

# SUPREME COURT OF INDIA

Chandrashekhar

Vs.

Additional Special Land Acquisition Officer

C.A.Nos.4163-4165 of 2009

(Tarun Chatterjee and V.S.Sirpurkar JJ.)

08.07.2009

## JUDGMENT

### **Tarun Chatterjee, J.**

1. Leave granted.

2. These appeals by special leave arise from the related judgments of the Division Bench of the High Court of Karnataka at Bangalore viz., judgment dated 14th of August, 2003 in MFA No. 1409/2003 and batch, judgment dated 27th of August, 2003 in MFA No. 1341/2003 and batch, judgment dated 10th of November, 2003 in MFA No. 5664/2003 and batch, and judgment dated 16th of June, 2006 in MFA No. 5309/2004. On 14th of August, 2003 the High Court, dismissing MFA No. 1409/2003 and batch, had fixed the market value of the lands acquired under the Land Acquisition Act, 1894, (hereinafter referred to as 'the Act') at Rs.23/- per square feet which was contested by both the respondents as well as the appellants. This decision was relied upon in all the other decisions mentioned above that have come up for appeals in the present special leave petitions.

3. Since the decision dated 14th of August, 2003 was relied upon in all other judgments appealed against and the issues are based on the same material facts, the facts in appeal arising out of S.L.P. No.(s) 4997-4999/2005 are sufficient to decide the questions of law that have arisen in all these appeals.

4. On 5th of March, 1998, the lands of the appellant were notified for acquisition under Section 4 (1) of the Act, for establishment of rehabilitation centre for the ousters of Kanabur and Jainapur Village submerged due to construction of Upper Krishna Project. On 15th of August, 1998, Notification under Section 6 (1) of the Act was issued. On 1st of March, 1999, the Land Acquisition Officer (hereinafter referred to 'LAO') passed an award determining the compensation @ Rs. 54, 500/- per acre and possession of the land was taken by the respondent on 31st of March, 1999. Consequent to Reference Application by the appellants, the LAO referred the matter to the Civil Court for determination and adjudication of correct market value payable for the acquired lands. The II Addl. Civil Judge, Bijapur, allowed the

petitions and came to the conclusion that the acquired lands were similar in nature to comparable lands acquired by LAO @ Rs.23/- per Sq. Ft. for the purpose of ring road, and so the lands in question must be valued on the same terms. However, the Civil Court resorted to further deductions and held the market value of the said lands to be only Rs.17/- per Sq. Ft. on 4th of November and 6th of November, 2002 respectively. The final amount worked out to Rs.7, 40,500/- per Acre. It was submitted that as per the Valuation Report dated 5th of August, 2002, submitted by PW2, Retired Superintending Engineer (PWD), Consulting Engineer and Registered Approved Valuer in respect of the acquired lands, the market value of the lands in question had worked out to Rs.73.50/- per Sq. Ft.

5. On 21st of March, 2003, the Respondent LAO filed Misc. First Appeal before the High Court of Karnataka for reduction of compensation awarded by the Civil Court and the present appellants appealed for enhancement of compensation. On 14th of August, 2003, the High Court held that the market value of the lands would be more than Rs.32.20/- per Sq. Ft., yet it restricted the amount to Rs.23/- only, in view of the deficit in the Court Fee paid by the appellants in their Cross-Objections, without affording the appellants to pay the balance Court Fee. This decision of the High Court was relied upon in all the other judgments already mentioned as far as the question of compensation amount is concerned, that have been appealed against and the decision here shall have a common effect on all the said judgments.

6. The learned counsel for the appellants has submitted that decision of the High Court not to grant enhanced compensation at the rate of Rs.32.10/- per Sq. Ft. on the mere technical ground that the appellants had restricted their claim to Rs.23/- per Sq. Ft. due to their inability to pay Court Fee was fallacious. In this regard the learned counsel for the appellants has drawn our attention to the judgment in *Bhag Singh v. Union Territory of Chandigarh*<sup>1</sup> wherein it has been laid down that a rightful claim of the claimant cannot be defeated on technical ground of want of requisite Court Fee. The relevant portion of the said order and judgment of the High Court may be referred to for proper decision of these appeals. This Court observed in the aforesaid decision as follows:

"3. We are of the view that when the learned Single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an opportunity of paying up the deficit court fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned Single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the

State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned single Judge should have allowed the appellants to pay up the deficit court fee and awarded to them compensation at the higher rate or rates determined by them."

