**(2015) 05 AHC CK 0049**

**In the Allahabad High Court**

**Case No :** First Appeal Nos. 120 and 121 of 1995

Bharat Immonologicals and Biologicals Corp. Ltd. APPELLANT

Vs

Ghanshyam Singh and Others RESPONDENT

**Date of Decision :** 21-05-2015

**Acts Referred:**
Land Acquisition Act, 1894 — Section 18, 23(1), 24, 4, 4(1)

**Citation :** (2015) 7 ADJ 687 : (2015) 112 ALR 686 : (2015) 5 AWC 4795 : (2015) 129 RD 619

**Hon'ble Judges :** Sudhir Agarwal, J;Shashi Kant, J

**Bench :** Division Bench

**Advocate :** B.D. Tripathi, Arun Kumar and Sudhir Chandra, for the Appellant; Virendra Kumar, A.P.S. Raghav, Ajeet Kumar, Krishna Murari, M.C. Singh, Seema Shukla, Sunil Kumar and Manu Saxena, Advocates for the Respondent

**Final Decision :** Partly Allowed

## Judgement

1. Heard learned counsel for parties. Both these appeals have arisen from award dated 15th September, 1994, passed by Sri V.K. Jain, District Judge, Bulandshahr in Land Acquisition Reference No. 153 of 1989 and 155 of 1989, whereby it has determined market value of acquired land for the purpose of payment of compensation to the land owners/tenure holders at the rate of Rs. 75/- per square yard. Since common questions are involved in both matters, same have been taken up together and are being decided by this common judgment.

2. The State Government issued notification for acquisition of land in Village - Chola, Pargana and Tehsil - Sikandrabad, District - Bulandshahr under Section 4(1) of Land Acquisition Act, 1894 (hereinafter referred to as ''Act, 1894''), on 6.10.1988, for the purpose of appellant company, which is a public limited company, promoted by the Central Government for indigenous production of oral Polio Vaccine. It was incorporated as Government of India Undertaking under the provisions of Companies Act, 1956. It proposed to acquire 37-7-10, i.e. around 23.359 acres land, in Village - Chola. Notification under Section 6(1) of Act, 1894

was published on 16.12.1988 and possession of acquired land was taken over on 30.3.1989. Special Land Acquisition Officer (hereinafter referred to as ''SLAO'') gave award on 8.6.1989, determining market value of acquired land for the purpose of compensation at Rs. 16397.73 per bigha (Rs. 5.42 per square yard). Aggrieved there against, claimants land owners/tenure holders made applications under Section 18 of Act, 1894, for making reference to the District Judge and in pursuance thereof aforesaid two references were made which have been decided by District Judge, Bulandshahr, enhancing compensation to Rs. 75/- per square yard. Reference Court has relied on two sale-deeds/exemplars, one is dated 17.12.1988 (Exhibit - 2), executed by one Smt. Rajviri, transferring, by sale, 378 square yards of land for consideration of Rs. 12500/- per bigha (Rs. 33,098 per square yard) and another sale-deed dated 27.12.1989, wherein 44 square meters of land was transferred by sale for consideration of Rs. 5,000/-. Besides, it has also observed that acquired land had residential potentiality. Relying on aforesaid two exemplars, it has said that SLAO has not considered potentiality of land in future. It has also said that adjacent to acquired land there are shops, police station and electricity sub station. It has also referred to award dated 25.7.1994, given in Land Acquisition Reference No. 64 of 1994, wherein the Reference Court determined compensation at the rate of Rs. 120/- per square yard. Acquisition in Land Acquisition Reference No. 64 of 1994, pertains to year 1991.

3. Sri Arun Kumar, learned counsel for appellants vehemently contended that exemplars and award in Land Acquisition Reference No. 64 of 1994, have wrongly been relied by Court below and determination of market value at Rs. 75/- is patently arbitrary, highly excessive and not based on any valid piece of evidence.

4. On the contrary, learned counsel appearing for respondents contended that SLAO had not examined the matter correctly and land in question at the time of acquisition had huge potential in future, besides the fact that it was already a developed area, therefore, its market value was much higher than what was determined by SLAO. Reference Court has therefore rightly determined market value at Rs. 75/- per square yard and no interference is called for.

5. The points for determination for deciding these appeals are:

"(1) Whether the two exemplars i.e., sale-deeds dated 17.12.1988 and 27.12.1989 relied upon by Reference Court and award passed in Land Acquisition Reference No. 64 of 1994, relied by Reference Court, can be said to be valid evidence to justify market value determined by Reference Court in respect to acquired land?

(2) What should be the just and adequate market value of land in question for the purpose of compensation payable to claimants/respondents?"

6. Before answering aforesaid two questions, it would be necessary to examine the principles which are generally applicable and acceptable having been laid

 

down in the last few decades through judicial proceedings in the light of statutory provisions etc. for determining adequate market value of land which is being forcibly acquired by the State.

