

Govt. of NCT of Delhi & Others

v.

Ajay Kumar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE C.  
NAGAPPAN

C. A. No. 8864 of 2013 (Arising out of SLP(C) No. 35008 of 2011) with C. A.  
No. 8865 of 2013 (Arising out of SLP (C) No. 35009 of 2011) | 23-09-2013

1. Leave granted.

2. Whether the Division Bench of the Delhi High Court could, while deciding the writ petitions filed by the respondents for quashing the acquisition of their land, pass interim orders and compel respondent No.1 - Government of NCT of Delhi to issue notification making circle rates as the prime criteria for determination of the compensation payable under the Land Acquisition Act, 1894 (for short, 'the 1894 Act') and then direct that the same shall be made applicable to the acquisitions made prior to issue of notification is the question which arises for consideration in these appeals.

3. The land of the respondents was acquired for construction of Depot, Staff quarters and TSS of Inderlok Mundka Corridor of Delhi MRTS Project Phase-II. Notification under Section 4 was issued on 7.6.2007 and the declaration made under Section 6 was published on 23.10.2007. After issuing notice under Sections 9 and 10, the Land Acquisition Collector passed the award and fixed market value of the acquired land.

4. The respondents challenged the acquisition proceedings in Writ Petition Nos.2109 and 5480 of 2008 and prayed for following reliefs:

"(i) Issue a writ of Certiorari/Mandamus or any other appropriate writ, order or directions thereby quashing the notification issued under Section 4 of the Land Acquisition Act dated 07.06.2007, section 6 of L.A. At and Section 17 of L.A.

Act dated 23.10.2007 and the proceedings and award, if any passed thereof in respect of the residential properties of the petitioners as detailed in para No. 2 of the petition declaring the same as illegal unconstitutional and ultra-vires;

(ii) In alternative issue a writ of Mandamus thereby directing the respondents to allot the petitioners residential plots of same area in the nearby authorized residential colony, in case the acquisition is held to be valid and to give appropriate compensation to the petitioners at the basis of auction reserved price of DDA, in the nearby area or in tune of user of the property for commercial purpose by the DMRC.

(iii) Issue a writ of Certiorari/Mandamus or any other appropriate writ, order or directions thereby de-notifying the land of the petitioners with the directions to handover the possession of their respective plots to them alongwith damages;

(iv) Cost be also awarded.

(v) Pass any other or further order which this Hon'ble Court deems fit and proper under the facts and circumstances of the case in favour of the petitioners and against the respondents."

5. On 2.4.2008, the High Court directed the Land Acquisition Collector to deposit 80% of the amount of compensation in the Court. Thereafter, the writ petitioners were permitted to withdraw 80% of the compensation. On 01.10.2008, 17.2.2009, 26.4.2009, 21.5.2010, 9.7.2010, 24.9.2010, 26.11.2010 and 4.2.2011, the High Court passed the following orders:

"01.10.2008

The amount representing 80% of the tentative compensation deposited by the respondents in this court be withdrawn by the petitioners without prejudice to their rights in this writ petition. Before releasing the amount the Registrar shall

satisfy himself about the identity of the claimants. The petitioners shall also furnish indemnity bond.

It is argued by learned counsel for the petitioners that the circle rate for area in question fixed by the Government itself is Rs.13,700/- per square yard which is in respect of category 'G' locality and the land in question which is acquired is stated in village Mundka which also falls in category 'G'.

Their submission is that the LAC totally ignored the aforesaid circle rate and fixed the tentative compensation at the meager rate of Rs.1000/- per square yard which according to the learned counsel shows lack of bona fides on the part of L.A.C. in fixing compensation at dismally low rate. Mr. Poddar, on the other hand, submits that no such document is produced by the petitioners nor any averments were made in this behalf in this petition. He also states that the aforesaid circle rate would not be applicable to the land acquired.

