to the question of interest under Section 4(3) of the Amending Act. In view of a previous decision of the Delhi High Court in Union of India v. Nathu, (RFA 101 of 1968, decided on 21-12-1968) a learned single Judge dismissed the appeal.

3. Before us the correctness of the decision of the Division Bench mentioned above on the interpretation of Section 4(3) of the Amending Act particularly with reference to the true meaning of the expression "market value" has been challenged.

4. It is necessary to refer to the provisions of the principal Act and the Amending Act to the extent they are material and relevant for the purpose of this appeal. Clause (a) of Section 3 of the principal Act defines the expression "land" as including benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. Section 4 of the that Act provided for publication of preliminary notification. Section 5-A provides for hearing of objections and Section 6 for declaration of intended acquisition. Section 6(1) provides, inter alia, that subject to the provisions of Part VII of the principal Act when the appropriate Government is satisfied, after considering the report, if any, made under Section 5(A), sub-section (2) that any particular land is needed for a public purpose or for a company a declaration shall be made to that effect. In that sub-section the following was inserted by Section 3 of the Amending Act :

"And different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2)."

In place of the proviso the following proviso was substitute :

"Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1) published after the commencement of the land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication."

Section 4 of the Amending Act is as follows :

"4 Validation of certain acquisitions.

#(1) .....(2) .....##

(3) Where acquisition of any particular land covered by a notification under sub-section (1) of Section 4 of the principal Act, published before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, is or has been made in pursuance of any declaration under Section 6 of the principal Act, whether made before or after such commencement, and such declaration is or has been made after the expiry of three years from the date of publication of such notification, there shall be paid simple interest, calculated at the rate of six per centum per annum on the market value of such land, as determined under Section 23 of the principal Act, from the date of expiry of the said period of three years to the date of tender of payment of compensation awarded by the Collector for the acquisition of such land :

#Provided .....###

Section 11 of the principal Act provides for inquiry and award by the Collector. The award has to include the compensation which, in the opinion of the Collector, should be allowed for the land. Section 18 enables any person interested who has not accepted the award of the Collector to make a written application to him requiring

him to refer the matter for the determination of the court when his objection relates to the amount of compensation apart from other matters. Section 23 of the principal Act must be reproduced in its entirety.

Section 23 "(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -

First. - the market value of the land at the date of the publication of the notification under Section 4, sub-section (1).

Secondly. - the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof.

Thirdly. - the damage (if any), sustained by the person, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

Fourthly. - the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earning;

Fifthly. - if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any), incidental to such change; and

Sixthly. - the change (if any), bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen percentum on such market value in consideration of the compulsory nature of the acquisition".

Sections 28 and 34 of the principal Act provided for payment of interest on the excess amount of compensation as directed by the court and when the amount of compensation is not paid or deposited on or before taking possession of the land.

5. In the case decided by the Division Bench of the Delhi High Court one of the main points which arose was whether the market value on which interest has to be awarded in the circumstances mentioned in Section 4(3) of the Amending Act would include the statutory charge of 15% on that market value as provided for by Section 23(2) of the principal Act. The decision of the Division Bench on this point was as follows :

"It therefore appears to us that while dealing with the question of market value of the land the statutory charge of 15% on such market value as provided for in sub-section (2) of Section 23 has got to be added to the market value of the land, although it may still be regarded as an additional charge to the market value of the land. The addition of this amount to the market value of the land as defined in Section 3(a) of the principal Act, is therefore a part of the market value of the land 'as determined under

Section 23 of the principal Act'. Mentioned in sub-section (3) of Section 4 of the validating Act, 1967. Section 23 is wide away to not any to include the 'market value' of the land as defined in Section 3(a) of the Act but also the additional 15% under sub-section (2) of Section 23 which by all accounts, becomes a part of the market value of the land. Without that addition there can be no determination of the market value of the land as 'under Section 23 of the principal Act'."

The Division Bench of the High Court thus came to the conclusion that interest was payable under Section 4(3) of the Amending Act not only on the market value of the land as determined under Section 23(1) but also on the additional amount of 15% payable on such market value under sub-section (2) of that section. This additional payment is popularly called the "solatium". On behalf of the Union of India the correctness of the view of the Delhi High Court has been strongly assailed. It has been urged by the learned Solicitor General that market value cannot possibly include the value of the land. It is an additional amount which the court has to award in every case on the market value in consideration of the compulsory nature of the acquisition.

