

(1994) 01 AHC CK 0101
In the Allahabad High Court
Case No : First Appeal No. 5 of 1979

Chand Kiran Tyagi and Others	Vs	APPELLANT
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 20-01-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4, 4(1), 51A, 6(1)

Citation : (1994) 1 AWC 597

Hon'ble Judges : J.P. Semwal, J

Bench : Single Bench

Advocate : B.D. Agrwal and B.B. Paul, for the Appellant;

Final Decision : Allowed

Judgement

J.P. Seniwai, J.—This appeal is directed against the judgment and decree dated 31st March 1978 passed by the First Addl. District Judge, Meerut in L.A. Case No. 326 of 1975 in a reference made in the Land Acquisition Act. The facts giving rise to the present appeal may be stated in brief, as follows:

2. The Executive Engineer, Temporary National High Way Division, PWD Ghaziabad, moved the Government for acquisition of the land of village Doonda Hera, Pargana Loni, Tahsil Ghaziabad for the construction of Ghaziabad Bye-pass on National High- way No. 24. Notification u/s 4(1) and 6(1) of the Land Acquisition Act were published in the UP. Gazette dated 11-3-1972. The possession was taken on 30-3-1972 and the special Land Acquisition Officer, Meerut, gave the award on 10th Oct. 1974.

3. The Special Land Acquisition Officer awarded total compensation amounting to Rs. 3,43,339.96 p. including solatium. He determined this compensation on the basis of classification of soil. He determined the rate of compensation at Rs. 4741.38 p. per bigha for Sewta I Khaki at Rs. 3551 72 per bigha; Sewta II Abi at Rs. 3551.72 per bigha; Sweta II Kbaki at Rs. 2586.21 p. per bigha and Sewta II Khaki at Rs. 1887.93 per bigha. after proportionately reducing the rate of inferior

quality of land. The acquired land included Khasra plots nos. 265/1/3(0-2-2), 266/1 (11-5), 370 (2-4-10), 734 (1-12-0.) 494 (0-4-8), 494/1 (0-7-5), 1241/1 (0-8-10) of Khata No. 129, 242 (1 -10-0) 244 (0-1-0) 251 (1-&0) of Khata No. 130 and 491/1 (0-5-7) of Khata No. 267 belonging to the claimants.

4. For this acquired land only Rs. 3,43,339.96 p. were awarded. The Appellants feeling aggrieved by this award, asserted that their land should have been treated as potential building site and accordingly the compensation should have been awarded. They claimed that the value of the land on the material date was not less than Rs. 6/- per square yard and requested that a reference be made to the Court of District Judge for disposal of their objections. The reference before the Additional District Judge u/s 18 of the Act was contested by the State Government which asserted that the compensation awarded by the Special Land Acquisition Office/, Ghaziabad, was- fair and adequate and no further compensation could legally be awarded to the claimant. The Additional District Judge framed two issues on the pleadings of the parties. The present Appellants claimants filed four exemplars to show the -market rate of the acquired land and examined Appellants No. 1, Chand Kiran Tyagi. No evidence was led by the State.

5. The submissions of the claimants before the Addl. District. Judge that Khasra plots nos 374, 494, 494/1 and 1241 are adjacent and very close to the village abadi and as such they should have been treated as potential building site. The submission finds support from Ext. A-2, the Sajra of the village. The Additional District Judge, therefore, opined that the claimants were entitled to compensation not on the basis of soil classification but as a potential building site in respect of these four plots. No documentary evidence has been filed to show that the agricultural land was being sold on the material date at a higher price than the compensation awarded by the special land acquisition officer, therefore the claimants are not entitled to any enhanced compensation in respect of remaining plots. As regards the aforementioned four plots having potential building site is concerned, the learned Addl. District Judge relied on Ext. 3, sale-deed dated 19-8-1971 executed by Ram Saran in favour of Bhikki in respect of plot No. 46, measuring 400 sq. yds. for Rs. 12,000/-. The rate according to the sale-deed comes to Rs. 3k per sq. yd. In the opinion of the Addl. District Judge the sale-deed was nearer to the date of acquisition and was thus a good exemplar. Therefore, he held that the claimants -are entitled to compensation at the rate of Rs. 3/- per sq. yd. in respect of their Khasra plots nos. 374, 494, 194/1 and 1241. In the result, the claim petition was - partly allowed by the Addl. District Judge and the claimants were awarded compensation at the rate of Rs. 3/- per sq. yd. in respect of aforesaid four plots and solatium at 15% on the entire amount of compensation alongwith interest at the rate of six per cent per annum on the enhanced amount of compensation from the date of possession to the date of payment or deposit. Parties" were directed to pay costs proportionate to their success and failure.

