

Assam Railways & Trading Co. Ltd.

Vs

The Collector of Lakhimpur and Another

Civil Appeal No. 1247 of 1968

(A.C. Gupta, Jaswant Singh JJ)

25.03.1976

JUDGMENT

GUPTA, J. -

1. This appeal by certificate granted by the High Court of Assam and Nagaland arises out of a proceeding under the Land Acquisition Act for the acquisition of an area of land belonging to the appellant company (hereinafter referred to as the company) measuring 61 bighas 1 katha and 7 lechas in village Khalihamari, mouza Dibrugarh, in district Lakhimpur.

Before the acquisition proceedings started, the Assam Railway had been negotiating with the company for purchase of the land and it appears from the correspondence on record that the railway was prepared to pay Rs. 2500 per bigha for the land. However, the transaction was not completed as the Executive Engineer, Assam Railway, at Dibrugarh pointed out that under the State Railway Rules land from private parties could be acquired only by acquisition proceedings. Proceedings for acquisition of the land started on October 17, 1951 when the notification under Section 4 of the Land Acquisition Act was published. In the meantime, the Sub-Deputy Collector, Dibrugarh, who was deputed to find out the market value of the land, assessed the value at Rs. 1000 per bigha. After the railway authorities came to know of this estimate, the Chief Administrative officer of the railway wrote to the General Manager of the company on October 27, 1951 saying that although before the acquisition proceedings started the railway had agreed to pay Rs. 2,500 per bigha, in view of the estimate submitted by the Sub-Deputy Collector, the railway was not agreeable to pay such a high price. This letter was followed by another written on January 7, 1952, in which the Chief Administrative Officer referred to the "gentleman's agreement" about the price, adding that "as a government concern", they had to "observe certain rules" and that it was "quite impossible" in the circumstances to agree to the price of Rs. 2500 per bigha. On September 7, 1955 the Collector made his award allowing compensation at the rate of Rs. 1000 per bigha plus 15 per cent of the amount as additional compensation under Section 23(2). The company being dissatisfied with the award applied for a reference under Section 18 of the Act. The Additional District Judge, Dibrugarh, who heard the reference rejected the same and affirmed the Collector's award, The company preferred and appeal to the High Court from the decision of the Additional District Judge, The High Court dismissed the appeal by its judgment dated March 13, 1964, but granted a certificate under Article 133(1)(a) of the Constitution.

2. Mr. Sanghi for the respondents took a preliminary objection that the certificate granted by the High Court ought to be cancelled as it did not disclose any reason. Undoubtedly the certificate suffers from this infirmity, but, having regard to the questions involved in the case which Mr. S. T. Desai for the appellant indicated to us, we thought that the case required consideration and heard the

appeal treating it as one by special leave.

3. It appears that in the High Court it was contended on behalf of the company that there was a binding contract between the company and the railway for sale of the land at Rs. 2500 per bigha and that, if it was found that there was not such binding contract, there was at least a "gentleman's agreement" regarding the price which indicated what a willing purchaser was ready to pay for the land. If this claim was found untenable, the alternative contention was that the market price of the land should be determined by capitalizing its rental value for twenty years. That there was an agreement between the parties about the price is not disputed, whether this amounted to a concluded contract does not seem to us a question that is required to be decided in this appeal. Assuming this was an agreement which bound the parties, the Collector had still the jurisdiction to determine the market value of the land. In *Fort Press Company Ltd. v. Municipal Corporation of the City of Bombay* (49 IA 331 : AIR 1942 PC 365) the Privy Council held that an agreement between the parties as to the price does not interfere with the jurisdiction of the Collector under the Land Acquisition Act. Their Lordships observed :

It may be a very unusual thing that he (Collector) should proceed to determine what in his view the price should be, after he had evidence of a complete contract on the point, but if he thought right to do so their lordships' judgment will not affect his taking such a course.

The Privy Council further elaborated the point in *Moulvi Samiullah v. Collector of Aligarh* (73 IA 44 : AIR 1946 PC 75). Having analysed the relevant sections of the Land Acquisition Act, their Lordships observed :

It is clear, therefore, that the Land Acquisition Officer, in awarding the amount of compensation under Section 11 is performing a statutory duty, a duty the exercise of which, in cases where land is to be acquired for a public purpose, concerns the public, since it affects the expenditure of public money. In assessing compensation he is bound to exercise his own judgment as to the correct basis of valuation and his judgment cannot be controlled by an agreement between the parties interested. On a reference under Section 18 the District Judge must also exercise his own judgment and consider, among other things, whether the award of the Land Acquisition Officer was based on a correct principle.

