

(2019) 02 MP CK 0057

In the Madhya Pradesh High Court

Case No : First Appeal No. 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 677, 678, 679, 680, 681, 682, 1389, 1390, 1391, 1418, 1419, 1421, 1476, 1477, 1478, 1480, 1492, 1493, 1494, 1533, 1540 Of 2018

Balaram & Anr

APPELLANT

Vs

State Of Madhya Pradesh And Another

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 6, 18, 23(1), 23(2), 54

Citation : (2019) 02 MP CK 0057

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : A.S. Garg, Swapnesh Jain, Amitabh Upadhyay, Vibhor Khandelwal, H.Y. Mehta

Final Decision : Disposed Off

Judgement

1. In this batch of appeals since impugned award and issues involved are common, therefore, considering the similitude of the matter all appeals are heard analogously and decided by this common judgment.

One batch of the appeals have been preferred by the land owners as against deduction of 65% market value. The second batch of the appeals have been preferred by the Union of India against determination of market value of the land at Rs.70,000/- per hectare.

For convenience, facts of F.A.No.664/2018 are considered.

2. This appeal under Section 54 of Land Acquisition Act, 1894 is preferred by land owner challenging the award dated 12.2.2018 passed in Misc. Civil (Land Acquisition) No.87/16 by reference Court under Section 18 of the Land Acquisition Act.

3. Facts relevant and necessary for disposal of the appeals are in narrow

compass: A notification under Section 4(1) of the Land Acquisition Act (for brevity hereinafter referred as "the Act") was published in M.P. Gazette on 17.4.2009, whereunder irrigated agricultural land admeasuring 0.192 hectares fallen in survey No.62/4 situated in village Agrakhedi, Tehsil & District Dhar was intended to be acquired alongwith other parcels of land (subject matter of aforesaid batch of appeals) total admeasuring 8.845 hectares for laying broad gauge railway track covering the route of Dahod - Indore (Bastara-Dhar-Jhabua-Pithampur). Thereafter, after publication of final notification under Section 6 of the Act, the land was acquired and an award was passed by the Land Acquisition Officer on 25.3.2010. The competent Authority has worked out the cost of irrigated and non-irrigated acquired lands on the basis of average rate worked out keeping in mind Collector's guidelines for the years 2006-07, 2007-08, 2008-09 as under:-

Non-irrigated land

Rs.4,07,000/-

2006-07

2007-08

Rs.5,25,000/-

2008-09

Average Rate

Rs.4,34,000/-

Irrigated land

Rs.5,92,000/-

2006-07

2007-08

Rs.6,51,000/-

2008-09

Rs.9,19,000/-

Average Rate

Rs.7,20,607/-

Accordingly, worked out the compensation and solatium at 30% as provided for under Section 23(2) of the Act; besides interest @ 12% under Section 23(1) of the Act from the date of issuance of notification under Section 4, i.e. 17.4.2009 till the date of award i.e. 25.3.2010.

4. The reference Court has taken into consideration sale deed dated 10.11.2008 (Ex.P/1), whereby land admeasuring 0.011 hectare was transferred on a consideration of market rate of Rs.70,000/-. Accordingly, worked out proportionate market rate of one hectare; $\text{Rs.70,000/-} \div 11 \times 1000 = \text{Rs.63,63,636/-}$ and value of 65% deduction; $63,63,636/- \times 65 \div 100 = \text{Rs.41,36,363/-}$. After deduction of 65% $\text{Rs.63,63,636} - \text{Rs.41,36,363} = \text{Rs.22,27,273/-}$ per hectare and accordingly amount of compensation has been worked out plus solatium, interest etc.,

5. Shri A.S.Garg, learned senior counsel for the appellant, while criticizing the impugned award has raised solitary question; "whether the reference Court was justified while making deduction @ 65%?" on following facts and ground

(i) claimant's land admeasuring 0.192 hectare is a irrigated land fallen in Survey No.64/2, village Agrakhedi, Tehsil & District Dhar and surrounded by lands in Pithampur Industrial area No.1, 2, 3, 4, S.E.Z. And Auto Testing Track. Hundreds of industrial units and factories are established there. As such, the acquired land has a potential value of the developed land. It falls in Ward No.10 of village Agrakhedi, Pithampur and close distance of urban population bus stand, Patel Nagar Colony, Moti Nagar Colony, Jeevan Jyoti Colony, Indorama Square are and ranging from 500 to 1000 meters. In the established colonies houses, commercial shops, educational institutions are existing. In fact the appellant's land is hardly 20 Kms. away from Indore.

