(1997) 12 AHC CK 0003

In the Allahabad High Court

Case No : First Appeal No''s. 368 and 439 of 1994

Allahabad Development Authority APPELLANT

Vs

Smt. Kiran Tandon and Another RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 41 Rule 33
Land Acquisition Act, 1894 — Section 11, 11(3), 17, 18, 23

Citation : (1997) AWC 841 Supp

Hon'ble Judges : R.K. Mahajan, J;Binod Kumar Roy, J

Bench : Division Bench

Advocate : Ashok Mohiley, for the Appellant; Krishna Murari, for the Respondent

Judgement

R.K. Mahajan, J.—These two First Appeal Nos. 368 of 1994 and 439 of 1994 would be decided together. The matter regarding transposition of the State as Appellant from the array of Respondents would a so decided in this case. There is one more interesting question which would be also decided along with the appeals that if the State has not filed an appeal regarding the entitlement of the compensation as a lessor but the matter has been agitated by the Appellant regarding the entitlement of compensation by the Respondent, then what would the fate of not filing the appeal by the State. In fact the land was acquired by the Appellant by making a request to the State Government for planned development, i.e., construction of flats of various types.

2. In order to understand the controversy the resume of essential dates and facts are mentioned below:

Notification u/s 4 of the Land Acquisition Act, 1894 as amended upto date (hereinafter referred to as the Act) was made by the Government in the Official gazette on 7.1.1987 with respect to 4 bighas of land situated at 2 Circular Road, Allahabad.

Declaration u/s 6 of the Act was made on 6.3.1987. Provision of emergent requirement u/s 6 of the Act were also invoked and possession was handed over to the Appellant with respect to building as well as the land on 16.6.1987. It may be mentioned that composite award has not been passed u/s 11 of the Act. Two separate awards have been passed on a mistake detected later on by the Special Land Acquisition Officer pointed out by higher authority with respect to building.

The Special Land Acquisition Officer gave an award on 4.3.1989 and awarded the following:

For Building Rs. 3,48,000.00

For trees Rs. 23,100.00 30% Solatium Rs. 1,11,330.00

under Section 23(1) Rs. 18,544.83 ------------------ Rs. 5,00,974.83 ------------------

The Special Land Acquisition Officer gave another award on t3.6.1987 and awarded the following:

For 4 Bighas Land Rs. 7,91,874.00

12% additional compensation Rs. 35,634.33

Solatium Rs. 2,37,562.20 -------------------- Rs. 10,65,070.53 --------------------

Upon a reference made by the Collector, Allahabad to the District Judge, Allahabad u/s 18 of the Act; the VIIIth Additional District Judge, Allahabad Shri Ajai Swaroop Chaudhary on 8.12.1992 awarded the following compensation with respect to the building Rs. 10,96,842 + Rs. 50,000 (for trees Rs. 11,46,842). He has also awarded interest at the rate of 12% from 7.1.1987 to 16.6.1987 amounting to Rs. 61.164.90 and on the entire said amount 30% solatium amounting to Rs. 3,62,402.07. He has further awarded interest @ 9% from 16.6.1987 to 15.6.1988 on the amount of Rs. 15,70,408.97 which comes to Rs. 1,41,336.81. On the entire amount of compensation since 16.6.1988 to 4.3.1989 an interest at the rate of 15% yearly amounting to Rs. 1,84,612.72. From the entire aforesaid amount of Rs. 18,96,358.50 after deducting the amount of award Rs. 5,00,974.83 the total amount comes to Rs. 13,95,383.67. The learned VIIIth Additional District Judge on 8.12.1992 also granted compensation at the rate of Rs. 500 per square yard for 10920 square yard which comes to Rs. 54,60,000. He has also awarded interest @ 12% yearly on the aforesaid amount which comes to Rs. 2,91,200. He has further awarded 30% solatium amounting to Rs. 17,25,360 and usual interest as mentioned in the award. Both awards are subject-matter of challenge in both appeal.

3. Briefly, grounds of appeal would be referred in both appeals as canvassed during the course of arguments by Shri R. N. Singh. It may be pointed out that Shri Ashok Mohiley has submitted that request for reference u/s 18 of the Act on behalf of Smt. Kiran Tandon for enhancement of compensation was made on 11.12.1987. It was further submitted that reference u/s 18 of the Act was made

by the Collector. On 30.5.1986 reference u/s 31 of the Act was also made. Reference dated 30.5.1986 shows that request was made to the District Judge to decide who is entitled for compensation of Rs. 10,65,070.55 as Shri Lal Ji Tandon, Shri Ravindra Kumar Tandon and the State Government were claimants. In other words, it is clear reference u/s 18 of the Act to decide the title. It may be also mentioned that on 6.8.1991 Allahabad Development Authority was added as one of the party vide Court''s order and the State Government has filed its written statement.