Be as it may, the petitioners shall file appropriate affidavit bringing the aforesaid fact on record within two weeks reply thereto shall be filed within two weeks thereafter. We also note that notices were issued by the L.A.C. to the petitioners under Section 9 and 10 of the Land Acquisition Act in October, 2007. Pursuant thereto the petitioners had preferred their claims. Since the notification for acquiring land was issued on 23rd October, 2007, Mr. Poddar states that L.A.C. shall make the award by 23rd October, 2008. Copy thereof shall be filed on the record of these cases. Learned counsel for the petitioners also submit that petitioners are entitled to alternate accommodation under the scheme formulated by the respondents. It would be open to them to make appropriate application/representation in this behalf to the competent authority within two weeks. List the matter again for hearing on 24th November, 2008.

17.02.2009

Learned counsel for the Respondents accept notice. The predecessor Bench of this Court in these two petitions as also in WP (C) No. 729/2008 has expressed its deep anguish in respect of the manner of fixation of tentative compensation when land is sought to be acquired under Sections 4, 6 and 17 of the Land

Acquisition Act, 1894. The object of tentative compensation being paid to the Petitioner is that 80 per cent of this amount is paid to the person losing the land and thus some immediate succor is provided for loss of land. If the fixation of land rate is ludicrous, it offers no succor and aggravates the situation defeating the very object of making a provision for payment of 80 per cent of the tentative compensation.

It has also been brought to our notice that, the Government in its wisdom has fixed circle rates for different areas. These circle rates are no doubt for calculation of stamp duty but the underlying object is that there is low declaration of value of land for the purposes of transaction while the actual transaction is of much higher value and this result in loss of revenue. The circle rates are thus fixed relying on a conservation estimate which would be the minimum rates at which any land of a particular nature would be sold. Thus, this would certainly be the minimum value of land at which transactions ought to take place but are not taking place due to said lower declaration in the value of land. In the facts of the present case, there is proximity between issuance of notification and the notification of circle rates to the extent of a difference of only about 10 days. The circle rates have been declared about 10 days later but such proximity would show that the circle rate would at least be the minimum rates on which transaction ought to take place. Despite this fact, the LAC is relying upon different transactions to fix the tentative compensation or the final compensation. The result is that the basis for such fixation is the mis-declared values in respect of the transactions to which the claimant is not a party but has been involuntarily deprived of the enjoyment of land. The figures are so glaring that even if the solatium amount is added, it is nowhere near the market value. Of course, the object of providing solatium is actually solace to the person and dry his tears who has been involuntarily deprived of the land because he is not a willing seller. Thus, what is envisaged is payment of a higher value than the market value to such a person. This object is being defeated by such low determination of values having no correlation with the ground realities. Learned counsel for the LAC referred to the judgment of the Supreme Court in U.P. Jal Nigam, Lucknow through its Chairman and Anr. v. M/s. Kalra Properties (P) Ltd. Lucknow and Ors., AIR 1996 SC 1170 to contend that the proposition laid down in the judgment is that the fixation of circle rates is for the purposes of calculation of stamp duty and cannot be relied upon to determine the market value. However, a closer scrutiny of the said judgment, in our considered view shows that these observations in the short order are in the context of there being a vast time difference between the issuance of the notifications under the said

Act and the issuance of circle rates. The notifications were issued in the year 1973 while the circle rates are of the year 1992. The observations must thus be understood in that context.

We do think that the remedy should be provided by the executive in such cases keeping in mind the larger public interest and the object of the provisions of the said Act which is to provide compensation to persons whose land has been acquired compulsorily at prevalent market value plus solatium. We see no reason why when there is close proximity between the declaration of circle rates and the issuance of notification, at least that value should be considered for determination of the tentative compensation leaving it to the parties to establish that a higher amount of compensation may be due depending on other factors to be taken into account for the determination of the market value. We may also note that, on the one hand the land acquired from the persons is permitted to be encroached upon and thereafter the encroachment and the construction is sought to be regularized under the scheme of regularization while on the other hand, the original owners of the land do not even get their basic dues. We consider it appropriate to direct the aforesaid aspect be examined at the highest level to at least facilitate the payment of tentative compensation up to a minimum value of the circle rates or in and around that rate depending upon the proximity of the notification of the circle rates and the notification issued under the said Act.

