SUPREME COURT OF INDIA

Subh Ram

Vs.

Haryana State

C.A.No.5844 of 2004

(R.V. Raveendran and G.S. Singhvi, JJ.)

20.10.2009

ORDER

R.V. RAVEENDRAN J.,

1. These appeals relate to determination of compensation for 38.48 acres of land in village Jharsa, Tehsil & District Gurgaon, Haryana, acquired for establishment of a jail. The acquisition was initiated under preliminary notification dated 22.11.1984, issued under section 4(1) of the Land Acquisition Act, 1894 (`Act' for short). Land Acquisition Collector (`LAC' for short) by his award dated 22.8.1985, offered compensation at the rate of Rs.60,000/- per acre for chahi land, Rs.50,000/- per acre for aabi land and Rs.40,000/- per acre for gair mumkin land. The Reference Court increased the compensation uniformly to Rs.36.20 per sq.yd. (that is Rs.1,75,200/- per acre) by judgment and award dated 26.9.1989. The appeals filed by the land owners for further enhancement were dismissed by the High Court, by the impugned judgments dated 11.2.2004, 31.3.2004, 11.2.2004 and 7.11.2006.

2. Before the Reference Court, claimants relied upon sale deeds marked as Ex.P-1 to P-12 relating

to the period 1981 and 1982 (except Ex.P8 which was dated 28.7.1983) which disclosed an average price of Rs.78/85 per sq.yd in Jharsa village. The said sale deeds related to small residential plots varying in size between 167 sq.yards to 665 sq.yds. The Reference Court deducted one-third of such price (that is Rs.26.25) towards development cost and arrived at the market value as Rs.52.60 per sq.yd.during 1981-82. As the market value of the acquired lands had to be determined as on 22.11.1984, the date of notification under section 4(1) of the Act, the reference court increased the said market value of Rs.52/60, at the rate of 12% per annum, for two years (that is, by Rs.12/62) and arrived at a market value of Rs.65/22. The Reference Court was of the view that it should also take note of the sale deed relied on by the LAC, namely Ex. R-2 dated 27.11.1984 which related to sale of one acre of land for Rs.30000/- which worked out to Rs.6.19 per sq.yd. The Reference Court took the average of Rs.65.22 which was the rate disclosed by the sale deeds relied on by the claimants and Rs.6.19 being the rate disclosed by the sale deed relied on by the LAC and awarded the same as compensation. Though the average works out to Rs.35/70, the compensation awarded was Rs.36/20 per sq.yd. This determination was affirmed by the High Court.

3. The claimants have filed these appeals aggrieved by the said judgments, contending that the compensation awarded is inadequate. The appellants have urged the following two contentions:

(i) that Ex.R2 dated 27.11.1984 relied on by the LAC ought to have been excluded from consideration, while determining the market value; and

(ii) that the deduction of one-third of the market value of small plots, towards development cost, is erroneous and no deduction ought to have been made.

The appellants submit that if these two corrections were made, the market value would have been Rs.98/91 per sq.yd (that is Rs. 78/85 plus 12% per year cumulatively for two years) to be rounded off to Rs.100/- per sq.yd.

Re : First Contention

4. Ex. R.2 dated 27.11.1984 relied on by the LAC relates to sale of one acre of land for a price of Rs.30,000/- per acre. This is far less than the compensation that was offered by the LAC. Having regard to the large variance between the market value disclosed by the twelve sale deeds exhibited and relied upon by the claimants (average of which is Rs. 78/85) and the market value disclosed by Ex R2 (Rs.6/19 per sq.yd) relied upon by LAC and having regard to the fact that the value disclosed by Ex. R2 was even less than what was offered by the LAC, it has to be inferred that Ex R2 was either grossly undervalued or was a distress sale and has to be excluded from consideration, as being unreliable.

5. If Ex R2 is excluded, the average of the prices disclosed by the twelve sale deeds relied on by the claimants, that is Rs.78/85 per sq.yd, would be indicative of the market value in 1981-82. The addition of 12% per annum for two years was not challenged by the respondents. By adding 12% per annum cumulatively for two years, the market value of small residential plots in the area neighbouring the acquired lands of that village, as on 22.11.1984, can be taken as Rs.98/90 per sq.yd. To determine the value of large tract of acquired land, it is necessary to make an appropriate deduction therefrom towards development cost. Having regard to the fact that all the acquired lands adjoin a State Highway (Gurgaon Alwar Road) and the proximate availability of facilities which can be easily accessed for development, it would be appropriate to limit the deduction to 40% towards development cost, instead of the usual higher percentage of deduction ranging from 50% to 67%. Thus, the market value would work out to be Rs.59/34 per sq.yd (Rs.98/90 minus 40%) or Rs.2,87,200/- per acre.

