Hindustan Oil Mills Ltd. and Another

Vs

Special Deputy Collector (Land Acquisition)

Civil Appeal Nos. 380 and 381 of 1973

(K. N. Saikia, S. Ranganathan JJ)

20.10.1989

JUDGMENT

RANGANATHAN, J. -

1. There are two appeals before us, one by Hindustan Oil Mills Ltd. (In liqn) (hereinafter referred to as 'the company') and the other by Sampatlal Ramlal Kimtee (hereinafter referred to as 'Sampatlal'). The appeals relate to the question of compensation payable to the company and to Sampatlal in respect of certain land belonging, to them acquired for the purpose of constructing a Dairy Plant under the Integrated Milk Product of the Andhra Pradesh Government.

2. Survey No. 135/1 in the village of Lallaguda in Hyderabad West Taluk in Hyderabad District is of the total extent of 16 acres 35 1/2 guntas. The entire survey number belonged to Sampatlal originally but it appears that he had sold 10 acres out of this to the company some time in 1947 to enable the latter to establish a lubricating oil plant thereon. Thus, at present, it is common ground that 10 acres belong to the company and 6 acres 35 1/2 guntas to Sampatlal.

3. The Andhra Pradesh Government issued a notification under Section 4 of the Land Acquisition Act dated April 26, 1961 published in the gazette on May 11, 1961. This notification, inter alia, related to the proposed acquisition of dry lands in survey No. 135/1 "belonging to Sampatlal - 13-20-18 acres". Certain other lands were also referred to in the notification belonging to other parties with which we are not concerned and the total proposed to be acquired was given as 18-36-30 acres.

4. On November 22, 1962, the government issued an erratum to the above notification. Insofar as is relevant for our present purposes, this notification clarified that the lands proposed to be acquired in survey No. 135/1 consisted of :

"Part I - Waste or arable lands, belonging to Sampatlal - 3-20-18 acres"; and

> Part II - Land other than waste and arable lands, building site belonging to Sampatlal - 10 acres."

5. The total of both the Parts was 18-36-30 acres as before.

6. Another notification was issued on February 28, 1963, (gazetted on February 28, 1963), which purported to be in suppression of the errata published on November 22, 1962. This again effected a change in regard to the extent and the ownership of the lands proposed to be acquired in survey No. 135/1. The proposed changes were as follows :

"Part I - Waste or arable lands, belonging to Sampatlal - 5-35-18 acres

> Part II - Land other than waste and arable lands, building site belonging to Hindustan Oil Mills Ltd. - 10 acres."

The total extent of land acquired under the notification was revised from 18-36-30 acres to 21-11-30 acres, the difference being entirely attributable to the increase in the area acquired in survey No. 135/1 from 13-20-18 acres to 15-35-18 acres. We may mention here that the notifications relate only to a total of 15-35-18 acres in survey No. 135/1 although it now transpires that the total extent of that survey number is really 16-35 1/2 acres.

7. The lands were acquired in due course in pursuance of the above notifications and an award was made by the Land Acquisition Collector. Thereafter a reference was made to the District Judge, who modified the award in some respects. The High Court, on appeals, has made further changes. It is, however, not necessary to set out the full details of the award or the modifications therein made by the courts on reference and appeal as the controversy before us is within a very narrow compass a indicated below :

> (1) The appellants have been awarded compensation on the basis of the market value of the lands as on May 11, 1961, the first of the notifications above referred to. The appellants contest the correctness of this and urge that the compensation payable should be determined on the basis of the notification published on February 28, 1963. This is the first contention.
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> (2) The High Court has finally determined the compensation, in respect of the lands belonging to the company, at Rs. 5 sq. yard and in respect of the lands belonging to Sampatlal, at Rs. 4 Per sq. yard. The adequacy of the compensation thus awarded is the subject matter of the second contention urged before us.
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> (3) The third contention raised by the appellants turns on the following circumstances. In the land belonging to the company, there is a godown which had been leased out to the Government of India at a rent of Rs. 1000 per month. It is common ground that the built-up area of the godown is about 2000 Sq. yards. In calculating the compensation payable to the company the Land Acquisition collector treated an area of 4 acres as the land occupied by the godown and appurtenant thereto. The compensation payable in respect thereof had been worked out as a multiple of the net annual rent derived by the company in respect of godown. When the matter came up to the District Judge, he treated 2 acres as the land appurtenant to the godown and gave compensation in respect of the balance of 8 acres at the rates already mentioned by us. Two objections are taken to this computation by the appellant. It is submitted that since the area occupied by the godown was only 2000 sq. yards, the total extent of land necessary for the use of the godown taken by the High Court at 2 acres is very excessive and that, even on the most generous estimate it could not be in excess of one acre. It is submitted that in respect of the balance of 9 acres, the company should be paid compensation at the rates which may be determined by us on the second contention referred to above. In respect of the godown it is submitted that since the rent was Rs. 12,000, the market value of the godown and the rent pertinent thereto should have been worked out as a multiple of Rs. 12,000, whereas it has been taken at 25 times a sums of Rs. 10,000, treating that

