SUPREME COURT OF INDIA

Bhule Ram

Vs.

Union of India

C.A.No.6251 of 2010

(Dr. B.S.Chauhan and J.Chelameswar JJ.)

28.03.2014

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been filed against the judgment and order dated 8.12.2009 passed by the High Court of Delhi at New Delhi in Land Acquisition Appeal No. 154 of 2007 by which the High Court has assessed the market value of the land @Rs.6,51,000/- per acre modifying the award under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') under which the land had been assessed @Rs.5,99,850/- per acre. The appellant claimed that his land ought to have been assessed @Rs.10,00,000/- per acre.

2. Facts and circumstances giving rise to this appeal are that:

A. Land comprised in Khasra Nos. 752(4-16), 753(4-16), 765(4-16), in all 24 bighas, in which the appellant had 1/3rd share and Khasra Nos. 757 (6-15), 758(4-17) and 761(4-16), in all 16 bighas 8 biswas (full share), situated in revenue village Aali, Delhi, stood notified under Section 4 of the Act for the purpose of construction of Ash Pond at Badarpur Thermal Power Station on 16.10.1992 alongwith a huge tract of land belonging to other persons in different villages.

B. In respect of the said land, a declaration under Section 6 of the Act was made on 23.3.1993. The award under Section 11 of the Act was made on 6.6.1994 assessing the market value of the land of the appellant @Rs.4,65,000/- per acre.

C. Aggrieved, the appellant preferred a reference under Section 18 of the Act and the Reference Court made the award dated 10.1.2007 assessing the market value of the land @Rs.5,99,850/- per acre with other statutory benefits.

D. Appellant preferred appeal under Section 54 of the Act before the High Court claiming further enhancement contending that his land ought to have been assessed @Rs.10,00,000/- per acre. The High Court disposed of the appeal vide impugned judgment and order dated 8.12.2009 assessing the market value of the land @Rs.6,51,000/- per acre placing reliance on other judgments in appeal before the High Court.

Hence, this appeal.

3. Ms. Shobha, learned counsel appearing for the appellant and Ms. Priya Hingorani, learned counsel appearing in other connected appeals have raised serious issues that the land ought to have been assessed at the rate on which the land covered by the same notification under Section 4 of the Act in the neighouring village have been assessed. Therefore, the appeal deserves to be allowed.

4. Appeal is opposed by Mr. Puneet Taneja and Ms. Rachna Srivastava, learned counsel appearing for the respondents submitting that the market value of the land of the appellant cannot be assessed on the basis of compensation paid in the adjacent village for the reason that the land is not similar in any circumstance, either in quality or geographical situation/location, and thus, there is nothing on record on the basis of which it can be held that the appellant is entitled for the same compensation which had been given to other claimants in different villages. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The scheme of the Act is that every man’s interest is to be valued rebus sic

stantibus, just as it occurs at the time of the notification under Section 4(1). Thus, the assessing authority must take into consideration various factors for determining the market value, but exclude the advantages due to the carrying out of the purpose of acquisition and remote potentialities. It is the duty of the claimant that he must produce the relevant evidence for determining the market value while filing his claim under Section 9 of the Act atleast before the trial court or before the reference court for the reason that the appellate court may not permit the party to adduce additional evidence in appeal.

7. The market value of the land is to be assessed as per Section 23 of the Act. Valuation of immoveable property is not an exact science, nor it can be determined like algebraic problem, as it abounds in uncertainties and no strait-jacket formula can be laid down for arriving at exact market value of the land. There is always a room for conjecture, and thus the court must act reluctantly to venture too far in this direction. The factors such as the nature and position of the land to be acquired, adaptability and advantages, the purpose for which the land can be used in the most lucrative way, injurious affect resulting in damages to other properties, its potential value, the locality, situation and size and shape of the land, the rise or depression in the value of the land in the locality consequent to the acquisition etc., are relevant factors to be considered. Section 23 mandates that the market value of the land is to be assessed at the time of notification under Section 4 of the Act. Therefore, value which has to be assessed is the value to the owner who parts with his property and not the value to the new owner who takes it over. Fair and reasonable compensation means the price of a willing buyer which is to be paid to the willing seller. Though the Act does not provide for “just terms” or “just compensation”, but the market value is to be assessed taking into consideration the use to which it is being put on acquisition and whether the land has unusual or unique features or potentialities. (Vide: Raja Vyricheria Narayana Gajapatraju Bahadur Garu v. Revenue Divisional Officer, Vizianagaram, AIR 1939 PC 98; and Adusumilli Gopalkrishna v. Spl Deputy Collector (Land Acquisition), AIR 1980 SC 1870).

8. The concept of guess work is not unknown to various fields of law as it applies in the cases relating to insurance, taxation, compensation under the Motor Vehicles Act, 1988 as well as under the Labour Laws. The court has a discretion applying the guess work to the facts of the given case but it is not unfettered and has to be reasonable having connection to the facts on record adduced by the parties by way of evidence.

