The Collector, Raigarh

Vs

Dr. Harisingh Thakur and Another and Vice Versa

Civil Appeal Nos. 64 and 65 of 1969

(Jaswant Singh, R. S. Pathak, A. P. Sen JJ)

17.11.1978

JUDGMENT

JASWANT SINGH, J. (on behalf of himself and Pathak, J.) –

1. These two cross appeals by certificates of fitness granted by the High Court of Madhya Pradesh at Jabalpur are directed against the judgment and decree dated December 1, 1961 of the said High Court dismissing the Misc. (First) Appeal 43 of 1959 preferred by the appellant from the Award dated December 20, 1958 of the II Additional District Judge, Raigarh in Miscellaneous Judicial Case 59 of 1958 being a reference under Section 18 of the Land Acquisition Act, made at the instance of the appellant in respect of the Award dated August 23, 1957 of the Land Acquisition Officer, Raigarh.

2. The facts giving rise to these appeals are : On an undertaking given by him to pay full compensation with interest from the date of possession to the date of payment of compensation as provided in the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), the District Engineer, South-Eastern Railway, Raigarh, took advance possession on January 17, 1957 of five plots of agricultural land admeasuring 3.38 acres and another plot of agricultural land admeasuring 0.14 acres adjoining the railway track situate in village Darogamuda, Tehsil and district Raigarh, a suburb of Raigarh belonging to respondents 1 and 2 respectively for doubling the railway line between Rourkela and Durg in the South-Eastern Railway. Subsequently Notification dated February 8, 1957 under Section 4(1) of the Act for acquisition of the aforesaid plots of land was issued and published in the Government Gazette dated February 15, 1957. This was followed on March 21, 1957 by a notification under Section 6 of the Act. Although in the statements filed by them under Section 9(2) of the Act the respondents claimed compensation at the rate of Rs. 32,670 per acre i.e. at the rate of -/12/- per square foot on the ground that the plots of land in question had a great potential value as a building site and Rs. 500 for improvements and Rs. 100 as the value of one tree, the Special Land Acquisition Officer, Raigarh, by his award dated August 23, 1957 awarded compensation at the rate of Rs. 3,327/14/- per acre which roughly worked out at - /1/6 per square foot on the basis of the statement of sales furnished by A.S.L.R. (L.A.) prepared by Jujhar Singh N.A.W.I. Not satisfied with the quantum of compensation, the respondents made an application to the Special Land Acquisition Officer requesting him to refer the matter to the Court under Section 18 of the Act. According to the request of the respondents, the Special Land Acquisition Officer made the aforesaid reference to the II Additional District Judge, Raigarh, who by his award dated December 20, 1958 enhanced the rate of compensation to -/4/- per square foot and awarded Rs. 36,808/4/- and Rs. 1,524/8/- to respondents 1 and 2 respectively as compensation. The Additional District Judge also allowed the solatium at the rate of 15 per cent amounting to Rs. 5,521/4/- and Rs. 228/12/- to respondents 1 and 2 respectively. Aggrieved by the said Award of the

II Additional District Judge, the appellant preferred an appeal to the High Court of Madhya Pradesh at Jabalpur which was registered as Miscellaneous (First) Appeal 43 of 1959. In the said appeal, the respondents filed cross objections claiming enhancement of compensation by Rs. 84,518.39 P. The High Court by its judgment dated December 1, 1961 dismissed the aforesaid appeal preferred by the appellant but allowed the cross objections filed by the respondents holding the reasonable rate of compensation to be Rs. 8/- per square foot. Consequently respondent 1 was held entitled to Rs. 73,616-8-0 as compensation and Rs. 11,042-8-0 as solatium and respondent 2 was held entitled to Rs. 3,049-0-0 as compensation and Rs. 457-8-0 as solatium. It is against this judgment of the High Court that the present appeals are directed.

3. Appearing for the appellant, Mr. Gambhir while admitting that in an appeal under Article 136 of the Constitution, the Court is only concerned with finding out whether the principles on the basis of which compensation has been computed for acquisition of land under the Act have been rightly applied or not and cannot re-appraise the evidence, has urged that the Additional District Judge and the High Court have erred in treating the land in question which was primarily an agricultural land as abadi land overlooking that it had not been declared as such.