(ii) in the first four phases, the land of Agrakhedi village had been acquired for industrial purposes and in the fifth phase land of village Sagore Kutti has been acquired for Auto Testing Track. Agricultural lands of village Agrakhedi and Sagore are divided by grazing ground known as Kankad. There is no distance between the lands of Agrakhedi and Sagore.

(iii) the appellant has proved the aforesaid facts in his depositions besides, the sale deeds and other documents vide Ex.P/1, P/2, P/3 and P/4 to demonstrate that the market price of the agricultural land in village Agrakhedi is Rs.70,000/- per hectare. There is no evidence contrary thereto.

the reference Court though has accepted the market price at Rs.70,000/- per hectare, but has made shockingly high deductions @ 65% without any reason or justification. Hence, deduction so made is arbitrary and de hors the record. That apart, the reference Court, in all fairness, ought to have bore in mind the purpose for which the land was acquired in order to determine the percentage of deductions from the market value of the land. That has not been done.

To support the aforesaid proposition, learned counsel relied upon (2005) 4 SCC 789 Viluben Jhalejar Contractor (Dead) By LRs Vs. State of Gujrat, (2003) 12 SCC 334 Land Acquisition Officer Vs. Nookala Rajamallu and others; (2007) 9 SCC 447 Fernandes Vs. Special Land Acquisition Officer, (2009) 11 SCC 75 C.R.Nagaraja Shetty Vs. Special Land Acquisition Officer.

(iv) the lands in question of village Agrakhedi have been acquired for laying broad gauge railway track (Dahod-Indore route) and is an agricultural field on a plain area. No development of land is required for the said purpose. Hence, the deduction made is wholly arbitrary, unreasonable and illegal.

(v) Learned senior counsel drawing parity with the facts of the case in the case of (2007) 9 SCC 447, where the land was sought to be acquired for laying broad gauge railway track (Konkan Railway), wherein deductions from the market value of the land @ 20% was made.

6. Per contra, Shri Vibhor Khandelwal, learned Govt. Advocate appearing for the respondent No.1/State and Shri H.Y.Mehta, learned counsel appearing for the respondent No.2, submits that the reference Court has committed grave error of law and fact while determining the value of the land @ Rs.70,000/- per hectare on the basis of sale deed Ex.P/1 inasmuch as, the said sale deed is of the village Agrakhedi and of a small plot of 0.011 hectares. Even otherwise, the land in village Agrakhedi is undeveloped land and the land of village Sagore Kutti is a developed land. Referring to the depositions of Abhay Kumar Jain, NAW-1 and Dashrat Singh, NAW-2 it is submitted that the reference Court has correctly made deduction of 65% as the land of village Agrakhedi is undeveloped land with no potential in near future. Learned counsel relied upon following judgments :-

(a) Kanta Devi Vs. State of Haryana, (2008) 15 SCC 201, Chandra Shekar Vs. Land Acquisition officer, (2012) 1 SCC 390

(b) Subh Ram and others Vs. State of Haryana and another, (2010) 1 SCC 444/
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(c) Smt. Basavva and others Vs. Special Land Acquisition Officer, (1996) 9 SCC 640; and

(d) Himmat Singh and others Vs. State of M.P., Civil Appeal No.1247 of 2007 Decided on 29.11.2013

7. Upon perusal of the material placed before the reference Court, the award dated 12.2.2018 and the submissions advanced by learned counsel for the parties before this Court, following questions arise for consideration :-

(i) Whether the reference Court was justified applying Rs.70,000/- per hectare as rate of the land to work out saleable price after deductions ?

(ii) Whether the reference Court was justified in making deductions @ 65% ?

8. Before advertng to questions so framed, it is expedient to reiterate the law laid down by the Apex Court as regards scope and ambit of Section 18 of the Act in the matter of valuation of land for awarding compensation and permissible deductions.

