

Tej Ram and others

Vs

Collector, Jammu Tawi

Civil Appeal No.1800(N) of 1975

(P. B. Sawant, S. C. Agarwal JJ)

12.09.1990

JUDGMENT

S. C. AGRAWAL J

1. This appeal by special leave has been filed against the judgment of the High Court of Jammu and Kashmir dated February 28, 1975. It arises out of proceedings for acquisition of land under the Jammu and Kashmir Land Acquisition Act, 1990 (1934 AD) (hereinafter referred to as 'the Act').

2. Appellants Nos. 1 (a) to (d) namely, Tej Ram, Heera Lal, Mani Ram and Mul Raj owned a line of shops, out of which three were double storeyed and the rest were single storeyed, in Mubarak Mandi Bazar in the City of Jammu Tawi. Gopal Krishan, appellant No. 2, owned a single storeyed shop in the said bazar. The State of Jammu and Kashmir issued a notification dated November 4, 1964 under Section 4 of the Act for acquiring almost the entire shop of appellant No. 2 measuring about 99.75 sq. ft. and almost the entire three double storeyed shops and small portions of the remaining five shops measuring about 654.33 sq. ft. belonging to appellants Nos. 1(a) to (d). The said notification under Section 4 was followed by a declaration dated March 12, 1965 under Section 6 of the Act. The Assistant Collector of Jammu made an award dated November 28, 1968, whereby he assessed the market value of the land underneath the single storeyed shops at Rs. 8 / - per sq. ft. and the market value of the land underneath the double storeyed shops at Rs. 12/ - per sq. ft. He also awarded Rs. 500/ towards design charges in each case. On that basis he awarded Rs. 1,298/- for the portion of the land acquired from the shop of appellant No. 2 and Rs. 16,797.96 for the land acquired out of the shops of appellants Nos. 1(a) to (d). At the instance of the appellants reference under Section 18 of the Act was made to the District Judge. Both the references were disposed of by District Judge, Jammu, by his order dated December 23, 1970. The District Judge enhanced the compensation for the land underneath the shops to Rs. 30/- per sq. ft. and on that basis he awarded Rs. 2,970/- as compensation for the vacant land to appellant No. 2. In addition to that a sum of Rs. 2,248/- was awarded as dismantling charges and Rs. 500/- was awarded as design charges. Rs. 857.70 was awarded as solatium at the rate of 15% under Section 23(2) of the Act. The total amount of compensation awarded to appellant No. 2 was Rs. 6,575.70. Similarly the compensation for the land underneath the shops of appellants Nos. 1(a) to (d) at Rs. 30/ - per sq. ft. was assessed at Rs. 19,630/-. In addition Rupees 11,800/- was awarded as dismantling charges and Rs. 500/- as design charges. A sum of Rs. 4,790/ - was awarded as solatium at the rate of 15%. A total amount of Rs. 36,720/was awarded as compensation to appellants Nos. 1 (a) to (d).

3. The Collector, Jammu, filed an appeal in the High Court against the said order of the District

Judge. The appellants filed crossobjections in the said appeal. The High Court allowed the said appeal of the respondent and reduced the compensation for vacant land to Rs. 10/- per sq. ft. The High Court maintained the award relating to dismantling charges and the design charges. But as regards the solatium the High Court held that the same was payable only for the area of the land and was not payable on the dismantling charges and design charges. On that basis, the High Court fixed the amount of compensation payable to appellant No. 2 at Rupees 3,895.50 and the amount of compensation payable to appellants Nos. 1(a) to (d) at Rs. 19,825.33. Aggrieved by the said decision of the High Court the appellants have filed this appeal after obtaining special leave to appeal.

4. Shri Atul Sharma, the learned counsel for the appellants, has submitted that the High Court was not justified in reducing the compensation that was awarded by the District Judge which itself was on the low side. Shri Sharma has pointed out that the acquisition in question has been made for the purpose of widening the road and the Municipal Committee, Jammu had earlier, in 1956, purchased a shop in the same locality from one Kewal Krishan for a sum of Rs. 15,000 by private negotiation. Shri Sharma has contended that the High Court has erroneously ignored the said transaction on the ground that the area underneath the said shop is nowhere mentioned. Shri Sharma has invited our attention to the statement of Shri Paul, an employee of M/ s. Khattrimal Kewal Krishan, who has deposed that the shop which was purchased by the Municipal Committee under the agreement dated January 6, 1956 was 10 x 10 ft. Shri Sharma has also referred to the statement of Shri Sant Ram Sharma, Assistant Commissioner, Jammu, produced by the respondent, who has stated that shops measuring 8 x 8 ft. are being sold in Mandi Bazar at Rs. 20,000/-. As regards solatium Shri Sharma has urged that in the appeal filed before the High Court the respondent had not challenged the finding of the District Judge with regard to solatium and the said appeal was confined to the valuation of the land.