7. It cannot be doubted that whatever has been considered by SLAO, it has to be seen by Reference Court or this Court. In our view, award made by SLAO, is like an offer and not to be treated as a judgment of trial Court. It is well-settled, when the land holders are not agreeable to accept the offer made by SLAO, they have a right to approach Collector under Section 18 of the Act, 1894, by a written application, for referring the matter to Court, for determination of the amount of compensation or if there is any dispute regarding measurement of land for that also. In the present case the references in question were made at the instance of claimants for determining the amount of compensation.

8. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, AIR 1988 SC 1652 : (1988) 3 JT 106 : (1988) 2 SCALE 43 : (1988) 3 SCC 751 : (1988) 1 SCR 531 Supp : (1988) 2 UJ 318 , the Court has said that a Reference is like a suit which is to be treated as an original proceeding. The claimants are in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate. However, for the said purpose the Court would not consider the material, relied upon by Land Acquisition Officer in award, unless the same material is produced and proved before the Court. The Reference Court does not sit in appeal over the award of Land Acquisition Officer. The material used by Land Acquisition Officer is not open to be used by the Court suo motu unless such material is produced by the parties and proved independently before the Reference Court. Determination of market value has to be made as per market rate prevailing on the date of publication of notification under Section 4 of Act, 1894. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. the Court is a hypothetical purchaser, willing to purchase land from the open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of publication of notification under Section 4 of the Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. The Court, therefore, would co-relate market value reflated in the most comparable instance which provides the index of market value. Only genuine instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine instances. From identified instances which would provide index of market value, price reflected therein may be taken as norm and thereafter to arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words a balance sheet of plus and minus factors may be drawn and the relevant factors may be valuated in terms of price variation, as a prudent purchaser would do. The market value of

 

land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors.

9. Some of the illustrative examples of plus and minus factors given by the Court in Chimanlal Hargovinddas (supra) are as under:

10. The size of the land, therefore, would constitute an important factor to determine market value. It cannot be doubted that small size plot may attract a large number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. The Court said that in such matters, the factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots.

11. The concept of smaller and larger plots should be looked into not only from the angle as to what area has been acquired, but also the number of land holders and size of their plots. When we talk of concept of a prudent seller and prudent buyer, we cannot ignore the fact that in the category of prudent seller the individual land holder will come. It is the area of his holding which will be relevant for him and not that of actual total and collective large area which is sought to be acquired.

12. In V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI), (1995) 1 SCALE 220 : (1995) 2 SCC 302 : (1995) 1 SCR 188 , the land acquired by notification dated 6.7.1970 in village Chicalim near Goa Airport belonged to a single owner. The Court observed, when land is sold out in smaller plots, there may be a rising trend in the market, of fetching higher price in comparison to the plot which are much higher in size. Having said so the Court further said "though the small plots ipso facto may not form the basis per se to determine the compensation, they would provide foundation for determining the market value. On its basis, giving proper deduction, the market value ought to be determined".

13. Again in Shakuntalabai (Smt) and Others Vs. State of Maharashtra, (1995) 8 JT 501 : (1995) 6 SCALE 693 : (1996) 2 SCC 152 : (1995) 5 SCR 618 Supp acres of land in Akola town was sought to be acquired by notification published on 11.8.1965 under Section 4(1) of Act, 1894 which was also owned by a single person. It is in this context the Court said "the reference Court committed manifest error in determining compensation on the basis of sq. ft. when land of an extent of 20 acres is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider valuation sitting on the armchair of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the conclusion. The answer is obviously no".

 

14. We need not go into a catena of other decisions rendered in the last several decades since we are benefited of a recent Division Bench decision of this Court in First Appeal No. 454/2003 and other connected matters, Meerut Development Authority through Its Secretary v. Basheshwar Dayal (since deceased) Through His L.Rs and another, decided on 1.8.2013 wherein the legal principles settled by Apex Court in various judgments, relevant for determination of market value have been crystallized as under:

"(i) Function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of the notification under Section 4(1),

(ii) The method for determination of market value may be:

(a) Opinion of experts,

(b) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages,

(c) a number of years purchase of the actual or immediately prospective profits of the land acquired.

(Ref. Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, (1994) 2 JT 604 : (1994) 2 SCALE 298 : (1994) 4 SCC 595 : (1994) 1 SCR 368 : (1994) 2 UJ 17

(iii) While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive but subject to the following factors:

(a) Sale must be a genuine transaction,

(b) the sale-deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,

(c) the land covered by the sale must be in the vicinity of the acquired land,

(d) the land covered by the sales must be similar to the acquired land.

(e) the size of plot of the land covered by the sales be comparable to the land acquired.

(f) if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land.

 

(iv) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-?-vis the land under acquisition which are as under:

(v) For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount.