We are in respectful agreement with the views expressed by this court, as noted herein above, in the above judgment. A perusal of the decision of the High Court in the present case gives a similar impression as was observed in the above judgment, viz. once the court has taken the view that the claimants (appellants in the present case) were entitled to enhance compensation they should not be denied the same on the mere technical ground of non payment of the court fees and an opportunity must be given for payment of the same.

7. After examining the decision of the High Court, we are of the view that the court has recognised the high value of the lands of the appellants and have accordingly justified the same. The High Court has observed that the locus and potentiality of the acquired land with reference to evidence laid before the Civil court and that evidence was held to be a clear and clinching proof of the high potential of the acquired land. The High Court further observed that allowing escalation at the rate of 10% p.a. for four years, the actual market value of the acquired land would have been Rs.32.10/- per Sq. Ft. The High Court also took into consideration the awards passed by the Civil Court in LAC No.180/1998 and LAC No.23/1998 and observed that the entitlement of the appellants in the present case would be far more than the rate of Rs. 32.10/- per Sq. Ft. However the High Court then relied on the fact that the appellants had failed to mobilize money towards court fee and so the claim was restricted to Rs.23/- per Sq. Ft. Nevertheless, the High Court was of the opinion that State

should be fair and reasonable in compensating the uprooted agriculturists and it should not be permitted to make unlawful gain while exercising eminent domain power under the Act or any other statute.

8. Thus, we are of the clear opinion that the High Court seems to be at fault in view of the established law emanating from the decision in *Bhag Singh* (supra) as far as the restriction of the compensation amount to Rs.23/- on the mere technical ground of non- payment of the court fees is concerned. However, the learned counsel for the respondent has drawn our attention to the decision in *Buta Singh v. Union of India*<sup>2</sup> wherein a Constitution Bench of this Court had affirmed and approved the law laid down in *Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India*<sup>3</sup>. The Constitution Bench held the opinion that the decision in *Chand Kaur v. Union of India*<sup>4</sup> was per incuriam the decision of this court in *Scheduled Caste oop.* (supra). The court in *Chand Kaur* (supra) had relied on the law laid down by *Bhag Singh* (supra) while granting two months time to the appellants in that case to make up the deficiency in the court fee in the LPAs which had been filed by them. Thus, in *Buta Singh* (supra), the Constitution Bench of this court pointed out that the decision in *Chand Kaur* (supra) had failed to take into account the law laid down in *Scheduled Caste Coop.* (supra) which was a subsequent decision to that of *Bhag Singh* (supra) and thus, the law as laid down by *Scheduled Caste Coop.* (supra) was held to be the correct one.

9. Since we have already perused the judgment in *Bhag Singh* (supra), now we need to examine the judgment in *Scheduled Caste Coop.* (supra) and find out whether, in fact, the Constitution Bench judgment of *Buta Singh* (supra) had rendered the law laid down in *Bhag Singh* (supra) null and void. A perusal of the decision in *Scheduled Caste Coop.* (supra) gives us the impression that the court had in fact agreed to the views expressed by this Court in *Bhag Singh* (supra), as can be observed in the following lines on *Bhag Singh* (supra):

"...the appellants had restricted their claim in the first appeal to the High Court by paying lesser court fee. After the judgment of the learned Single Judge, the appellants realised that they were entitled to the benefit of enhanced compensation which was denied to them as they had restricted their claim by paying a lesser court fee. They kept the matter alive by filing a Letters Patent Appeal along with several others who too were dissatisfied with the amount awarded by the learned Single Judge. The Division Bench of the High Court affirmed the judgment of the learned Single Judge in regard to the rate of compensation for the land comprising the belt having proximity to the road, but with regard to the land situate in the owner belt, it enhanced the compensation to Rs.38.720/- per acre as stated earlier. Since the Division Bench also restricted the benefit of the enhanced compensation to claimants who had paid the proper court fee, the appeal preferred by the appellants was dismissed. The appellants did not rest there but carried the matter to this Court by way of special leave. It will be clear from the above facts that unlike the present petitioner- society the appellants in that case kept the matter alive...