6. Aggrieved by this award dated 31st March 1978, the Appellants have preferred

this appeal, inter-alia, on the grounds that the Court below in determining the market value at the rate of Rs. 3/- per sq. yd. had acted arbitrarily and against the evidence on record and that exemplers sale deed filed on behalf of the claimants Appellants amply prove, that their claim was made out for compensation at the rate of Rs. 6/- per sq. yd."

7. I have heard Sri B. B. Paul, learned counsel for the Appellants and Sri R. P. Shastri, learned Standing Counsel at considerable length and have perused the record of the case regarding the four plots nos. 374, 494; 494/1 and 1241. The Add. District Judge has rightly accepted the claim of the claimants Appellants treating the said four plots as potential building site. The findings regarding other plots have not been challenged. The only question for determination is whether the amount of compensation awarded at the rate of Rs. 3/- per sq. yd in respect of aforesaid four plots having potential building site is inadequate or not. The claimants have filed four exemplers which are sale deeds dated 11-7-72, 10-4-73, 19-8-71 and 10-7-68. Out of these sale-deeds the sale-deed dated 10-7-68 is original sale-deed (Ex. 2) which has been proved by Chand Kiran (PW 1) while other sale-deeds are certified copies which are admissible u/s 51A which runs as under:

51-A Acceptance of certified copy as evidence -- In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given u/s 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

9. The Respondents have not challenged these sale-deeds either before the Addl. District Judge, Meerut or before this Court. The only point for consideration is as to what amount of compensation is to be awarded in respect of the four aforementioned plots. The matter to be considered in determining compensation are mentioned in section 23 of the Act. The market value of the land at the time of publication of the notification is the relevant rate for the purposes of assessment of the compensation. It, may, however, be mentioned at the very outset that the question of fair compensation is not an algebraic problem which would be solved by an abstract formula. Valuation of property cannot be determined by any principles of exactitude and with arithmetical precision. A certain amount of guesswork or conjecture is inevitable but the Court should be careful not to go too far in that direction.

10. The Supreme Court has, however, laid guidelines for determination of the market value of the property. It has held- that the best evidence is authentic transaction of sale in respect of the very land that was acquired Bargaru Narsingharao Naidu v. R.D.C. Vijayanagram 1980 1 SCC 75. If a part of the land acquired has or have been previously sold, such sales are taken as a fair basis upon which, making of proper allowances for situation etc. to determine the value of that part acquired. It is also well settled that the value of small plots of land cannot apply to lands covering a very large tract. The best evidence to prove that willing purchaser would pay for the land under acquisition, would be

evidence of genuine sales effected about the time of notification for acquisition either in respect of the land or any portion thereof or the sale of land precisely parallel in all its circumstances to the land under compulsory acquisition, when there are not comparable sale which can guide the Court to determine accurately as possible the market value, the Court has to import rule of thumb. However, every effort has to be made from the material placed on record for arriving at a rate which is just and fair as far as possible. It cannot be denied that price of the property indicated in recent sales of the property is an index of its market value. In concluding the value of a plot of land the price previously paid for the portion of the same area affords infinitely the best material which can possibly exist if the price remains stationary. In estimating the value of the land, the question of similarity between the two must therefore be particularly considered. The land must be actually parallel. There can be no valuation when there is no such similarity.

