
(1973) 01 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Appeals No's. 16, 17 and 30 of 1971 and Appeal No. 12 of 1972

Collector

APPELLANT

Vs

Ghulam Qadir Sheikh and others

RESPONDENT

Date of Decision : 15-01-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 20, 23, 23(1), 25

Citation : AIR 1974 J&K 45

Hon'ble Judges : S.M.F. Ali, C.J.;Jaswant Singh, J

Bench : Division Bench

Advocate : J.N. Bhan, M.A. Nehvi and A.K. Malik, for the Appellant; R.N. Kaul, S.T. Hussain and S.K. Chaku, for the Respondent

Final Decision : Dismissed

Judgement

Jaswant Singh, J.—This bunch of four appeals which are directed against three separate awards given by three different District Judges of

Srinagar on three separate references made to them u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act") shall be disposed of

by this judgment as they raise common questions of law and arise out of a common award made by the Collector. Srinagar, u/s 11 of the Act. It

appears that in connection with slum clearance scheme the State Government acquired in 1965 a huge area of land in two Tehsils of Kashmir

including 820 Kanals and 15 marlas of land in Zoonimar. Srinagar, Proceedings for the acquisition of the aforesaid area which culminated in the

award dated January 10, 1966. of the Collector, Srinagar. commenced on January 14. 1965. with the issue of Notification u/s 4 of the Act

2. Out of the area acquired in Zoonimar, Srinagar. land measuring 27 Kanals and 7 Marias described as "Bagh Kushki" comprised in Khasra No.

3826 Mitt belonged to Ghulam Qadir, Abdul Rashid and Ghulam Ali, appellants in appeal No. 17 of 1971, land measuring 5 Kanals and 11

Marias (consisting of 2 Kanals, 12 Marias described as Bagh Khushki, 13 Marlas as Bagh Maidani and 2 Kanals and 6 Marias as Ghair Mumkin)

comprised in Khasra Nos. 3871 and 3872 belonged to Mst. Ateeqa and Asghar Ali, respondents in appeal No. 30 of 1971 and land measuring

28 Kanals. 7 Marias and 3 Sarsais consisting of 17 Kanals and 12 marlas classed as Bagh Khushki. 9 Kanals classed as Maidani and 1 Kanal and

15 Marlas classed as Ghair Mumkin out of Khasra Nos. 3757. 3827, 3828. 3829, 3833 Min and 3863 belonged to Ghulam Ali Khan,

respondent in appeal No. 12 of 1972. The Collector assessed the compensation for different kinds of lands referred to above as under :-

1/- BaghiAbi... Rs. 3,991.00 per Kanal

2/- BaghiKhushki... Rs. 1,743.80 per Kanal

3/- MaidaniAbiSoim and Labroo etc.... Rs. 1,450.40 per Kanal

4/- BanjerKadeejn and GairMumkineta... Rs. 737.00 per Kanal

3. On the compensation worked out at the above rates Jabrana at the statutory rate of 15% was also allowed by the Collector. The Collector, did

not, however, allow any compensation for the trees standing on the plots of lands acquired on the ground that the department did not desire to

retain them and the owners could cut and remove the same In regard to the structures standing on the dots of land acquired. It was observed by

the Collector that the Executive Engineer, Housing Division, had been directed to assess the compensation and on the completion of the

assessment supplementary award in respect of the same would be issued. Thus the Collector allowed Rs. 51,930.80 to Ghulam Qadir and others,

appellants in Appeal No. 17 of 1971, Rs. 8,955.32 to Mst. Ateeqa Bano and Asghar Ali, respondents in appeal No. 30 of 1971 and Rs.

54,101.78 to Ghulam Ali Khan, respondent in appeal No. 12 of 1972.

4. The aforesaid land owners received the compensation given to them under protest and. by separate applications made u/s 18 of the Act

required the Collector to refer their cases to the District Court for determination of the amount of compensation due to them. The Collector

granted their prayer and referred their cases to the Court On receipt of the references the Court issued necessary notices u/s 20 of the Act All the

references were contested by the Collector inter alia on the grounds that the compensation was fixed according to classification of the prices of

land comprised in the aforesaid area keeping in view the reasonable market value of the land and the claims made by the owners at whose instance

the references were made were grossly exaggerated and baseless. After raising the necessary issues and affording an opportunity to the parties to

adduce their evidence the Court allowed to Gulam Qadir and others, respondents in appeal No. 17 of 1971, compensation at the rate of Rs.

