

SUPREME COURT OF INDIA

Attar Singh

Vs.

Union of India

C.A.No.7203 of 2004

(S.B. Sinha and Cyriac Joseph JJ.)

04.08.2009

JUDGMENT

S.B, Sinha, J.

1. Appellants were owners of agricultural lands situated in village Jharoda Kalan, New Delhi. The subject matter of these appeals is a Notification dated 14th July, 1982 issued by the Union of India expressing its intention to acquire the land in the said village
2. The Land Acquisition Collector made an award on 10th August, 1983 categorizing the acquired lands in three categories, i.e. 'A', 'B' and 'C' and fixed the market value thereof at the rate of Rs.5,800/- per; Rs.4,800/- per bigha; and Rs.2,400/- per bigha respectively.
3. The awardees not being satisfied with the said award filed applications for reference before the District Collector. References having been made, the Reference Court vide its Award dated 22nd July, 1987 assessed the fair market value of the acquired land at Rs.9,750/- per bigha.
4. Still not satisfied, the appellants preferred appeals before the High Court seeking enhancement of compensation for acquisition of their lands at the rate of Rs.27,750/- per bigha.
5. Before the High Court a contention was raised that in a Lok Adalat Settlement, the market value of similarly situated land was fixed at Rs.22,000/- per bigha at the instance of the Union of India, pursuant whereto a Division Bench passed a decree on the said basis.
6. A Division Bench of the High Court by its order dated February 28, 2003, however, on the basis of its earlier decision, assessed the fair market value at Rs.11,500/- per bigha.
7. Learned counsel appearing on behalf of the appellants submitted that in a matter of this nature, the High Court having regard to the claim of the appellants, namely Rs.27,750/- per

bigha should have awarded compensation at least @ Rs.22,000/- which was fixed as the fair market price for lands similarly situated.

8. The principal question which, therefore, arises for consideration is as to whether any agreement entered into by and between the holders of the lands and the Union of India in a Lok Adalat should have formed the basis for determination of the amount of compensation in respect of the lands which are said to be similarly situated.

9. It does not appear that before the High Court, the particulars of the matter which was settled in the Lok Aalat had been produced. Before us only an order sheet dated 5th November, 1992 passed in R.F.A. No.891 of 1987 has been produced, which reads as under :- Before the Lok Adalat, the parties agreed that the market price of the acquired land is Rs.22,000/- per bigha. In view of the settlement made before the Lok Adalat, we fix the market price of the land at Rs.22,000/- per bigha. The appellant shall be entitled to increased compensation under Section 23(1A) of the *Land Acquisition Act, 1894* as amended by 1984 Act. The appellant shall also be entitled to solatium at 30% per annum and interest at the rate of 9% per annum for the first year and at the rate of 15% per annum thereafter till payment. The Supreme Court has already decided the matter regarding the payment of interest and, therefore, the question of award of interest need not await the decision of the Supreme Court as suggested by the Lok Adalat.

The appeal is allowed with costs.

10. It is now a well settled principle of law that determination of the market value of the land acquired indisputably would depend upon a large number of factors including the nature and quality thereof. The norms which are required to be applied for determination of the market value of the agricultural land and homestead land are different. In given cases location of land and in particular, closeness thereof from any road or high-way would play an important role for determination of the market value wherefor belting system may in appropriate cases may be resorted to. The position of the land, particularly in rainy season, existence of any building etc. also plays an important role. A host of other factors including development in and around the acquired land and/or the potentiality of development will also have a bearing on determination of the fair market value of the land.

11. Determination of the market value of the land may also depend upon the facts and circumstances of each case, amongst them would be the amount of consideration mentioned in a deed of sale executed in respect of similarly situated land near about the date of issuance of Notification in terms of Section 4(1) of the Act; in absence of any such exemplars, the market value can be determined on yield basis or in case of an orchard on the basis of number of fruit bearing trees.

12. It is also well settled that for the purpose of determination of price of acquired land, the courts would be well advised to consider the positive and negative factors, as has been laid down by this Court in *Viluben Jhalejar Contractor vs. State of Gujarat*¹, i.e. : Positive factors
Negative factor (i) Smallness of size (i) Largeness of area (ii) Proximity to a road (ii)

Situation in the interior at a distance from the road (iii) Frontage on a road (iii) Narrow strip of land with very small frontage compared to depth (iv) Nearness to developed area (iv) Lower level requiring the depressed portion to be filled up (v) Regular shape (v) Remoteness from developed locality (vi) Level vis-à-vis land under (vi) Some special disadvantageous acquisition factors which would deter a purchaser (vii) Special value for an owner of an adjoining property to whom it may have some very special advantage.

13. This Court in *Union of India v. Pramod Gupta*², on the question of determination of market value opined:-

“24. While determining the amount of compensation payable in respect of the lands acquired by the State, the market value therefor indisputably has to be ascertained. There exist different modes therefor.

25. The best method, as is well known, would be the amount which a willing purchaser would pay to the owner of the land. In absence of any direct evidence, the court, however, may take recourse to various other known methods. Evidences admissible therefor inter alia would be judgments and awards passed in respect of acquisitions of lands made in the same village and/or neighbouring villages. Such a judgment and award, in the absence of any other evidence like the deed of sale, report of the expert and other relevant evidence would have only evidentiary value.