amount as the net annual rent. It is submitted that the deduction of Rs. 2000 from the annual rent in working out this compensation was not justified. These are the only three contention which have been urged before us by Shri Sachhar on behalf of the appellants.

Contention No. 1

8. Shri Sachhar submits that of the three notifications issued by the government, it is really the third dated February 28, 1963 that is the effective notification under Section 4. He points out that the notice under Section 4 read with Section 5-A issued to the company on March 8, 1963, refers to the notification dated February 28, 1963, as the one in pursuance of which that notice has been issued. He also points out that, while the first two notifications referred only to Sampatlals lands (and that too inaccurately) it was only the third notification which for the first time mentioned the name of the company. He also submits that, as the notifications dated November 22, 1962 and February 28, 1963 purport to be by way of amendment to the notification of May 11, 1961, they should be treated as fresh notification under Section 4. He refers to the language of Section 21 of the General Clauses Act, that any amendment can only be effected "in the like manner and subject to like sanctions and conditions, if any" as the original notification that is sought to be amended. He, therefore, argues that the notification dated February 28, 1963 is the real and effective notification under Section 4, applicable to this case, in respect of both the lands belonging to the company and the lands belonging to Sampatlal. On the other hand, on behalf of the respondent, the point taken is that the intention of the government, even at the time of the first notification, was to acquire the entirety of survey No. 135/1. However, the government committed certain mistakes in describing the extent and ownership of these lands necessitating the subsequent amendments. Originally, the government was under the impression that the entire extent of the land was 13-20-18 acres, that it belonged to Sampatlal and that it consisted fully of dry lands. Subsequently, it found that certain portions of the land were in the nature of building sites and hence the bifurcation between waste land and building sites was effected by the second notification. It was thereafter discovered that the total extend of the land was 15-30-18 acres, out of which 10 acres belonged to the company and were in the from of building sites and that 5-35-18 acres belonged to Sampatlal and were dry lands. It is submitted that the company and Sampatlal were closely connected with each other and that the company was fully aware of the proceedings taken under the Land Acquisition Act. In fact the initial notification of May 11, 1961 was challenged by Sampatlal, In that litigation there was a compromise, in which it was agreed that 10 acres out of total extent should be treated as building sites and valued accordingly and that only the balance should be treated as waste land. It was also know at that time that 10 acres belonged to the company. In short, it is contended that it was always the intention of the government to acquire the entirety of the survey No. 135/1 and that the notification of May 11, 1961 cannot be said to be ineffective merely on the ground that there were some mistakes in describing the nature of the land or the owner. In fact, there is no requirement under the Act that the notification should specify the nature of the lands proposed to be acquired or the owner thereof. The reference to these details in the notification dated April 26, 1961 or any mistakes therein, it is urged, should, therefore, be treated as totally irrelevant for the purposes of considering the effectiveness of the notification of May 11, 1961.