Learned counsel for the Petitioner states that the applications filed by them for allotment of an alternative land are pending consideration. We direct that those applications be processed under the relevant scheme expeditiously in terms of the seniority of the applications.

List for directions on 18.03.2009.

CM 4056/2008 in WP(C) No. 2109/2008

CM 10465/2008 in WP(C) No. 5480/2008

Dismissed as not pressed as they have become infructuous.

Dasti to learned counsel for the respondents.

26.04.2009

In view of the controversy involved, let the Divisional Commissioner, Deputy Commissioner (West) and concerned L.A.C Mr. Sandeep Mittal remain personally present in the Court on 21st May, 2010

List in the category of directions.

21.05.2010

Learned counsel for LAC, on instructions from Principal Secretary (Revenue) seeks some time to take necessary decisions which may affect not only these matters but ameliorate the sufferings of similar situated citizens. List this matter as part heard on 9th July, 2010 for directions. The Principal Secretary and the concerned LAC shall again remain present on the next date.

09.07.2010

CM No. 8958/2010 in WP (C) No. 2109/2008

Notice which is accepted by the learned counsel for the Petitioner. For the reasons stated in the application, the presence of Principal Secretary is exempted for today. Application stands disposed of.

CM No. 8959/2010 in WP (C) No. 2109/2008

Notice, which is accepted by the learned counsel for the Petitioner. For the reasons stated in the application, last opportunity is granted to take considered decision on or before 15th September, 2010.

Application stands disposed of.

WP(C)No. 2109/2008

List as part heard on 24th September, 2010 for directions.

The Principal Secretary and the concerned LAC shall remain present on the next date.

Dasti to the learned counsel for the LAC. 24.09.2010

CM No. 12895/2010 in WP (C) No. 2109/2008

The request for personal exemption of the Principal Secretary of Land DO for today date of hearing is allowed and the application is disposed of.

CM No. 12896/2010

At request of learned counsel for the Respondents, further time is granted for necessary decision to be taken by the Respondents. Application stands disposed of.

WP (C) No. 2109/2008

List as part heard on 26th November, 2010 for directions. The Principal Secretary and the concerned LAC shall remain present in the Court on the next date.

26.11.2010

CM No. 20490/2010 (for extension of time)

Notice, which is accepted by learned counsel for the Petitioner. The application has been filed seeking extension of time. It is stated that the relevant file has now been moved through the various channels and has finally reached the table of the Hon'ble the Chief Minister for approval so that the matter can be placed before the Council of Ministers where after it has to be placed before Lieutenant Governor and on approval to be notified in the official gazette. It is assured by learned counsel that a needful will be done within two months. We expect this matter be taken seriously as it reflects a large number of citizens in Delhi and it is in the interest of everyone that a realistic view is taken and a proper decision formulated at the earliest. The application stands disposed of.

CM No. 20489/2010 (by RI for exemption from personal appearance)

Notice, which is accepted by learned counsel for the Petitioner.

The application has been filed seeking exemption of

The presence of the Principal Secretary for today. The application is allowed.

WP (C) No. 2109/2008

List for directions on 4th February, 2011. The Principal Secretary and the concerned LAC shall remain present in the Court on the next date. Dasti to learned counsel for the LAC.

04.02.2011

Notice, which is accepted by learned counsel for the Petitioners. The application has been filed seeking exemption of the Principal Secretary. The personal presence of the Principal Secretary is exempted for today and the application is allowed. Notice, which is accepted by the learned counsel for the Petitioners. An extension of time has been sought for obtaining necessary instructions in terms of the order dated 21.05.2010. It is stated that the Cabinet has taken the decision recently and the file has been sent to Lieutenant Governor whose decision is awaited. A further one month's time is sought to take the final decision. We accede to the prayer and allow the application accordingly.

