

Deep Chand and Another

Vs

State of U. P. and Another

Civil Appeal No. 351(A)(N) of 1970

(O. Chinnappa Reddy, N. L. Untwalia JJ)

16.01.1980

JUDGMENT

UNTWALIA, J. –

1. This is an appeal by special leave arising out of a land acquisition proceeding. The land measuring 28 bighas and 18 biswas situated within the municipal limits of the town of Muzaffarnagar in the State of Uttar Pradesh was sought to be acquired by a notification issued on November 25, 1948 under Section 4 of the Land Acquisition Act. The land was needed for the Muzaffarnagar Housing Cooperative Society. Out of the acquired area of the land a portion measuring 1 bigha of 4 biswas belonged to one Uggra Sen; the rest belonged to appellant Deep Chand. The total area belonging to the said appellant (hereinafter in this judgment he alone will be referred to as the appellant) was 67,872 square yards. Out of this, land measuring 61,012 square yards was in possession of the tenants and the balance 6,860 square yards was in his possession of the appellant. The appellant in the year 1942 pursuant to an agreement of sale executed by his vendor had purchased the land @ 2 annas per square yard. But there was a lot of litigation between the parties a subsequent purchaser came onto the scene and ultimately the appellant succeeded in this Court in getting the land after a lot of expenses. The Collector's award determined the compensation payable at 2 annas per square yard. Reference was asked for by the appellant, the tenants as also by the said Uggra Sen. Uggra Sen had purchased his land by sale deed dated May 15, 1946, Ex. 7 @ Rs. 1/6/- per square yard. In this reference the District Judge allowed him compensation at the said rate and since the amount involved in his case was small, he did not go up in appeal to the High Court. The learned District Judge of Muzaffarnagar who decided the references fixed 6 annas per square yard as the value of the appellant's land both in his khas possession and in possession of this tenants. The value of 61,012 square yards of tenant's land at the said rate came to Rs. 22,869/8/- and the share of appellant Deep Chand @ 10 annas in a rupee was fixed at Rs. 14,299/11/- and that of the tenants at 6 annas in a rupee came to Rs. 8,579/12/-. The value of 6,860 square yards of Khudkasht of the appellant at 6 annas per square yard came to Rs. 2,572/8/-. Thus the total value to which the appellant was held entitled came to Rs. 16,872/3/-. Adding 15 per cent to his amount the total amount payable to Deep Chand came to Rs. 19,403. Deducting the amount already awarded by the Collector the balance payable under the judgment of the District Judge came to Rs. 9,525/7/-. It was directed that he was entitled to get interest @ 6 per cent per annum from the date of his dispossession i.e. May 1, 1951 to the date of payment.

2. An appeal was taken to the High Court from the decision of the District Judge - Although the appellant had claimed in the reference the value of the land @ Rs. 6 per square yard, in appeal the total extra claim was limited to Rs. 1,25,000 over and above the sum of Rs. 19,403 determined by the District Judge as the sum payable to the appellant. In other words, roughly speaking, in the High

Court the allellant confined his claim as regards the value of the land to Rs. 2/12/- per square yard claiming the full amount for his khudkasht land and 10 annas in a rupee in respect of the tenant's land. On that basis adding 15 per cent the total claim came to Rs. 1,44,403 thus the value of appeal was confined to Rs. 1,25,000 only.

3. The High Court has dismissed the appeal of the appellant in toto. In our opinion it was a fit case where the appeal ought to have been substantially allowed and by committing obvious error in appreciation of the legal position and the facts and circumstances of the case the High Court maintained the valuation fixed by the District Judge.

4. The site plan which is a part of the record of the case shows that the land in question is situated to the North of Bhopa Bijnor Road and to the East of the Railway line which runs North to South crossing the said road at a point which is near plot No. 110 to its West and plot No. 220 to its East. The main Basti is to the West of the Railway line. But more and more land were required for building purposes due to the extension of the town as also due to influx of a large number of refugees from Pakistan in the year 1947. They came to the town of Muzaffarnagar in large numbers. At the relevant time the land to the East of the Railway line was mostly agricultural and there was little habitation. Very near the North of the land there was a bungalow of Church Mission Society. It will appear from the Society's application dated March 11, 1947 as also from the report of the Sub-Divisional Officer who was the Land Acquisition Officer that the land was close to the inhabited area of New Mandi and was the best of all other available lands from the point of its hygienic conditions and healthy environments. The Sub-Divisional Officer had summed up his report thus :

... I have come to the conclusion that due to the acute housing problem in this thickly populated town which is not only a big commercial and business centre of the western districts of U.P. but has also attracted substantially a large number of refugees there is a great dearth of houses and the acquisition of the land in question is essential as it is just in the heart of ever growing locality of his town

5. As noticed by the High Court the land had certain disadvantages also. The level of the land was lower than the level of the Bhopa Road; during rainy season water collected on it. There were some pits here and there, which needed filling up. Nonetheless the value fixed by the courts below, in our judgment, is too low and unjust. If these defects would not have been there the value of the land would have been not less than Rs. 5 per square yard. In any event we shall immediately show that the value cannot be less than Rs. 2/6/- per square yard.