5. Shri Ashok Mathur, the learned counsel for the respondent, has supported the judgment of the High Court and has urged that the High Court has rightly assessed the compensation and no ground is made out for interference with the same.

6. Under clause first of sub-section (1) of Section 23 of the Act the relevant date for assessing the market value of the land is the date of the publication of the declaration relating thereto under Section 6. In the instant case the declaration under Section 6 was issued on March 12, 1965 and the market value has to be determined with reference to the said date. For the purpose of assessing the market value of the land the District Judge has taken into account the sale deed dated March 19, 1967 executed by Lala Ram Saran Dass Kohli in favour of Shri Ram Krishan, relating to a shop at Bazar Chowk Chabutra, Jammu, for a sum of Rs. 8,000 and the sale deed dated April 14, 1967 executed by Lala Kidar Nath Saraf in favour of Lala Chuni Lal in respect of shop at Bazar Pacca Danga, Jammu Tawl for Rs. 5,000/ -. Keeping in view the area of the shop that were sold as well as the cost of construction the District Judge assessed the market value of the land in 1965 at RS. 3,000/ - per 100 sq. ft. The High Court has disagreed with the said assessment made by the District Judge on the ground that the market value prevailing in March, 1967, could not be treated as market value prevailing in March, 1965, the date when a declaration under Section 6 was made. The High Court was also of the view that the cost of construction had been assessed by the District Judge at a very low figure of Rs. 2,000/- per 100 sq. ft. for a single storeyed shop on the date of acquisition. According to the High Court the total cost of construction could not be less than Rs. 4,000/ - at the material date and the land underneath the two shops in March/ April, 1967 could not be valued more than Rs. 5,000/- and excluding the appreciation in prices from March, 1965 to March, 1967, the land underneath the two shops could not value more than Rs. 3,500/- in March, 1965 and since the area

covered by the two shops was approximately 350 sq. ft. the value of land could not work out at more than Rs. 10/- per sq. ft. at the material date.

7. In interfering with the award of the District Judge the High Court appears to have adopted a hypercritical approach. The shops in question were situated in Mandi Bazar, an important shopping area in Jammu City. The acquisition was made for the Municipal Committee, Jammu to widen the road. The Municipal Committee, Jammu had earlier purchased a shop for the same purpose in the same Bazar by private negotiation, under agreement dated January 6, 1956, for a sum of Rs. 15,000/- from Lala Kewal Krishan. Shri Paul, who was employed as a clerk with M/s. Khatrimal Kewal Krishan, has deposed that the area of the said shop was 10' x 10', i.e. 100 sq. ft. According to Ram Saran, another employee of Lala Kewal Krishan, the area of the shop that was sold was 8' x 10', i.e. 80 sq. ft. Taking the cost of construction of the shop as Rs. 4,000/-, as assessed by the High Court for the shops sold in 1967, the value of the vacant land comes to Rs. 11,000 / -. Proceeding on the basis that the area of the shop was 100 sq. ft. as indicated by Shri Paul, the value of vacant land in 1956 would come to Rs. 110/- sq. ft. Then there is evidence of Shri Sant Ram Sharma, Assistant Commissioner, who was examined by the respondent. He has deposed that shops measuring 8' x 8' are being sold in Mandi Bazar at Rs.20,000/-. This statement was recorded on November 21, 1970. Taking the cost of construction as Rs. 4,000/- for the shop the value of,64 sq. ft. of vacant land in 1970 comes to Rs. 16,000/- i.e. about Rs. 250/- per sq. ft.

8. Keeping in view the transaction of purchase by private negotiation of the shop by the Municipal Committee, Jammu from Lala Kewal Krishan in 1956 and the evidence of Shri Sant Ram Sharma, Assistant Commissioner, Jammu, produced by the respondent indicating the prices of shops in Mandi Bazar in 1970, the assessment of market value of the vacant land on the material date, i.e. March 12, 1965, at Rs. 30/- per sq. ft. by the District Judge cannot be said to be high. The High Court has upset the said valuation without taking into consideration the aforesaid evidence on record. In the circumstances we are of the opinion that the High Court was not justified in interfering with the assessment of the market value of the vacant land made by the District Judge.

9. As regards solatium, we find that the respondent in his appeal before the High Court had not assailed the award of solatium on the entire amount of compensation by the District Judge and the appeal was confined to the assessment of the market value of the vacant land. The High Court was, therefore, in error in interfering with the award of the District Judge with regard to solatium.

10. The appeal is, therefore, allowed. The judgment and decree of the High Court dated February 28, 1975 is set aside and the judgment and decree of the District Judge, Jammu, dated December 23, 1970 are restored. The appellants will be entitled to their costs in this appeal.

Appeal allowed.

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