(2002) 05 DEL CK 0177

In the Delhi High Court

Case No : Regular First Appeal s. 464, 465 and 466/86

Bhuley APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 24, 4, 54

Citation : (2002) 64 DRJ 226

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : C.L. Verma, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—Claimants in these appeals filed u/s 54 of the Land Acquisitions Act, 1894 (hereinafter referred to as the Act) are seeking further enhancement in the amount of compensation. Subject matter of the appeals is the land situate in village Ziauddinpur, Delhi which was acquired for public purpose, namely, Planned Development of Delhi through notification issued u/s 4 of the Act on 6.3.1965. Declaration u/s 6 of the Act was made on 7.1.1969. The Collector Land Acquisition made his award No.39/80-81 on 9.7.1980.

2. After the Collector Land Acquisition in his award offered compensation to the claimants @ Rs. 2,000/- per bigha reference was sought by the claimants. The reference court by the impugned award answered the reference holding the claimants entitled to compensation @ Rs.4,770/- per bigha. The reference court in assessing the market value relied upon sale deed Ex.A-1 dated 11.3.1964. By this sale deed land measuring 5 bighas was sold for a consideration of Rs. 22,500/-. Another sale deed Ex. A-2 was also relied upon by the claimants which was executed subsequent to the notification issued u/s 4 of the Act. This sale deed Ex.A-2 was executed on 3.10.1996. One bigha land was sold for Rs. 7,000/-. Relying upon the earlier sale deed it was held by the reference court that Rs. 4,500/- per bigha was the fair market value of the land in village

Ziauddinpur as on the date of sale i.e. 11.3.1964. Therefore, in order to assess fair market value as on the date of notification i.e. 6.3.1965 the reference court by allowing appreciation @ 6% p.a. from 11.3.1964 to 6.3.1965 held Rs. 4,770/- per bigha to be the fair market value.

3. Learned counsel for the appellant urged that the revenue estate Ziauddinpur was a Be Chirag revenue estate and was surrounded by Gopalpur on the East, Mirpur Turk in the West, Mauzpur in the South and Johripur towards North. Wazirabad Road passes through this village and connects Wazirabad Bridge to Loni Road. For construction of the said road land situate in village Ziauddipur was acquired through notification issued u/s 4 of the Act on 16.3.1961. The road was constructed from Wazirabad Bridge to the Junction of Loni Road at Gokulpur, Delhi. Market value of the land acquired through notification dated 16.3.1961 was finally determined by this Court in Swarup Chand and Anr. v. Union of India 44 (91) DLT 652 @ Rs.2,500/- per bigha. Claimants land was acquired four years subsequently for Planned Development of Delhi. Therefore, it was urged that due to the construction of road market values of the lands situate in Ziauddinpur had increased substantially which aspect deserves to be taken note of and compensation deserves to be determined @ Rs. 15,000/- per bigha since this Court in RFA 174/80 Jagat Singh and Anr. v. Union of India decided on 20.9.2001 had already the assessed market value of land situate in village Mauzpur at Rs. 9,000/- per bigha as on 13.11.1959. It was contended that village Mauzpur is towards Southern side of Ziauddinpur, Delhi and in Jagat Singh''s case (supra) this Court had made the following observations as regards the location of village Mauzpur vis-a-vis Ziauddinpur:-

"From the record we find reliance had been placed by the other Reference courts while determining the market value on the market rates which had been held payable for land situate in adjacent villages of Jafrabad, Ziauddinpur, Chandrawali etc. which were also acquired through the same Notification for the same public purpose."

4. We have considered the submissions made at the bar and have gone through the record.

5. The mere fact that village Ziauddinpur, as regards its location is adjacent to village Mauzpur and the fact that Mauzpur is located towards Southern side of Ziauddinpur along cannot be a ground to allow similar compensation or compensation on the same basis, in the absence of any evidence to the effect that the land situate in the two violates were similarly situate having similar potentiality. The mere fact that two villages adjoin each other cannot be a ground to allow similar compensation since there is bound to be difference in the potentiality and location of the two villages from the point of view of market value. It has also so held by the Supreme Court in Kanwar Singh and Others Vs. Union of India, .

6. No doubt it is true that in 1961 a part of the land situate in village Ziauddinpur

was acquired and there is also no manner of doubt that after construction of road there must have been some development activity thereby enhancing the importance of the villages but for but for that also it was necessary that the claimants to have placed on record some evidence about the extent of such development in terms of increase in the market value, in the absence of which it will not be possible for a court to allow any extraordinary appreciation over the earlier market value determined earlier. Normal increase of course would be permissible.

7. As noticed above, the claimants placed reliance upon two sale deeds. Sale deed EX.A-1 reflects market value of Rs. 4,500/- per bigha which is a year prior to the date of acquisition. The other is Ex.A-2 which is one year and six months later to the date of notification u/s 4 of the Act. It reflects market value of Rs/ 7,000/- per bigha. Learned reference court discarded the second sale deed on the ground that it was subsequent to the dat of notification u/s 4 of the Act. The mere fact that the sale transaction relied upon by the claimants happened to be subsequent to the date of notification u/s 4 of the Act along will not be a ground to discard the same. The same in certain circumstance can be taken in consideration in order to find out rising trend of market values of the land in the vicinity. Of course, while determining the amount of compensation u/s 23 of the Act the relevant factor to be taken into consideration would be as are incorporated in Section 23 of the Act and the matters to be neglected would be those referred to in Section 24 of the Act. u/s 23 of the Act compensation payable to a claimant is the market value of land at the date of publication of notification u/s 4 of the Act adjusted in Sub-section (1) of Section 23. In case sale instances of earlier period and later period are relied upon, in order to arrive at the market value as on the date of notification u/s 4 of the Act and to find out the rising trend of market values, sale instance subsequent to the date of notification may also be taken into consideration. Considering the rising trend in the prices of land reflected in the two sale deeds Ex. A-1 and A-2. As such the reference court was not justified in discarding altogether the second sale deed Ex.A-2. Taking into consideration the rising trend in the prices of the land the fair market value of the land as on the date of notification u/s 4 of the Act in our view would be Rs. 6,000/- per bigha.

8. Consequently the appeals are allowed with proportionate costs holding the claimants entitled to compensation @ Rs. 6,000/- per bigha. In addition to the enhanced market value the claimants will be paid the solarium and interest as allowed by the reference court including interest on solarium as per the decision of Supreme Court in Sunder Vs. Union of India, .