4. Mr. Sanghi has on the other hand urged that even according to the findings of the Additional District judge, who made the spot inspection, as also of the High Court, it is abundantly clear that the land in question was Abadi land and has been rightly treated as such. Mr. Sanghi has further urged that the said site has great potentialities as building site.

5. The question as the whether a land has potential value as a building site or not is primarily one of fact depending upon several factors such as its condition and situation, the user to which it is put or is reasonably capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, whether the nearby town is a developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighbourhood thereof. In the instant case, the fact that the land in question has a great potential value as a building site is evident not only from the observations made by the Special Land Acquisition Officer himself in his aforesaid award to the effect that the land has assumed semi-abadi site but also from the following observations made in his judgment dated December 20, 1958 by the Additional District Judge who had the advantage of inspecting the site :

> The land abuts Raigarh town. It is within Municipal limits and the nazul perimeter extends up to it. To the East of the plot there are some kutcha buildings and beyond 50 yard there are pucca buildings inhabited by respectable persons. To the North is a Municipal road leading to the railway quarters to the West. To the West beyond the railway quarter, there is further habitation and the locality is called "Banglapara" within Municipal limits. The plot did have a potential value as a building site and it is further supported by the fact that the plot has been used by the Railway authorities for construction of staff quarters thereon through the land was acquired for doubling the railway line.

6. It is also not disputed that the Special Land Acquisition Officer did not lead any evidence worth the name to show the price of the comparable sites in question and remained content with the production only of the sale statement made by Jujhar Singh, N.A.W.I. Now the sale statement consisted mostly of sales relating to the year 1951 which is not relevant to the question in hand.

Moreover the sale statement by itself without examining either the vendors or the vendees or the persons attesting the sale deeds is not admissible in evidence and cannot be relied upon. The sale deed dated December 14, 1956 in favour of Dr. Das for 4,800 square feet of land out of contiguous Khasra No. 256 in lieu of Rs. 2,000 i.e. at approximately 6 1/2 annas per square foot (which has been relied upon by the Additional District Judge and the High Court) could be taken as a safe guide for determination of the compensation. From the material adduced in the case, it appears that Raigarh is a growing town, that instead of utilising the land for doubling the railway track, the Railway has built staff quarters thereon, that on three sides of the acquired land, there already existed pucca buildings and on the fourth side, there is a metalled road. It is also in evidence that some lawyers have put up some constructions near the sites in question. Taking all the facts into consideration, it cannot be said that the basis on which the Additional District Judge and the High Court proceeded is wrong or that the quantum of compensation awarded by the High Court is in any way excessive or exhorbitant.

7. As neither the interest nor compensation on account of severance was claimed in the High Court either by Dr. Harisingh Thakur or by Tikam Singh Thakur, we do not think they can justifiably put up claims in that behalf. Mr. Sanghi appearing on their behalf has fairly stated that he would not like to press his cross-appeal.

8. In the result, we do not find any merit in either of the aforesaid appeals. We would accordingly dismiss them with costs.

SEN, J. (dissenting) –

I have had the advantage of reading the judgment by my learned brother Jaswant Singh. Since the appeal involves an important question affecting valuation which has been overlooked by the High Court. I would like to say a few worlds of my own.

10. Normally, this Court does not interfere in appeal with the valuation by the High Court in land acquisition cases, unless the judgment cannot be supported, as it stands, either by reason of a wrong application of principles or because some important point in evidence has been overlooked or mis-applied : The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty (1959 Supp 1 SCR 404 : AIR 1959 SC 429).

11. With respect, I venture to say that the judgment of the High Court cannot be supported by reason of a wrong application of principles. It overlooked the fact that there was no discernible basis on which the Additional District Judge could have changed the mode of valuation adopted by the Special Land Acquisition Officer treating the land acquired to be agricultural land and in awarding compensation upon the basis as if it were a building site. Indeed there was no attempt on their part to determine the "intrinsic character of the land", namely, whether the land acquired should be classified as agricultural land or not.