26. Therefore, the contention that as the Union of India was a party to the said awards would not by itself be a ground to invoke the principles of res judicata and/or estoppel. Despite such awards it may be open to the Union of India to question the entitlement of the respondent claimants to the amount of compensation and/or the statutory limitations in respect thereof. It would also be open to it to raise other contentions relying on or on the basis of other materials brought on record. It was also open to the appellant to contend that the lands under acquisition are not similar to the lands in respect whereof judgments have been delivered. The area of the land, the nature thereof, advantages and disadvantages occurring therein amongst others would be relevant factors for determining the actual market value of the property although such judgments/awards, if duly brought on record, as stated hereinbefore, would be admissible in evidence.

It was furthermore opined :-

36. Yet again in *Ras Behari Mandal v. Raja Jagadish Chandra Deo Dhaubal Deb* the Patna High Court reiterated the presumption that the lessor retains all the rights in mines and quarries. It also noticed the decision of the House of Lords in *Great Western Rly. Co. v. Carpalla United China Clay Co. Ltd.* wherein a grant reserving minerals was held to exclude a deposit of china clay despite the fact that the same was found near the surface. It was also held that:-

8. In *V. Hanumantha Reddy v. Land Acquisition Officer Mandal R. Officer* the law is stated in the following terms:

It is now a well-established principle of law that the land abutting the national highway will fetch far more higher price than the land lying interior.

This Court furthermore opined :-

84. It is also trite to state that the market value of agricultural land is lower than that of the land suitable for commercial purposes. (See *Om Prakash v. Union of India*.)

It was observed :-

87. The courts will also have to take into consideration the enormity of the financial implication of enhancement in view of the size of the land acquired for a particular project. In *Ranvir Singh v. Union of India*³, this Court held as under :-

22. Concededly, the High Court in its impugned judgment did not place any reliance whatsoever upon the sale instances whereupon strong reliance has been placed by the parties solely on the ground that neither the vendors nor the vendees thereof had been examined as witnesses. It has also not placed any reliance upon any other judgment or award filed by the parties. The High Court while arriving at the said finding evidently took into consideration the law as it then stood. The correctness of the decisions wherein the aforementioned view had been taken was doubted and the matter was referred to a larger Bench.

Referring to *Cement Corporation (supra)*, it was opined that the High Court was required to consider the deeds of sale in their proper perspective for determining the market value of the acquired land. In *Karimbanakkal Sulaiman (Dead) by L.Rs. v. Special Tahsildar for K.A.K.P.I.P.*⁴, this Court held:

These factors have been taken into consideration by the High Court in fixing the land value. Moreover, the land acquired was agricultural land and it was acquired for the purpose of an irrigation project. There is nothing on record to show that the land had any commercial value or future potentialities. We do not think that the land value fixed is too low to be interfered with by this Court. In *Viluben Jhalejar Contractor v. State of Gujarat*⁵, this Court opined :-

24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In *Basavva v. Spl. Land Acquisition Officer* deduction to the extent of 65% was made towards development charges. In *Basant Kumar v. Union of India*⁶, this Court held that even if the entire land is of one village one standard for determining the market value should not be applied, stating:-It has been firmly settled law by beadroll of decisions of this Court that the Judge determining the compensation under Section 23(1) should sit in the armchair of a

willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land, i.e., land possessing all the advantageous features and to the same extent. This test should always be kept in view and answered affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are allowed to sway, he outsteps his domain of judicial decision and lands in misconduct amenable to disciplinary law...”

14. On what basis the aforementioned settlement in the Lok Adalat was arrived at is not known. Details of the land with regard to location, nature, advantages and dis-advantages pertaining thereto are absent. In absence of any detailed particulars showing the similarity of the land and/or the respective advantages and dis-advantages pertaining thereto, in our opinion, the said settlement had rightly not been made the basis for determining the market value of the land.

15. The High Court, thus, was required to determine the fair market value of the land on the basis of the legal principles laid down by this Court in the decisions referred to heretofore. No contention has been/ could be raised that the High Court in passing the impugned judgment failed to take into consideration the well settled legal principles.

16. There is another aspect of the matter which cannot also be lost sight of. The High Court based its decision on its earlier common judgment arising out of the same notification. The lead judgment was delivered in the case of Jia Ram and others vs. Union of India, - R.F.A. No. 500 of 1987.

“We have not been informed whether any appeal has been preferred against that judgment and if so, what was the result thereof. In absence of that information, we are of the opinion that the appellants should not be treated differently from Jia Ram (supra) who might not have preferred any appeal and have accepted the judgment of the High Court.”

17. For the reasons stated above, there is no merit in these appeals. The same are dismissed accordingly. No costs.

¹(2005) 4 SCC 789

²(2005) 12 SCC 1

³(2005) 12 SCC 59

⁴(2004) 13 SCC 643

⁵(2005) 4 SCC 789

⁶(1996) 11 SCC 542