

SUPREME COURT OF INDIA

Thakur Kuldeep Singh

Vs.

Union of India

C.A.No.8636 of 2002

(P.Sathasivam and H.L.Dattu)

08.03.2010

JUDGEMENT

P.Sathasivam, J.

1. These appeals are directed against the impugned final judgment and order dated 18.09.2001 of the Division Bench of the High Court of Delhi at New Delhi in R.F.A. 1 No. 166 of 2000 whereby the High Court allowed the appeal of the claimants enhancing the compensation payable to them for acquiring their land @ Rs.3000/- per sq. yds. along with solatium @ 30% and interest @ 9% p.a. for a period of one year from the date of taking possession by the Collector and thereafter @ 15% p.a. till date of payment of compensation and held that the appellants are entitled to additional amount under Section 23(1-A) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") @ 12% p.a. from the date of notification under Section 4 of the Act till the date of award or taking over possession by the Collector.

2. Dissatisfied with the above compensation awarded by the High Court, the appellants-claimants have preferred Civil Appeal No. 8636 of 2002 praying for Rs.6000/- per sq. yd. and the respondents-Union of India filed Civil Appeal No. 8637 of 2002 against the enhancement of compensation by the High Court from Rs.550/- per sq. yd. to Rs. 3000/- per sq. yd. For convenience, we shall refer claimants-land owners as appellants and Union of India as respondents.

3. Brief facts in a nutshell are as under:

“The appellants had purchased the property situated in Karol Bagh, subject matter of the present acquisition containing an area of approximately 2475 sq. yds. from the Ministry of Rehabilitation, Government of India in the year 1961 in a public auction for a consideration of Rs.1,61,000/-. By notification dated 21.10.1981, Ministry of Works and Housing (Land Division), Government of India, revised the schedule of market rates of land in different areas of Delhi/New Delhi w.e.f. 01.04.1981 dividing

entire Delhi/New Delhi in VIII Groups. Ajmal Khan Road and Gaffar Market falls within Group-III and the rate for residential plots was fixed @ Rs.2000/- per sq. mt. whereas for commercial plots, it was fixed @ Rs.6000/- per sq. mt. The said notification was issued with the concurrence of the Ministry of Finance. On 09.05.1983, a notification under Section 4 of the Act was issued by the Land & Building Department expressing its intention to acquire an area of 4952 sq. yds. of land situated in Karol Bagh for a public purpose, namely, for Joshi Memorial Hospital. The appellants herein filed their objections claiming suitable residential or commercial plot of not less than 500 sq. yds., not far away from the claimant's plot and also claimed compensation of their acquired land @ Rs.6000/- per sq. yd. in addition to a sum of Rs.1,53,293/- for superstructure standing on the acquired land. The Land Acquisition Collector, Delhi vide Award No. 7/86-87 dated 30.05.1986, determined the market value of the acquired land @ Rs.550/- per sq. yd. and, in addition, awarded solatium @ 30% and an additional amount under Section 23(1-A) of the Act @ 12% p.a. w.e.f. 09.05.1983. Dissatisfied with the said Award, the appellants-claimants filed a reference under Section 18 of the Act before the Civil Court, Delhi. The Additional District Judge vide order dated 19.11.1999, dismissed the same holding that the compensation awarded by the Land Acquisition Collector is quite adequate. Aggrieved by the said order, the appellants-claimants filed R.F.A. No. 166 of 2000 under Section 54 of the Act before the High Court.

The Division Bench of the High Court by its impugned judgment allowed the same and enhanced the compensation @ Rs.3000/- per sq. yd. with all other statutory benefits.”

4. According to the appellants, that their plot was surrounded in the north by a commercial property, namely, Jain Publishing House, in the south by Plot No. 875 which was also acquired by the impugned award for the same public purpose, namely, construction of Joshi Memorial Hospital, on the remaining half there were commercial shops, in the east there was Joshi Road and in the west of which was East Park Road and Ajmal Khan Road. In other words, according to the appellants, the entire area surrounding the plot in question as on the date of Section 4 (1) notification was commercial and that the plot had tremendous potential of being used for commercial purposes. It is also pointed out that adjacent commercial areas are Model Basti, Ajmal Khan Road and Faiz Road. They placed further materials to show that all amenities such as water, telephone, electricity and roads were available to the acquired land much prior to the notification issued under Section 4 (1) of the Act. We have already referred to the fact that the plot of the land was purchased by the appellants from the Ministry of Rehabilitation, Government of India in the year 1961 for a consideration of Rs.1,61,000/-.

