

(1998) 08 DEL CK 0006
In the Delhi High Court
Case No : R.F.A.No. 65 of 1981

Bhola Nath and others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Citation : (1998) 08 DEL CK 0006

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Dhruv Mehta and Mr.Aman Vachher, for the Appellant; Ms. Geeta Luthra, for the Respondent

Judgement

Arun Kumar, J.—This appeal u/s 54 of the Land Acquisition Act (hereinafter referred to as the Act) is directed against the judgment dated 27th September, 1980 passed by the learned Addl. District Judge, Delhi in a reference u/s 18 of the Act. The land subject matter of the present appeal falls within the revenue estate of village Bahapur, Delhi. As per notification published on 3rd June, 1966 in the Official Gazette of Delhi (Ex.P-3), village Bahapur ceased to be a rural area. A notification u/s 4 of the Act for acquiring the lands subject matter of the present appeal for public purposes, namely, planned development of Delhi was issued on 30th June, 1978. The declaration u/s 6 of the Act was issued on 9th February, 1979. Award with respect to the acquired land was announced by the Land Acquisition Collector on 25th June, 1979. The Collector had categorised the land into three categories, namely, Block A, Block B and Block C. The land of the appellants in the present appeal falls within Block A and the Collector awarded compensation @ Rs.84/- per sq.yard as against the claim of the appellants before the Collector @ Rs.5,000/- per sq.yard.

2. In the reference u/s 18 of the Act, the learned Addl. District Judge enhanced the rate from Rs.84/- per sq.yard fixed by the Collector to Rs.175/- per sq.yard. Not satisfied with the decision of the Addl. District Judge, the appellants have approached this Court by way of the present appeal. The appellants originally

claimed in this appeal that they be awarded compensation @ Rs.575/- per sq.yard. However, as a result of amendments allowed by this Court, the appellants have laid a claim for compensation @ Rs.3,000/- per sq.yard and have paid the requisite court fee on that basis.

3. The emphasis from the side of the appellants in the present case is on the potential value of their land because of its situation and location. According to the appellants, the land is adjacent to important and prestigious commercial centres of Delhi. The Okhla Industrial Area is on one side while the Nehru Place District Commercial Centre is on the other side. It is a well-known fact which was accepted by the learned Addl. District Judge also in the impugned judgment that Nehru Place Commercial Complex was envisaged as the largest commercial complex in Asia and the land subject matter of the present appeal is hardly about 300 sq.yards from the said Centre. The well-known Mata Ka Mandir at Kalkaji is almost next doors to the land in dispute. About the location of the land, there is a report of the Tehsildar of the area on record which is Ex.RW-2/1. This report gives the boundaries of the land subject matter of the present appeal as under:-

"North: Parking place of Kalkaji temple and Okhla Industrial Area.

South: Vacant land and Nehru place at a distance of about 300 Metres.

East: Kalkaji temple.

West: Vacant land up to Ring Road."

4. The Tehsildar admitted in his report that the vicinity of the land in dispute comprises of Okhla Industrial Estate and Nehru Place. The learned Addl. District Judge also had occasion to personally inspect the site. His inspection note is on record. He prepared a rough sketch of the land from locational point of view. This is what he had to say about the land in his inspection note:-

"The land in dispute is in two pieces ABCD and S.T.U.V. ABCD is somewhat more than 1/3rd of the total land. In this, in a portion, the storage tank exists and at point W, there is an Old Dharamshala sort of construction. Between the two pieces of land, i.e. between ABCD and STUV, there is road leading to Kalkaji temple. The main port in of the land opens on the main road leading from Nehru Place. The land STUV is practically leveled with a slope of about 10 decrees. Opposite this land beyond main Road, there is park of D.D.A. The land in dispute is rocky. About 250 to 200 yards away from this land, there is Nehru Place. At point X there is a godown existing in about two bighas of land. At point Y there is newly constructed factory. The godown at point X and factory at point Y are adjacent to this land as shown in the plan."

5. It is significant to note that though the notification u/s 4 of the Act with respect to the land in dispute was issued on 30th June, 1978, the possession of the appellants' land had been taken by the Government as early as in January 1972. This fact is admitted by the Collector in the award itself. AW-3 Yad Ram, the Niab Tehsildar in the Land Acquisition Department who appeared as a witness

in this case stated that the Government had constructed a water tank in this land before 1972. He also admitted that Kalkaji Colony which is about a thousand yards away from the land in dispute was a fully developed colony. It is also in evidence that on a portion of two bighas out of the land in dispute, there are godowns in occupation of the Publications Department of the National Council of Educational Research and Training (NCERT) and in 17 bighas of the land there is a water tank and water treatment plant under the Municipal Corporation of Delhi. It is also in evidence that about 50 yards away from the land there is a factory, which is being run since long.