The court further held as under: "'Guess' as understood in its common parlance is an estimate without any specific information while "calculations" are always made with reference to specific data. "Guesstimate" is an estimate based on a mixture of guesswork and calculations and it is a process in itself. At the same time "guess" cannot be treated synonymous to "conjecture". "Guess" by itself may be a statement or result based on unknown factors while "conjecture" is made with a very slight amount of knowledge, which is just sufficient to incline the scale of probability. "Guesstimate" is with higher certainty than mere "guess" or a "conjecture" per se."

> (See also: Thakur Kamta Prasad Singh v. State of Bihar, AIR 1976 SC 2219; Special Land Acquisition Officer v. Karigowda & Ors., AIR 2010 SC 2322; and Charan Das & etc. etc. v. H.P. Housing & Urban Development Authority & Ors. etc., (2010) 13 SCC 398).

9. In Trishala Jain & Anr. v. State of Uttaranchal & Anr., AIR 2011 SC 2458, this Court held that in case the parties do not lead any evidence on record it is difficult for the court to award compensation merely on the basis of imagination/conjectures, etc. The Act provides for compensation for acquisition of land and deprivation of the property which is reasonable and just. The court must avoid relying on a sham transaction which lacks bona fide and which had been executed for the purpose of raising the land price just before the acquisition to get more compensation for the reason that fraudulent move or design should not be considered as a proof in such cases though such a conclusion can be inferred from the facts and circumstances of the case.

10. The market value of the land should be determined taking into consideration the existing geographical situation of the land, existing use of the land, already available advantages, like proximity to National or State Highway or road and/or notionally or intentionally renowned tourist destination or developed area, and market value of other land situated in the same locality or adjacent or very near to acquired land and also the size of such a land. (Vide: Viluben Jhalejar Contractor v. State of Gujarat, AIR 2005 SC 2214; Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer & Ors., AIR 2011 SC 781; Bilkis & Ors. v. State of Maharashtra & Ors., (2011) 12 SCC 646 and Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Special Land Acquisition Officer & Ors., AIR 2012 SC 2709).

11. Where huge tract of land had been acquired and the same is not continuous, the court has always emphasised on applying the principle of belting system for the reason that where different lands with different survey numbers belonging to different owners and having different locations, cannot be considered to be a compact block. Land having frontage on the highway would definitely have better value than lands farther away from highway. (Vide: Andhra Pradesh Industrial Infrastructure Corporation Limited v. G. Mohan Reddy & Ors., (2010) 15 SCC 412).

12. In Ashrafi & Ors. v. State of Haryana & Ors., AIR 2013 SC 3654, this Court emphasised on belting system and observed that while determining the market value of the land, the court must be satisfied that the land under exemplar is a similar land.

(See also: Sher Singh etc. etc. v. State of Haryana & Ors., AIR 1991 SC 2048).

13. In Executive Engineer (Electrical), Karnataka Power Transmission Corporation Ltd. v. Assistant Commissioner & Land Acquisition Officer, Gadag & Ors., (2010) 15 SCC 60, this Court held that in towns and urban areas, distance of half kilometer to one kilometer makes considerable difference in price of the land. Therefore, the court has to determine the market value on the basis of the material produced before it keeping in mind that some of the lands were more advantageously situated.

14. In Ramanlal Deochand Shah v. State of Maharashtra & Anr., AIR 2013 SC 3452, this Court held that the burden of proof lies on the land owner and in case he does not lead any evidence in support of his claim to prove the inadequance of market value fixed of the land acquired, the court cannot help him.

> (See also: Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P. & Ors., (1994) 4 SCC 595; and Land Acquisition Officer & Sub- Collector, Gadwal v. Sreelatha Bhoopal (Smt) & Anr., (1997) 9 SCC 628).

15. In view of the above, the law can be summarised to the effect that the market value of the land is to be assessed keeping in mind the limitation prescribed in certain exceptional circumstances under Section 23 of the Act. A guess work, though allowed, is permissible only to a limited extent. The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land alongwith the advantages/disadvantages i.e. distance

from the National or State Highway or a road situated within a developed area etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of the party to lead evidence in support of its case, in absence of which the court is not under a legal obligation to determine the market value merely as per the prayer of the claimant.

> There may be a case where a huge tract of land is acquired which runs though continuous, but to the whole revenue estate of a village or to various revenue villages or even in two or more states. Someone's land may be adjacent to the main road, others' land may be far away, there may be persons having land abounding the main road but the frontage may be varied. Therefore, the market value of the land is to be determined taking into consideration the geographical situation and in such cases belting system may be applied. In such a fact-situation every claimant cannot claim the same rate of compensation.