4. It was contended on behalf of the appellant that the admitted agreement fixing the price at Rs. 2500 per bigha, assuming it was a "gentleman's agreement" only, furnished the best evidence of the market value of the land. No doubt, in the absence of any other material, the agreed price ought to be the basis of the compensation payable but the High Court and the Additional District Judge have both found in this case that the price of land in the locality did not exceed Rs. 1000 per bigha. This finding was reached mainly on the sale statement, Exhibit C, filed by the Sub-Deputy Collector, and his report, Exhibit J. Exhibit C is described as a "statement showing result of examination of cases of sales of land in village Khalihamari, mouza Dibrugarh, Lakhimpur district". This statement notes six transactions of sale between September 1949 and November 1950, the price varying from Rs. 32 to Rs. 945 per bigha. The material part of the report, Exhibit J, prepared by the Sub-Deputy Collector reads :

1. The greatest drawback of the land in question is that it has no approach from my direction. On the north it is bounded by railway land and on other sides by private

persons' lands. Moreover one has got to cross the railway line to go to the land in question. So nobody would like to purchase the land.

2. I have examined as many as six bona fide of similar lands in the vicinity from the records of the Registration Department and the sale prices have been recorded in form No. 6. These sales took place in the year 1949 and 1950 in which years the prices of lands had gone up considerably and the average purchase value of land in the neighborhood per bigha from the sale cases shown in form No. 6 is less than Rs. 600. I have also visited the locality and those who are willing to purchase the land in question offer Rs. 250 to Rs. 500 per bigha. There is great demand for paddy land in the locality but no demand for high land.

3. The net annual letting value of the land in question cannot exceed Rs. 3 per bigha.

Considering all the above facts the rate of the land cannot be more than Rs. 1000 per bigha. So my estimate is very fair and reasonable.

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The Sub-Deputy Collector who was examined by the respondents as their witness admitted on cross-examination that as regards the sales of plots of land appearing in Exhibit C, I did not visit the sites, but prepared the statement from my office records and from the records of Registration Office. Besides the details given in Exhibit C, I am not aware of Registration Office. Besides the details given in Exhibit C, I am not aware of any circumstances or conditions under which those sales took place.

No one was examined in support of the statements made in the report and repeated by the Sub-Deputy Collector in his deposition, and there is no material on record to indicate the comparative advantages and disadvantages of the plots of land figuring in the sale statement. One is not sure if they are at all comparable units. Besides, there is no explanation accounting for the remarkable disparity in price of the different plots disclosed by the sale statement. The High Court does not appear to have considered these aspects.

5. Two sale deeds, Exhibits 13 and 19, were produced on behalf of the company. Exhibit 13 shows that the appellant purchased 2 bighas 1 Katha 8 lechas of land in 1950 for Rs. 4560 which works out to Rs. 2000 per bigha. The High Court rejected this document on the ground that the land of that transaction was situated in the "heart of the Dibrugarh town and can be no criterion of the price of land outside the municipal area". From the evidence of the Personal Assistant to the General Manager of the company, witness No. 1 for the claimant, it appears that the land of Exhibit 13 is at a distance of only 1 1/2 or 2 miles from the land acquired. Witness No. 3 for the claimant, a pleader's clerk who lived at Khalihamari, purchased a plot of land measuring 1 bigha 1 katha 1 lecha, covered by Exhibit 19, for Rs. 5000. The High Court found that "this land is just inside the municipal area and the acquired land is just outside the same", but rejected this evidence on the ground that the "price paid for this land prima facie was abnormal. No question was, however, put to this witness to find out what made him pay this "abnormal" price. We have already referred to the wide disparity in price of the different plots of land mentioned in Exhibit C; if the High Court was not prepared to rely on the sale deeds produced by the company, we do not see how it was possible to depend on the transaction noted in Exhibit C. It is not that on the evidence we are taking a different view from the High Court; all we wish to point out is that the High Court treated Exhibit C as conclusive evidence

without noticing its infirmities and without considering whether it was adequate to provide a basis for ascertaining the value of the land. The High Court also failed to advert to several relevant and important aspects of the evidence on record which we have discussed above.

6. It is difficult for us to say that the High Court should have determined the market value on the basis of any particular piece of evidence adduced in the case. This is a very old matter, and a remand to the court of the District Judge for reconsideration of the case on new and additional material means prolonging its life by several more year. From the judgment of the High Court it appears that the High Court found no objection to the method of capitalizing the rental value of the land for twenty years to determine its market value. In fact the High Court found that "the railway took the land on lease at Rs. 105 per bigha per annum" but, as the other terms of the lease were not known, the High Court did not find it possible to hold that the aforesaid sum represented "the actual rent value of the land". It is also not known whether the lease spoken of was a written lease. In these circumstances, we think that the best course would be to send the case back to the High Court for determination of the market value of the land on the aforesaid method upon affidavits. The High Court will come to its own conclusion as to the market value on a consideration of the materials disclosed in these affidavits. As the case is an old one, we expect that the High Court will try to dispose of the matter expeditiously, if possible within a period of four months from the date the record of the case is received back in that court. We allow the appeal as indicated above. There will be no order for costs.

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