

SUPREME COURT OF INDIA

Sardar Jogendra Singh (D) By LRs.

Vs.

State of UP

Civil Appeal No. 4028-4029 of 2007

(R. V. Raveendran and Lokeshwar Singh Panta)

28/09/2008

JUDGMENT

ORDER

1. Civil Appeal Nos.4028-4029 of 2007 are filed by claimants seeking enhancement of compensation. The other nine appeals are by the UP State Avas Evam Vikas Parishad ('Parishad' in short) which acquired the land, seeking reduction in compensation.

2. Certain lands in Village Samiuddinpur were acquired for the Ram Sagar Misra Nagar Extension Scheme, on the outskirts of Lucknow. The preliminary notification under section 28 of the UP Avas Evam Vikas Parishad Adhinyam, 1965 was issued on 17.3.1979 and the final declaration was issued on 25.5.1980. The Land Acquisition Officer by award dated 13.1.1983 made an offer of Rs.1.88 per sq.ft. as compensation. The Tribunal to which the claims of the land owners for higher compensation were referred, determined the market value as Rs.3 per sq.ft. The Tribunal based its decision on its award (Ex.C-141) in regard to an earlier acquisition of lands in the same village for the Ram Sagar Misra Nagar Scheme, under preliminary notification dated 12.12.1969. In other

words, C-141 related to acquisition for a Residential Layout and the subject acquisition was of adjoining lands for the extension of the said layout. The Tribunal had awarded Rs.1.50 per sq.ft in regard to the 1969 acquisition under Ex.C-141. As there was a gap of about 10 years between the date of earlier acquisition (12.12.1969) covered by Ex.C-141 and the date of subject acquisition (17.3.1979), the Tribunal adopted an increase of 10% per year (or 100% for 10 years) to arrive at the market value of the subject acquisition. It thus determined the market value as on 17.3.1979 as Rs.3 per sq.ft. It also considered two sale transactions relied on by claimants, dated 24.2.1978 and 12.4.1978 (Ex.C-26 and C-46) relating to sale of plots in the neighbouring Bastauli village (which was nearer to Lucknow as compared to Samiuddinpur), at a price of Rs.4.50 per sq.ft. and Rs.4.57 per sq.ft. Having regard to the fact that those sale deeds related to small extents of land in a village nearer to Lucknow and the subject acquisition related to a large extent of land in a village farther away, the Tribunal was of the view that at least one-third should be deducted from the sale price reflected by those deeds. The Tribunal thus arrived at the market value at Rs.3/- per sq.ft. even with reference to sale transactions of 1978. Consequently, it allowed the reference by judgment and order dated 12.9.1991 and held that the claimants were entitled to compensation at Rs.3/- per sq. ft. with solatium at 30%, additional amount at 12% per annum under section 23 (1A) and interest at 9% per annum on the unpaid compensation amount.

3. The Parishad preferred appeals before the High Court. The claimants also filed appeals. The High Court disposed of the said appeals by a common judgment dated 23.9.2002. The High Court affirmed the judgment of the Tribunal in regard to market value. It however increased the rate of interest payable from the date of expiry of one year from the date of taking possession. Feeling aggrieved, the Parishad has filed nine appeals and two claimants filed Civil Appeal Nos. 4028-4029 of 2007. While the Parishad contends that the increase from Rs.1.88 per sq.ft. to Rs.3/- per sq.ft. was not warranted, the claimants contend that the market value ought to have been fixed as Rs.5/- per sq.ft. on the basis on another award - Ex.C146.

4. After considering the evidence, the Tribunal and the High Court have concurrently determined the compensation payable as Rs.3 per sq.ft. as on 17.3.1979. The said market value has been determined with reference to an award (Ex.C-141) relating to acquisition of land by the Parishad in the same village and for the same purpose. In view of the gap of 10 years between the two acquisitions, the market value of Rs.1.50 per sq.ft. determined for the 1969 acquisition has been adopted as the base price, and an increase of 10% per annum, for ten years was provided to arrive at the market value as on 17.3.1979 at Rs.3/- per sq.ft. The question is whether the said market value is excessive as contended by the Parishad or low as contended by the claimants.

5. This Court in a series of judgments taken judicial notice of the fact that there is a steady increase in the market value of lands and have adopted the procedure of increasing the market value in the relied-upon transaction, at a given rate per year. In *General Manager, ONGC vs. Rameshbhai Jivanbhai Patel* (Civil Appeal No.5192 of 2002 decided on 31.7.2008), this Court held that in regard to urban and semi-urban areas, in the absence of other acceptable evidence, a cumulative increase of 10% to 15% was permissible with reference to acquisitions in the 1990s. In the decades preceding 1990s, the quantum of increase was considered to be less than 10% per annum. This Court however

observed that transactions beyond five years before the acquisition, should be considered with caution and may not always be a reliable guide.

