SUPREME COURT OF INDIA

Lucknow Development Authority

Vs.

Krishna Gopal Lahoti

C.A.No.5112 of 2007

(Dr. Arijit Pasayat and Lokeshwar Singh Panta JJ.)

02.11.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court, Lucknow Bench dismissing the appeal filed by the appellant under Section 54 of the Land Acquisition Act, 1894 (in short the 'Act') read with Section 96 of the Code of Civil Procedure, 1908 (in short 'CPC').

3. In the First Appeal challenge was to the award dated 18.2.1998 passed by the Presiding Officer, Nagar Mahapalika Tribunal, Lucknow in a reference under Section 18 of the Act in land case No.746 of 1991 titled Krishna Gopal Lahoti v. State of U.P.

4. The factual background in a nutshell is as follows:

A large area of land measuring 194 bigha 19 biswa 14 biswansi and 14 kachwansi situated in village Purania and Mahibullapur was sought to be acquired by appellant- Lucknow Development Authority under the housing and development scheme known as "Timber Nagar Avasiya Yojana". Khasra plot No.379 measuring 8 bigha, and Khasra plot No.394 measuring 2 bigha, 8 biswa 15 biswansi situated at village Mahibullapur and belonging to the claimants Krishna Gopal Lahoti, Sharad Kumar Lahoti, Sunil Kumar Lahoti and Sudhir Kumar Lahoti were also acquired under the said scheme. The relevant notification under Section 4 was issued on 26.3.1986. The notification under Section 6 of the Act was published on 28.5.1986. The possession of the acquired land was taken on 17.12.1986 and Award under Section 11 of the Act was made on 27.5.1988 by the Special Land Acquisition Officer. The Special Land Acquisition Officer in his Award under Section 11 of the Act determined the market value of the land in question at the rate of Rs.2.20 per sq. ft.

5. Aggrieved by the aforesaid Award, reference under Section 18 was preferred by the land owners, inter alia, stating that adjoining to the land in question, there is Lucknow- Sitapur Highway and nearby the acquired land there are number of colonies such as Aliganj Colony, Kapurthala Complex,

P & T Colony, Arif Complex, Public Service Commission and Office of Geological Survey of India.

6. According to the landowners, the land in question has great potential value and the market value as determined by the Special Land Acquisition Officer is quite inadequate. The market value of the land at the rate of Rs.60/- per sq.ft. was claimed by the respondents besides statutory benefit under Act 68 of 1984.

7. The Lucknow Development Authority and the State of U.P. filed written statements separately. It was stated that the compensation as determined and awarded by the Special Land Acquisition Officer is quite adequate and the claimants are not entitled to the benefits of the provisions of Act 68 of 1984. It was stated that claim petition is barred by time. It is also barred by the provisions of the Urban Land Ceiling Act, 1976 (in short 'ULC' Act) and by the provisions of Section 31 of the Act.

8. Both the parties led oral and documentary evidence.

9. The learned Tribunal could not find any substance in the pleas raised by the appellants regarding claim being barred under various heads as alleged in the written statements and all the issues were decided in negative against the appellant. The Tribunal further found that the claimants are entitled to the benefit of provisions of Act of 68 of 1984 and on the basis of the evidence on record, the Tribunal determined the market value of the land at Rs.6/- per sq. ft. and accordingly compensation was awarded by the impugned Award.

10. Against the Award, the First Appeal was filed before the High Court. Primarily, it was contended before the High Court that the Tribunal had not properly evaluated the evidence on record and wrongly placed reliance on a sale deed relating to a small piece of land. It was also submitted that without any proper appreciation of materials on record the compensation was enhanced.

11. Stand of the respondents before the High Court was that there was no illegality in the Award passed by the reference court. It was submitted that the land was situated near densely populated area having great potential value and the appellate authority is selling the same land at the rate of Rs.300/- per sq. ft. The reference court on the basis of oral and documentary evidence has awarded compensation at the rate of Rs.6/- per sq. ft. along with other benefits as provided under the Act. The High Court found that the claimants had filed number of sale deeds of varying rates ranging between Rs.10/- per sq. ft. to Rs.5/- per sq. ft. but the sale deed relating to the plot No.166 situated at Mahibullahpur was relied upon by the Tribunal and the reasons for enhancing the compensation were assigned which according to the High Court did not call for any interference. The High Court did not find any substance in the plea of the appellant that the sale deed (Ex.C-38) was unduly relied upon by the Tribunal. It was pointed out that the sale deed is related to a very small piece of land as against the large area of more than 10 bighas involved in the present case. The High Court referred to certain decisions of this Court to hold that while determining the market value of the land, the potentiality of the land is a very material consideration and several factors like location of the land, its surroundings, available facilities thereon in the vicinity, nature of the land have to be taken into account. The High Court also found that there was no similarity between the land which was the subject matter of dispute in land acquisition case No.204 of 1992 where the rate fixed was Rs.1.85 per sq. ft.

12. The High Court further found that two sale deeds (Ga 26 and Ga 27) reflected that the rate was Rs.3/- per sq. ft. However, instances were referred to in holding that the market value is much higher. After granting deduction of 25% on account of expenses to be incurred towards plotting and development charges, the rate was fixed at Rs.6/- per sq. ft. Therefore, the High Court did not find any substance in the stand that the deduction should be at least 40% and not 25% as done. Accordingly, appeal as noted above was dismissed.

13. In support of the appeal, learned counsel for the appellant re-iterated the stand taken before the High Court.

14. In response, learned counsel for the respondents submitted that three sale deeds namely, C-38, 39 and 40 clearly show that rate is much higher. It was pointed out that this Court has depending on the facts of the case, allowed deductions ranging between 20% to 33%. That cannot be a hard and fast rule and in fact it would depend upon various factors.

15. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in The Collector of Lakhimpur v. Bhuban Chandra Dutta (AIR 1971 SC 2015), Prithvi Raj Taneja (dead) by Lrs. v. The State of Madhya Pradesh and Anr. (AIR 1977 SC 1560) and Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr. (AIR 1984 SC 892).

16. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

17. In the case of Suresh Kumar v. Town Improvement Trust, Bhopal (1989 (1) SVLR (C) 399) in a case under the Madhya Pradesh Town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam (AIR 1939 P.C. 98) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded, neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without

indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality.

18. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages.

19. It is only when these factors are present, it can merit a consideration as a comparable case (See The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty (AIR 1959 SC 429).

20. These aspects have been highlighted in Ravinder Narain and Anr. V. Union of India (2003 (4) SCC 481)

21. The deduction to be made towards development charges cannot be proved in any strait-jacket formula. It would depend upon the facts of each case.

22. It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civil amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot,

particularly, when vast tracts are acquired, as in this case, for development purpose.

23. The aforesaid aspects were highlighted in Kasturi and Ors. v. State of Haryana (2003 (1) SCC 354)

24. A reference may also be made to what has been stated in Kiran Tandon v. Allahabad Development Authority and Anr. (2004 (10) SCC 745), State of West Bengal v. Kedarnath Rajgarhia Charitable Trust Estate (2004 (12) SCC 425) and V. Hanumantha Reddy (dead) by Lrs. V. Land Acquisition Officer & Mandal R. Officer (2003 (12) SCC 642).

25. Keeping in view the general principles and the factual scenario as evident from the materials brought on record, we sustain the market value fixed (i.e. Rs.8/- sq.ft.) but instead of 25% development charges one-third has to be deducted. The entitlements shall be worked out on that basis.

26. The appeal is allowed to the aforesaid extent with no order as to costs.