5. The Land Acquisition Collector, while fixing compensation, considered three sale transactions. The details as stated in the Award No. 7/1986-87 are as follows:-

Sl.No.	Name	Year	Total Area	Total Price	Average per Sq. yds	Property
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“1. 1980-1981 203 sq.yds Rs.1,02,000 Rs.502/-

2. 1981-1982 257 sq.yds Rs.1,70,000 Rs.664/-

3. 1982-1983 463 sq.yds Rs.1,94,375 Rs.419/- Taking note of the average price paid for the property transactions for the last three years and the area involved as well as other circumstances, the Land Acquisition Collector passed an award fixing Rs.550/- per sq. yd as the market value for the land under acquisition. Though he fixed compensation for other structures etc., in view of the fact that the appellants are concerned about the market value of the plot, there is no need to consider those aspects.”

6. Sections 23 and 24 of the Act speak about the matters to be considered and to be neglected in determining compensation. Let us consider whether the appellants are entitled to higher compensation than that of the one fixed by the High Court or Union of India is justified in seeking reduction of the market value/compensation for the acquired land. While fixing compensation, it is the duty of the Land Acquisition Collector as well as the Court to take into consideration the nature of the land, its suitability, nature of the use to which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available. The Land Acquisition Collector as well as the Court should always keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence. The relevant factor would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser of normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification under Section 4(1) of the Act. In other words, the Judge who sits in the armchair of the willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The market value so determined should be just, adequate and reasonable.

7. Keeping the above principles in mind, let us consider the case of both the parties. The appellants in order to sustain their claim examined one Labh Singh Chane, Under Secretary (Land), Ministry of Urban Affairs and Employment, Nirman Bhawan, New Delhi as PW-1 and the Circular issued by the Government of India, Ministry of Works and Housing (Land Division) New Delhi on 21.10.1981 which was marked as Ex. PW 1/1. Inasmuch 9 as the appellants heavily relied on the above circular before considering the evidence of the officer, it is useful to analyze the said circular:

“No.J-22011/8/80 LD (DOI) Government of India Ministry of Works & Housing (Lands Division) ***** New Delhi, the 21st October, 1981 To

1. The Land & Development Officer, Nirman Bhawan, New Delhi. (5 copies)
2. The Vice-Chairman, Delhi Development Authority, Vikas Minar, New Delhi. (5 copies) Subject: Schedule of market rates of land in different areas of Delhi/New Delhi.

***** Sir, The Government of India have had under consideration the question of revision of the schedule of market rates of land in Delhi/New Delhi w.e.f. 1.4.1981. The land rates have now been revised as shown in the schedule annexed to this letter and shall be adopted for all purposes except for (i) hotels, (ii) cinemas and (iii) for the purpose of recovery of unearned increase due to the lessor, while granting permission for sale, in respect of residential leases measuring 100 sq. yds. (83.613 sq. metres) or less only.

2 (a). The market rates for commercial purposes for Group I & II are based on an FAR of 250, for Group III on FAR of 150 and for other Groups on existing FARs.

(b) Residential rates are based on the existing FAR prescribed for various areas.

NOTES: These rates will be reduced or increased proportionate to the reduction or increase in the FAR.

3. For multi-storeyed group housing by co-operative group housing societies 1= times the residential rate and by others twice the residential rate will apply up to an FAR of 100. The rates will be increased corresponding to the increase in FAR.

4. For the purpose of calculating and recovering lessor's share of unearned increase, while granting sale permissions, in respect of the residential leases measuring 100 sq. yds. (83.613 sq. metres) or less, the land rates laid down in this Ministry's letter No. J-22011/1/75-L.II (i) dated 21st June 1979 will be applicable for a further period of two years from 1.4.1981. i.e. till 31.3.1983.

5. In so far as hotel and cinema sites are concerned, the case should be specifically considered in consultation with the Ministry of Finance.

