(2016) 05 AHC CK 0004

In the Allahabad High Court

Case No : First Appeal No. 168 of 2004

Bharat Petrolium Corpn. Ltd. APPELLANT

Vs

Sita Ram RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 54

Citation : (2016) 5 AllLJ 41

Hon'ble Judges : Mrs. Sunita Agarwal, J.

Bench : Single Bench

Advocate : Satyendra Nath Srivastava, Advocate, for the Appellant; Anil Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Sunita Agarwal, J.—Heard Sri Satyendra Nath Srivastava, learned counsel for the appellant and Sri Anil Kumar, learned counsel for the respondents.

2. This appeal under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as ''the Act'') is directed against the common judgment and award dated 16th October, 2003 passed in Land Acquisition Reference No. 161 of 1997 (Sita Ram v. State of U.P. and another) connected with 19 other references.

3. Before coming to the questions raised by Sri Satyendra Nath Srivastava learned counsel for the appellant, it would be appropriate to note that seven appeals under Section 54 of the Land Acquisition Act against the common judgment/award and decree dated 16th October, 2003 have been heard and dismissed together by a common judgment and order dated 10.7.2015. The award of reference court which is under challenge in the present appeal has been upheld. It is also to be noted that Sri Satyendra Nath Srivastava had appeared in the above referred appeals and argued for M/s Bharat Petroleum Corporation Ltd, the appellants therein.

4. One more appeal namely First Appeal No. 659 of 2005 (M/s Bharat Petroleum

Corporation Ltd. v. Bundu & Another) was also heard and dismissed on 28.10.2015 recording the submission of the learned counsel for the parties that the issues raised therein were squarely covered by the judgment and order dated 10th July, 2015 passed by this Court in First Appeal No. 595 of 2004 (M/s. Bharat Petroleum Corporation Ltd. v. Ganeshi Singh and others) connected with six other appeals.

5. In this scenario, this Court has called upon learned counsel for the appellant to explain as to why this appeal be not decided in terms of the judgment and order dated 10.7.2015 passed by the coordinate Bench in appeals filed against the same award. He has insisted upon hearing of the appeal submitting that the arguments raised by him have not been noted and dealt with in the judgment and order dated 10.7.2015, affecting the interest of the appellant materially. The matter was heard and the judgment was reserved. However, on 15.3.2016, at the time of rehearing the appeal, it was informed by Sri Satyendra Nath Srivastava learned counsel for the appellant that the Special Leave Petition filed against the judgment and order dated 10.7.2015 has been dismissed by the Apex Court on 23.11.2015, and leave was refused by the Apex Court.

6. He submitted that since the Special Leave Petition has been dismissed in liminie, it would not come in the way of the appellant to argue the matter again so as to impress upon the Court to take a different view of the matter.

7. Hence the Court has proceeded with the hearing. The submissions of learned counsel for the appellant are as under:-

(i) The total area of acquired land was more than 48 Bigha. A large chunk of land cannot be equated with the small pieces of lands in sale exemplars and the compensation at the rate in per square metre cannot be awarded.

(ii) The offer of compensation was accepted by the land holders and there was no protest, the reference, therefore, could not have made by the Collector.

(iii) In another Reference No. 72 of 1997 (Rajveer v. State of U.P. and another) decided on 1.10.1991, the compensation of the land subject matter of same acquisition was determined at a much lower rate. The said award was placed before the reference court but it was distinguished wrongly by saying that it was referable to the land which was subject matter of that reference. The entire land was acquired for the same scheme and is to be compensated at the same rate.

(iv) Before acquisition, the lands were inspected and it was reported that there was variation in the lands both qualitywise and situationwise. The finding of reference court are based upon the quality and location of only one land which was levelled land belonging to Ganeshi Singh, the claimant in Land Acquisition No. 317 of 1993. Whereas other lands, subject matter of references including the land in present appeal was uneven and quite different from the land of Ganeshi Singh.

(v) The sale deed of small area at the rate of Rs. 85/- per sq. metre was wrongly chosen as exemplar sale deed, as it was executed barely 4 months prior to the acquisition. The prices fetched therein cannot be treated to reflect the actual prices of the land as the sale deed was executed purposely to get a higher compensation in view of the forthcoming acquisition.