Re : Second Contention

6. We will now deal with the contention of the appellants that no deduction need be made towards development cost, from the market value of residential plots, for the purpose of determining the market value of the acquired lands in this case. It is not disputed by appellants that usually a deduction towards development cost is necessary when the `wholesale' market value of large undeveloped land is determined with reference to `retail' market value of small developed plots. But their contention is that having regard to the purpose of acquisition (construction of a jail), which does not involve any development activity, no deduction should be made from the market value of small developed plots. The said contention is based on the premises that the purpose for which the land is acquired is a relevant factor to decide whether any deduction should be made towards development cost or not. The appellants contend that as the acquisition was for construction of a jail, there will be no need set apart any part of the land for formation of roads, drains, parks etc. nor spend any amount for development of the land into a layout. They submitted that the observation of this Court in Viluben Jhalejan Contractor vs. State of Gujarat [2005 (4) SCC 789] and Nelson Fernandes vs. Special Land Acquisition Officer [2007 (9) SCC 447] that the purpose for which acquisition is made, is also a relevant factor for deciding the compensation, lends support to their contention. The contention of the appellants proceeds on a misunderstanding and misconstruction of the legal position relating to deductions.

7. What is the concept of deduction of development cost to arrive at market value? If the market value of a large tract of agricultural and or undeveloped non-agricultural land possessing potential for development is to be determined with reference to the market value of a small residential plot situated in a neighbouring residential layout, it becomes necessary to work back the market value of the large tract of undeveloped land from the market value of the small residential plot. This is because the value of one square yard of undeveloped land is not the same as one square yard of developed residential plot. If there is a large tract of agricultural or undeveloped land, obviously the entire extent cannot be sold as residential plots. If the agricultural or undeveloped land has to be

sold as residential plots, it is first necessary to make a layout of plots in such land. This would mean that a provision will have to be made for roads to provide access to each plot in the layout. In a standard layout with plots measuring say 2500 sq.ft. (50'x 50') each, to provide road access to each plot, it will be necessary to provide a road after every two rows of plots. If the depth of each plot is 50', and if the road width is 25 feet, then for every two strips of plots, there will have to be a strip of road of 25 feet. This means a minimum of 25% of the total land area will be utilised for roads. A typical layout will also have cross-roads, and areas earmarked for park, and/or community areas. Consequently non-saleable area (area which cannot be sold as plots) would be around 30% to 40% of the total area. Therefore, in the hypothetical layout method of determination of market value, as a first step, the areas that will be used up for roads, drains, parks/playgrounds and community areas, will have to be excluded from the total extent of the acquired land. The standard deduction in this behalf is one- third (33%). But merely deducting the areas required for roads, drains, parks and community areas, will not convert a large tract of agricultural or undeveloped land into a developed residential layout. For that, considerable financial outlay has to be made. The land will have to be levelled. The land will have to be converted from agricultural use to non-agricultural residential use by paying necessary fees/fine to the Revenue/development authorities. Then the roads will have to be asphalted or concreted. Drains will have to be dug and lined with reinforced cement concrete or stone, for drainage of rain water. Electricity, water, and sewage lines will have to be laid. Deposits will have to be made to the Authorities dealing with electricity, water, sewage removal. The development will also involve the service of surveyors, engineers and developers. All these involve considerable expenditure. Further, as there will be a time gap between the expenditure for development and the actual sale of plots, the cost of development will also have an element of interest on investment. The developer who undertakes the development and invests the monies for evelopment would also expect a reasonable profit when the plots are sold. All these expenditure and factors are standardised into another one-third (33%) deduction towards expenses of development. Thus, if the valuation of a large extent of agricultural or undeveloped land is to be based on the sale price of a small developed plot in a private layout, then the standard deductions should be one-third (for roads etc.) plus one-third (for expenditure of development) in all two thirds (or 67%), as 'development cost' from the value of small plot. The percentage of deduction may however vary between 20% to 75% depending on several circumstances (See : Lal Chand vs. Union of India - 2009 (11) SCALE 627, paras 8 and 9 for illustrations of such circumstances).

8. Therefore, when deduction is made from the value of a small residential plot towards the development cost, to arrive at the value of a large tract of agricultural or undeveloped land with development potential, the deduction has nothing to do with the purpose for which the land is acquired. The deduction is with reference to the price of the small residential plot, to work back the value of the large tract of undeveloped land. On the other hand, where the value of acquired agricultural land is determined with reference to the sale price of a neighbouring agricultural land, no deduction need be made towards `development cost'.