12. In the present case, the High Court obviously fell into an error in overlooking the fact that the acquired land situate in village Darogamuda, admeasuring 3.52 acres, was, on February 8, 1957, i.e. on the date of the issue of the notification under Section 4(1) of the Act, agricultural land. It was recorded as raiyati land belonging to the two claimants, Dr. Harisingh Thakur and his brother Tikam Singh Thakur who were exgaontiyas of village Darogamuda. The land was not recorded as abadi as wrongly assumed by the High Court. Perhaps it was misled by the mis-description of the land as abadi in the reference made by the Collector under Section 18(1).

13. This is an admitted position between the parties. In response to the notice of admissions and denials of documents served by the claimants, the Collector admitted panchsala khasra for the year 1950-51 to 1953-54 and kistbandi khatouni for the years 1952-53 and 1953-54. The claimant Dr. Harisingh Thakur, AW 1 admits during his cross-examination that till the month of December 1956, the lands were actually under his cultivation and he had reaped the crops before delivering possession of the same on January 17, 1957 to the District Engineer, South-Eastern Railway. He further admits that throughout the land was under cultivation, i.e. from the time of his forefathers. In fact, Jujhar Singh NAW 1, Assistant Superintendent Land Records, who was at the relevant time a Revenue Inspector, states that the land acquired was a paddy field and was surrounded by agricultural lands. That being so, the District Judge was clearly wrong in treating the land to be abadi and calculating compensation on the footing of its being a building site.

14. In awarding compensation at a flat rate of Rs. 3,327.87 P. per acre, the Special Land Acquisition Officer took notice of the fact that the land is situate in village Darogamuda, a suburb of Raigarh, which is a town of great commercial importance, though beyond its nazul perimeter. He also took notice of the fact that the land abuts and railway track and there were agricultural fields on two sides. On the other two sides, there existed kutcha hutments of backward classes and a few railway buildings. The award of compensation at the rate of Rs. 3,327.87 P. per acre was based on average of sales of lands in recent years as prepared by Jaihar Singh, Revenue Inspector NAW 1. The Special Land Acquisition Office accordingly observed :

> The average value based on the above noted sales comes to Rs. 3,327.14/- per acre and in my opinion it truly represents the average market value of lands in this predominantly agricultural locality which has assumed semi-abadi site value due to the constructions of houses mostly by low class people besides a few buildings of Railway Department. It is for this reason that the average value per acre comes to as much as Rs. 3,327/14/- per acre else the lands in question would have fetched lower price available in respect of agricultural lands to which class they really belong and stand assessed as such till today.
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> While it is no doubt true, as my learned brother Jaswant Singh has rightly observed, that the statement of average of sales, prepared by Juihar Singh, NAW 1, was not admissible in evidence unless the Collector proved the transactions in question, upon which it was based, there is no denying the fact that the acquired land was nothing but agricultural land and the mode of valuation had necessarily to be upon that basis.

15. Now, if the purpose for which the land was acquired, i.e., for the construction of staff quarters in connection with the doubling of the railway line by the South-Eastern Railway, has no bearing on the question of valuation, the future possibilities of the land, which admittedly was agricultural land, lying in the vicinity of Raigarh if applied to the most lucrative use, having regard to its the then condition, was very little as a building site. The land was lying undeveloped and undiverted. Unless there was a development scheme, the land could not be valued as a building site. The land could, however, be put to that use if there was such development scheme. At the time of the notification under Section 4(1), there was no recent building activity nearabout the land, which was either under cultivation or lying desolate. But as I have already said, the land could be put to a better use provided it was fully developed as a building site. The claimants were, therefore, entitled to the evaluation of the land as agricultural land with an additional allowance being made for its future potentiality as a building site. I just cannot imagine what could be the utility of the acquired land as a building site, looking to its proximity to the railway track. It would, indeed, be very little.

16. In a reference under Section 18 of the Act, the burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimant, and he must show affirmatively that the Collector had proceeded upon a wrong basis. The nature and the burden of establishing that he was wrong depends on the nature of the enquiry held by him. When the proceedings before the Collector disclosed that the award was not reasonably supported by the material before him, or when the basis was the application of a 'multiple' which could not be justified on any rational ground, the burden can be discharged by a slight evidence. But that is not the case here. The claimants have led no trustworthy evidence. It is equally well-settled that where the claimant leads no evidence to show that the conclusions reached in the award were inadequate, or, that it offered unsatisfactory compensation, the award has to be confirmed.