This Court pointed out that since the case was not between two private parties and the claim was directed against the Government for payment of compensation for

expropriated land the State Government was bound to pay compensation on the basis of the marked value of the acquired land and if according to the judgments of the learned Single Judge and the Division Bench the market value was higher than that awarded by the Collector or the reference court there was no reason to deny to the appellants the benefit of payment of that market value because to deny the same would tantamount to permitting the State Government to acquire land at a rate below the market value. On this line of reasoning this Court allowed the appellants to pay the deficit court fee and receive compensation at the higher rate."

10. The court clearly distinguished the factual position in that case from the material facts in Bhag Singh (supra), as can be seen in the following lines:

"...In the present case however, the petitioner-society while preferring the appeal stated in paragraph 11 of the Memo of Appeal that their claim for enhanced compensation was restricted to Rs.4,00,000/- over and above the amount awarded by the reference court. It is further stated in that paragraph that according to the appellants the market value of the land is not less than 80,000/- per acre but as the appellants are not in a position to pay the huge court fee, they are restricting their claim to Rs.4,00,000/-. This was a conscious decision on the part of the present appellant. The averment in that paragraph about their incapacity to pay the court fee is doubtful having regard to the fact, that the appellants had received a substantial amount by way of compensation under the award made by the Collector as well as the reference court. Be that as it may, the fact remains that though the appellants were aware that the market value was higher, they deliberately restricted their claim to Rs.4,00,000/- and after the appeal was disposed of by the learned Single Judge on November 10, 1981 they allowed the matter to rest and did not carry the same by way of an appeal to the Division Bench. It was long after the decision rendered by this Court in Bhag Singh's case that the appellants filed an application in 1987 to permit them to pay the deficit court fee and claim the benefit of the difference in higher rate of compensation awarded by the learned Single Judge. Possibly they were inspired by the afore- quoted observations of this Court in Bhag Singh's case. As stated earlier, Bhag Singh & Others had kept their matters alive by preferring Letters Patent Appeals and thereafter approaching this Court under Article 136 of the Constitution. On the other hand the present petitioners rested content with the amount claimed and received by them in paragraph 11 of their Memo appeal even after the decision of the learned Single Judge."

11. This court, in the case of Scheduled Caste Coop. (supra), had one apprehension in mind, a justified one, that entertainment of such a claim at such a belated stage would have opened up flood gates for similar applications in innumerable cases which might have become final. This was justified in view of the fact that the appellants in that case had not kept their matter alive unlike in the present case or in the case of Bhag Singh (supra). The same is reflected in the following words of the court:

"...The petitioners herein were satisfied with the amount of Rs.4,00,000/-and did not apply to pay the deficit court fee soon after the judgment of the learned Single Judge was rendered in 1981 but did so after a lapse of almost six years in 1987. The Full Bench of the High Court, therefore, rightly held that to permit payment of deficit court fee for recovering enhanced compensation after a lapse of almost six years under its inherent jurisdiction would encourage the practice of not paying the court fee in the hope that as and when the valuation is determined in appeal the jurisdiction of the court can be invoked under Section 151 of the Code and the benefit of enhanced compensation can be reaped by making good the deficit court fee."

12. In view of the difference in material backgrounds of the present case or Bhag Singh and Scheduled Caste Coop. (supra), we are of the opinion that the apprehension mentioned above can not be an issue in the present case.

13. From the observations as quoted herein earlier, we conclude that the decision of the Constitution Bench in Buta Singh (supra) has not reversed the decision in Bhag Singh (supra) and the law laid down in Scheduled Caste Coop. (supra) is materially different from the law established by this court in Bhag Singh (supra) since both the decisions dealt with different matters and moreover the Scheduled Caste Coop. (supra) decision has in fact recognised the validity of the law laid down in Bhag Singh (supra). Therefore, we are of the opinion that following the judgment of Bhag Singh (supra) in the present case shall not be in conflict with the opinion of the Constitution Bench decision in the case of Buta Singh (supra). Thus, in our opinion, it is settled that the High Court should not have deprived the appellants of their rightful claim on the technical ground of want of requisite Court Fees and an opportunity should have been afforded to them for payment of the deficit Court Fee. This position is also supported by the decision of this court in a recent case viz. *Bhimasha v. Special Land Acquisition Officer*<sup>5</sup> wherein it has been held that the High Court should have, after taking note of the facts of the case and the market value determined by it, awarded the higher compensation subject to the payment of the balance court fee.