9. It is not doubt true that this Court in some decisions has observed that purpose of acquisition will also be relevant. But it is made in a different context. The Land Acquisition Collectors in some cases adopt belting methods for valuation of land, with reference to a focal point, that is either with reference to the distance from the main road, or distance from a developed area. Lands that adjoin a developed area or a main road is given a higher value than a land farther away from the road or the

developed area. The Land Acquisition Collectors also award different compensation depending upon whether the acquired land is a dry land or wet/irrigated land.

When different categories of lands (or lands with different situational advantages) are acquired for the same purpose, say for forming of a residential layout, courts have sometimes felt that determination of their value with reference to previous status or situation should be avoided and a uniform rate of compensation should be awarded for all lands acquired under the same notification. The logic employed by the court is that categorising the lands acquired for a common purpose, say for a residential colony, into high value irrigated land and low value dry lands is meaningless, as all lands are to be levelled and used for the same purpose that is for formation of a residential layout and once the layout is formed, it makes no difference whether the land was previously a land with irrigation facilities or a dry land. It is in this context, in some cases, to avoid the need to differentiate the lands acquired under a common notification for a common purpose, and to extend the benefit of a uniform compensation, courts have observed that the purpose of acquisition is also a relevant factor. The said observation may not apply in all cases and all circumstances as the general rule is that the land owner is being compensated for what he has lost and not with reference to the purpose of acquisition.

10. The purpose of acquisition can never be a factor to increase the market value of the acquired land. We may give two examples. Where irrigated land belonging to `A' and dry land of `B' and waste land of `C' are acquired for purpose of submergence in a dam project, neither `B' nor `C' can contend that they are entitled to the same higher compensation which was awarded for the irrigated land, on the ground that all the lands were acquired for the same purpose. Nor can the Land Acquisition Collector hold that in case of acquisition for submergence in a dam project, irrigated land should be awarded lesser compensation equal to the value of waste land, on the ground that purpose of acquisition is the same in regard to both. The principle is that the quality (class) of land, the situation of the land, the access to the land are all relevant factors for determination of the market value. But in certain acquisitions, in certain circumstances, for lack of detailed or clear evidence, courts have chosen to ignore the difference in the quality/situational advantages and treat all lands equally for awarding uniform compensation having regard to the common purpose of acquisition. How far such a course is proper or valid may be debatable. Whether such a procedure is legally valid or proper or not, may have to be decided in the context of the respective acquisitions. All that has to be noticed in the context of the issue before us, is that the use to which the acquired land may be put, can have no bearing upon the deduction to be made towards development cost. Nor can the purpose of acquisition be used to increase the compensation awardable with reference to the expected profits from the future user. The observation that purpose of acquisition is a relevant factor, unless properly understood and carefully applied with reference to special circumstances, may lead to absurd or unjust results. It is accepted generally that residential plots are costlier than industrial plots, and commercial plots are costlier than residential plots. If the purpose of acquisition is a relevant factor in determining compensation, then it would lead to the absurd and unjust situation, that the compensation payable for the same land will be different, depending upon the purpose of the acquisition; and that compensation will be less if the acquisition is for a sewage treatment plant, more if the acquisition is for an industrial layout, much more if acquisition is for residential layout and highest if the acquisition is for commercial value. The purpose of acquisition cannot therefore be a factor to increase the compensation.

11. Deduction of `development cost' is the concept used to derive the `wholesale price' of a large undeveloped land with reference to the `retail price' of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the `development cost'. Two factors have a bearing on the quantum (or percentage) of deduction in the `retail price' as development cost. Firstly, the percentage of deduction is decided with reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land. The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water etc.), then the development cost (that is percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, the future use or purpose of acquisition will play a role in determining the percentage of deduction towards development cost.

12. Section 24 of Land Acquisition Act prohibits the court from taking into consideration any increase to the value of the land acquired, likely to accrue from the use to which it will be put when acquired. A three-judge Bench of this Court in Tarlochan Singh vs. State of Punjab 1995 (2) SCC 424 held :

"Section 24 of the Land Acquisition Act expressly prohibits and puts an embargo on the Court in taking the factors mentioned in section 24 as relevant in determining the market value. Under these circumstances, the future development and potential prospective use of the acquisition etc., are not relevant circumstances. Even the purpose of acquisition is not relevant."

