

(1984) 12 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil First Appeal No. 25 of 1980

Collector, Assistant Commissioner, Land Acquisition, P.W.D., Jammu APPELLANT

Vs

Baldev Singh and Others RESPONDENT

Date of Decision : 18-12-1984

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 18, 23

Citation : AIR 1986 J&K 18

Hon'ble Judges : M.A. Shah, J;K.K. Gupta, J

Bench : Division Bench

Advocate : S.D. Sharma, Chief Government Advocate, for the Appellant; D.R. Khajuria, for the Respondent

Final Decision : Partly Allowed

Judgement

Shah, J.—This is an appeal against the judgment and award given by Additional District Judge, Jammu in Land Acquisition File No. 63/L.A.

Act of 1978 passed on Oct., 15. 1980. The Collector made a reference u/s 18 of the Land Acquisition Act to the District Judge about the claim

put forward by the respondents before him. The learned Additional District Judge after giving an opportunity to the respective parties to adduce

their evidence gave the award by raising the compensation awarded by the Collector to the respondents to the tune of Rs. 4,000/- per kanal. It is

not disputed that the Collector by award in case No. LA/1316-17 dated Nov. 30, 1977 gave an award regarding the acquisition of land

measuring 86 kanals and 1 marla in village Bagla, Tehsil Samba, and 26 kanals and 10 marlas in village Man Sukha Singh and 5 kanals and 3

marlas in village Chak Qadir of Tehsil R.S. Pura, District Jammu. Notice u/s 4 of

the Land Acquisition Act (hereinafter called the Act) was issued on May 12, 1976 and u/s 6, the same was published on June 10, 1976. Simultaneously a notice u/s 5-A of the Act was also issued. No objection to the acquisition of the above land was filed u/s 5-A of the Act by the interested persons. The Collector after enquiry u/s 23 of the Act determined the compensation of the land as follows : --

- (i) Hail Rs. 900/- per kanal
- (ii) Mera I and Salaba Rs. 800/- per kanal
- (iii) Mera II Rs. 700/- per kanal
- (iv) Banjar Qadim Rs.300/- per kanal
- (v) Gair Mumkin Rs. 200/- per kanal

The respondents were aggrieved against the said award given by the Collector, hence a reference on their application was made u/s 18 of the Act.

2. The learned Additional District Judge on the assessment of the evidence produced by the claimants/respondents, Messefa (1) Chain Singh, (2)

Hari Singh, (3) Mohd. Ashraf, (4) Chhankar Singh and (5) Gulab Singh were examined on behalf of the respondents. Along with the said

witnesses the sale deeds EXPWCS, EXPWMA and EXPWGS have also been placed on record. The learned Additional District Judge after

assessing the above-said evidence produced by the respondents assessed the compensation to Rs. 4,000/- per kanal and thus the amount, which

was awarded by the Collector quoted above was enhanced irrespective of the classification of land to a sum of Rs. 4,000/- per kanal. Being

aggrieved against the said award given by the Additional District Judge, the Collector has come up on this appeal before us challenging the

quantum of compensation awarded by him.

3. Heard learned counsel for the parties. Learned Chief Government Advocate argued before us that the assessment of potentialities by the learned

Additional District Judge is based on no principle, and without any foundation the amount of Rs. 4,000/- per kanal is arrived at by him, which is

arbitrary and excessive. He further submitted that before the Collector, three of the respondents who were present on the spot when the Collector

recorded their statements have put forward their claim for a sum of Rs. 1,500/- per kanal only and thus the learned Additional District Judge

ignoring the admission of the respondents, which should be termed as a limit of the claim put forward in REPLY to notice u/s 9 of the Act, the respondents are not entitled to claim more than that. Having gone through the record and examining the statements taken by the Collector on which great emphasis is laid by the learned Chief Government Advocate, we find that the statements recorded by the Collector are joint and not in accordance with the provisions of the Evidence Act, which are liable to be ignored and thus we do not rely on such a statement, which cannot be said to be in any manner an admission in response to notice u/s 9 of the Act. Learned Chief Government Advocate was unable to show before us any reply in writing accepting the price of the acquired land by the respondents as Rs. 1,500/- per kanal. Learned Chief Government Advocate also submitted that the learned Additional District Judge, failed to give a reasoning to arrive at a figure of Rs. 4,000/- per kanal in the villages specially of the land, which was entered as agricultural and at the relevant time, moreover, it is against the principle of Section 23 of the Act to take into account the transactions made of the small plots of land, which are relied on by the learned Additional District Judge to assess the compensation at Rs. 4,000/- per kanal. In support of his contention, he relied on the authority of their Lordships of the Hon'ble Supreme Court reported in Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, , wherein it has been held, ""Acquisition of large area of land --Determination of Compensation -- Price paid for small plots of land cannot provide a safe guide or criterion for determining compensation for a large area."" It is apparent that the total land acquired in the present case is a large chunk of 117 kanals and 14 marlas, the learned Additional District Judge has not considered this aspect in his award nor there is any discussion over the aspect pointed above. Similar view is held in Padma Uppal and Others Vs. State of Punjab and Others, . Learned Chief Government Advocate also tried to persuade us relying on an authority of their Lordships of the Supreme Court reported in Dadu Yogendra Nath Singh and Others Vs. The Collector, Seoni, . That claim for compensation in pursuance of notice u/s 9 of the Act made by the respondents was only limited to Rs. 1,500/- per kanal, thus the award of compensation in excess of the claim was held wrong. In this respect we have already made it clear as above that the learned Chief Government