6. For any locality not covered by the schedule annexed hereto, the rates for comparable areas will be applied.

7. These rates are effective from 1st April, 1981 to 31st March, 1983.

8. The review of these rates should be taken up by the Land and Development Officer well before the date of expiry.

9. This issues with the concurrence of the Ministry of Finance.

10. It may be noted that the revised rates are for area expressed in square metres.

Yours faithfully, Sd/- (R.Krishnaswamy) Under Secretary (Lands)"

Schedule of Market Rates S.No. Name of the locality Residential Commercial 1 2 3 4
Group I Xxx xxxxx Group II Xxx xxxxx Group III

1. Ajmal Khan Road 2,000 6,000

2. Gaffar Market 2,000 6,000

3. Khan Market 2,000 6,000 Xxx xxxxx

14. Karol Bagh 2,000 6,000 Xxx xxxxx Xxx xxxxx Group IV Group V Xxx xxxxx

6. Old and New Rohtak Road 1,200 2,400 Group VI Xxx xxxxx Group VII Xxx xxxxx
Group VIII Xxx xxxxx”

8. Before considering the acceptability or relevancy of the circular, let us examine the evidence of PW-1 - Labh Singh Chane, Under Secretary (Land) Ministry of Urban 12 Affairs and Employment. His evidence in chief and cross- examination are relevant which reads as under:- "Labh Singh Chane, Under Secretary (Land) Ministry of Urban Affairs and Employment, Nirman Bhawan, New Delhi.

“On S.A.

I have seen Circulars dated 21.10.81 No. J- 22011/3/80-LD (DO1) copy of which is Ex. PW-1/1.

We arrive at this conclusion after consulting Income-tax Department, L& DO, Delhi Admn. and DDA. Thereafter, we issue the circular. There is a committee which considers this Data and the recommendations are considered by the Government, Sanction of the Finance Ministry is taken and then we fix the rates.

Xxxx xxxxx by Shri Krishan Kumar, for Union of India:

I was not a party to the above said proceedings or the conclusion arrived at by L & DO & and our department. I have no personal knowledge about this case. I have made the above statement on the basis of documents. I am not a party to the

recommendations made by the Committee. The above said rates are primarily intended for the recovery of misuse charges, recovery of unearned increase and revision of ground rent in respect of Central Government properties. The Data is obtained on the basis of values recording in the Registered Sale-Deeds and Auction rates. I have no knowledge about the property in dispute. I cannot refer to any Sale-Deeds mentioned above.

Xxxx by Shri S.C.Arora counsel for respondents No.2 & 3:

It is correct that I have never worked with Shri R.Krishnaswami, the then Under Secretary (Lands). It is correct that I cannot identify the signatures of Shri R. Krishnaswami, but I am deposing so on the basis of the record. The record produced by me today in the court is maintained by the office.

It is wrong to suggest that I have deposed falsely.

RO & AC Sd/- 1.12.98 ADJ”

9. According to PW-1, the valuation was fixed after consulting Income-tax Department, L & DO, Delhi Admn. and DDA. He has also deposed that there is a Committee which considers the details and the recommendations are considered by the Government and after sanction of the Ministry of Finance, the Ministry of Urban Affairs and Employment would fix the rates. In the cross- examination, though he has admitted that he had no personal knowledge, however, he has explained that the details/figures in the circular dated 21.10.1981, have been made on the basis of various information/documents. He has also stated that the rates provided in the circular are primarily intended for the recovery of misuse charges, recovery of unearned increase and revision of ground rent in respect of Central Government properties. He has also informed that the data was obtained on the basis of values shown in the registered sale deeds and auctioned rates.

10. It is not in dispute that the circular referred to by PW-1 is for the purpose of recovery of unearned increase while granting permission for sale in respect of residential leases measuring 100 sq. yds or less. The rates mentioned therein are effective from 01.04.1981 to 31.03.1983. In the schedule appended to the circular Sl. No. 14 in Group III relates to Karol Bagh where the acquired lands are situated. It further shows that if it is residential plots, the value is to be fixed @ Rs.2,000/- per sq. mt. and if it is commercial plots, the rate notified is @ Rs.6,000/- per sq. mt. Sl. No.6 in Group V which relates to old and New Rohtak Road and as per the circular, the residential value fixed is Rs.1,200/- per sq. mt. and commercial value is Rs.2,400/- per sq. mt.

11. Mr. T.S. Doabia, learned senior counsel for the respondents submitted that fixing market value on the basis of `circle rates' is not sustainable and in support of the same, he relied on the decisions of this Court in *Delhi Development Authority vs. Bali Ram Sharma & Ors.*¹, *Union of India vs. Pramod Gupta(Dead) by L.Rs. & Ors.*²,.