6. These cases relate to an acquisition in the year 1979. The relied-upon award related to an acquisition of the year 1969. The general increase between 1969-1979 can be taken to be around 8-10% per annum. If the said increase is calculated cumulatively, we find that the total increase for ten years would be around 100%. Therefore the assessment by the Tribunal affirmed by the High Court, does not suffer from any infirmity. The other evidence also broadly support such an increase. There is nothing to show that the market value could be less than Rs.3 per sq.ft, as contended by the Parishad. Therefore, we find no need to reduce the market price fixed at Rs.3/- per sq.ft.

7. Learned counsel for the Parishad submitted that out of the rate determined with reference to the Ex.C-141 a deduction of at least 30% should be made towards development charges. He attempted to draw support from the decision of this Court in *Viluben Jhalejar Contractor (D) by LR. vs. State of Gujarat - 2005 (4) SCC 789*. The said decision is not relevant. It does not lay down any proposition that while calculating the market value of an acquired land, with reference to market value determined by courts/tribunal for similar land, any deductions should be made for development cost. Therefore, we reject the contention that 30% should be deducted.

8. In the appeals by the claimants, the submission is that the compensation awarded is very low. It is pointed out that in regard to the acquisition under notification dated 20.12.1969 for Ram Sagar Misra Nagar Scheme, there were two awards. One was Ex.C-141 relied on by the Tribunal where the amount awarded was Rs.1.50 per sq.ft. The second was an marked Ex.C-146 under which, in regard to acquisition in the very same village under the same notification dated 20.12.1969, market value was determined at Rs.2.50 per sq.ft. Claimants contend that there was no logical reason for the Tribunal and the High Court to adopt Rs.1.50 as the base rate with reference to Ex.C-141, when another award (Ex.C146) in regard to very same village and very same notification was available under which rate is Rs.2.50 per sq.ft. The contention is that if the market price of Rs.2.50 under Ex.C-146 is taken as the base rate with appropriate increase of 100% increase for ten years, the compensation would be Rs.5 per sq.ft. It is also submitted that having regard to the evidence showing that the acquired lands though agricultural, was in a village near to Lucknow and had the potential of being used for residential purposes and the evidence of steep increases in prices, the tribunal and the High Court ought to have awarded a minimum of Rs.5 per sq.ft.

9. There are concurrent findings by the Tribunal and the High Court in regard to the market value of Rs.3/- per sq.ft.. In exercising jurisdiction under Article 136 of the Constitution of India, this Court will not interfere with concurrent finding of facts unless there are special circumstances. The claimants attacking the concurrent finding regarding market value should be able to demonstrate that the determination is arbitrary or that some relevant evidence was totally ignored or that some irrelevant material was taken into account. Such a contention is not available in regard to judgment of the Tribunal and the High Court. The claimants do not dispute that in regard to the acquisition

under the notification dated 20.12.1969, the Tribunal had determined Rs. 1.50 as market value under Ex.C-141. It is true that Rs.2.50 per sq.ft. was also awarded under Ex.C-146. This would show that the lands covered by Ex.C-146 were clearly superior or situated in a more advantageous position when compared to lands covered by Ex.C-141. The Tribunal and the High Court have held that the acquired lands were similar to the lands considered in Ex.C-141 and therefore, they accepted Ex.C-141 and rejected Ex.C-146. If the claimants want us to ignore Ex.C-141 and prefer Ex.C-146, they must demonstrate with reference to oral or documentary evidence, that their lands were on par with the lands considered in Ex.C-146, and that the lands considered in Ex.C-141 were inferior to their lands. There is no such evidence. The claimants merely chose to produce both the awards i.e. Ex.C-141 and Ex.C-146. The fact that claimants themselves had produced and relied on Ex.C-141 apart from Ex. C-146 shows that they were satisfied if the market value under Ex. C-141 was adopted as the basis. When on consideration of the evidence, both the Tribunal and the High Court have chosen to rely on Ex. C-141, we find no reason to interfere with such decision, in the absence of special circumstances or evidence to choose Ex.C-146 as the basis. The other evidence relied on by the claimants do not establish a market value of Rs.5/- per sq.ft. Therefore, we find no reason to increase the market value.

10. In view of the above, the appeals by the Parishad as also the appeals by the Claimants are dismissed. Parties to bear their respective costs.