
(1991) 04 DEL CK 0091

In the Delhi High Court

Case No : Letter Patent Appeal No's. 137 and 138 of 1980 and Regular First Appeal No. 20 of 1991

Chet Ram and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1991) 44 DLT 378

Hon'ble Judges : Usha Mehra, J; S.B. Wad, J

Bench : Division Bench

Advocate : N.S. Vashisth, B.S. Mathur and H.K. Gangwani, for the Appellant;

Judgement

Usha Mehra, J.

(1) Questions involved in these two appeals by Letters Patent, No. 137 and 138 of 1980, are whether two sets of rates can be fixed of the land acquired by the same notifications situated in the same revenue estate where in one reference the party is a coloniser and in another an ordinary farmer; and secondly can the appellants be deprived of the fixation of same rates of compensation (which were awarded to an adjacent land similarly situated and acquired by the same notification) as in the case of Regular First Appeal No. 55/70 Raghbir Singh v. Union of India. Since, these appeals have arisen from a common judgment and involve common questions, Therefore, are disposed of vide one order.

(2) The facts, material for the purposes of these appeals, may, now be briefly indicated.

(3) The appellants land in Letters Patent Appeal No. 137 of 1980 measuring 90 bighas 10 bids was and 1/24th share in 85 bighas 17biswasin Shamlaat Deh and in Letters Patent Appeal No. 138 of 1980 measuring 2 bighas, 1/2 Biswa situated in the revenue estate of village Posangipur were acquired by the Government pursuant to Notification dated October 24, 1961 u/s 4 of the Land Acquisition

Act, 1894 (hereinafter called the Act). The land of the appellant in Letters Patent Appeal No. 137 of 1980 was categorised in three different blocks. Block "A", "B" and "C" and the land in Letters Patent Appeal No. 138 of 1980 fell only in Block "A". The Land Acquisition Collector in Letters Patent Appeal No. 137 of 1980 awarded compensation for the land falling in Block "A" @ Rs. 1400/ and for Block "B" @ Rs. 1200/ per bigha and for block "C" @ Rs. 1,000/ per bigha. So far as the land in Letters Patent Appeal No. 138 of 1980 is concerned, the Land Acquisition Collector awarded compensation @ Rs. 1200/per bigha.

(4) Not satisfied with the award, references were made to the District Judge u/s 18 of the Act. In both these cases the learned Additional District Judge on reference enhanced the compensation for the appellants land in Lpa No.138/80 to Rs. 3,550.00 per bigha and for the land in Lpa No. 137/80 for Block "A" Rs. 3750.00 per bigha and for block "B" @ Rs, 3250.00 per bigha and for Block "C" Rs. 3050.00 per bigha. Still not satisfied appellants filed Regular First Appeals against the judgments of the Additional District-Judges, which were listed as Rfa No. 279 of 1972 Rfa No. 376 of 1979. These appeals were heard and dismissed by the learned Single Judges of this Court by common judgment dated May 14, 1980.

(5) Grievance of the appellant is primarily based on the non-consideration of the potential value of his land by the learned Single Judge. The submissions of the appellant are that the potentiality of the whole land acquired vide notification dated October 24, 1961 being the same, no distinction ought to have been drawn while fixing its rates. The land in Posangipur was acquired for planned development of Delhi, the purpose being the same the potentiality had to be judged on that basis. No difference could have been drawn on the ground that the adjacent land was developed, leveled and cut into small plots whereas appellant's land still being agricultural; had no potentiality for being used for building purposes. The land has to be valued by reference to the use it was being put at the time its value has to be determined. But while determining the real value of the land, it has to be kept in mind the use the said land is capable of being put to in future. In the case of Shyam Krishan Chandiwal v .Union of India, 1978 Dlt Page 8 Division Bench of this court held that the potentiality of the land would be the same regardless of its being Abadi Chahi or Rosli and the same rates were allowed for the whole of the land.

(6) EX. A 4 is the judgment in Raghbir Singh's case delivered by learned Additional District Judge, Delhi. Perusal of the same shows that appellants land was adjacent to the land in Ex. A. 4. The said land was an extension of Shankar garden a developed colony. This evidence coupled with Ex. A. 3 goes to show that land of the appellant was situated in a developing colony.