12. In DDA's case (supra), this Court in view of the market value fixed in the case of *Karan Singh & Ors. vs. Union of India*³, and taking note of the fact that acquisition of land under the same notification without adverting 'Government schedule of rates' fixed the market value as determined in Karan Singh's case (supra). In Pramod Gupta's case (supra), this Court did not approve the method of fixing market value based on certain notifications issued by the Union of India in the year 1965 which were meant for the residential plots. In Ranvir Singh's case (supra), the circle rates were not followed in determining the market value.

13. We accept that in view of the purpose for which the 'circle rates' have been notified by the Ministry of Urban Affairs and Employment, market value of a plot cannot be determined solely on the basis of the circle rates. On the other hand, it cannot be ignored in toto. If other materials are available, Government rates can also be considered as corroborative evidence. The nature of the land plays an important role. Likewise, market conditions prevailing as on the date of notification are also relevant.

“Sale price in respect of small piece of land cannot be the basis for determination of market value of large stretch of land.”

14. It is also useful to refer the recent decision of this Court in *Lal Chand vs. Union of India & Another*⁴, A two-Judge Bench has held that the circle rates relate to urban/city areas in Delhi and are wholly irrelevant when the court has to decide the market value in regard to land situated in a village on the outskirts of Delhi. Based on this, learned counsel for the appellants submitted that this Court has not completely ignored the rates notified by the Government though it cannot be applied to the area other than urban/city.

15. It is clear from the above decisions and discussion that merely on the basis of 'circle rate', market value for acquired lands cannot be fixed but, at the same time, as observed earlier, the locality and the prevailing circumstances are relevant for determining the real value of the land. We have adverted to the assertion of the claimants about the proximity and various other attending circumstances. It is seen from the evidence of PW-2, Power of Attorney holder of the appellants that the acquired plot was located in the midst of commercial properties, had commercial potentiality and for similar properties, the rates in the locality were not less than Rs.6,000/- per sq. mtr. He tendered evidence and placed documents Ex.PW-2/1 to PW-2/11 which includes Eicher City Map. PW-2 has also highlighted that the plot was located within the developed commercial hub of Karol Bagh having all facilities. As rightly observed by the High Court, the Reference Court overlooked the evidence on record that after the property was purchased by the appellants in 1961, considerable development in and around the area had taken place. The acquired property was purchased by the appellants in the year 1961 and it is not in dispute that the acquisition proceedings started in the year 1983 i.e. after a period of 22 years from the date of 4 (1) notification (9/5/1983). The High Court has also relied on *Ram Lal Bansiwal vs. Union of India & Ors.*, R.F.A. No. 131/88, a decision of fixing market value @ Rs.2320/- per sq. yard for commercial plots based on the circle rates. When the appeal was carried to this Court, by decision dated 17.02.1997, this

Court enhanced the amount of compensation to Rs.3,000/- per sq. yd by observing that the land was located in a commercial hub and was adjoining to a petrol pump. It is pointed out that the said decision relates to Chowkri Mubarkabad being a locality adjacent to Karol Bagh situated by the side of main Rohtak Road. It is also demonstrated that the same is in close proximity to Karol Bagh area and the plot in question was located in the midst of Karol Bagh. Though in the award, the Land Acquisition Collector has mentioned that the plot is 2 km. away from the commercial area in the Karol Bagh admittedly, the very same Joshi Memorial Hospital was running on the land under acquisition since 1970-71 and the hospital was paying rent to the pattedars/owners. This information has been mentioned in the synopsis filed by the Union of India in their Civil Appeal No. 8637 of 2002.

16. We have also verified the Delhi Government Map survey of 1982. On going through the location as found in the Government Map, the assertion of PW-1, an officer of the Government, PW-2, Power of Attorney of the appellants, various activities in and around the plot and considering the fact that the Land Acquisition Collector relied on the three property transactions relating to 1980- 81, 1981-82 and 1982-83 and not nearer to the date of notification under Section 4 (1) i.e. 09.05.1983 and also of the fact that even on the date of notification the very same hospital i.e. Joshi Memorial Hospital was running on the land, we hold that even if we eschew 'circle rate', the amount determined by the High Court is just, reasonable and acceptable. For the same reasons and in the absence of additional material, we are not inclined to increase the market value as claimed by the claimants-appellants.

17. In the light of the above discussion, the appeals filed by the claimants as well as the Union of India are dismissed. No costs.

¹(2004) 6 SCC 533

²(2005) 12 SCC 1 and 59

³(1997) 8 SCC 186

⁴JT 2009 (11) SC 490