4. In the written statement the State Government alleged that Ravindra Kumar Tandon is not landlord and the State Government is landlord and is entitled to get compensation. Shri R. N. Singh submits that there is decision by the learned Additional District Judge holding that Smt. Kiran Tandon is entitled for getting compensation and since no appeal has been filed against the said judgment and as such the State Government is debarred to agitate this matter by transposing it as a party. He has further submitted that even the Appellant has no locus standi to agitate the matter.

5. Shri Ashok Mohiley has submitted that he has taken in appeal that Smt. Kiran Tandon is entitled for entire compensation, solatium including the interest.

6. We find from the grounds of appeal that a plea has been taken that the State Government is owner of the land and superstructures. We also find from the grounds of appeal that the lease land was acquired by the Government and the view taken by the VIIIth Additional District Judge that the State Government is not owner is erroneous.

7. Before proceeding to the question of compensation which would be referred later on, we are of the view that the State Government can acquire the land of the lessee. It may be mentioned that the property was leased property on behalf of the Government to the lessee on a premium and rent and lease expired on 7.7.1987 and the possession was taken u/s 17 of the Act earlier. It was renewed further with certain conditions, i.e., right to entry and super-structures would belong to the party. There is a letter dated 28.7.1987 (paper No. 23-Ga) from the Joint Secretary, Government of U.P. to the Collector, Allahabad showing that the Government of U.P. has renewed lease in favour of Ravindra Kumar Tandon for the period of 30 years on payment of Rs. 10,03,500 as premium and also on payment of Rs. 25,087.50 as annual rent and the Collector was directed to execute and register the lease. We do not agree with the submission of Shri Ashok Mohiley that the lease was not renewed and was not subsisting at the time of acquisition and passing of award as also at the time of taking possession u/s 17 of the Act. So we are of the view that the relationship of lessor and lessee subsisted.

8. We do not agree with the submission of learned Counsel for the Respondent Shri R. N. Singh who has quoted so many authorities regarding transposition. He has relied upon Govinda Iyer v. Kumar and Ors. AIR 1980 Mad 232 (Para 7), and

stated that the transposition in appeal will not be permitted in case it results in enlarging the scope of appeal. We failed to accept his argument that how it would enlarge the scope of the appeal. In fact the Appellant has already arrayed it, i.e., State of U.P. as a party (as Respondent).

9. In Uttar Pradesh, it is our common experience that there is bureaucratic lethargy and apathy and the State is impersonal and no body bothers for the State finances and interest. In many cases, callousness is writ large. Taking background of this case when the Appellant is disputing the title of the Respondents to receive the entire money and arrayed the State as a party and when the State Government has taken the plea that the Respondent is not entitled to entire compensation as the State is owner, in these circumstances and background, it would help in doing justice. We, therefore, transpose the State as party as the interest of justice requires so and the State Government has submitted an application for the same. There is no bar under Order I, Rule 10 (2), C.P.C. to do so. Order I, Rule 10 (2), C.P.C. is quoted below with an advantage:

(2) Court may strike out or add parties.--The Court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been Joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

This gives power to the Court to transpose the State Government as Appellant in the facts and circumstances of the case to do justice and we transpose accordingly.

10. In this case, there is also an interesting feature that the land was acquired by the State Government on behalf of the Allahabad Development Authority and the grounds of appeal show, as mentioned above, that title to receive money has been specifically disputed by the Appellant. Since the Appellant was to pay the entire compensation, it could have taken the objection. The lower court has also committed mistake by not consolidating the three cases and disposing it by one judgment as the parties were same and purpose was same and the notification was also same. It appears that request was made but it was not acceded. Shri R. N. Singh, learned Counsel for the Appellant has submitted that the matter has become res judicata between the parties by not filing the appeal by the State Government and he has cited, AIR 1953 SC 33, in Rajlaxmi case. He has further submitted that since the appeals were not filed regarding reference answered by the Additional District Judge in Reference No. 126 of 1987 with reference to title of ownership of the Premises No. 2 Circular Road and declaring the widow Smt. Kiran Tandon wife of Ravindra Kumar Tandon exclusive owner in possession and

the appeals relate to other reference, i.e., the building and land. We failed to appreciate his submission as the parties cannot be prejudiced if the matter is not properly answered in a one common judgment. We failed to appreciate his submission regarding res judicata as in our view, if the matter has not been finally decided and is still under subjudice between the Appellant and State as the Appellant had interest to attack the ownership of the land in dispute and to whom the disbursement was to be made according to the title. The ratio of the judgment of Hon''ble Supreme Court in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, , is not applicable in the facts and circumstances of the case.