(7) Raghbir Singh's land was acquired by the same notification. He leveled his land being a coloniser and was selling the same in small plots. Taking into consideration that he was a coloniser, had the means and potentiality to level the land and sell it in small plots, the learned Single Judge taking this factor into

consideration enhanced the compensation and fixed his market rate of the land at much higher rates. The learned Single Judge while disposing of Raghbir Singh's appeal in Rfa No. 55/70 held that the land which was classified as leveled land can get higher rates and the land which was not developed, a deduction of Rs. 500.00 per bigha was considered justified.

(8) Compensation under the impugned judgment was determined at the given rates particularly on the footing of sale instances of comparable land but the instances of sales of small developed plats were ignored. According to appellants their land was contiguous to the land of Raghbir Singh whose land as already mentioned above was acquired by the same Notification. It was urged by the appellant that the principle reason given by the Learned Single Judge based on the reasoning given by trial court is not tenable in law. According to appellant compensation should have been awarded to him on the same basis as was given to Raghbir Singh. The Additional District Judge's reasoning followed by the Learned Single Judge viz., that since Raghbir Singh's land was developed, cut into plots and he had the potentiality to develop the land and sell it into small plots, Therefore entitled to higher rates, is contrary to the well-settled principle of law. The potentiality which has to be taken into consideration is the capability of its being used in future. Even if the layout plan had not been submitted nor sanctioned, it is not a very relevant consideration as in the case of D.L.F. Housing and Construction (P) Ltd. Vs. Union of India (UOI), . Similarly in a recent judgment in the case of Tek Chand (Dead) by Lrs. and Others Vs. Union of India (UOI) and Others, the Supreme Court has held that in the land acquisition proceedings compensation has to be fixed on the basis of a hypothetical sale at or about the time of the notification u/s 4 of the Act on similar land by a willing seller to a willing buyer, there being no other factor like urgent need of the money or urgent need of the land for a special purpose and so on which might depress or augment the price. In determining the compensation the ability of a particular party or his lack of ability to develop the land and to realise the potential cannot be regarded as a relevant circumstance. In another case Nand Ram and Ors. v. The State of Haryana : reported in Jt 1988 (4) S.C. 260 it was observed that State cannot refuse to pay in respect of lands acquired under the same notification, compensation awarded to the land owners whose similarly situated lands had been acquired under the same notification and for the same purpose.

(9) The above principle which was followed in the case of Raghbir Singh was not followed in the case of the appellant while disposing the Rfa Nos. 279/72 and 713/70 -by the learned Single Judge. In the case of the appellant the learned Single Judge only considered the sale instances and ignored the potential value of the land which to our mind was not a correct approach.

(10) The land of the appellant was not covered by Land Reforms Act, hence no restriction was there for its use. It could be used for building purpose. But the learned Single Judge has neither taken these factors into consideration nor

discussed the potential value of this land vis-a-vis the adjoining land of well-developed colonies. Therefore, to our mind the learned Single Judge erred by awarding lesser rates to the appellant being actual owner than to Raghbir Singh a coloniser. This distinction drawn by the learned Single Judge as discussed above being contrary to law, the impugned judgment cannot be sustained .

(11) Against the judgment of the learned Additional District Judge the appellant claim in the Regular First Appeal enhanced compensation @ Rs. 4,950/ per bigha over and above the award of Additional District Judge. Learned Additional District Judge had awarded Rs. 3,750.00 per bigha for the land falling in Block "A". This court has held in number of cases that village as a whole has to be taken as a unit. Taking that to be the criteria we assess the market value of the land of the appellant to be Rs. 8,700.00 i.e. the rate fixed by the learned Additional District Judge i.e. Rs. 3750/ plus the enhanced compensation claimed Rs. 4,950.00 ; the total of which comes to Rs. 8,700.00 . We accordingly hold that the appellants are entitled to compensation Rs. 8,700.00 per bigha minus deduction Rs. 500.00 per bigha charges on account of development.

(12) For reasons stated above, we set aside the impugned judgment dated May 14, 1980 and accept the appeals. The appellants shall also be entitled to solarium @ 15%, and interest @ 6% for all the years. Deficient court fee be deposited in Court within 10 days. The appellants shall also be entitled to costs of the appeal. The appeal is accordingly disposed of.