17. Upon a compulsory acquisition of property, the owner is entitled to the value of the property in its actual condition, at the time of expropriation, with all its advantages and with all its possibilities, excluding any advantage due to the carrying out of the claim for the purpose for which the property is acquired. In Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam (66 IA 104 : AIR 1939 PC 98 : (1939) 2 MLJ 45), the Privy Council stated:

> For the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, . . . but also by reference to the uses to which it is reasonably capable of being put in the future. It is possibilities of the land and not its realized possibilities that must be taken into consideration.

The value of the acquired property, with all its possibilities has to be adjudged on the material on record.

18. The market price must be fixed with reference to the date of the notification under Section 4 irrespective of any trend, if any, for an increase to the value thereof. The basis for determination of the market value of the land within Section 23(1)(i) of the Act is the value of the land to the owner. Only such transactions would be relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. That task is clearly not fulfilled in the present case.

19. Clause fifthly in Section 24 interdicts the Court from considering any prospective increase in value due to acquisition. Market value of the land acquired has to be fixed with reference to the date of notification under Section 4(1). In Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam (supra) the Privy Council observed that where the owner is a person who could turn the potentiality of the land into account, it is immaterial that the utilization of the same potentiality is also the purpose for which the land is acquired. The underlying principle is that a speculative rise in price of land due to acquisition should not be an element which should enter into computation of compensation. Sometimes the prices shown in sale deeds executed subsequent in point to time are not the actual prices paid. The sales may be unreal and may not reflect the true value of the land. There always elapses a certain interval between the time when the intention to acquire a certain land first becomes known and the actual notification under Section 4(1) is issued. Here though the notification under Section 4(1) was issued on February 8, 1957, the claimants had, in fact, delivered the possession to the District Engineer, South-Eastern Railway of January 17, 1957, and were indeed, as it appears from the evidence, aware of the fact that the land was being acquired by the South-Eastern Railway much earlier, i.e., in December, 1956. In view of this, the prospective rise in value, if any, has to be kept out of consideration.

20. The principles to determine the quantum of compensation are contained in Section 23(1) of the Act. The Court in fixing the amount has to take into consideration the prevailing market value of the land at the date of the notification under Section 4(1) and the said market value has to be determined by reference to the price which a willing seller might have reasonably expected for similar property from a willing purchaser. The underlying principle of fixing the market value with reference to comparable sales is to reduce the element of speculation. In a comparable sale, the features are : (i) it must be within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be a sale of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. Before such instances of sales can be considered there must be material evidence either by the production of the sale deeds or by examining the parties to the deeds or persons having knowledge of the sales, to prove that the transactions are genuine.

21. In the light of these principles, the three sale deeds relied upon by the High Court, Ext. P-14, Ext. P-15 and Ext. P-17, pertaining to the small portions of the acquired land executed by the claimants, could not obviously be the basis for the determination of the market value of the land. These sale deeds had clearly been brought into existence by the claimants in quick succession, in an attempt to inflate the price of the land, after they became aware of the proposed acquisition. Of these, the land covered by the sale deed Ext. P-14, dated December 14, 1956 executed by Tikam Singh Thakur, i.e., just a month before the delivery of the possession, shows a sale of a plot measuring 4,800 sq. ft. to Dr. Dhirendra Chanra Das, AW 2, for a price of Rs. 2000. The rate works out to about 42 P. per sq. ft. It evidently could not afford a fair criterion of the value of the property on the date of the notification under Section 4(1). Dr. Das admits that he is in Railway service and when he purchased the land he knew that it was being acquired by the South-Eastern Railway. No doubt Dr. Das is a willing friend of Dr. Harisingh Thakur prepared to lend a helping hand but, by no stretch of imagination, could he be treated to be a willing purchaser, in the true sense of the term. Though Dr. Das asserts that he had purchased the land for building a house, he admits that he did not construct upon it because he would have been required to invest considerable money for levelling the land and making it fit to be utilized as a building site. This transaction indubitably does not appear to be a real sale and could not furnish any guide for determination of the true market value.