2,647/- per Kanal on the basis of Item No. 15 of the statement of sales (Ex. DW 1) produced on behalf of the Collector which related to sale on

August 17, 1964. of land measuring 11 Kanals and 18 Marlas in consideration of a sum of Rs. 1,500/-: Thus the Court enhanced the

compensation given to Ghulam Qadir and others, respondents, in appeal No: 17 of 1971, by a sum of Rupees 31,315.96 and also awarded them

interest at the rate of 4% per annum from the date of possession of the land was taken to the date of payment. The Court modified the Collector's

award by allowing to Mst. Ateeqa Band and Asghar Ali Qureshi compensation at the rate of Rs. 4000/- per kanal and consequently held them

entitled to Rupees. 22,200 plus Rs. 3,030/- by way of statutory Jabrana at 15% as also to interest at 4% per annum from the date the Collector

took possession of the acquired land till the amount was liquidated instead of Rs. 8,955.32 given to them by the Collector. The Court awarded

compensation to Ghulam Ali. respondent in appeal No. 12 of 1972 at the rate of 55 paisa per sq. ft. and held him entitled to Rs. 30,770.92 in

addition to the compensation already allowed to him by the Collector. It is against these awards of the Court that the aforesaid appeals have been

preferred.

5. The learned counsel appearing on behalf of the Collector and the State have submitted that the compensation allowed to the aforesaid owners of

lands was exorbitant and was based on irrelevant considerations.

6. The learned counsel appearing on behalf of the aforesaid proprietors of the lands have on the other hand urged that the compensation awarded

to them both by the Collector and the Court was inadequate and did not represent the real market value of the land.

7. We have carefully considered the submissions of the learned counsel for the

parties.

8. The principles relating to the determination of compensation are contained in Section 23 of the Act which aims at providing lawful and just

compensation for the acquisition made by the State. According to first clause of this Section the Court has to take into consideration the market

value of the land at the date of publication of the notification u/s 6 of the Act It is now well recognized that the measure of market value is what a

willing purchaser might at the date of the aforesaid notification pay for the right to the land. (See the Special Land Acquisition and Rehabilitation

Officer, Sagar v. M.S. Seshagiri Rao, AIR 1968 SO 1045.

9. It will be advantageous to refer to the following observations made in State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.,

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In the case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar

advantages. Where there are no sales of comparable lands, the value must be found in some other way. One method is to take the annual income

which the owner is expected to obtain from the land and to capitalise it by a number of years purchase. The capitalised value is then taken as the

market value which a willing vendor might reasonably expect to obtain from a willing buyer. In some special cases awards have been given on the

basis of the reinstatement value which is assessed according to the cost of acquiring an equally convenient land or premises. This method should

not be adopted where the market value deduced from the income derived from the lands would fairly compensate the owner and in no case

reinstatement value be given unless reinstatement in' some other place is bona fide intended.

It is also well settled that the broad object underlying the principle governing the valuation is to award to the owner an equivalent of his property

with its existing advantages and its potentialities. (See Smt. Tribeni Devi and Others Vs. Collector of Ranchi, .

10. It is also well recognised that in determining compensation the value fetched for small plots of land cannot be applied to the lands covering a

very large extent and that the large area of land cannot possibly fetch a price at the same rate at which small plots are sold. (See The Collector of

Lakhimpur Vs. Bhuban Chandra Dutta, .