11. If we read Section 11 read with Section 30 of the Act, the only conclusion is that u/s 11(3), the apportionment of the compensation has to be made among all the persons known or believed to be interested in land of whom or of whose claims, he has information, whether or not they have respectively appeared before the Court.

12. Section 30 of the Act lays down that when the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Section 18 of the Act deals with the determination of market value of the land in dispute.

13. From a conjoint reading of these questions can be decided in one judgment and they can be disposed of together and not in driblets or by parts. So we are of the considered view that the matter can be determined regarding the apportionment and is not closed.

14. There are some principles laid down regarding the apportionment of lessor and lessee amount. Since it is not a case of permanent lease nor we want to give a finding, we hold that there is relationship of lessor and lessee and the Government in case of some breach of condition can re-enter the premises. The Government still retains its right of re-entry. Shri Ashok Mohiley has relied upon Inder Parshad Vs. Union of India (UOI) and Others, . In this case, the civil court has granted 67% to the lessee and 33% to the Government. The High Court increased to 75% to lessee and 25% to the Government. It was held that being an owner, the Government is not enjoined to acquire its own interest or land alone for public purpose. But where it leases its land in terms of the covenants cannot unilaterally determine the lease and take back possession and the land is required for a public purpose, it has to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. But if compensation is determined for both the components, then the same has to be apportioned between them. Since the Land Acquisition

Collector had determined the compensation for the sum total of interests held by the lessor and the lessee in the land under acquisition but being not able to decide on the apportionment such compensation between Government and the Appellant, reference was made to the civil court to determine the apportionment. The civil court decided by its award that apportionment of compensation fixed in the award of the Land Acquisition Collector between the lessee-claimant and the Government landlord shall be in order of 67 per cent and 33 per cent. The High Court by its judgment and decree under the present appeal has modified the appointment of compensation payable for land as 75 per cent for the lessee and 25 per cent for the lessor. Under these circumstances, it cannot be said that the Land Acquisition Collector had determined the compensation only towards the leasehold interest held by the Appellant and that, therefore, the Appellant is entitled to the entire compensation determined by the Collector.

15. Shri Ashok Mohiley, learned Counsel for the Appellant has invited our attention to Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, . It relates to the family which Respondents belong as; stated in argument. In this case the compensation was granted by the High Court 50 : 50 and it was not questioned by the State as no appeal was filed. Mr. Ashok Mohiley submits that Appellant cannot get more than 50 : 50 so we order to apportion the compensation in the aforesaid ratio 50 : 50 and reverse the finding of the lower court on this point by negativing the submission of the learned Counsel for the Respondent Shri Singh.

16. It has been further submitted by Shri Ashok Mohiley that even for argument sake the appeal regarding apportionment is not considered competent even then the case is covered under Order XLI, Rule 33, C.P.C. Shri Singh submits that Order XLI, Rule 33, C.P.C. does not apply in this case as it would nullify the main provision of law. We would like to quote Order XLI, Rule 33, C.P.C. with an advantage:

33. Power of Court of appeal--The appellate court shall have power to pass any decree and make any order which ought to have passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are, passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the appellate court shall not make any order u/s 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

17. Shri Singh submits that this is not covered by judgment in Choudhary Sahu

(Dead) by Lrs Vs. State of Bihar, . He submits that even if this is allowed to be done, it would mean that the Appellant would have easy escape from the principle of res judicata. We are of the view that there is no force in the argument of Shri Singh as in view of the reasons recorded in earlier part of the judgment, the provisions of Order XLI, Rule 33, C.P.C. are also applicable in this case as the entire case is open. The submission of both the parties also looses importance in view of the transposition of the State as a party.

18. Next question in case is regarding compensation of the building as well as the land. We would like to point out the definition of land as mentioned in Section 3 of the Act. It lays down unless there is something repugnant in the subject or context:

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

Reference has been made to judgment of Hon''ble Supreme Court in Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, : (1997) 2 SCC 161. by Shri Ashok Mohiley. According to the judgment of the Apex Court, claimants Respondents are not entitled to valuable land and building separately and compensation on both. It was observed in Para 9 of the judgment that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods but not both. If the building is assessed, it is settled law that the measure of assessment be based on either the rent received from the property with suitable multiplier or the value of the building is the proper method of valuation In this case, since the land was separately valued, the building cannot again be separately assessed and compensation awarded except the value of debris.