WP (C) No. 2109/2008

List for directions on 01.04.2011 when the Principal Secretary and the concerned LAC shall remain present in the Court."

6. In deference to the desire expressed by the High Court, appellant No.1 issued notification dated 23.2.2011, which reads as under:

"Government of National Capital Territory of Delhi Land & Building Department.

B Block, Vikas Bhawan, New Delhi - 110092

No.F.9(20)/80/L&B/L.A/15346

Dated 23.02.2011

NOTIFICATION

No.F.9(20)/80/L&B/L.A,

The Government of the National Capital Territory of Delhi is pleased to notify that the minimum rates for valuation of land and immovable properties (circle rates) shall henceforth be considered by the Land Acquisition Collector as one of the factors for determining the compensation of land under the provisions of the Land Acquisition Act, 1894 (1 of 1894). The Land Acquisition Collector may, by recording reasons in writing, determine the compensation based on other factors, if he is satisfied that circle rates are not serving as an effective factor for determining the compensation of land acquired through award under the said Act.

BY ORDER AND IN THE NAME OF THE LIEUTENANT GOVERNOR OF  
THE NATIONAL CAPITAL TERRITORY OF DELHI

(Vinay Kumar)

Addl.Secretary (L & B)"

7. After taking cognizance of the aforesaid notification, the High Court disposed of writ petitions in the following terms:

"In the given facts and circumstances of the present cases, where there is such a vast difference between the rate determined in terms of the award and the circle rate and that too despite the directions of this court, we consider it appropriate that there should be an expeditious resolution to the controversy by decision of the reference in a time-bound manner. We thus call upon the reference court to decide the reference as expeditiously as possible, but not later than one year from the receipt of the reference. There is another aspect to the matter arising from the claim of the petitioners to an alternative plot in terms of the policy of the respondents for which the applications are stated to have been already made. We expect the respondents to take an expeditious decision on the applications, but in any case, inform the petitioners about the progress of the applications and the status thereof within a maximum period of 15 days from today.

The amount towards 80 per cent of the amount quantified in terms of the award deposited in this Court be released by the Registry to the petitioners after due verification along with interest accrued thereon, if any. The balance 20 per cent is also agreed to be paid to the petitioners by the LAC within one month from today on execution of relevant documents."

8. We have heard Shri L.N. Rao, learned Additional Solicitor General appearing for the appellants and Shri P.S. Narasimha, learned senior advocate appearing for the respondents. Though, we appreciate the anguish expressed by the High Court over the abysmally low market value determined by the Land Acquisition Collectors in almost all cases, a phenomenon which is prevalent all over the country, it is not possible to approve the exercise undertaken by the High Court for forcing the administration to prescribe circle rates as the criteria for fixing market value or for determination of the compensation. The 1894 Act contains a comprehensive mechanism for fixing market value and determination of the compensation payable. Any person, who feels aggrieved by the award of the Land Acquisition Collector or the determination made by the Reference Court can avail remedy either by filing an application under Section 18 of the 1894 Act or by filing an appeal under Section 54 thereof. Therefore, there was no justification for the High Court to have compelled the Government to adopt the circle rates as an important factor for fixing market value of the acquired land. The power vested in the Collector to determine market value of the acquired land cannot be controlled by a judicial fiat and each case has to be decided by the concerned authority by application of objective criteria.

9. In the result, the appeals are disposed of by making it clear that the circle rates referred to in notification dated 23.2.2001 issued by appellant No.1 shall not constitute the sole criteria for fixing market value of the acquired land and the Land Acquisition Collector shall be free to make determination by taking into consideration the relevant factors and evidence which may in an appropriate case include circle rates.