11. Although the learned counsel for the Collector have suggested that compensation should be determined on the basis of the average rate of the three years preceding the acquisition i.e. 1962. 1963 and 1964, as adopted by the Collector and the learned counsel for the owners of lands have contended that the compensation should be according to (he rates paid by the Municipal Committee Srinagar, in the year 1964 for lands acquired by it in connection with the road widening scheme, we think that neither of these methods would be a satisfactory method of arriving at the compensation. The average based on the value of lands cannot, in our opinion, be a true guide for determination of compensation as it runs counter to the method indicated in clause firstly of Section 23 (1) of the Act. Again the rate of compensation paid by the Municipal Committee. Srinagar in 1964 for the acquisitions made in connection with the widening of the road, cannot serve as a guide for determining compensation as the acquisitions were of small portions of frontage of some properties and as held in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, in determining compensation the value fetched for small plots of land cannot be applied to lands covering a very large extent. We cannot also overlook that market value is the price the property may fetch in open-market if sold by an owner uneffected by the special needs of a particular purchaser.

12. Though the evidence produced by the parties in all these cases is not of a very satisfactory nature, there is intrinsic evidence in the Collector's award itself which can help us in assessing reasonable compensation to be awarded to the land owners. If according to the well-settled principles the market value is to be determined from sales of comparable property proximate in time to the date of acquisition and possessing the same or similar advantages and subject to the same or similar disadvantages, we fail to see how the Collector by the same award allowed compensation at the rate of Rs. 3,991/- per Kanal for 2 Kanals and 10 marlas of Bagh Khushki situate in the same locality and allowed Rs. 1,743.80 for the same quality of lands to the other owners. We see no reason for the Collector awarding compensation at one rate to one owner and at another rate for similar land to another owner. The invidious distinction drawn by the Collector is

not at all understandable. We think the Collector ought to have awarded compensation at the rate of Rs. 3,991/- per kanal for Bagh Khushki. Bagh Maidani and Banjar Kadeem etc. as the potential value of the plots in the instant cases was the same and this would have been in consonance with the principles enunciated by their Lordships of the Supreme Court in Smt. Tribeni Devi and Others Vs. Collector of Ranchi, .

13. Having examined the principles governing the determination of compensation and settled the rate at which compensation ought to have been allowed, let us now take up each appeal separately:

Appeals Nos. 16 and 17 of 1971

14. As Ghulam Qadir and others respondents in appeal No. 16 of 1971 and appellants in appeal No. 17 of 1971. were entitled, as indicated

above to Rs. 3991/- per Kanal as compensation and have been allowed only Rs. 2.647/- per Kanal, we dismiss appeal No. 16 of 1971". allow

appeal No. 17 of 1971, and enhance the compensation in their favour by Rs. 1.344/-per Kanal. They are also held entitled to additional solatium

of 15% on the enhanced amount. They shall also get interest at the rate of 4% per annum on the amount enhanced from the date the Collector took

possession of their lands to the date the entire payment due to them is made.

Appeal No. 30 of 1971

15. So far as Mst. Ateeqa Bano and Asghar Ali's case is concerned we think that though in view of the principles set out above, the compensation

allowed to them by the Collector was grossly inadequate, the Court could not have awarded compensation to them at the rate of Rs. 4,000/- per

Kanal. This is so because as apparent from the statement of Mohamad Yussuf Querishu Mukhtar of Mst. Ateeqa Bano and Asghar Ali. they had

claimed compensation from the Collector at the rate of only Rs. 3,500/- and u/s 25 of the Act, they could not have been allowed more

compensation than claimed by them. Appeal No. 30 of 1971. is. therefore, allowed to the extent that instead of Rs. 4,000/- per Kanal

compensation will be allowed to the said respondents at the rate of Rs. 3,500/- per Kanal plus 15% by way of statutory solatium and interest at

the rate of 4% from the date of the taking of possession of the land by the Collector to the date the said payment is made to them.

Appeal No. 12 of 1972

16. So far as Ghulam Ali's case is concerned we think, there is no warrant for reducing the compensation awarded by the Court. As indicated

earlier, Ghulam Ali was entitled to compensation at the rate of Rs. 3,991/- per Kanal. Since, however, he has not preferred any appeal against the

decision of the Court awarding him a lesser compensation, we are unable to enhance the compensation awarded in his favour. We would,

therefore, maintain the decision of the Court and dismiss appeal No. 12 of 1972. There will be no order as to costs of these appeals.