

SUPREME COURT OF INDIA

D.D.A

Vs.

S.S.Aggarwal & Ors.

C.A.No.7301-7302 of 2003

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

02.08.2011

JUDGMENT

G.S. Singhvi, J.,

1. Leave granted in SLP(C) Nos. 18056-18057 of 2003.
2. These appeals are directed against judgment dated 21.2.2003 of the Division Bench of the Delhi High Court whereby the appeals preferred by two groups of persons i.e., S.S. Aggarwal and others and Om Prakash and others under Section 54 of the Land Acquisition Act, 1894 (for short, "the Act") were allowed and market value of the acquired land fixed by Additional District Judge, Delhi (hereinafter described as, 'the Reference Court') was enhanced from Rs.102/- to Rs.7,390/- per square yard.
3. By notification dated 6.1.1995 issued under Section 4(1) read with Section 17(1) of the Act, the Government of National Capital Territory of Delhi proposed the acquisition of 27 bighas 5 biswas land situated at village Jasola. After 4 days, the declaration was issued under Section 6 of the Act.
4. In response to the notice issued under Section 9 of the Act, the landowners filed three claim petitions through the same Advocate, namely, Ch. Sawrup Singh. One of the petitions was filed by Kishan Lal and 13 others. The other was filed by S.K. Sarogi and another and the third was filed by Mangla Ram and 3 others. They pleaded that keeping in view the prevailing market rates, they be paid compensation at least at the rate of Rs.4,000/- per square yard. In support of their claim, the landowners relied upon the allotments made by the Delhi Development Authority (for short, 'the DDA') at a concessional rate of Rs.2,200/- per square yard.
5. During the pendency of the matter before the Land Acquisition Collector, Delhi, Mangla Ram and 3 others executed Assignment Deed dated 21.9.1995 in favour of Om Prakash, Phire Ram and Vinod Kumar (all sons of Ch. Swarup Singh, Advocate, who was

representing the landowners before the Land Acquisition Collector). The relevant portions of the assignment deed are extracted below:

"WHEREAS, the Vendors are the actual owners of the Acquired Land Total Measuring 8 Bighas and 5 Biswas, in Khasra No. 133 situated in Revenue Estate of Village Jasola, Tehsil Mehrauli, New Delhi. That the above said land has been notified under Section 4 of the Land Acquisition Act, 1894, on 6.1.1995, and declaration under Section 6 and notification under 17(1) of the Land Acquisition Act, 1894, has also been issued on 10th Jan. 1993 but the compensation in respect of said land has not been passed by Govt. to the Vendors so far. AND WHEREAS, the possession of the said land has also been taken by the Govt. on 22nd February, 1995.

AND WHEREAS, the Vendors have willingly agreed to sell transfer the said compensation right of the said land measuring 8 bighas 5 biswas, in Khasra No. 133, of village Jasola, Tehsil Mehrauli, New Delhi, whatsoever to be settled by the Land Acquisition Collector in award or by the court in reference or in revisions or appeals of the same in High Courts with all rights to recover and receive the same from the concerned authorities/depts. for a sum of Rs.4,80,000/- [Rs. Four lacs and eighty thousand only] and the Vendees have agreed to purchase the same for said amount. The entire consideration amount of Rs. 4,80,000/- [Rs Four lacs and eighty thousand only], has already been received in advance by the Vendors from the Vendees [the receipt whereof, the Vendors admit and acknowledge] in full and final settlement.

NOW THIS ASSIGNMENT DEED WITNESSETH AS UNDER:

1. That the Vendors do hereby sell, transfer, convey and assign the compensation rights, whatsoever to be settled by the Land Acquisition Collector in Award or by the courts in reference perceptions, revisions as sale etc. of the same to be filed in Delhi High Court and other higher courts with rights to receive and recover the same from the concerned authorities/Depts. with each and every rights which vest in their names as towards the above said award of the Land Acquisition Collector and in reference, revisions, appeals etc. upto the Vendees.
2. That the Vendors admit that they have no right left with the compensation right to be settled in above said award or in reference, revisions or appeals etc. and the same has become property of the Vendees, with the rights to receive and recover the same.
3. That the Vendors admit that the Vendees are fully entitled to substitute themselves before Land Acquisition Collector in Award/reference as mentioned above and to conduct the same. The vendors have handed over and delivered the notices and other acquisition documents and all other relevant papers/documents to the Vendees.
4. That the Vendors have assured the Vendees that they have not entered into any agreement with anyone else for the said transfer of the said compensation right to be settled in award by the Land Acquisition Collector and references, revisions, appeals,

etc. and they further admit and declare that if found and proved otherwise, then the Vendors shall be liable and responsible to make good the losses suffered by the Vendees and to repay the said received amount with costs and damages to the Vendees. The Vendees then shall be entitled to recover the said amount from the Vendors, their properties both moveable and immovable.