(vii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. (Ref. Valliyammal and Another Vs. Special Tahsildar (Land Acquisition) and Another etc. etc., AIR 2011 SC 2937 : (2011) 8 JT 442 : (2011) 3 RCR(Civil) 904 : (2011) 8 SCALE 139 : (2011) 8 SCC 91 : (2011) 10 SCR 293 : (2011) AIRSCW 4591 .

(viii) When there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition.(Ref. Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, AIR 2012 SC 2721 : (2012) 114 CLT 696 : (2012) 3 CTC 396 : (2012) 4 SCALE 628 : (2012) 5 SCC 432 : (2012) AIRSCW 2822 : (2012) 4 Supreme 66 .

(ix) In view of Section 51A of the Act certified copy of sale-deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale-deed would automatically be accepted. The legislature advisedly has used the word ''may''. A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the Court may not accept the evidence contained in a deed of sale. (Ref. Cement Corporation of India Ltd. Vs. Purya and Others, (2004) 8 JT 327 : (2004) 8 SCALE 558 : (2004) 8 SCC 270 : (2004) AIRSCW 5534 : (2004) 7 Supreme 711 .

 

(x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(a) Existing geographical situation of the land.

(b) Existing use of the land.

(c) Already available advantages, like proximity to National or State Highway or road and/or developed area,

(d) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

(xi) Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(xii) The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing.

(xiii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". (Ref. Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others, AIR 2012 SC 2709 : (2012) 6 JT 185 : (2012) 6 SCALE 34 : (2012) 7 SCC 595 : (2012) AIRSCW 3986 : (2012) 4 Supreme 323 ."

15. In the light of above general guidelines and also considering the fact that claimants have to be considered as plaintiffs before Reference Court, therefore, onus initially lay upon them to prove what is the appropriate market rate, we

proceed to consider first whether in the present case such onus has been discharged by plaintiffs or not.

16. First of all we propose to consider the award dated 25th July, 1994, passed in Land Acquisition Reference No. 64 of 1994, which has been referred to by the Court below in the impugned award. It is admitted by the parties that against award dated 25th July, 1994, passed in Land Acquisition Reference No. 64 of 1994, the matter came up before this Court in First Appeal No. 20 of 1995 - Bharat Immunological And Biological Corporation Ltd. v. Bijendra Pal Singh and others. In that award also, sale-deed dated 27.12.1989, whereby 44 square meters of land was transferred by sale for consideration of Rs. 5,000/-, was relied upon by Reference Court and its correctness was examined by this Court. The Court found that aforesaid sale-deed did not show a genuine and bona fide transaction. Findings recorded by this Court reads as under:

"Having explained the legal position as above, we find that the reference Court has not at all adverted to the above aspects of the case and proceeded to rely upon these two sale-deeds, forgetting that the claimants were the executants of the sale-deeds and thee was absolutely no necessity for them to sell a small piece of land measuring 44 sq. mtrs. For a sum of Rs. 5,000/-. It has come on record that the claimants have other lands also, excluding the acquired land. The payment of insignificant amount of stamp duty and non disclosure of value of land for the purposes of stamp duty and also non payment of any money before the Sub Registrar at the time of registration of sale-deeds are indicative of fact that the transaction under the sale-deeds in question was not genuine or bona fide transaction."

(Emphasis added)

17. The Court thereafter, allowed appeal in part and modified the award of Reference Court holding that claimants are entitled to compensation at the rate of Rs. 34,000/- per bigha (approximately 11.24 per square yard).

18. Aforesaid judgment makes it very clear that reliance placed by Reference Court, in the present case, on sale-deed dated 27th December, 1989 and award dated 25.7.1994 passed in Land Acquisition Reference No. 64 of 1994, is clearly erroneous and determination of market value relying on the above evidence, cannot be sustained.

19. Now the only exemplar remains is dated 17.12.1988, which admittedly had also been executed for a small piece of land and that too after commencement of acquisition proceedings.

20. It cannot be doubted that an exemplar within a short period before or after commencement of acquisition proceedings may have been relied upon provided there is no otherwise reason to doubt its genuineness and bona fide. Simultaneously, this Court also cannot ignore the fact that in respect to acquisition of land at the same place, where land in question situate and for the

purpose of same establishment of appellant, when market value in respect to 1991 acquisition has been determined at Rs. 34,000/- per bigha, obviously, in the year 1988, this market value cannot go up and higher than the above. When quarried on this aspect, learned counsel appearing for claimants-respondents could not dispute it.

21. In these facts and circumstances, and looking to entirety of the matter, we are of the view, that compensation of land in question be determined at twice the rate on which it was determined by SLAO which comes to Rs. 32795.46 per Bigha i.e. Rs. 10.84 per sq. yard (double rate).

22. Appeals are partly allowed. Impugned award stands modified accordingly and we direct that claimants shall be entitled for compensation of acquired land at the rate of Rs. 32795.46 per bigha. Sofar as, solatium and interest is concerned, directions contained in the impugned award are hereby confirmed. Parties shall bear there own costs.