6. High Court relied on certain decisions of different High Courts which turn on what was included in the expression "land" as defined in Section 3(a) of the principal Act and for determining the market value of all those things that fall within that expression. The High Court appears to have read those judgments in a way which would justify the conclusion that the word "market value" as used in sub-section (2) of the Section 23 of the principal Act was not confined only to the market value mentioned in Section 23(1) "first" but it also included the various items which have to be taken into consideration and which are covered by clauses "secondly" to "sixthly" in Section 23(1). This Court had occasion in *Chaturbhuj Panda & Others v. The Collector, Raigarh*, ((1969) 1 SCR 412 : AIR 1969 SC 255 : (1969) 1 SCJ 344) to consider the question whether the value of trees standing on the land was to be added to the market value of the land for the purpose of the addition of 15% solatium. Referring to some of the judgments on which the High Court relied i.e., *Sub-Collector of Godavari v. Saragam* (ILR 30 Mad 151), and *Krishna Rai v. The Secretary of State of India in Council*, (ILR 42 All 555) it was observed that the law laid down by these cases was correct but the question which was considered by this Court was confined only to the point whether the value of trees was to be included in the market value for the purpose of awarding the 15% solatium. This court held that the statutory allowance under Section 23(2) had to be given on the value of the trees because under Section 3(a) of the principal Act the expression "land" includes benefits to arise out of land and things attached to the earth. In other words the decision rested on the meaning of the expression "land" and not on the fact that clause "secondly" in Section 23(1) refers to the damage sustained by reason of taking any trees which may be on the land. It is altogether unnecessary in the present case to determine the question whether the market value on which 15% solatium is to be awarded by the court would include the various items given in clause "Secondly" to "sixthly" in Section 23(1) of the principal Act. What we are concerned with is whether the expression "market value" in Section 4(3) of the Amending Act will take in the additional amount of 15% which is to be awarded on the market value of the land acquired under Section 23(2) of the principal Act. We can find no warrant for the view which appealed to the High Court that market value would consist of not only the market value of the land but also the 15% solatium which is to be granted under Section 23(2) in consideration of the compulsory nature of acquisition. The additional amount of 15% certainly forms part of the amount of compensation because under Section 23 the compensation to is consist of what is provided for in sub-section (1) and the additional amount of 15% on the market value of the land acquired. But compensation and market value are distinct expressions and have been used as such in the Acquisition Act. It is not possible for anyone to contend that solatium falls within the expression "land" within the meaning of Section 3(a) of the

Principal Act. Since under Section 4(3) of the Amending Act it is only the market value of land on which interest has to be paid solatium cannot form part of the market value of the land. In the well known decision of the Privy Council in *Raja Vyrigherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam*, (66 IA 104) it was laid down that market value is the price which a willing vendor might reasonably expect to obtain from a willing purchaser. Disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded and both must be treated as persons dealing in the matter at arms length and without compulsion. It is somewhat interesting that the Law Commission of India in its report submitted in 1957 on the need for reform in the law of land acquisition observed :

"We are not also in favour of omitting Section 23(2) so as to exclude solatium of 15% for the compulsory nature of the acquisition. It is not enough for a person to get the market value of the land as compensation in order to place himself in a position similar to that which he could have occupied had there been no acquisition; he may have to spend a considerable further amount for putting himself in the same position as before ..... As pointed out by Fitzgerald the community has no right to enrich itself by deliberately taking away the property of any of its members in such circumstances without providing adequate compensation for it. This principle has been in force in India ever since the Act 1870. The Select Committee which examined the Bill of 1893 did not think it necessary to omit the provision but on the other hand transferred it to Section 23."

7. It seems to us that the term "market value" has acquired a definite connotation by judicial decisions. Any addition to the value of the land to the owner whose land is compulsorily acquired which addition is the result of such factors as are unrelated to the open market cannot be regarded as a part of the market value. It is significant and has been noticed at an earlier stage also that according to the other sections which appear in the principal Act interest is payable on such amount which is either a part of compensation or is the total compensation which is payable itself. If market value and compensation were intended by the legislature to have the same meaning it is difficult to comprehend why the word "compensation" in Section 28 and 34 and not "market value" was used. The key to the meaning of the word "compensation" is to be found in Section 23(1) and that consists (a) of the market value of the land and (b) the sum of 15% on such market value which is stated to be the consideration for the compulsory nature of the acquisition. Market value is therefore only one of the components in the determination of the amount of compensation. If the Legislature has used the word "market value" in Section 4(3) of the Amending Act of 1967 it must be held that it was done deliberately and what was intended was that interest should be payable on the market value of the land and not on the amount of compensation otherwise there was no reason why the Parliament should not have employed the word "compensation" in the aforesaid provision of the Amending Act.

8. For the reasons given above we are unable to accept the view of the High Court that market value in Section 4(3) of the Amending Act means the same thing as compensation and includes the amount of 15% payable under Section 23(2) on the market value of the land. This appeal, therefore, succeeds to the extent that the amount awarded to the claimants shall be computed in accordance with our decision. In all other respects the appeal is dismissed. The parties are left to bear their own costs in this Court.

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