

Hookiyar Singh

Vs

Special Land Acquisition Officer, Moradabad and another

Civil Appeal No. 6821 of 1996

(K. Ramaswamy, S. P. Bharucha, K. S. Paripoornan JJ)

14.03.1996

JUDGMENT

1. Substitution allowed.

2. Leave granted. We have heard learned counsel on both sides.

3. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') acquiring an extent of 171.46 acres of land situated in village. Tigarea Bhoor, Tehsil Hansanpur, District Moradabad for public purpose, viz., UPSIDC, was published on September 28, 1981. The Land Acquisition Officer (LAO) classified the lands into several categories and accepting the sale deed, item 51, determined compensation at the highest rate of Rs. 15,500/- and gradually reduced the market value basing upon the classification. On reference under Section 18, the District Judge by his award and decree dated May 22, 1989, increased the compensation to Rs. 40,000/- per acre. Dissatisfied with the determination of the compensation, the claimants as well as the State filed appeals in the High Court.

4. As seen, the High Court proceeded on the premise that the classification of the lands was not warranted, the entire land commands same value and that, therefore, uniform rate of market value is required to be adopted in determining the compensation. The High Court had accepted the sale deed relied on by the LAO and on that basis it increased the market value by five times, holding that in the oral evidence of the claimants they had stated that they paid much more than what was reflected as consideration in the sale deed and that there was no cross-examination in that behalf. It fixed the market value at Rs. 62,500/- and ultimately determined the compensation in respect of all lands at Rs. 50,000/- per acre. Thus these appeals by claimants and the State as well as the UPSIDC.

5. The question for consideration is : what is the just and adequate compensation to which the lands would command determination? We accept the finding of the High Court as the State did not seriously dispute in the High Court that all the lands are of equal value and, therefore, compensation should be determined uniformly in respect of all lands. It is seen that the market value of the lands varies from Rs. 5,000/- to Rs. 49,500/- per acre. But the sale deeds are of small extents of land. Only one sale deed in which large extent of land, i.e., one acre and odd was sold, appears to be related to one of the claimants and part of the transfer was in favour of his wife. The Civil Court also pointed out that those lands are abutting the national high way and that they do not command the same market value as the lands under acquisition. In view of those facts, we cannot accept the sale deed to be reflective of the true and genuine market value. But the fact remains that the LAO himself had adopted the highest rate of Rs. 15,500/- and the High Court accepting the sale deed relied on by the LAO had enhanced the market value five times accepting the oral evidence.

6. It is settled law that the burden of proof of market value prevailing as on the date of publication of Section 4(1) notification is always on the claimants. Though this Court has time and again pointed out the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation. If the sale deeds are found to be genuine, the market value mentioned therein must be presumed to be correct. If the genuineness is doubted, it cannot be relied upon, Proper tests and principles laid down by this Court must be applied to determine compensation. Since the LAO as well as the High Court placed reliance on the sale deed which commanded market value of a maximum of Rs. 15,000/- and odd, the question is : what would be the just and adequate compensation to be paid in respect of the lands? The Court must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser in open market and to put a question to itself whether as a prudent purchaser it would offer the same price in the open market as is to be determined? This should be the acid test. The District Court was not right in holding that the lands are possessed of future-potentiality as public purpose is industrial development. Section 24 clause fifthly prohibits taking into consideration future user to which the land will put when acquired. Considered from the fluctuation in the prices placed on record and large area involved in the acquisition, situation of the lands, actual user of the lands as agricultural lands and on the totality of the facts in this case, treating all the land as agricultural lands, we are of the considered view that the market value of the land per acre would be Rs. 35,000/-. The claimants are accordingly entitled to this amount. It is no ground for the claimants to contend that as they are required to refund the difference of the compensation amount, the amount determined by the High Court or reference Court should be confirmed. If that contention is given acceptance in no case proper compensation can be fixed by the appellate Court.

7. It is stated by Shri Manoj Swarup, learned counsel that the lands have been sold to the beneficiaries at the lesser rates than what was determined. It would be obvious that if higher compensation was paid in respect of the lands, UPSIDC is entitled to recover the proportionate increase in the compensation from the allottees.

8. The appeals are accordingly disposed of. No costs. Order accordingly.