Union of India and Others

Vs

Chain Singh and Others

Civil Appeals Nos. 3568 to 3570 of 1997

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

08.05.1997

ORDER

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

2. The land to an extent of 1007 kanals and 6 marlas situated in Village Sansoo in Tehsil and District Udhampur was initially requisitioned under Section 6 of the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (15 of 1968). On 26-12-1988, proceedings for acquisition of the land were initiated. The compensation was determined under Section 8 of the Act by the Land Acquisition Officer at the rate of Rs. 12,000, Rs. 10,000 and Rs. 9000 per kanal to Warhal Changhi, Warhal Mandi and Banjar Kadeem lands respectively. Dissatisfied therewith, an application under Form 'G' seeking reference was filed. The Arbitrator was appointed under Rule 9 read with Section 8(1) of the Act. Thereafter the Arbitrator determined the compensation at the rate of Rs. 70,000 per kanal. On appeal, the learned Single Judge confirmed the same and the Division Bench held that no letters patent appeal would lie. Thus, this appeal by special leave.

3. It is seen that the Land Acquisition Officer has adduced the oral as well as documentary evidence. The claimants also filed the documentary evidence as well as the oral evidence. On consideration of the evidence, the Arbitrator as well as the High Court have held that the lands are situated in a developed area and possessed of and commanded good market value for sale in the open market to a willing purchaser and, therefore, they are capable of fetching market value ranging from Rs. 1 lakh to Rs. 2 lakhs per acre and in view of the fact that the sale deeds relied on were in respect of small pieces of land they determined the compensation at the rate of Rs. 70,000 per acre.

4. The question is whether the view taken by the Arbitrator as well as by the High Court is correct in law. It is settled law that under Section 8(3) of the Act, as amended by Act 6 of 1977, the compensation payable for the acquired property under Section 7 shall, in the absence of an agreement, be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of the requisition, and been sold on the date of the acquisition in the same condition. In other words, the principle required to be applied would be that the existing conditions as on the date of the acquisition (as if existed in conditions) in which the land existed on the date of requisition, be the determining factor for fixing the compensation as per the market value prevailing as on the date of the acquisition and compensation has to be determined accordingly.

5. This Court in Union of India v. Hari Krishan Khosla [(1993) Supp (2) SCC 149] (SCC at p. 166) considered the question under the Requisitioning and Acquisition of the Immovable Property Act,

1952 which is pari materia to the Act, and held thus : (SCC paras 61-63)

> "We are of the opinion that the amount of compensation can be fixed by agreement under Section 8(1) (b). In the absence of such an agreement, it is left to the discretion of the arbitrator. The arbitrator under Section 8(1) (e) is to hear the dispute. Thereafter he is to determine the compensation which appears to him to be just. He must have regard to the circumstances of each case while applying the provisions of sub-section (3) (a) of Section 8 which reads as under :
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> "8. (3) The compensation payable for the acquisition of any property under Section 7 shall be -
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> (a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or
>
> #(b) * * *##
>
> In our view the significant omission of solatium is indicative of the legislative intent necessitating stress on the expressions 'just' and 'circumstances of each case' occurring in sub-section (1) (e) thereof.
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> Yet another distinguishing feature is the expression 'open market'. The reason why solatium has not been provided is that 'open market' contemplates a bargain between a free buyer and a free seller unfettered by the consideration of requisition and consequent acquisition."

6. The principle for determination of market value has been laid down by this Court in a catena of decisions one of which is Periyar & Pareekanni Rubbers Ltd. v. State of Kerala [(1991) 4 SCC 195] (SCC at p. 207, para 18) which reads as under :

> "... Equally it is salutary to note that the claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be recompensated for rehabilitation or to purchase similar lands elsewhere. In some cases for lack of comparable sales it may not be possible to adduce evidence of sale transactions of the neighbouring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of notification under Section 4(1). Therefore, it is the paramount duty of the Land Acquisition Judge/authority to keep before him always the even scales to adopt pragmatic approach without indulging in 'facts of imagination' and assess the market value which is reasonably capable to fetch reasonable market value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. The guiding star would be the conduct of a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be wiling to buy as a prudent man in normal market conditions as on the date of the notification under Section 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or

otherwise to inflate the market value."

7. Thus, it could be seen that the endeavour of the court or the arbitrator should be to sit in the armchair of a prudent willing purchaser; keep the consideration of the feats of imagination at bay; seek answer to the question whether a willing and prudent buyer would offer to purchase the land from the open market from a willing seller at the same rate which is proposed to be determined by the Land Acquisition Officer/Court. All the relevant features, viz., the nature of the land, the quality of the land, the market conditions prevailing as on the date of the acquisition, the income derived from the land etc. should be taken into consideration. Thus, the question is if the similar land remains in the same condition at the time of acquisition, would a prudent purchaser offer to purchase 1007 kanals at Rs. 70,000 per kanal. The Court is required to consider what will be the true market value in that behalf. The Arbitrator and the High Court have thrown the tests laid by judicial decisions to the winds. It is seen that in the acquisition proceedings, the Tehsildar had collected various documents which now have been proved through the witnesses as to the value as on 30-6-1987 and they have worked out the compensation at the rate of Rs. 12,000 per kanal for the Warhal Changhi, Rs. 10,000 for Warhal Mandi and Rs. 9000 for Banjar Kadeem. It is not disputed nor can it be disputed that the lands had developed in and around the land on account of the military estate established in that village. The present development has been taken into consideration which is wrong in law. There is not doubt that the landowners are not having any other land except the small piece of land. But that would not be a consideration for totally ignoring the prevailing market value and fixing the compensation dehors the prevailing market value. The documents relied on by the claimants show in the map filed before us, that the lands are situated far away from the lands under acquisition. Equally, the land in respect of which sale deeds were filed by the Government are situated in Sansoo Village itself which is very near to the acquired lands. The market value fetched by the lands, i.e., small pieces of the extent of 4 and 5 marlas respectively, between 10-8-1986 and 27-4-1987 hardly work out to a minimum of Rs. 10,000 and a maximum of Rs. 20,000. Even the sale deeds relied on by the claimants are of maximum of 8 marlas of land; though the house was constructed, it was sold for Rs. 32,000. Thus, the compensation worked out to Rs. 80,000 per kanal.

8. Under these circumstances, considering the totality of the facts and circumstances and sitting in the armchair of a willing purchaser, we think that the appropriate market value would be Rs. 30,000 per kanal and the High Court and the Arbitrator, therefore, have committed manifest error in determining the compensation.

9. Accordingly, the appeal is allowed viz. (CA No. 3568 of 1997). The claimants are entitled to interest as per the Act. With regard to the determination of the value of the trees, we are not inclined to disturb the determination made by the Arbitrator. It is open to the appellants to have the excess amount recovered from the respective persons as per rule. No costs.

10. CAs Nos. 3569-70 of 1997 [@ SLPs (C) Nos. 11052-53 of 1997, CC Nos. 3592-93 of 1997] filed by the claimants stand dismissed. No costs.