5. That the Vendors declare that the Deed which is executed by the Vendors in favour of the Vendees for that they are fully entitled to execute the same without consent of any other person/s are entitled owners of the same, they transferred their rights, titles and interests and claims in the same for ever in favour of the said Vendees. The heirs and successors of the Vendors will have no right to challenge it."

6. The other landowners appear to have executed a similar assignment deed in favour of S.S. Aggarwal and 5 others, who are appellants in the appeal arising out of SLP(C) No.18056/2003.

7. Although, the assignees were very much aware that claims filed by the landowners were pending before the Land Acquisition Collector and in terms of paragraph 3 of the assignment deeds, they could apply for substitution, all of them deliberately kept quiet and did not produce assignment deeds before the Land Acquisition Collector, who ultimately passed award dated 11.10.1995 and fixed market value of the acquired land at the rate of Rs.98/- per square yard.

8. After announcement of the award, S.S. Aggarwal and 5 others filed an application under Section 18 of the Act for re-fixation of market value of the acquired land at the rate of Rs.10,000/- per square yard by asserting that they fall in the category of interested persons. Similar application was filed by Om Prakash and two others. The Collector did not make any inquiry on the issue of locus of S.S. Aggarwal and others to claim compensation and referred the matter to the Court. The Reference Court too did not inquire about the entitlement of S.S. Aggarwal and others to claim compensation and disposed of the reference by fixing market value of the acquired land at the rate of Rs.1,02,000/- per bigha.

9. Feeling dissatisfied with the determination made by the Reference Court, S.S. Aggarwal and 5 others filed an appeal under Section 54 of the Act and claimed that even though they were entitled to enhanced compensation at the rate of Rs.2,00,000/- per bigha, but due to paucity of funds, they were limiting their claim to Rs.3,000/- per square yard. Similar appeal was filed by Om Prakash and 2 others.

10. After four and a half years of filing the appeals, S.S. Aggarwal and 5 others filed C.M. No.1340 of 2002 under Order VI Rule 17 read with Section 151 CPC for amendment of the memo of appeal so as to enable them to claim compensation at the rate of Rs.7,000/- per square yard. Simultaneously, they deposited court fee of Rs.4,98,000/- by assuming that the High Court will necessarily accept their prayer for amendment. Notice of the application was given to the counsel representing the Union of India on 5.9.2002, but no order was passed granting or refusing the prayer for amendment. The appeals were finally disposed of by the

Division Bench of the High Court vide judgment dated 21.2.2003 and market value of the acquired land was fixed at Rs.7,390/- per square yard. By an order of the same date, the Division Bench of the High Court allowed C.M. No.1340 of 2002 in the following terms:

"By this application amendment has been sought to the memorandum of appeal. Such like applications have been decided in a number of cases by this Court. Amendment to the memorandum of appeal to claim higher amount of compensation has been sought on the ground that while filing appeal, due to paucity of funds, the appellants could not claim proper amount of compensation though in the reference higher amount of compensation had been claimed by them. Considering the facts and circumstances of the case and the principle that a claimant must be paid fair amount of compensation in case his property is acquired for public purpose by the State and relying upon the ratio of the decisions of the Supreme Court in *Harcharan Vs. State of Haryana*¹ *Bhag Singh & Ors. Vs. Union Territory of Chandigarh*² *Scheduled Caste Co-operative Land Owning Society Ltd. Bhatinda vs. Union of India and Others*³ *Chand Kaur & Others Vs. Union of India*⁴ *Gokal vs. State of Haryana*⁵ and *Buta Singh (Dead) by L.Rs. Vs. Union of India*⁶ the prayer made in the application is allowed subject to the condition of the appellant making good the deficiency in court fee within a period of four weeks, if not already made good."