9. We have considered the contentions of both parties and we have come to the conclusion that, in the facts and circumstances of this case, it is only the notification dated February 28, 1963 that can be taken to be the effective notification under Section 4 of the Land Acquisition Act. In the first place, this is the notification on which reliance is placed in the first place, this is the notification on which reliance is placed in the notice under Section 4 read with Section 5-A issued on February 28,

1963. Section 4 of the Land Acquisition Act contemplates the publication of a notice not only in the gazette but also at convenient places in the locality in which the land proposed to be acquired is situated. Though it is true that the notification need not precisely define the nature of the land proposed to be acquired or the persons to whom it is considered to belong, there should be a clear indication in the notification of the land that is proposed to be acquired, from which the owners or occupies of the land can get a fair idea as to the details of the acquisition and the impact of their rights. The failure to refer to the name of the company and the reference of Sampatlal as the owner of the entire 13-20-18 acres is a vital defect in the notification. Also, the notification of May 11, 1961 merely sets out 13-20-18 acres as the land proposed to be acquired in Survey No. 135/1. Having regard to the fact that the full extent of survey No. 135/1 is much more, the notification does not clearly specify which part of survey No. 135/1 is intended to be acquired. There is nothing to support the contention of the learned councel for the government that the intention even originally was to acquire the entirety of survey No. 135/1. When it is intended to acquire the entirety of a survey number, it is usual for the relevant notification under Section 4(1) to mention this. So also, where only a part of a survey number is sought to be acquired, that is also indicated within brackets. In the present case, there is nothing to show that the government intended to acquire the entirety of the survey No. 135/1. Thus the notification of May 11, 1961 was defective in material respects. The second notification of June 22, 1962 does not carry matters further as it only gives the split up of the waste land and buildings sites within the area of 13-20-18 acres mentioned in the earlier notification. Even the third notification does not say that it is the entirety of survey No. 135/1 that is proposed to be acquired but it makes a distinction between the land belonging to Sampatlal and the land belonging to the company. It transpires only from the award that the full extent of the survey No. 135/1 was taken as 15-35-18 acres. It is only in this notification for the first time that the land proposed to be acquired are defined with sufficient precision or clearness and, in our opinion, it is this notification alone that can be taken as the effective notification for purposes of computing the market value. We would like to make it clear that we are resting out conclusion entirely on the language of the notifications in present case. We do not wish to go to the length of suggesting, as Shri Sachhar did, that, wherever there are notifications under Section 4. Shri Sachhar in this context referred to a his of this Court in Raghunath v. State of Maharashtra ((1988) 3 SCC 294 : AIR 1988 SC 1615) to support his contention that where a subsequent notifications issued it should be deemed to have superseded the earlier one. In that case a notification under Section 4 had been issued in respect of certain lands and this was followed by another notification under section 4 in respect of certain lands. Some of which had been included in the earlier notification as well. A bench of this Court, of which one of us was a member, held that latter notification must be considered to have superseded the earlier one. That decision rested on its facts and cannot be treated as an authority for the general proposition, that, even in cases like the present one, where subsequent notifications are in the nature of amendments to the earlier one, the subsequent amendment should be treated as the only effective one. In our opinion where there is a notification, which purports to be by way of an amendment, the question whether it is really one rectifying certain errors in the earlier one or whether its nature is such as to totally change the entire complexion of the matter would have to be considered on the terms of the relevant notifications. In the present case, as we have already said, it appears to us, on a proper construction of the notifications, that the real and effective notification in respect of lands presently in question in survey No. 135/1, was only the notification dated February 28, 1963. The first contention is disposed of accordingly.

Contention No. 2

10. The High Court has taken into consideration, in fixing the rates of compensation, various awards and various sale deeds but while fixing the compensation it has proceeded on the assumption that

the notification under Section 4 relevant for the purposes of the present case is the notification of May 11, 1961. For the reasons we have discussed under the first contention, this needs to be modified and the compensation has to be fixed with regard to the market value of the lands in question as on February 28, 1963. As to quantum the High Court has based its conclusion principally on two awards in respect of certain lands in the neighborhood marked as Exs. A-20 and A-21. Under Ex. A-20, compensation at the rate of Rs. 5.75 per sq. yard was given in relation to an acquisition dated December 11, 1958 in respect of a plot measuring 1900 sq. yards. The lands covered by that award were on the other side of the main road and opposite to the lands presently in question. The only difference is that the lands are comparatively smaller in extent. Making adjustments for this factor, the High Court thought, the value of the land acquired here could be fixed for Rs. 4 per Sq. yard in May 1961. Again Ex. A-21 related to an acquisition for which the relevant date was January 8, 1959. This award comprised a total extent of 33-03 acres and the compensation worked out to about Rs. 5 per sq. yard in respect of the leveled land. The High Court took into account the fact that the land acquired under Ex. A-21 was in a better and more important locality and also the fact that there was a time gap of about two and half years between that acquisition. Considering these factors as counter balancing each other, the value again worked out to Rs. 5 per sq. yard. On this line of reasoning, the High Court held that the market value of 8 acres of land belonging to the second claimant could be estimated at the rate of Rs. 5 per sq. yard. So far as the lands of Sampatlal were concerned the rate was fixed at Rs. 4 per sq. yard.