16. The instant appeal is required to be examined in light of the aforesaid settled legal propositions.

> The appellant has not put on record as what was his claim under Section 9 of the Act before the Land Acquisition Collector. The award had been made relying upon some other awards. In his application for reference under Section 18 of the Act, the appellant has inter-alia taken the following grounds:
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> "(iii) That the land acquisition is very closed and surrounded by the developed and posh colonies and industrial area such as Tughlakabad, Railway Station, Sarita Vihar, Badarpur Town and other colonies ….. iv) That the Revenue Estate of Aali is surrounded by adjacent villages such as Badarpur, Madanpur Tekhand and Tughlakabad.
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> iii) That the land of village Aali is better situated and has more potential value village Jaitpur as the land of village Aali is near to Delhi and main Mathura Road.
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> iv) That the Land Acquisition Collector should have assessed the market value

of the land in question on the basis of the judgment of the courts of surrounding villages as Tughlakabad, Tekhand, Badarpur, Madanpur Khadar. Several awards of the Collector or courts are based on the sale transactions of each other being same area and same potential value."

17. The Reference Court while determining the market value of the land recorded the following findings:

> "Since the instances of sale in land in village Aali relied by respondents and referred by LAC in the Award are available the sale prices of the land in village Jasola, Tughlakabad and Badarpur is not required to be looked into. Further it has not been proved on record in case the potentiality and quality of land in village Jasola and Tughlakabad is the same as that of village Aali and as such the sale deeds pertaining to aforesaid villages cannot be relied upon to assess the market value in village Aali. It has further come on record in other cases pertaining to same award the village Madanpur Khadar is located between village Jasola and Aali and distance between two villages is about 3 Kms. Further Mathura Road is stated to be about 6 Kms. from the acquired land. Even village Tughlakabad and Badarpur are more beneficially located than village Aali. For the foregoing reasons, the rate of land in village Jasola, Badarpur and Tughlakabad cannot be compared to assess the rate of land in village Aali and Ex.P7, 8, 9 and 10 are not relevant. It may also be observed that the acquired land on the date of notification under Section 4 was being utilized for agricultural purposes and no electrical and municipal connection for water was available. Even the purpose of acquisition in adjacent land, falling in village Jaitpur was for construction of ash pond and as such there could not have been any substantial appreciation of prices, as no building activities could have taken place. In view of above, the land in village Aali cannot be compared with villages Jasola and Tughlakabad." (Emphasis added)
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> The Court further held that the three sale deeds referred to by the Land Acquisition Collector in his award could not provide a proper guideline for determining the market value of the land acquired as they relate to land so sought to be acquired where value is less than land free from encumbrance.

18. Before the High Court, learned counsel for the appellant relied solely upon the

judgment dated 10.4.2008 passed in appeal preferred by Bishamber Dayal & Ors. from the same village as is evident from the impugned judgment. The relevant part thereof reads as under: "Counsel for the appellant submits that the present case is covered by a judgment dated 10.4.2008 passed in an appeal registered as LAA 399/2007 entitled Bishamber Dayal & Ors. v. UOI & Anr., wherein the compensation payable to the land owners in respect of the same village under the same award was enhanced from Rs.5,99,850/- per acre to Rs.6,51,000/- per acre with proportionate statutory benefits including interest on the amount of additional compensation and solatium on the lines of the decision of the Supreme Court in the case of Sunder v. Union of India reported as 93 (2001) DLT 569."

19. Thus, it is evident that the High Court in the instant case awarded the compensation as per the demand of the appellant himself. There is nothing on record to show that any other argument had been advanced at his behest.

20. Before us, what is being argued are the same issues which have already been rejected by the Reference court pointing out the distance of the appellant's land from the Mathura Road and non-suitability of comparing with other lands. We do not see any cogent reason to interfere as the Reference Court has clearly held that the appellant's land so acquired had been at a distance of 6 Kms. from the Mathura Road, while other lands relied upon by the appellant before us are adjacent to Mathura Road, and thus the lands are surrounded by hospitals and residential and commercially developed areas.

21. Land of the appellant is situated in revenue estate Aali and appellant claims compensation at the rate which has been awarded in revenue estate Jaitpur. No site plan has been produced showing the distance between the land in Jaitpur and the appellant's land, nor any other evidence is shown to compare the lands and to determine as to whether the award in respect of the land in Jaitpur could be used as an exemplar as only on a comparison would it be possible to arrive at a conclusion that both the lands are similarly situated in all respects.

22. In view of the above, we do not think that the judgments in RFA No.416 of 1986 dated 6.10.1986, Ram Chander & Ors. v. Union of India in respect of the land situated in Jasola; and in Hari Chand v. Union of India, 91 (2001) DLT 602 in respect of the land situated in Tughlakabad have any relevance in the present appeal. In view of the

above, we do not find any merit in this appeal. It lacks merit and is accordingly dismissed.