(vi) The inspection of land was done one year prior to the acquisition proceeding and the quality of land mentioned therein could not have been ignored by the reference court.

(vii) Against the commission issued by the reference court, objection filed by the appellants were not considered. Deductions of 15% is wholly negligible.

8. Dealing with these submissions of learned counsel for the appellant, it would be appropriate to refer to paragraphs ''24'' and ''25'' of the judgment and order dated 10.7.2015, wherein the issue raised by the appellant regarding sale exemplar of small area chosen by reference Court was considered.

These paragraphs are quoted as under:-

"24. 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.

25. 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."

9. Now considering the submissions regarding genuineness of the sale exemplars chosen by the reference court, it is suffice to note that the reference court after discussion on various documents relied upon by the claimants had discarded them and ultimately relied upon the exemplars produced by the defendant/ appellant and determined market value on that basis. This fact has been taken note of by this Court in the above noted judgment and order dated 10.7.2015.

Relevant paragraph ''30'' is quoted as under:-

"30. In the present case, Reference Court has discussed various documents relied upon by the claimants and discarding the same, it has ultimately relied on exemplars produced by defendant appellant and on that basis, determined the market value. We find it difficult as to how in such circumstances, the appellant can have a valid objection that the documents adduced by them ought not to have been relied by Reference Court for the purpose of determining market value. Despite repeated query, it could not be disputed by learned counsel for the appellant that those documents did not reflect any sham transaction and they were actually relied by the appellant before the Reference Court. If that be so, determination of market value by the Reference Court cannot be said invalid, erroneous or, otherwise illegal in any manner. Despite repeated query, learned counsel for appellant could not tell as to how determination of market value by Reference Court at the rate of Rs. 150/per sq. yard can be sad to be highly excessive, considering the exemplars relied by the Reference Court which were actually filed by the appellant itself."

10. Now on the question of quality and situation of lands acquired, it is relevant to note that the reference court considered the location and quality considering the building potentiality of the land on the date of notification. The map, revenue records and testimony of oral witnesses were examined and it is recorded that as per the revenue entries most of the land was entered as "Abadi" in Khasra of 1399 fasli. The acquired lands are adjacent to boundaries of Najibabad Town. In village Shekhpura Gaddu which is adjacent to Tatarpur Lalu, there existed Steel factory, Card Board factory, school, Abadi in Khasra of various plots. In fact gram Shekhpura Gaddu was thick Abadi having factory and school at the time of acquisition. Other villages namely Rahu Khedi, Dhanaura, Tatarpur Lalu, Chhapar, Rampur Banwari and Shekhpura Gaddu are contiguous villages and part and parcel of Najibabad town. There was no separate map of Nazibabad Town. The Degree College, Steel factory, Thumps Up factory, Card Board Factory, Radio Station, Canal Office and Nursing Home were situated in village Shekhpura Gaddu. On one side of the acquired lands there lies old Najibabad Haridwar By-pass Road.

11. Considering all these evidences, it was found that the lands of village Tatarpur Lalu which was acquired for construction of Petroleum Depot was having enormous building potentiality as the contiguous village Shekhpura Gaddu was "fully developed" "Ghani Abadi" Area.

12. Further submission of learned counsel for the appellant is that only location of Plot No. 91 of village Tatarpur Lalu was considered to grant compensation for the entire acquired lands. The position of other lands were different from that of Plot No. 91 and the fact that adjacent village Shekhpura Gaddu was developed, it could not be said that Gram Tatarpur Lalu wherein the lands in question exist was also developed.

13. This submission of learned counsel for the appellant is not substantiated from the record inasmuch as the facts noted by the reference court indicates that lands of Gram Tatarpur Lalu were near Railway-Line and Haridwar By-pass road was abutted to the lands acquired. There exist old abadi namely Railway Colony, Old Warehouse, Adarsh Nagar Colony around village Tatarpur Lalu.

