

(2023) 08 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Civil First Appeal No. 20 Of 2013 (O&M)

Choudhary Mohd. Khan

APPELLANT

Vs

Collector Land Acquisition, Jammu

RESPONDENT

Date of Decision : 10-08-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 18, 23

Citation : (2023) 08 J&K CK 0019

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Intikhab H. Shah, Priyanka Bhat, Monika Kohli

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The Collector, Land Acquisition, Jammu, Assistant Commissioner, (R) (for short " the Collector?) vide award dated 26.07.2004 determined the market rate of the land at the rate of Rs. 25,000/- per kanal, for acquisition of 45 kanals and 5 marlas of the land of the predecessor-in-interest of the appellant. The predecessor-in-interest of the appellant was not satisfied with the award and as such, he filed an application for making reference in terms of section 18 of the Land Acquisition Act. The prayer of the predecessor-in-interest of the appellant was acceded to by the Collector and reference was made before the Principal District Judge, Jammu which was subsequently transferred to the court of 2nd Additional District Judge, Jammu (hereinafter to be referred as " the reference court").

2. The reference court framed the following issues:

"(1) whether the compensation awarded by the Collector was not in accordance with market rate, prevalent at the time of acquisition or the land in question? If so, what was the market rate, prevalent at the time of acquisition of the land in question (OPP)

(2) whether the reference is time barred? (OPR)

(3) Relief. (OP Parties)."

3. The predecessor-in-interest of the appellant in fact had died before the passing of the award by the reference court but the reference court was not informed about the same and the counsel for the predecessor-in-interest of the appellant argued the matter, leading to the passing of the award dated 06.09.2012, whereby the compensation was enhanced and the market value of the land was fixed at the rate of Rs. 30,000/- per kanal. The appellant not satisfied with the enhancement of the compensation by the reference court, has assailed the judgment dated 06.09.2012 of the reference court in the present appeal and has prayed for enhancement of the compensation to Rs. 1 lac per kanal on the ground that the reference court has not appreciated the statements of the witnesses produced by the predecessor-in-interest of the appellant, as the witnesses were not cross-examined by other side and his evidence remained un-rebutted. It is also stated that the land has been sold in the month of September, 2002 at a sale consideration of Rs.1.00 lac per kanal only and the Tehsildar, R. S. Pura had conveyed that the prevailing market rate of the land was Rs. 1.00 lac per kanal.

4. Mr. I. H. Shah, learned counsel for the appellant vehemently argued that the learned reference court has neither properly appreciated the un-rebutted evidence led by the predecessor-in-interest of the appellant nor the communication addressed by the Tehsildar R. S. Pura to the Collector wherein he had stated that prevailing market rate of the land was Rs. 1.00 lac per kanal.

5. Per contra, Ms. Priyanka Bhat, learned counsel appearing vice Ms. Monika Kohli, representing respondent vehemently argued that the learned reference court has rightly passed the award as the agreement to sell executed by the predecessor-in-interest of the appellant cannot be considered for the purpose of determining the market value of the land and it is only the sale deed of the land that can be considered for the purpose of determining the compensation.

6. Heard and perused the record.

7. The grievance projected by the appellant in the present appeal is twofold:

(1) that the learned reference court did not appreciate the un-rebutted evidence led by the predecessor-in-interest of the appellant and also ignored the agreement to sell executed in the year, 2002.

(2) that the learned reference court has not appreciated the communication dated 15.03.2003, whereby the Tehsildar, R. S. Pura had stated that the present market value of the agriculture land is Rs. 5000/- per marlas (i.e. Rs. one lac per kanal).

Issue No. 1

8 A perusal of the application filed by the predecessor-in-interest of the appellant

reveals that he had stated that the market rate of the land at the time of the notification issued under section 4 of the Land Acquisition Act was about Rs. 3 lacs per kanal and the said application was filed on 17.12.2004 and on the basis of said application, the reference was made to the court of Principal District Judge, Jammu vide order dated 26.04.2005.