6. The learned Addl. District Judge accepted the fact that the Nehru Place Complex was one of the biggest markets in Asia with provision for multi-story buildings and having all facilities of a modern commercial complex. However, he refused to accept the argument on behalf of the appellants that their land had to be compared with the land comprised in Nehru Place Complex for purposes of determining its market value. According to the learned Addl. District Judge, Nehru Place has its own special importance and, Therefore, the prices prevailing in Nehru Place could not be a good guide for determining the compensation payable to the appellants for their acquired lands in the present case.

7. About the user of the land in question the learned Addl. District Judge observed that on about 2/3rd of the land, there was the water reservoir and water treatment plant under the Municipal Corporation of Delhi. While on two bighas of land, there were godowns under the occupation of the NCERT, again a Government organisation. Adjacent to the land in dispute was a factory which was operating since long. This led the learned Addl. District Judge to conclude: "So on the date of notification u/s 4, it cannot be said that the land was being reserved for user as land of green belt. It is correct that the potentiality of the land is to be seen on the date of notification u/s 4 and as to what use the land can be put to". Still the learned Addl. District Judge was not prepared to compare the land in dispute with the land comprised in Nehru Place Complex. One thing is very clear. By June 1978 when the Notification u/s 4 of the Act was issued, all modern facilities including road, electricity, water were available in the area and lot of commercial activity was already going on. Kalkaji residential colony was also nearby.

8. The principles of evaluation have to be applied keeping in mind the fact that the land is surrounded by prestigious commercial area. Secondly, the surface of the land is even and beneath the land it is all rocky. It is a level piece of land. This gives the land unique advantage as a building site. The entire area, i.e., Nehru Place, Kalkaji temple etc. is rocky and that is why so many multi storey buildings were already sanctioned on the date of section 4 Notification. They have come up in the Nehru Place Complex. The fact that land in question is also rocky and comprises in the same belt has been admitted by the Revenue officials of the Government who appeared as witnesses in this case. The valuation of land for purposes of award of compensation depends upon the market value of the

land on the date of section 4 notification. Market value of land is what a willing purchaser would pay to a willing seller for the land having due regard to its existing conditions including its potential when laid out in its most advantageous position. In this behalf, observations of the Privy Council in AIR 1939 98 (Privy Council) are worth reproducing:-

"The compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser. But this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of the particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth. To say that it is the value of the land to the vendor that has to be estimated is however not in strictness accurate. The land for instance may have for the vendor a sentimental value for in excess of its "market value". But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at "the market price".

In AIR 1967 SC 465 in re: Raghubans Narain Singh Vs. The Uttar Pradesh Government, it has been observed:-

"Market value on the basis of which compensation is payable u/s 22 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired".

9. These principles continue to enjoy their primacy in matters of determination of compensation to be awarded for land compulsorily acquired by the Government. Similarly it is well established that potentiality of the acquired land as a building site has also to be kept in view while determining the market value of such land. "Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged u/s 4(1) of the Act, ought to necessarily include that portion with the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the Act". This was so held in P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, . This is equally well settled as a principle of law that the landowners should get their proper due by way of compensation.

10. The land subject matter of the present appeal has the following unique advantages:-

1. It is a level piece of land having rocky strata underneath which means that it is ideally suited for building activity particularly multi storey buildings, example of which is the Nehru Place Complex which is almost next doors to the land in question. One cannot lose sight of the fact that the Delhi Development Authority which had developed the Nehru Place Complex, had carved out and auctioned various plots in area for multi storey buildings. This means that even though on 30th June, 1978, the multi storey buildings were not in existence but the fact that they would come up was very much in existence because the Delhi Development Authority had already planned and sanctioned constructions of such buildings in the area.

2. Secondly, the land in dispute is surrounded by prestigious commercial and industrial complexes like the Nehru Place and Okhla Industrial Area. The posh Kalkaji Colony which is a residential colony is about a thousand yards away from the land in dispute.

3. Another unique advantage of this land is that it is large and compact piece of land comprising 27 bighas ideally suited for big projects.

All these, i.e., the commercial complex the Industrial Area and Kalkaji residential colony were already in existence when the notification u/s 4 of the Act was issued with respect to the land in dispute on 30th June, 1978. On the basis of these facts it can safely be concluded that the land subject matter of this appeal had great potential value as a building site.