(emphasis supplied)

The above position was reiterated in Raj Kumar vs. State of Punjab 1995 (3) SCC 121. This Court led :

".....The purpose of acquisition i.e. to establish market and on its account the lands are possessing potential value, is irrelevant by operation of section 24 of the Act."

(12.1.) Administrator General of West Bengal vs. Collector, Varanasi, [1988 (2) SCC 150] contains

a precise statement as to the concept of deducting development cost. This Court stated:

"It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. ..... The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued ....is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In Sahib Singh Kalha v. Amritsar Improvement Trust [1982 (1) SCC 419], this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reasons that the former reflects the `retail' price of land and the latter the `wholesale' price.

(emphasis supplied)

This Court referred to and relied upon several earlier decisions including three Judge Bench decisions in Mirza Nausherwan Khan v. The Collector (Land) Acquisition, Hyderabad [1975 (1) SCC 238] and Padma Uppal v. State of Punjab [1977 (1) SCC 330].

(12.2.) In Chimanlal Hargovinddas vs. Special Land Acquisition Officer 1988 (3) SCC 751, this Court held :

"..... a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx, between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards".

It should be noted that deduction of 20% to 50% referred to therein is only in regard to the land to be earmarked for roads, community areas etc. and does not refer to the further deduction towards the expenses of development. (12.3.) In K.S. Shivadevamma vs. Asstt. Commissioner & Land Acquisition Officer [1996 (2) SCC 62], this Court held :

"It is then contended that 54% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal."

(12.4.) In Atma Singh vs. State of Haryana 2008 (2) SCC 568 this Court reiterated the settled principles regarding deductions thus :

"The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracks of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic amenities. Expenses are so incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward, depending upon the facts of each case, is made."

13. The legal position is therefore clear and well settled. But in Atma Singh, after reiterating the said principle regarding deduction of development cost, this Court made an observation that no deduction need be made having regard to the purpose of acquisition, which requires to be clarified. We extract the relevant portion below:

"15. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have

been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-product in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by product degases is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration."

The above observations no doubt seem to suggest that where the acquisition is for a residential lay out, deduction towards development cost is a must, but if the acquisition is for an industry which does not require forming a layout of sites, the market value of small residential plots may be adopted without any cuts towards development cost. The said observations are made with reference to the special facts of that case. If they are read out of context to support a contention that the purpose of acquisition is a relevant factor to avoid the deduction of development cost in valuation, it may then be necessary to consider the said observations as having been made per incuriam, as they overlook a mandatory statutory provision -- section 24 (clause fifthly) of the Act and the series of decisions of larger benches of this Court which hold that when value of large tracts of undeveloped lands is sought to be determined with reference to small residential plots in developed area, it is mandatory to deduct an appropriate percentage towards development cost. But it may be unnecessary to consider whether the observations are per incuriam as para 15 of the decision makes it clear that what is stated therein, is with reference to the special facts of that case, with a view not to disturb the smaller deduction of 10% by the High Court, and not intended to be statement of law.

Relevancy of other acquisitions in the same village

14. Learned counsel for the appellants lastly contended that having regard to two judgments of Punjab & Haryana High Court relating to acquisition in the same village in Azad Singh vs. State of Haryana & Anr. (RFA No.2 of 1991 decided on 30.9.1997) and Kabul Singh & Ors. vs. Haryana State & Anr. (RFA No.556 of 1994 decided on 13.5.1999) the compensation to be awarded should

not be less than Rs.68/- (plus 25%) per sq.yd. In both cases Rs.68/- per sq. yard was awarded as compensation for acquisitions of land in village Jharsa in the years 1982 and 1983. It was also submitted that as the subject acquisition was two years later in 1984, at least 25% should be added to Rs.68/- per sq.yd. But the map of the area produced by the appellants show that the lands which are the subject matter of those two decisions are more advantageously situated as they adjoin National Highway No.8 and are next to well developed areas (like Hidayatpur Cantonment, etc.) whereas the acquired lands are farther away from National Highway No.8 and any developed area. Hence, the said decisions, though relating to Jharsa village, are not of any assistance.

Conclusion

15. In view of the above, we allow these appeals in part and increase the compensation for the acquired lands to Rs.2,87,200/- per acre. The appellants will also be entitled to all statutory benefits, that is solatium at 30% under section 23(2) of the Act, additional amount at 12% from the date of preliminary notification to date of award under section 23(1A) of the Act, and interest on the total compensation less the amount awarded by the LAC, at 9% per annum for one year from the date of taking possession and 15% PA thereafter. Parties to bear respective costs.