14. Since we have come to the conclusion that the High Court was not justified in denying the appellants compensation @ Rs.32.10/- pr Sq. Ft. after having recorded its finding that the value of the required land would be not less than @ Rs.32.10/- pr Sq. Ft. on a mere technical ground that the Court Fee paid by the appellants would entitle them to compensation of only Rs.23/- per Sq. Ft., we now proceed to consider the other submissions of the appellants. The learned counsel for the appellant submitted that since the High Court had awarded compensation @ Rs.100.50/- per Sq. Ft. in MFA No. 2366/2003 (LAC) C/W MFA CR.OB. No. 52/2004 [Asst. Commissioner & the LAO, Bijapur v Tukaram S/o. Shivaram Zinjade, arising out of LAC No. 180/1998], the appellants should also be awarded compensation at the same rate affording an opportunity to them to pay the deficit court fee. In this regard our attention was drawn to the decision of this Court in Pal Singh v. UT of Chandigarh [AIR 1993 SC 225].

15. In the case of Pal Singh (supra), this court had examined the question whether a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of

acquired lands, even though not inter-parties, was admissible in evidence in a subsequent case, either as an instance or one from which the market value of the acquired land could be deduced or inferred. The court had analyzed the same and expressed the following opinion:

"5. No doubt, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not inter Partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in H.K. Mallick's case [*H.K. Mallick v. State of West Bengal*<sup>6</sup> based on the authority of the Judicial Committee of the *Privy Council in Secretary of State v. Indian General Steam Navigation and Railway Co.*<sup>7</sup> where the Judicial Committee did refuse to interfere with High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it."

So it seems that the court in principle recognised the admissibility of such previous decisions in a subsequent case as far as the market value of the acquired land was concerned. However, the court further held that:

"...But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land..."

16. Thus, for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of that same court and this requirement is fulfilled in the present case. However, the requirement was that it must have been proved by the person relying upon such judgment by adducing evidence aliunde and that due regard being given to all other attendant facts and circumstances it could furnish the basis for determining the market value of the acquired land, is in our opinion the more important test for admission of such previous decision of the High Court for determination of the market value of the land acquired in the present case. On a perusal of the materials submitted before us by the appellants, we must conclude that the appellants had failed to satisfactorily furnish the basis for determining the market value of the acquired land according to the decision of the same High Court in Assistant Commissioner & the LAO (supra) at Rs.100.50/- Per sq. ft. Thus, we conclude that this plea of the appellants is not acceptable in the present case.

17. In view of our discussions made herein above and in view of the decisions cited herein earlier, we are of the view that the decisions of the High Court impugned in these appeals on the termination of the market value of the lands of the appellants are set aside. We fix the market value of the acquired lands of the appellants at Rs.32.10/- per sq. ft. However the rest of the decision of the High Court is affirmed. In other words the appellants are entitled to

30% solatium on the enhanced compensation and interest accrued on it. The appellants are also entitled to 12% additional market value on the enhanced compensation from the date of issuance of the notification under Section 4 (1) of the Act, till the date of dispossession or till the date of award, whichever is earlier. Moreover they are also entitled to interest @ 9% on the enhanced compensation amount from the date of taking possession or award for a period of one year and thereafter @ 15% till the amount is deposited. The compensation already paid by the LAO shall be deducted. It is made clear that the enhanced compensation which has now been directed to be paid to the appellants shall be paid if the appellants shall deposit the requisite court fees on the aforesaid enhanced amount within four months from the date of supply of a copy of this order to the courts below.

18. These appeals are thus allowed to the extent indicated above. There will be no order as to the costs.

<sup>1</sup>(1985) 3 SCC 737

<sup>2</sup>(1995) 5 SCC 283

<sup>3</sup>(1991) 1 SCC 174

<sup>4</sup>(1994) 4 SCC 663

<sup>5</sup>(2008) 10 SCC 797

<sup>6</sup>(79 Calcutta Weekly Notes 378)

<sup>7</sup>1909 I.L.R. 36 Cal. 967