9. A reference under Section 18 of the Land Acquisition Act is not an appeal against the award, therefore, the Court cannot take into account the material

relied upon by the Land Acquisition Officer in his award unless; the same material is produced and proved before the Court.

The reference proceedings are original proceedings and the Court is required to determine the market value afresh on the basis of the material produced before it.

The claimant is in the position of plaintiff, who has to show that the price offered for his land is declared on the basis of the material produced in the Court, though the material placed and proved by other side can also be taken into account for this purpose.

Market value of the land under acquisition has to be determined as on the date of publication of notification under Section 4 of the Land Acquisition Act and while doing so it has to reach at marketable price of the land hypothetically that a purchaser may be willing to purchase in the open market and seller is willing to sell; a relative phenomena. For this purpose, the Court has to co-relate the market value reflected in the most comparable instance, which provides standard to arrive at market value.

Such comprehension should be genuine and not pricked up in anticipation of acquisition. The Court while working out comparable instance must bear in mind its proximity from situation angle. Thereafter, upon identification of such instances, which provides index of market value the price reflected therein and the market value of the land under acquisition may be reduced by making suitable adjustments in the obtaining facts and circumstances of the case but upon relevant factors to be valued in terms of the price variation as a prudent purchaser [(1988) 3 SCC 751 (Chimanlal Hargovinddas Vs. Special Land Acquisition Officer) referred to].

The Hon'ble Apex Court in the case of Hasanali Khanbhai & Sons and others Vs. State of Gujrat, (1995) 5 SCC 422 has held as under :-

"..... But it is settled law by series of judgments of this Court that the court is not like an umpire but is required to determine the correct market value after taking all the relevant circumstances, evinces active participation in adduction of evidence; calls to his aid his judicial experience; to evaluate the relevant facts from the evidence on record applying correct principles of law which would be just and proper for the land under acquisition. It is its constitutional, statutory and social duty. The court should eschew aside feats of imagination but occupy the arm-chair of a prudent willing but not too anxious purchaser and always ask the question as to what are the prevailing conditions and whether a willing purchaser would as a prudent man in the normal market conditions offer to purchase the acquired land at the rates mentioned in the sale deeds. After due evaluation taking all relevant and germane facts into consideration, the Court must answer as to what would be the just and fair market value.

....."

Further, in the case of Land Acquisition Officer Vs. Nookala Rajamallu and others, (2003) 12 SCC 334, it has been observed that though Courts have held that where large area is the subject matter of acquisition the rates of small plots sold cannot be said to be a safe criteria. However, the same cannot be laid down as an absolute proposition, where there is no other material in such cases it may be appropriate to make comparison of the rates paid for the small plots and after making necessary deductions/adjustments to determine the market value of the acquired land.

In the case of Viluben Jhalejar Contractor (Dead) By LRs Vs. State of Gujarat, (2005) 4 SCC 789, it has been held as under :-

"In Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat, (1995) 2 SCC 422 and L.A.O. Vs. Nookala Rajamallu, (2003) 10 SCALE 307, it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible."

The Hon'ble Apex Court further reiterated the concept of market value and its determination regard being had to the purpose for which the land is acquired in the case of Nelson Fernandes Vs. Special Land Acquisition Officer, (2007) 9 SCC 447 held as under :-

"30. We are not, however, oblivious of the fact that normally 1/3 deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat, 1995 2 SCC 422 and L.A.O. vs. Nookala Rajamallu, 2003 (10) Scale 307 had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."

Following the aforesaid two judgments in the case of C.R.Nagaraja Shetty Vs. Special Land Acquisition Officer, (2009) 11 SCC 75, it is held as under :-

"The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs.25/- per square feet out of the ordered compensation at the rate of Rs.75/- per square feet. We set aside the judgment to that extent."

10. Now coming to the factual matrix in hand, the land in question is acquired for the purpose of laying of broad gauge railway line from Indore to Dahod via Pithampur-Dhar-Jhabua. Therefore, the question of development does not arise.

Hence, no development charges are required to be deducted from the instance sale deed to arrive at market price.

The Court below has not assigned reasons/justifications to make deductions @ 65% though it has relied upon the judgment of Supreme Court reported in AIR 1996 SC 3168 equal to (1996) 9 SCC 640 Smt.Basavva and others Vs. Special Land Acquisition Officer.