11. Shri Sachhar, learned counsel for the appellant, contended that the evidence in the case hoed that the rates in Hyderabad were steadily rising between 1958 and 1963. Sale deeds had been placed on record, which disclosed sales at Rs. 8, 10, 12, 14, and 15 per sq. yard on dates falling between 1958 and 1963, though these were of comparatively small areas. Even making necessary adjustments for the variation in extent, learned counsel contended that the compensation payable could not be fixed at less than Rs. 10 pr sq. yard. He also submitted that the land covered by Ex. A-21 was full of pits and that if adjustment is also made for the fact that the present acquisition is about four years later, the compensation fixed by the High Court would be seen to be totally inadequate.

12. We have carefully gone through the judgment of the High Court. The High Court has meticulously discussed the various distinguishing features of the plots covered by the sale deeds and the awards placed before it. It appears to us that the lands covered by Exs. A-20 and A-21 come nearest the present case. It is true that the price of Rs. 5.75 per sq. yard under Ex. A-20 is in respect of a small plot of land of less than half an acre in extent. But at about the same time, Ex. A-21 evidences the payment of Rs. 5.00 per sq. yard in January 1959. The area covered by this award is fairly extensive compared to the acquisition with which we are at present concerned. We are, therefore, of the opinion that the price per sq. yard as on February 28, 1963, which according to us is the relevant date should be considerably higher than the figure of Rs. 5 fixed by the High Court. Taking into account all the relevant circumstances, and in particular, the finding based on the evidence even of the Collector, that prices were rising between 1957 and 1963, we think that it would be reasonable to fix the market value at Rs. 9 per sq. yard, in respect of the lands belonging to the company. So far as the lands of Sampatlal are concerned, it is true that in fact they form part of a big tract of land in the survey number but they belong to different owners and the land of Sampatlal is away from the main road. The High Court was, therefore, justified in fixing its value at one rupee per sq. yard less than the compensation Awarded in the respect of the land of the company. We would, therefore, fix the compensation in respect of the lands of Sampatlal at Rs. 8 per sq. yard. We direct the compensation and consequent benefits on this basis.

Contention No. 3

13. This contention relates to the extent of free land and the market value of the godown along with the land on which it stands. So far as the extent of the land is concerned, we are in agreement with the learned counsel for the appellant that the extent of land on which the godown stands and the land appurtenant thereto cannot be taken to be in excess of one acre. The building occupies only 2000 sq. yards and even making provision for a fairly wide roadway for access to trucks and lorries to the main road from the godown, the total extent of such land referable to the godown cannot be taken as more than one acre. The estimate of 4 acres by the Collector and even 2 acres by the District Judge and the High Court are rather excessive. We, therefore, hold that out of 10 acres belonging to the company, 9 acres should be paid for as land and only one acre should be included as part of the godown. Coming, however, to the evaluation of the godown itself, we see no error in High Court's conclusion. The rent derived from the godown was Rs. 1000 per month. The rent deed itself provided that the lessor was to carry out repairs. In the circumstances, we are of the opinion that the High Court was fully justified in taking the net annual rent at Rs. 10,000. The multiple of 25 is also quire reasonable and, therefore, we see no error in the computation by the High Court so far as the value of the godown is concerned.

14. This disposes of all the contentions raised in the appeal. To sum up we hold -

> (1) the market value of the lands should be determined as on the date of the notification dated February 28, 1963;
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> (2) the value of the godown has been rightly arrived at by the High Court and the District Judge;
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> (3) the extent of land for which the company should be compensated as building sites will be 9 acres and that belonging to Sampatlal will be taken as 6 acres 35 guntas;
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> (4) the compensation payable to the company should be worked out at Rs. 9 per sq. Yard and that payable to Sampatlal at Rs. 8 per sq. per yard. The appeals are allowed to the extent indicate above.

15. In the circumstances, however, we make no order as to costs.

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