6. The market value of the land had to be fixed as prevailing on the date of the notification under Section 4 of the Land Acquisition Act, which, as already stated, was issued on November 25, 1948. It would appear from the site plan that Uggra Sen's land was not abutting the Bhopa Road although it was near it. It was land locked as it was surrounded on all sides by the appellant's land in question. Uggra Sen had purchased his land by Ex. 7 the sale deed dated May 15, 1946 @ Rs. 1/6/- per square yard. We find from the records that land comprised in plot No. 110 which is adjacent West to the Railway line was purchased by sale deed dated May 15, 1945, Ex. 11 @ Rs. 5 per square yard. It was resold by sale deed dated October 4, 1948, Ex. 12 @ Rs. 10 per square yard. It would thus be seen that the price of the land in the locality was doubled in the course of three years near about the time the notification under Section 4 had been issued. Thus the value of the land in question could be taken at Rs. 2/12/- per square yard on the basis of Uggra Sen's sale deed. But we are taking not the double figure because the doubling of the price in regard to plot No. 110 was in respect of a land which was to the West of the Railway line. Ex. 40 is a sale deed dated February 15, 1947 which is in

respect of a small piece of land to the South of the Bhopa Road but very near the land in question. This sale deed shows the sale price of the land at Rs. 10 per square yard. We are leaving this sale deed out of consideration as the area covered by it is very small being only 424 square yards. But the High Court was not right in completely brushing aside the sale deed dated March 11, 1948, Ex. 9 by which about 5 bighas of land in plot No. 220 was sold approximately @ Rs. 7 per square yard. This sale deed has been rejected on the ground that plot No. 220 is near the Railway crossing; it contained a mango grove and that it was a small plot compared to the land in question. We are not impressed by any of these reasons. Since the plots is to the East of the Railway line its nearness to the Railway crossing cannot bring about a huge difference in value in comparison with the appellant's land. So also the existence of the mango grove cannot justify the large difference between Rs. 7 per square yard and 6 annas per square yard. It is not a small plot of land. Although it is smaller in area than the appellant's land, yet it is big enough for throwing light on the prevailing market value of the land in the locality at the relevant time.

7. Appellant Deep Chand was Vice-President and Secretary of S.D. College, Muzaffarnagar. For the purpose of the college a large chunk of his land situated further east was acquired in the year 1955. The appellant agreed before the Acquisition Officer to accept the price of his land for the purpose of the college @ 5 annas per square yard. This seems to have heavily weighed with the courts below in fixing 6 annas per square yard as the value of the land in question. But in our opinion wrongly. The appellant and his family were interested in the establishment of the college. Deep Chand was the Vice-President and the Secretary. Obviously, therefore, he accepted a nominal price by way of compromise before the Land Acquisition Officer as a good gesture and benevolent disposition. He did not contest the valuation matter nor did he ask for any reference. In respect of the land in question he had already started making his claim by way of reference and claim Rs. 6 per square yard. It does not stand to reason, therefore, that he would accept 5 annas per square yard for the college land thinking that was the proper market value of the land in or about the year 1955.

8. For the reasons stated above we fix the market value of the land in question prevailing at the relevant time at Rs. 2/6/- per square yard that is to say the appellant is entitled over and above the amount fixed by the District Judge an extra rate of Rs. 2 per square yard in respect of his land. The value of his khudkasht land measuring 6,860 square yards will be Rs. 13,720. The value of his 61,012 square yards, the tenants land, will be Rs. 1,22,024. Calculating it at the rate of 10 annas in a rupee the value of the appellant's share will be Rs. 76,265. The total value of this land thus comes to Rs. 89,985. Solatium of 15 per cent on the said amount comes to Rs. 13,497.75 paise. Thus the total extra amount awarded by us over and above the amount awarded by the courts below comes to Rs. 1,03,482.75 paise. The appellant will be entitled to interest on this amount also @ 6 per cent per annum from the date of dispossession i.e. May 1, 1951 till the date of payment. The appeal is accordingly allowed in part and the judgments of the courts below are modified. The appellant will also be entitled to get his proportionate costs in the High Court as also in this Court.

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