Advocate failed to show before us any such claim in response to notice u/s 9 of the Act, by which we can bind the respondents not to claim more than Rs. 1,500/-per kanal.

4. Learned counsel for the respondents in reply submitted that the arguments advanced by the learned Chief Government Advocate has no basis to stand. Learned Additional District Judge on consideration of the evidence produced before him has validly come to a conclusion that a claim of Rs.

4,000/- per kanal is appropriate and is a reasonable compensation looking to the potentiality of the land for future development and the

transactions made before and after the notification of land acquisition issued in the present case. In support of his contention, he placed his reliance

on 1981 KLJ 451 : (AIR 1982 J&K 23), (State v. Mohd. Yasin) and Smt. Tribeni Devi and Others Vs. Collector of Ranchi, and thus supported

the award given by the learned Additional District Judge and submitted that the appeal has no substance and liable to be dismissed.

5. Having gone through the record and considering the arguments put forward by the respective counsel for the parties, we find that the land

acquired in the present case is situated in a village, which is admittedly a large chunk of land consisting of 117 kanals and 14 marlas in three

parcels, thus it cannot be said that in order to equalize the potentiality of the land in question the learned Additional District Judge has rightly come

to a conclusion in arriving at a sum of Rs. 4,000/- per kanal. In our, opinion, the learned Additional District Judge lost sight of the principle laid

down by their Lordships of the Supreme Court in Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, and has

taken into account the sale deeds of small plots of land, which cannot form safe basis for arriving at a definite conclusion about the potentiality of

the land acquired. Moreover, this is also to be taken into account while assessing the compensation regarding large areas of land for assessing the

potentiality for building sites that in making plots for building sites on an average, the land for roads and drainage etc. is to be excluded and also the

development charges in developing the land for the purpose of building sites shall have to be taken into account. On going through the findings

arrived at by the learned Additional District Judge and the evidence produced before him, we find that the learned Additional District Judge has

completely lost sight of the above-said principle in assessing the compensation, even taking into consideration the amount arrived at by the learned

Additional District Judge at Rs. 4,000/- per kanal, apart from the fact that he should have taken into account the proximity of the land acquired

near the road and away from the road, he should have made a classification instead of fixing a lump sum amount equally applicable to all the land

acquired. He has also lost sight of deducting the amount for leaving the space for roads and for drainage. Thus leaving the margin for roads at 25

per cent and 7 per cent for drainage, etc., we find that at least 33 per cent of the compensation arrived at by the learned Additional District Judge

should have been deducted out of the amount of Rs. 4,000/- per kanal. Calculating the compensation on the above principle, we deduct 33 per

cent of the amount of Rs. 4,000/- per kanal, which comes to Rs. 2,680/- per kanal. Thus we hold that the respondents are entitled to a

compensation for the land acquired at the rate of Rs. 2,680/-per kanal and the appeal deserves to be allowed to this extent by reducing the

compensation from Rs. 4,000/- per kanal to Rs. 2,680/- per kanal.

6. For the reasons stated above, the appeal is partly allowed. The judgment and award given by the learned Additional District Judge, Jammu

stands modified as stated above and the respondents are held entitled to the compensation at the rate of Rs. 2,680/- per kanal with proportionate

interest on the said amount at the rate of Rs. 4 per cent per annum till the above amount is paid and Jabrana at the rate of Rs. 15/- per cent on the

compensation awarded. In the facts and circumstances of the case, the parties are left to bear their own costs and the judgment and award given

by the learned Additional District Judge, Jammu stands modified as stated above. The record be sent back. C.M.P. No. 133 of 1980 also stands

disposed of and the stay granted by this Court on December 31, 1980 stands vacated.