

# SUPREME COURT OF INDIA

Brahma Deo

Vs.

State of Uttar Pradesh

C.A.No.1174 of 1999

(B. P. Singh and B. N. Srikrishna JJ.)

02.09.2004

## JUDGMENT

### **B. P. Singh, J.**

1. This appeal by the special leave is directed against the judgment and order of the High Court of Judicature at Allahabad dated 13th July, 1998 in First Appeal No.671 of 1993. By its impugned judgment and order the High Court modified the judgment and decree of the VIII Addl. District & Sessions Judge, Varanasi dated 31st July, 1989 in L.A. Reference No.331/1988 and reduced the compensation granted to the appellant under the Land Acquisition Act ('the Act' for short) from Rs.15, 000/- per biswa to Rs.10, 000/- per biswa.

2. We may notice only the relevant facts.

3. By a notification issued under Section 4 of the Act dated 10th January, 1987, lands, admeasuring 1 bigha 15 biswas and 4 dhoors, belonging to the appellant were notified for acquisition. The Land Acquisition Collector granted a compensation @ Rs.30, 952.37p. per bigha. Upon reference under Section 18 of the Act, the learned VIII Addl. District & Sessions Judge, Varanasi enhanced the compensation to Rs.15, 000/- per biswa. It is not disputed before us that 20 biswas make one bigha. The lands in question have been acquired for 'Bhadohi Rajwaha', which is a Canal Scheme. By the impugned order the High Court held that the learned Judge, while disposing of the reference under Section 18 of the Act, committed an error in considering the Award in LAR 172/86 for the reason that a certified copy of that judgment had not been filed before the Court. It further observed that the only evidence before the Court was, the judgment in LAR 34/89 which had awarded compensation @ Rs.10, 000/- per bigha. The High Court, therefore, reduced the compensation payable to the appellant from Rs.15, 000/- per biswa to Rs.10, 000/- per biswa.

4. It is not disputed before us that the lands in LAR 34/89, LAR 172/86 and in the instant case, i.e., LAR 331/88 are all comprised within the same village. The land, which was subject matter of LAR 34/89, was acquired by notification issued under Section 4 of the Act on 25.8.1987 for the purpose of construction of a bye-pass, whereas the land subject matter

of LAR 172/86 was acquired pursuant to the notification under Section 4 of the Act issued on 11.2.1982 for the same purpose as in instant case, i.e., for the 'Bhadohi Rajwaha'. In the case in hand, the notification under Section 4 of the Act was issued on 10.1.1987.

5. When the reference under Section 18 of the Act was being considered by the learned VIII Addl. District & Sessions Judge, Varanasi, the judgment in LAR 34/89 dated 31.5.1989 was brought to his notice. From that judgment it appears that compensation @ Rs.10, 000/- per biswa only had been awarded. That judgment, however, noticed an earlier judgment in LAR 172/86 dated 27.11.1987 wherein compensation was awarded for similar lands @ Rs.15, 000/- per biswa. The learned VIII Addl. District & Sessions Judge, Varanasi, while disposing of LAR 331/88 (the instant case), noticed the judgment in LAR 34/89 that for similar lands acquired under the Act, which were subject matter of LAR 172/86, a higher compensation @ Rs.15, 000/- per biswa was awarded. The learned VIII Addl. District & Sessions Judge, Varanasi also noticed from a perusal of the judgment in LAR 34/89 that it did not show on what basis or for what reasons, the value of the acquired lands, subject matter of that reference, the compensation was determined at a lower rate than the lands, subject matter of LAR 172/86. He however, preferred to follow the Award in LAR 172/86 finding that the lands in question were comparable to the lands, which were subject matter of LAR 172/86, and that both had been acquired for the same purpose, though Section 4 notification in the former case was published in February, 1982 while in the latter case in January, 1987.

6. We are of the view that the High Court was not justified in modifying the Award of the Reference Court on a technical ground that the judgment in LAR 172/86 was not evidence in the case for the reason that its certified copy had not been filed before the Court. The fact which the High Court missed is that the certified copy of the judgment in LAR 34/89 was on record which referred to the judgment in LAR 172/86. The facts of LAR 172/86 were, therefore, incorporated to some extent in the judgment in LAR 34/89. It would be hyper technical to assume that though the Court was entitled to consider the judgment in LAR 34/89 and take notice of the facts which related to that particular reference, it could not take notice of the facts noticed in that judgment which had reference to another case being LAR 172/86. The fact that in LAR 172/86 higher compensation @ Rs.15, 000/- per biswa had been awarded was certainly proved by filing of the judgment in LAR 34/89 which recorded this fact. No doubt, disagreeing with the finding in the earlier case, a lower compensation @ Rs.10, 000/- per biswa only had been awarded in LAR 34/89.

7. In the facts and circumstances of the case, we are of the opinion that the view taken by the High Court is not justified and it has resulted in miscarriage of justice. The lands, which are subject matter of the instant case, were acquired 5 years after the lands acquired in LAR 172/86. The lands in both the cases are within the same village and have been acquired for the same purpose. If at all, the appellants could have claimed a higher compensation on the ground that the acquisition in their case was 5 years later, and the price of the land must have escalated during this period. Even if we take the Award in LAR 34/89 as the basis, which awarded compensation @ Rs.10, 000/- per biswa, having regard to the fact that the lands in the instant case were notified for acquisition five years later, and taking notice of the

escalation of price of land the rate of Rs.15, 000/- per acre does not appear to be unreasonable.

8. In the result, the appeal is allowed, the judgment and order of the High Court is set aside and the judgment and decree of the VIII Addl. District & Sessions Judge, Varanasi dated 31st July, 1989 in L.A.R.No.331/88 restored.

No costs.

The appeal is allowed with no costs in terms of the signed order.