9 In order to prove the market value of the land, the predecessor-in-interest of the appellant besides examining himself, also examined two witnesses, namely, Mohd. Yaqoob and Talib Hussain. The predecessor-in-interest of the appellant had stated that in the year 2002, the market value of the land was Rs. 1.20 lacs per kanal. Further, he also stated that on 07.09.2002, he had entered into an agreement with Mohd. Yaqoob for selling five kanals of land for an amount of Rs. 5 lacs. As the land was acquired, he could not execute the sale deed in favour of Mohd. Yaqoob. He had also obtained Rs. one lac as an advance. He proved the agreement to sell (ExPW-FD). During cross-examination, he stated that he did not know as to whether in the year, 2002 or before that any sale of the land adjacent to his land, took place or not. Appellant witness-Mohd. Yaqoob proved the agreement to sell (ExPW-FD). He stated that the agreement was executed on 07.11.2002 and that agreement pertained to five kanals of land situated at village, Ganda. Total sale consideration was fixed as Rs. 5.00 lacs. AW-Talib Hussain was an attesting witness to the said agreement to sell. He also proved the agreement to sell. He further stated that the sale deed could not be executed because the notice for acquisition of the land in question was issued.

10 From the evidence led by the predecessor-in-interest of the appellant, it is evident that no comparable sale of identical land has been proved by the appellant whereby, the land was sold at Rs. 1.00 lac per kanal. In an application for making reference filed before the Collector, the predecessor-in-interest of the appellant has mentioned the market value of the land as Rs. 3.00 lacs per kanal. In the statement before the reference court, the predecessor-in-interest of the appellant stated that the market value of the land at the rate of Rs. 1.20 per kanal. In view of these statements, it is hard to fathom as to how he sold the land to Mohd. Yaqoob for an amount of Rs. 1.00 lac per kanal when the market rate of land was Rs. 3 lac or 1.20 lacs per kanal in the year, 2002. In Viluben Jhalejar Contractor (Dead) by LRs. Vs. State of Gujarat, (2005) 4 SCC 789 12, The Apex Court has laid down the following principles for determination of market value of the acquired land :-

"17. Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification Under Sub-section (1) of Section 4.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefore it is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in

possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification Under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition...."

11. The predecessor-in-interest of the appellant did not produce any sale exemplar either in respect of similar land or in the close vicinity of the acquired land to demonstrate the market value of the land. The agreement to sell executed by the predecessor-in-interest of the appellant cannot be considered for the purpose of determining the market value of the land. The learned reference court has considered this aspect of the case and it cannot be said that the learned reference court has not rightly appreciated the evidence led by the predecessor-in-interest of the appellant.

Issue No. 2

12. Much reliance was placed by the learned counsel for the appellant on the communication dated 15.03.2003 made by the Tehsildar, R.S Pura. A perusal of the same would reveal that the average sale rate of the area was Rs. 22,545.80/- per kanal. In the same report, the Tehsildar R. S. Pura has mentioned that as per the local residents, the present market value is about 1.20 lac per kanal. What was the basis for the Tehsildar, R. S. Pura to opine that the market value of the agriculture land was Rs. 1 lac per kanal is not forthcoming from the communication. The said assessment was made by the Tehsildar R. S. Pura on the basis of hearsay only. A perusal of the award reveals that the total quantum of the sale-purchase of the land in the said village for the last 3 years was only to the extent of 19 kanals and 12 marlas and there were only 10 sale transactions. The Collector had also personally visited the spot and had found that the acquired land was about one kilometre away from the R. S Pura road and was located in patches and these patches was surrounded by the land of other land owners. It was also observed by the Collector that there was no direct approach road to these patches and one had to pass through the field of other land owners to reach the various patches. After taking note of the location of the land, the Collector fixed the rate of the land at Rs. 30,000/- per kanal in the draft award, but subsequently the same was reduced to Rs. 25,000/- per kanal in the final award. In view of the above findings of the Collector and also that there was

no basis/data before the Tehsildar R. S. Pura to mention the market value of the agriculture land as Rs. 1.00 lac per kanal in his communication dated 15.03.2003, this Court is of the considered view that the said report cannot come to the rescue of the appellant and this Court has examined the award passed by the reference court, wherein the reference court has considered in detail the evidence led by the predecessor-in-interest of the appellant and after detailed discussion, has enhanced the amount of compensation from Rs. 25,000/- per kanal to Rs. 30,000/- per kanal. This Court does not find any illegality in the award passed by the reference court and also the appellant has not been able to make out a case for further enhancement of the compensation of the acquired land.

13. Viewed thus, the present appeal is without any merit, as such, the same is dismissed. Record be sent back forthwith.