19. However, since the State has not come into the appeal and the Supreme Court did not go into the question and confirmed the compensation in respect of the building, the legality of the award on behalf of the State recorded by the Additional District Judge and High Court was not considered.

20. Shri Ashok Mohiley has further submitted that the lower court has not given deduction of 33% regarding the amendments to be effected in the land while assessing the value and cited so many judgments of Hon''ble Supreme Court. He has further submitted that further improvements in the land are not to be taken into consideration u/s 23 of the Act and the Respondent must prove that land has a potentiality of building. He further submitted that vendor and vendees have also not been examined in the exemplar relied upon by the Additional District Judge and as such lower court committed mistake in relying upon the similar exemplar.

21. Shri Singh has frankly conceded that the exemplar which has been relied upon by the Additional District Judge and on which vendor and vendee have not been examined and he submits that there is sufficient evidence to give a finding

on market value of the building and land and finding can be sustained on that evidence.. He further submitted that there is no need of 30% deduction as the land was already developed and there is no material placed by the Appellant regarding how much land would be wasted for the development purpose. Shri Singh further submits that the land is in posh locality of Allahabad. It is very near to the circuit house and important markets, colonies, offices and residence of important persons are also situated within the radius of 11/2 Km. His submission is that the land is already in the developed locality and posh area and he relied upon judgment of Apex Court Ratan Kumar Tandon and others Vs. State of Uttar Pradesh, of the same family in which the High Court, gave Rs. 243 per square yard with respect to the notification dated 14.12.1986 and the area was 22,508 square yards. The State Government did not appeal and this rate was confirmed by the Hon''ble Supreme Court.

22. Shri Singh further submitted that it is not proper to remand the case in view of the judgment in Meharban and others etc. etc. Vs. State of U.P. and others, . (Paras 8, 11, 13 and 14) as it would put the parties into agony and harassment and would result in wastage of public time. While sitting with Justice Palok Basu we did not remand the case but decided ourselves. We have decided in question the Krishi Utpadnn Mandi Samiti, Mnuranipur, Jhansi v. State of U.P. and Ors. Writ Petition No. 13502 of 1992. regarding awarding of compensation.

23. We are of the considered view that the land regarding which High Court granted Rs. 423 per square yard between the same parties, as referred above, was with respect to notification of 1986 but the present notification is of 1987 and the prices have arisen. On behalf of Smt. Kiran Tandon, sale deed of Jai Prakash Singh, paper No. 6 Ga, has been relied upon. Sale deed has been executed in the year 1985 and Rs. 250 per yard was awarded in reference.

24. it may be mentioned that there is Bungalow Nos. 3 and 4 in Circular Road which was also subject-matter of acquisition in 1985 and compensation was paid at the rate of Rs. 250 per square yard by the Appellant without objection, it has come on the record and there is no denial of the fact. It also finds mention in the lower court judgment. So considering all these factors and time-gap and rise in prices and the property situated in a posh locality and near circuit house in developed area having potentiality for building purposes, the trial court has not committed an error in fixing the price of the land @ Rs. 500 per square yard.

25. In our view the State Government has already in granting price @ 423 and that award is a piece of evidence for the determination of the price of the land has acquired in market value of land. Regarding submission that the trial court has not deducted 30% for the purpose of developing the area. Shri Singh has also pointed out that the Allahabad Development Authority after acquiring the land in Ashok Nagar has granted the rate of Rs. 510 per square yard plus Rs. 10 as lease rent in favour of persons and has pointed out paper No. 27C showing the allotment in favour of Brijesh Mehrotra. Similarly the land was allotted to Shri Joginder Pal Arora. So we are of the view that the price has been fixed correctly

by the lower court.

26. Now coming to the deduction regarding the development, we are of the view that lower court was right that the Appellant has not shown how much area is to be left for the road, sewerage system, drainage, was not completely right. Regarding not allowing deduction for the development purpose. It is matter of common experience that when a development authority has taken an area for a planned development, it has to give due consideration for roads and streets, etc. and lot of land is wasted out of big chunk. There is no hard and fast rule that how much deduction has to be allowed when the area is already developed.