11. Ms. Gita Luthra, learned senior counsel appearing for the Union of India assailed the impugned judgment mainly on the ground that the High Court committed serious error by entertaining the amendment application filed after a long time gap of four and a half years. She relied upon the judgments of this Court in *Buta Singh v. Union of India*⁷ and *Union of India v. Pramod Gupta*⁸ and argued that the High Court should not have granted the prayer for amendment because the applicants had not given any tangible explanation for the long delay of four and a half years. Ms. Luthra further argued that the High Court was not justified in disposing of the appeals without first deciding the amendment application and giving an opportunity to the acquiring authority and the ultimate beneficiary i.e. the DDA to contest the prayer made by S.S. Aggarwal and others for fixation of market value at the rate of Rs.7,000/- per square yard. Learned senior counsel then argued that the assignment deeds executed by the landowners constituted the best piece of evidence for determination of market value but the assignees deliberately withheld the same from the Land Acquisition Officer, the Reference Court and the High Court and this, by itself, should be treated as a ground for remitting the matter to the Reference Court. Ms. Luthra further argued that the High Court committed serious error by awarding compensation over and above what was claimed in the amendment application and that too without taking into consideration the fact that Om Prakash and others had not even filed an application for amendment of the memo of appeal.

12. Shri Amarendra Sharan, learned senior counsel appearing for the DDA argued that the impugned judgment is liable to be set aside because the assignees had deliberately kept the Land Acquisition Collector, the Reference Court and the High Court in dark about the assignment deeds under which they claim to have purchased the right to get compensation by

paying a meager sum of Rs.58/- per square yard to the landowners. Shri Sharan referred to Sections 23 and 28 of the Contract Act and argued that the assignment deeds are liable to be treated as void because the same are not only opposed to public policy, but have the effect of defeating the objects of the Delhi Lands (Restrictions on Transfer) Act, 1972, which prohibit transfer of land after issue of notification under Section 4(1). In support of this argument, Shri Amarendra Sharan relied upon the judgments of this Court in *Rattan Chand Hira Chand v. Askar Nawaz Jung*⁹ *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*¹⁰ *Central Inland Water Transport Corporation v. Brojo Nath Ganguly*¹¹ and *Jayamma v. Maria Bai*¹² Shri Sharan lastly submitted that the landowners are entitled to just and reasonable compensation as of right and the assignees cannot take advantage of their better financial position to unduly enrich themselves by getting huge compensation.

13. Shri Dhruv Mehta, learned senior counsel appearing for S.S. Aggarwal and other assignees argued that the DDA does not have the locus to question the assignment deeds by invoking Article 14 of the Constitution and Sections 23 and 28 of the Contract Act because it was not a party before the Reference Court. Shri Mehta emphasised that the assignment deeds are registered documents which were executed by the landowners with full knowledge of the consequence of assignment and it is not open to the Union of India and the DDA to indirectly question the transaction involving transfer of the right to receive compensation. Shri Mehta relied upon the judgments in *Dawson v. Great Northern and City Railway Company*¹³ *Sunrise Associates v. Government of NCT of Delhi*¹⁴ and unreported judgment of the Delhi High Court in Appeal No.140 of 1972-Laxmi Narayan v. Union of India and another decided on 24.11.1977 and argued that the right to receive compensation is in the nature of property right and the same can be assigned by the owner of the property. Shri Mehta strongly supported the order passed by the High Court granting leave for amendment of the claim by pointing out that the landowners had claimed compensation at the rate of Rs.4,000/- and in the applications filed under Section 18, the assignees had clearly indicated that market value of the acquired land is at least Rs.10,000/- but due to paucity of funds, they had restricted the claim to Rs.3,000/- per square yard.

14. We have considered the respective submissions in the back drop of the fact that even though in terms of the assignment deeds, S.S. Aggarwal and others became entitled to seek substitution before the Land Acquisition Collector, they neither sought impleadment in the award proceedings nor produced the assignment deeds to show that the landowners had transferred the right to receive compensation.

15. Learned senior counsel appearing for the assignees could not offer any tangible explanation as to why his clients chose to keep the Land Acquisition Collector, the Reference Court and the High Court in dark about the execution of the assignment deeds by the landowners. Therefore, it is reasonable to presume that they had done so deliberately and the only possible reason for this could be to avoid a proper scrutiny by the Land Acquisition Collector and two judicial forums about their entitlement to receive compensation at a rate higher than Rs.58/- per square yard paid to the landowners. If the assignment deeds had been produced before the Land Acquisition Collector or the Reference Court, either of them could have held an inquiry and given an opportunity to the landowners and/or assignees to explain

the position. By withholding the assignment deeds, the assignees succeeded in avoiding proper scrutiny of their claim for compensation at the hands of the Land Acquisition Collector, the Reference Court and the High Court.