11. In the instant case, the only material for estimation of the land consists of the aforementioned four sale-deeds. The lower Court had dealt rightly been not accepted as good exemplars as they pertain to a period far from the date of notification and the land is not similar in nature as the land acquired. The lower Court, however, has accepted the sale deed of 19th August 1971 and has discarded the sale deed of 10th July 1968. No doubt the sale deed of 19th August 1971 is nearer to the relevant date but it also does not indicate the similarity with the acquired land. The land which was subject matter of this sale-deed is at a distance of 2-3 furlongs from the abadi and is at the out-skirt of the village, hence it cannot be a good exemplar for estimating the value of the acquired land. The sale-deed dated 10th July 1968 executed by Ram Ral in favour of the Appellants No. 1, Chand Kiran in respect of plot measuring 511 sq. yds. for Rs. 2000/- is a good exemplar for two reasons. Firstly, this land is situated adjacent to the acquired plot No. 494 as has been deposed to by PW 1 in para 2 of his deposition which has remained uncontroverted and unrebutted. Secondly, the Appellants No. 1 himself was the purchaser of this land which is very significant. It is not the case of the Respondents that the sale-deed is not genuine one or that the price shown is fanciful and has been exaggerated. Thus, I am of the view that the sale-deed dated 10-7-1968 is a good exemplar for assessing value of the acquired land and the sale-deed dated 19-8-71 relied upon by the lower Court does not provide the safe criteria for determining the amount of compensation. In the year 1968 the price was 3.91 p. per sq. yd. The other sale-deeds, however, indicate that the trend of price of land in between that period was more or less stationary and it did not increase as it is increasing now-a-days. The sale-deed of increased price after the date of notification has less probative value as the price is deliberately shown more in order to claim more compensation on acquisition.

12. The learned counsel for the Appellants argued that the notification was made on 11-3-72 and the sale deed dated 11-7-72 indicates price at the rate of Rs. 10/- per sq. yd. which is a pointer of the rising tendency of the price of land

during that period. The Appellants No. 1 had himself purchased the land under the sale-deed dated 10-7-68 at the rate of Rs. 3.91 p. per sq. yd. and even if the said price is taken to be stationary till 19-8-71 but thereafter in the year 1972 the prices have shown rising tendency and had gone to the tune of Rs. 10/- and Rs. 12/- per sq. yd. However, the said exemplers in any way cannot be good guide for determining the value of the acquired property. We have already accepted the exemplar dated 10-7-68 as a good" exemplar for estimation of the valuation. The price at that time was Rs. 3.91 per sq. yd. and the land was purchased by Appellants No. 1 himself adjacent to acquired plot No. 494. No gullible person would accept that any one would sell out his land for a lesser value. The value to be ascertained is the value to the vendor of the land acquire. The Appellants No. 1 had purchased part of land at Rs. 3.91 per sq. yd. in 1968 and this land is of similar situation as that of acquired land. The acquired land has been held to have potential building site and the land was acquired in March 1972. It cannot be denied that a vendor would expect some return from the investment he had made in purchasing the land. Though no hard and fast rule can be laid down, but in such a case as the present one, return of 5% would be fair Thus, an allowance of 5% on the value as depicted in the sale-deed dated 10-7-68 can be made fox the fair and just determination of the value of the acquired land which comes to Rs. 4-10 p per sq. yd.

13. Considering all the facts, evidence and circumstances of the case, the compensation in respect of acquired plots nos. 374, 494 494/1 and 1241 awarded by the lower Court at Rs. 3/- per square yard on the face of it is the part of land adjacent to the acquired land by the Appellants himself and it is held that the Appellants are entitled to get compensation at the rate of Rs. 4.10 per square yard in place of Rs. 3/- per square yard. The appeal accordingly succeeds.

14. The learned counsel for the Appellants vehemently argued that in view of the amended provisions of the Act the Appellants is entitled to solatium at the rate of Rs. 30% of the market value. Learned counsel cited two rulings of the Supreme Court, namely, Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, and State of Punjab Vs. Mohinder Singh and Another, in support of his contention that the Appellants are entitled to the benefit of the provisions of the Act 68 of 1984 by which 30% solatium is to be given from the date of publication of Notification u/s 4. This contention was repelled by the Standing Counsel, who urged that benefit of the provisions of Act 68 of 1984 is available to a limited category of awards made by the Collector between 30st April 1982 and 24th September 1984 or to any order passed by the High Court or Supreme Court in appeal against any such award. Learned Standing Counsel cited in Supreme Court ruling of Union of India v. Raghuvir Singh 1990 (1) CRC 192 wherein the larger bench of the Supreme Court overruled the statement of law laid down in the aforementioned cases of Bhag Singh and Mohinder Singh relied upon by the learned counsel for the Appellants. The aforesaid overruled rulings relied upon by the learned counsel for the Appellants are thus of no assistance to him in buttressing his contention.

15. In the light and observations made above the appeal succeeds and is accordingly allowed.