27. Considering the facts and circumstances of the case, we are of the view that 20% deduction would be allowed for leaving out roads, open space, etc. and as such 20% has to be deducted in fixing market value. We have relied upon Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, . In this case, it was observed that it is a well-settled principle of valuation that where there is a large area of undeveloped land under acquisition, provision has to be made for providing the minimum amenities of town life such as water connections, well laid out roads, drainage facility, electric connection, etc. The process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on a par with the developed lands. An extent of 20% per cent of the total land acquired is normally taken as a reasonable deduction for the space required for roads.

28. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , 25% deduction was required to be made.

29. Shri Ashok Mohiley has relied upon so many rulings on this point K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), and Smt. Basavva and others Vs. Special Land Acquisition Officer and others, .

30. Shri Ashok Mohiley has pressed deduction of 30% but we do not consider reasonable in the facts and circumstances of the case as there was already a bungalow and must have some facilities. So only deduction out of market value 20% per square yard is allowed and after considering facts and circumstances of the case, the Court fixes Rs. 500 per square yard but after 20% deduction, the final price would be Rs. 400 per square yard and we determine accordingly.

31. Now coming to next question regarding the building. The Hon''ble Supreme Court has laid down, as discussed above, that there cannot be discrimination in fixing the price of the building as well as land. The entire land was acquired in which the building was also situated. The price of the building fixed by the lower court Rs. 10,96,842 and Rs. 50,000 for trees.

32. Shri Ashok Mohiley submits that according to the report of Shri G. S. Birdie, who is valuer and formerly Principal, J.L.N. Polytechnic, Mahmudabad (Sitapur) has fixed the value of the salvage Rs. 65.210. Shri B. C. Mittal, Consulting Engineer has fixed price of the building Rs. 16,40,000 on 17.1.1987. It has come

on the record in the lower court judgment that according to Mr. Birdie the total constructed area is 400 48 square meter while P.W.D. in his report mentioned the area 410.68 square meters. So it is obvious that this area has been also assessed for the purpose of building as well as land which cannot be done as there will be depreciation. The Respondents are getting price for the land according to the market value and they can remove the debris if they like or the price of the debris must be Rs. 60,000. We determine accordingly.

33. So we are of the view that the question of value of building was left out by the Hon''ble Supreme Court in case cited above as the State has not filed the appeal and that double price cannot be fixed. In our view rate of the principle still applies.

34. It has been submitted by Shri Ashok Mohiley that the land is covered under Ceiling Act. There is no issue nor any finding on this point. We are of the view that we are afraid to open this issue as it is not covered by the pleadings specifically. We reject the plea.

35. Before parting with the case, we must observe that the Development Authorities and State Government are not perusing the case of the land acquisitions in true spirit and the same is causing loss to the public money.

It is for the State Government to see and think over this aspect.

36. We set aside the finding of the Additional District Judge on the market value and fix market value of the land as well as building in the aforesaid two appeals in the light of reasons discussed. We accordingly fix the market value of the land Rs. 400 per square yard on the entire land including the land covered by the bungalow. The market value is to be determined at this rate by the Special Land Acquisition Officer and is to be paid at this rate. We reverse the award to this extent after setting aside the same.

37. We accept the price of debris determined by Shri G. S. Birdie, Architect to be Rs. 60,000 as the building is more than 90 years old and it is practically an old construction. This price is to be paid to the lessee in case he does not remove the structure. We also do not want to disturb the price of the trees payable to the lessee as determined by the Special Land Acquisition Officer.

38. We reverse the award of the Additional District Judge regarding the price of building in First Appeal No. 368 of 1994. We also order that the Respondent would be entitled to solatium @ 30% on compensation and to interest @ 12% u/s 23(1A) of the Act on the market value from the date of notification u/s 4 of the Act till the date of taking possession u/s 17 of the Act. If the amount of market value has not been paid or deposited, a further interest @ 9% u/s 28 of the Act is to be paid from the date of possession to the date of payment of such excess amount into Court and 15% interest after the expiry of one year on which the possession was taken as postulated u/s 28 of the Act. Out of the total compensation interest and solatium 50% of the amount would be given to the

Government by the Respondents and 50% would go to the Respondents. In case any amount has been deposited either before Court or Special Land Acquisition Officer that amount has to be deducted for determination of the compensation and the remaining amount be deposited in the light of the rate assessed and observation made and finding given.

We allow the appeals after setting aside the awards in the light of observations made above with costs.

A copy of this judgment be sent to the Secretary, Revenue. Government of Uttar Pradesh in the light of the observations made in the judgment.