16. In the aforesaid scenario, it will be just and proper to set aside the impugned judgment and remit the case to the Reference Court for fresh determination of the amount of compensation payable to the landowner and/or assignee after giving them reasonable opportunity of adducing evidence in support of their respective cases.

17. We also find merit in the submission of Ms. Gita Luthra that the High Court committed serious error by entertaining and allowing the amendment application filed by S.S. Aggarwal and others. What has surprised us is that the High Court first decided the appeals filed by the assignees and then disposed of the amendment application and that too without going through the records. If this was not so, there was no occasion for the High Court to incorporate the condition of making good the deficiency in court fee. By this process, the Union of India and the DDA were deprived of an important opportunity to make a request to the High Court to remit the case to the Reference Court or at least allow them to adduce evidence on the issue of correct market value of the acquired land. Another grave error committed by the High Court in this regard was that it allowed the amendment application without even adverting to the issue of unexplained delay of 4 and half years.

18. In *Union of India v. Pramod Gupta (supra)*, this Court considered the legality and propriety of granting prayer for amendment in a case somewhat similar to the present one and observed:

"Delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings. The High Court neither assigned sufficient or cogent reasons nor applied its mind as regards the relevant factors while allowing the said application for amendment. It has also not been taken into consideration that the application for amendment of pleadings might not have been maintainable in view of statutory interdict contained in sub-section (2) of Section 25 of the Act, if the same was applicable. In *Anoop Singh* whereupon reliance has been placed by Mr Salve, the Division Bench of this Court did not have any occasion to consider that decisions of this Court in *Krishi Utpadan Mandi Samiti v. Kanhaiya Lal* and *B.V. Reddy* which, it will bear repetition to state, are authorities for the proposition that once it is held that Section 25(2) of the Act would be attracted in a given case, the parties are estopped and precluded from claiming any amount higher than that claimed in their claim petition before the Collector. An observation made to the effect that an application under Order 6 Rule 17 would be maintainable having regard to Section 53 of the Act, with utmost respect, does not constitute a binding precedent. No ratio has been laid down therein and the observations made therein are without any discussion. Furthermore no reason has been assigned in support of the said proposition of law. In *Harcharan* also this Court did not address the question as to whether Order 6 Rule 17 would be applicable in relation to the original claim petition or memo of appeal.

It may be true that not only the memorandum of appeal but also the reference was amended. Mr Rao pointed out that the necessary amendments have been carried out in the application for reference or memorandum of appeal. In terms of Order 6 Rule 18 of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party which has obtained leave to amend his pleadings within the time granted therefor and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order 6 Rule 18 of the Code is that the party shall not be permitted to amend its pleadings thereafter unless the time is extended by the court. It is not in dispute that such an order extending the time specified in Order 6 Rule 18 has not been passed.”

19. In the result, the appeals are disposed of in the following terms:

(i) The impugned judgment as also the one passed by the Reference Court are set aside.

(ii) The matter is remitted to the Reference Court for fresh determination of the compensation payable to the landowners and/or assignees. While doing so, the Reference Court should first decide the issue of locus of the assignees to claim compensation. If it is held that the assignees are entitled to step into the shoes of the landowners, then the Reference Court shall consider the value of the land mentioned in the assignment deeds and decide what compensation should be paid for the acquired land.

(iii) The Reference Court shall give opportunity to the parties to lead additional evidence in support of their respective cases.

(iv) In view of the law laid down in *Delhi Development Authority v. Bhola Nath Sharma*¹⁵ the DDA shall be entitled to participate in the proceedings of the Reference Court and raise objections against the claim made by the assignees for payment of compensation. The DDA shall also be entitled to raise all other legally permissible objections to contest the claim of the assignees.

20. Since the case is sufficiently old, we direct the Reference Court to decide the matter within a maximum period of one year from the date of receipt/production of copy of this judgment.

Judgment Referred.

¹AIR 1983 SC 0043

²(1985) 3 SCC 0737

³(1991) 1 SCC 0174

⁴(1994) 4 SCC 0663

⁵AIR 1992 S.C. 0150

⁶(1995) 5 SCC 0284

⁷(1995) 5 SCC 0284

⁸(2005) 12 SCC 0001

⁹(1991) 3 SCC 0067

¹⁰(1995) *Supp.* 2 SCC 0549

¹¹(1986) 3 SCC 0156

¹²(2004) 7 SCC 0459

¹³(1905) 1 KB 0260

¹⁴(2006) 5 SCC 0603

¹⁵(2011) 2 SCC 0054