22. I am afraid, the other two sale deeds, Ext. P-15 dated December 19, 1956 and Ext. P-17 dated February 21, 1957 executed by Dr. Harisingh Thakur, by which he sold 300 sq. ft. of the acquired land to Jhallu Dani, AW 13, for Rs. 150 and 280 sq. ft. to Daido, AW 15, for Rs. 200 were, in fact, fictitious sales effected by him after delivery of possession to the South-Eastern Railway. The transactions speak for themselves. Indeed, Ext. P-17 was executed by him after issue of the notification under Section 4(1). The first sale was effected by the claimants to show the price of the land to be 50 P. per sq. ft. They were evidently not satisfied by this and, therefore, brought the other sale deed into existence, a few days after the notification, showing the rate to be about 72 P. per sq. ft. It is needless to stress that such fictitious and unreal transactions which are but speculative in nature could not be taken into account by the High Court at all.

23. In Raghubans Narain Singh v. The Uttar Pradesh Government ((1967) 1 SCR 489 : AIR 1967 SC 465) this Court quoted with approval the following passage from one of its earlier decisions in N. B. Jeejabhoy v. The District Collector, Thana (C. As. 313 to 315 of 1965, decided on August 30, 1965), where it was said :

> 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 the lands purchased for building purposes, what is the distance between the built-it-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.

24. In Raghubans Narain Singh's case (supra) there was evidence to the effect that there was a school building near the acquired land, that the land abutted on the road and that some houses had been built on the opposite side of the road. It was nevertheless held by this court that all this did not constitute evidence of building potentiality. It was pointed out that there should be evidence, on the record, 'of 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'.

25. There is complete absence of such evidence in this case. It is beyond doubt that the acquired land was agricultural land, and had not been diverted for non-agricultural purposes. Indeed, the claimant, Dr. Harisingh Thakur had himself admitted the land to be agricultural land. The land is on the outskirts of Raigarh town but that itself does not show that the land had a potential value for building purposes. It was for the claimants to show that at the relevant time there was a tendency of the town to develop in that direction and that prior to the acquisition new buildings had been constructed in the neighbourhood. Topography of the acquired land which abuts the railway track is given by Jujhar Singh, NAW 1, the then Revenue Inspector, who states that actually paddy used to be grown on the land. To the north of this land, there was cultivation. Beyond it, there was a 20 ft. broad pucca road. About three furlongs away from the land was the house of Ambalal. About one and a quarter miles away there was a skin godown. In the east, there were small huts. Beyond them, in the east, at a distance of about half a furlong, there was the house of Jairamvalji. In the west, about a furlong away, there was an old bungalow. At about the same distance, there is the burial ground. In between and all around, there were agricultural fields. That is the total evidence of the case. On this evidence it cannot be said that valuation should be made on the basis of the potentiality of the land as building site.

26. In the absence of comparable sales, the only other alternative to adopt is the capitalised value. Compensation in respect of the agricultural land should be allowed on the basis of 20 years' purchase. The capitalisation basis cannot, however, be accepted in a case where, as in the instant case, there is no evidence of the profits yielded from the land.

27. I would, therefore, for the reasons allow the appeal of the State of Madhya Pradesh.

28. It is with reluctance that I have written this separate opinion. There has never been a public undertaking in this country - Governmental, Municipal, city or industrial, but that the land-holder has generally secured anything from four to forty times as much for the land as its agricultural price, i.e., many times its real value. This result unfortunately springs from a general tendency of District Judges in hearing a reference under Section 18 of the Land Acquisition Act, 1894, to assume that purely agricultural lands, merely by their proximity to a city or town, become endowed with 'special adaptability' as a building site. While it is not suggested that unfairly low value should be offered, on the other hand the temptation to over-generosity must be equally resisted. Such generosity at the public expense reacts against the development and against the prosperity of the country and imposes

an unnecessary burden on the taxpayer.

PER CURIAM

29. In accordance with the opinion of the majority, the appeals are dismissed with costs.

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