14. Learned counsel for the appellant specifically pointed out that Adarsh Nagar was located in Gram Shekhpura Gaddu and not in Tatarpur Lalu. This fact would not make any difference as on many of the plots of village Tatarpur Lalu there were Abadi and moreover, Gram Shekhpura Gaddu was contiguous village and Adarsh colony was located near village Tatarpur Lalu. The reference court also took note of this fact and meticulously discussed the position of lands in village Tatarpur Lalu and adjacent villages. It has arrived at a finding that adjacent to the lands acquired, there exist Railway Station, Najiabad; Railway Station Quarters, Mohalla Adarsh Nagar as part of town Najiababad. In the contiguous village Shekhpura Gaddu, Degree College, Steel Factory, Card Board Factory, Radio Station, Shops and various commercial and industrial activities were going on. These facts reflect that the lands acquired had high building potentiality value on the date of acquisition. There was pressure on the lands on account of industrial and commercial activities in and around the area. It was a developed area having all amenities.

15. The acquisition was for construction of Petroleum Depot and not for planned development of the acquired lands for a scheme. No integrated plan was required. The entire chunk of levelled land was acquired for construction of Petroleum Depot. As the acquisition was not for integrated residential/ commercial purposes, as such carving out roads, laying water and sewer lines etc. was not required which would have incurred in development of the area. The principles laid down for deduction on the acquisition of large area on development charges incurred would not apply so with respect to the lands in question.

16. So far as 15% deduction made by the reference court is concerned, it is noteworthy that the said deduction was made for arriving at the fair market value in the prices fetched by the lands of exemplar sale deed. The price of lands of exemplar sale deed was Rs. 176.47/- per sq. metre. As it was a sale deed of small area of land, considering the largeness of area of the acquired lands and the principle that the prices fetched for small developed plots cannot be directly adopted in volume large area, a deduction of 15% was made in the wholesale price of the acquired lands. This deduction was rightly made so as to arrive at the just and fair market value of the lands.

17. Admittedly, claimants did not file any appeal or cross appeal to challenge the deduction, therefore, there is no interference on this issue.

18. Last submission of learned counsel for the appellant is that the reference court has erred in treating the entire acquired lands in a block. Inspection report which says that some part of area acquired was not levelled, was ignored.

19. In the crux, submission is that the market value ought to have been determined keeping the land in different belts looking to their quality and location.

Learned counsel for the appellant though urged that the entire lands was not similar but could not prove from any material on record that there was remarkable dissimilarity in different plots.

20. The reference court has issued a commission and obtained Amin report so as to ascertain the quality & location of the acquired lands. The land as a whole was similarly placed and was surrounded by developed area, it was to be used for one purpose i.e. construction of Petroleum Depot. The lands were not abutting any National or main State Highway and, therefore, the reference court has rightly taken the acquired lands in a block. It was rightly held that where the lands are situated in the developed area and are very near to the developed localities and possess the potential value for use for building purposes, there is no rationale for categorisation/classification of lands for determining market value.

21. In a recent report in Ashrafi and others v. State of Haryana and others, 2013(5) Supreme Court Cases 527, the Apex Court held as under:-

"In Mukesh Kumar''s case (Supra), Mr. Manoj Swarup had pointed out that having regard to the potentiality of the acquired lands, the belting system should not have been resorted to. We are inclined to accept Mr. Swarup''s contention on this score. We are also inclined to accept Mr. Swarup''s other submissions that, although, the High Court had allowed a yearly increase of 12%, taking 1983 as a base-year, such increase was not commensurate with the yearly escalation of prices and that was required to be calculated on a cumulative basis, as was held in Rameshbhai Jivanbhai Patel''s case (supra)."

22. The deductions of 15% was given because of acquisition of huge area considering that there may be some development cost, the rates of lands from the exemplar sale deed was reduced to 15%, being of a small area. There was no question of further deduction as it was not an acquisition for planned development of the area for residential or commercial purposes.

23. For all the noted reasons, it is recorded that the learned counsel for the appellant could not convince the Court to take a different view from what has been taken by this Court in the judgment and order dated 10.7.2015 in other appeals of the same lands subject matter of the same acquisition.

24. In the circumstances, there is no error warranting interference.

25. The appeal is devoid of merits and hence dismissed.