11. Coming to the evidence of market value which is available on record, we note that the claimants have proved certain lease deeds with respect to commercial plots of land in the Nehru Place area executed by the DDA in favor of the lessees on perpetual lease basis. These lease deeds are ex.AW-8/1 to ex.AW-8/5 and pertain to the plots having area ranging from 334 sq.mtrs. to 740 sq.mtrs. The dates of the lease deeds, their respective areas and the rate at which premiums were paid for acquisition of the lease hold rights are contained in the following table:-

Exb.No.	Area in	Date of	Rate of Sq.	Lease premium meter.	Deed per sq. meter.
AW 8/1	334	1.8.1973	1429/-	AW 8/2	741 28.9.1973 2160/-
AW 8/3	334	17.10.1973	3024/-	AW 8/4	334 24.10.1973 2550/-
AW 8/5	445.93	29.11.1973	1175/-		

12. All the above lease deeds pertain to the year 1973 whereas the crucial date for our purposes is 30th June, 1978. The appellants further brought on record a list of commercial plots auctioned by the DDA in the years 1977-78 where the rates were Rs.20,000/- per sq.yard and above. These auctions by the DDA were relating to larger plots meant for multi storey buildings.

13. The learned Government counsel submitted that the lease deeds ought not to be looked into. So far as lease deeds ex.AW-8/1 to AW-8/5 are concerned, it was argued that they were pertaining to Nehru Place and, Therefore, should be ignored. Secondly, they had not been properly proved in evidence because neither the vendor nor the vendees were produced as witnesses to prove these

documents. It was submitted that instances of Nehru Place could not be used for determining the market value of the land in the present case. The learned Addl. District Judge did not place reliance on the aforesaid lease deeds. He felt that instances of Nehru Place could not serve as a good guide. We are unable to accept this approach of the learned Addl. District Judge. It is settled law that in the absence of instances from the same village, instances of adjoining villages can be taken into consideration for determining the market value of land. In the present case the instances of Nehru Place are from the same village because Nehru Place also falls within village Bahapur which is under consideration in the present appeal and where the acquired land of the appellants falls. Admittedly Nehru Place is less than 300 sq.mtrs. away from the land in question. In the absence of any other evidence, we feel that these instances of Nehru Place can be a good guide. The only difference between the Nehru Place Commercial Complex and the land in dispute is concerned is that Nehru Place Commercial Complex is a fully developed commercial complex whereas the land in dispute is not developed, even though it is level. For this, suitable provision can be made. So far as the question of proof of lease deeds ex.AW-8/1 to ex.AW-8/5 is concerned, the objection on behalf of the respondents has no merit because the objection regarding proof of the documents ought to have been taken at the time the documents were proved in evidence and not at this stage. We note from the record that no such objection was taken regarding production in evidence of the sale deeds at the relevant time. Secondly we cannot lose sight of the fact that these lease deeds are certified copies of documents to which the Delhi Development Authority is a party. There is no reason to entertain any suspicion regarding these documents.

14. So far as the transactions of auction of multi storey plots by the DDA in the year 1977-78 as per list Ex.AW-1/1 is concerned, we cannot place any reliance thereon because the lease deeds have not been proved on record. Further these are transactions relating to developed plots meant for multi storey buildings and for that reason also, they cannot be of any use or relevance for present purposes. There is another sale deed on record relating to sale of a shop plot of approximately 178 sq.mtrs. at the rate of about Rs.1,300/- per sq.mtr. close the relevant date. This shop plot is in Greater Kailash II which is about a mile away from the land in question. The sale deed is ex.P-2 and is dated 4th September, 1978. This sale deed is also according to us of no use being that of a plot which is far away from the land in dispute.

15. Thus we are left only with the lease deeds Ex.AW-8/1 to Ex.AW-8/5 which are between 1st August, 1973 to 29th November, 1973. These are lease deeds for plots ranging in area from 334 sq.mtrs. to 741 sq.mtrs. and the average rate of premium for acquiring lease hold rights works out to Rs.2,060/- per sq.mtr. or Rs.1,880/- per sq.yard. In the absence of any other evidence on record, we are of the view that the best manner to determine an appropriate market value for the acquired land would be to take the average of the market value from the above lease deeds and to allow 12% annual increments thereon for a period of

five years so as to reach 30th June, 1978 which is the date of notification u/s 4 of the Act in the present case. On this basis the average rate comes to approximately Rs.2,900/- per sq.yard. In the absence of evidence by way of sale transactions near about the date of the notification u/s 4 of the Act, the Supreme Court resorted to the method of taking averages and proceeding on the basis of yearly increase in the market value of Gokal Vs. State of Haryana, . This system of working out the market value in such circumstances was also followed by this Court in Rameshwar Solanki Vs. Union of India, and Nand Kishore Vs. Union of India RFA No.186/1986 decided on 17th April, 1998.

16. This Court as well as the Supreme Court has approved that instances of small plots of land can be taken into consideration for determining the market value of a large tracts of land in the absence of any better evidence.

Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, and The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others,

17. From the above price some deduction will have to be made on account of the fact that the plots from which the said price has been worked out were fully developed plots whereas the land subject matter of the present appeal is a large tract of land with no development. On this account in order to make the price comparable, some deduction has to be made. In the facts of the present case, a deduction of 30% appears to be an appropriate deduction which will take care of the development cost as well as the cost of land to be left out for purposes of roads, parks and other common facilities. From this we reach the price of approximately Rs.2,000/- per sq.yard as on 30th June, 1978.

18. The learned Addl. District Judge rightly declined to take into consideration the Government notified rates of land in the area. The object of the notification of rates by the Government is quite different and these rates never represent the market value of land in any particular area.

19. At this stage, we would like to observe that the concept of categorisation of land under acquisition into different categories has not been approved by the Supreme Court and is no longer acceptable. As already noticed, the Collector categorized the land under acquisition into three categories. The learned Addl. District Judge maintained categorisation done by the Collector. Categorisation is hereby rejected and the entire land has to be valued on same basis.

20. The result of the above discussion is that the market value of land under acquisition in the present appeals is fixed at Rs.2,000/- per sq.yard as on 30th June, 1978, i.e., the date of notification u/s 4 of the Land Acquisition Act and the appellants will get compensation on that basis.

21. The next point for consideration is interest to be awarded to the appellants. The appellants have claimed interest with effect from the date of their actual

dispossession from the land in dispute. The land is in Government possession since the year 1972 as noted by the Collector in his Award. The appellants have in this behalf relied upon section 34 of the Land Acquisition Act. The said provision as it stood before amendment of the Act in the year 1984 is reproduced as under:-

"34. Payment of Interest: When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6 per centum per annum from the time of so taking possession until it shall have been so paid or deposited."

22. According to the aforesaid provision, the claimants are entitled to interest on compensation @ 6% per annum from the date they were dispossessed from their land. Admittedly the compensation was not paid or deposited in this case before taking possession of the land. The learned Addl. District Judge has awarded interest @ 6% on enhanced compensation w.e.f. 30th June, 1978, i.e., the date of notification u/s 4 of the Act. The point for decision is as to whether the appellants are entitled to interest from the date of dispossession or from the date of the notification u/s 4.

23. A bare perusal of the relevant provisions of Act supports the contention of the appellants. Sections 28 and 34 contain the relevant provisions. In both the sections payment of interest has been linked with taking possession of the land by the Collector. The land owner is sought to be compensated for the period between taking over possession of his land and the payment of appropriate compensation, by way of interest. Determination of fair amount of compensation normally takes time while the land owner may be dispossessed from his land earlier. For this time gap between dispossession and payment of compensation under the Act as finally determined in a given case, the land owner is given interest. Thus interest has been directly linked with possession of the land. The right to receive interest from the date of taking possession takes the place of right to retain possession.

24. This leaves no scope for the contention that interest is payable only from the date of issuance of notification u/s 4 of the Act. Denying interest from the date of dispossession and confining it from the date of section 4 Notification besides being contrary to the statutory provision, defeats the very object thereof. The Statute confers the right to receive interest from the date of dispossession. The right to retain possession is replaced by right to receive interest.

25. The learned counsel for the appellants has in this connection relied upon a judgment of the Supreme Court in *Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat*, . The provision of section 34 was held to be mandatory and it was observed that when once the provision of section 34 is attracted, it is obligatory for the Collector to pay the interest. If he fails to do so, the same can be claimed from the court in proceedings u/s 18 of the Act or even from the appellate court/

courts, thereafter. This was followed in Civil Appeal No...../1995 decided on 24th August, 1995 Mamleshwar Prasad Vs. Union of India arising out of S.L.P.(O) No.2438 of 1986. In this case also, the possession of land was taken before the issuance of section 4 notification. The High Court had granted interest only from the date of the Award and not from the date possession was taken by the Government. It was held that the appellant was entitled to interest u/s 34 as it then stood from the date of taking possession of the acquired land. This interest is liable to be paid to the appellants on the amount of compensation finally determined by the Court.

26. We are of the considered view that the appellants in this case are entitled to interest @ 6% per annum from the date of their dispossession till the date of payment of compensation.

27. The appellants will also be entitled to solarium @ 15% on the enhanced amount of compensation, the case being prior to the amendment of the Act in the year 1984.

28. The learned counsel for the appellants prayed that the appellants be allowed interest on solarium also. However, for reasons recorded in our judgment in RFA 387/1991 Ram Phool and Another v. Union of India, this claim is rejected.

29. The appellants will be entitled to proportionate costs.

30. The appeal stands disposed of in these terms.