11. The appellant has examined himself as AW-1, besides giving detailed description of land and its surroundings has also proved two sale deeds Ex.P/1 and P/2 of unirrigated land of village Agrakhedi and Ex.P/3 of Sagore Kuti and award dated 18.5.2012 in relation to agricultural land of village Sagore Kuti is Ex.P/4. His testimony has withstood in cross-examination.

The respondent No.1 has examined one Abhay Kumar Jain, Senior Section Engineer, Railway, Indore. Though, he has denied the claim of the appellant, but has admitted in para 12 of cross-examination that agricultural land of Agrakhedi is surrounded by agricultural land of village Sagore Kuti. Though, in the second breath he expressed his ignorance. The respondents have examined one Dashrath Singh, Patwari of the village. However, the respondents have not led oral or documentary evidence in respect of the market value of the land.

The Court below has worked out the market value of the land taking into consideration sale deed Ex.P/1.

During the course of arguments, there is no challenge, muchless; serious challenge to the findings of the Court below as regards marketable value of one hectare land without deductions is Rs.63,63,636/- and rightly so as there is no material to the contrary on record to that effect.

This Court has carefully perused the judgment of the Hon'ble Apex Court in the case of Smt.Basavva & others (supra) and is of the view that the Court below did not appreciate facts of the said case before applying aforesaid deductions @ 65%. The land in the said case was acquired for industrial development for which deductions have to be made for setting apart the land for carving out roads, drainage, open spaces, parks, sewerage, water, telecommunication, plotting of smaller plots for suitable construction of buildings and quarters etc. In fact, the extent of the area acquired has to be assessed by the Court having regard to the shape, size and situation of the concerned plot or land etc.

Nevertheless, the question remains what should be percentage of deductions applied in the obtaining facts and circumstances?

The instance sale deed is though of the village Agrakhedi, but of a smaller plot based whereupon value of the land is worked out at Rs.63,63,636/- though where large area is the subject matter of acquisition, the rates for smaller plots may not be fair factor to arrive at the marketable value of such large area of land, but no such absolute proposition has been laid down by the Courts. Where there is no other material to the contrary, it may be appropriate to make

comparison of rates for smaller plots and after making necessary deductions to work out the marketable value of the acquired land as held by the Hon'ble Supreme Court (supra).

In the instant case, the land is acquired for construction of laying broad gauge railway track covering the route of Dahod - Indore (Bastara-Dhar-Jhabua-Pithampur) and not for industrial purpose. Therefore, the same rate of deductions by way of development charges cannot be made; as the purpose for which land is acquired is relevant and the germane factor to work out the deductions from the marketable value of the land acquired. However, looking to the fact that the instant sale deed is of smaller plot (0.011 hectare) but, lands acquired for laying broad gauge railway track are large areas (8.845 hectares), therefore, the deduction of 33% for one hectare, i.e., out of Rs.63,63,636/-; 20,99,999/- instead of 65% is held to be reasonable to work out the saleable value for one hectare of land i.e., Rs.42,63,637/-. The aforesaid view finds support from the judgment of the Hon'ble Supreme Court reported in (2007) 9 SCC 447 Nelson Fernandes and others (supra) wherein only 20% deduction was held reasonable for the said purpose on similar facts and circumstances. The relevant part of the judgment is quoted below:

"..... in view of the availability of basic civil amenities such as school, bank, police station, water supply, electricity, highway, transport, post, petrol pump, industry, telecommunication and other business, the claim of compensation should reasonably be fixed @ Rs.250 per sq. m with the deduction of 20%...."

Accordingly, the appellants/land owners are held entitled for difference of amount of compensation to be worked out by the competent authority. The entire exercise shall be completed within twelve weeks from the date of production of certified copy of order passed today by the land owners.

12. The principle of law in the judgments cited by the learned State's counsel and the learned counsel for the Union of India/Railways is found to be beyond reasonable doubt, however, are distinguishable and of no assistance to them, particularly in the context of deductions for development charges regard being had to the purpose for which the land is acquired.

13. With the aforesaid the appeals preferred by the appellants/land owners are allowed with costs. The appeals preferred by the State/Union of India stand dismissed.

Accordingly, all the appeals stand disposed of.

Let copy of this judgment be retained in all the connected appeals.