

(1974) 09 MP CK 0002

In the Madhya Pradesh High Court

Case No : F.A. No's. 65 and 35 of 1974

Collector Durg

APPELLANT

Vs

Saroj Kumari

RESPONDENT

Date of Decision : 15-09-1974

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 24, 4, 4(1), 6

Citation : (1975) JLI 769

Hon'ble Judges : M.L. Malik, J;C.P. Sen, J

Bench : Division Bench

Advocate : M.V. Tamaskar and A.P. Tare, Government Advocates, for the Appellant; D.P. Agrawal and A.K. Khaskalam for respondent, for the Respondent

Final Decision : Dismissed

Judgement

Malik, J.—These appeals are directed against the order of the Second Additional District Judge, Durg, dated the 19th October. 1973, passed in Miscellaneous Judicial Case No. 72 of 1971. The question that arises for consideration is whether the Additional District Judge has determined just compensation payable to Saroj Kumari for acquisition of ben(sic) lands, Kh. Nos. 941/1 and 941/12, total area 1.65 acres, of Mouza Kasaridih in Tahsil and District Durg.

2. By notification dated the 2nd December, 1959 (published in the Madhya Pradesh Rajpatra of the 4th December, 1959), the State Government proposed to acquire 127.50 acres of land of Mouza Kasaridih. The notification was issued u/s 4(1) of the Land Acquisition Act. Saroj Kumari's land was involved in this acquisition.

The Land Acquisition Officer made an award on 6-7-1961 before the notification u/s 6 of the Act could be published. But then he realized his mistake. But before he could rectify it by initiating fresh proceedings after the publication of the notification u/s 6 on 6th May, 1962, Saroj Kumari got the award dated the 6th July, 1961, struck down by the High Court, by filing a writ petition. The Land

Acquisition Officer was directed by this Court to proceed afresh in accordance with the provisions of law.

3. The Land Acquisition Officer fell into an error again. He proceeded on the basis of the previous notices issued u/s 9 of the Act. He did not withdraw the earlier award dated the 6th July, 1961. He acted on the evidence and depositions previously recorded. The claimants were not given fresh opportunity to put in additional evidence. Saroj Kumari, therefore, came again to the High Court making a grievance against the second award dated the 6th October, 1964. That award was also quashed. (See: Smt. Saroj Kumari v. The State of Madhya Pradesh 1966 J LJ 38 : 1966 MPLJ 473).

4. We are dealing here with the third award made by the Land Acquisition Officer on the 4th August, 1969. No procedural errors seem to have been committed in the proceedings which commenced after the decision of High Court on 15-12-1965 in the second writ petition which Saroj Kumari had filed. No challenge in that regard has been made. Presumably, therefore, there were no procedural or constitutional errors.

5. The effect of the earlier decisions of the High Court vitiating the awards dated 6-7-1961 and 6-10-1964, was, however, not to render nugatory the validity of the proceedings upto the stage of declaration made u/s 6. The proceedings upto that stage had achieved finality. (See: The Tuticorin Municipal Council v. A.R.A.S. Arunagiri and others ILR 1966 (1) Mad. 336 The crucial date for determination of the market value would, therefore, be the date of the publication of the notification u/s 4(1) of the Act i.e. the 4th December, 1959.

6. The Land Acquisition officer made an award on the basis of a multiple per rupee rental. The multiple was worked out by him at 1146 He took into consideration the oral evidence led by the parties, which gave the market value of the agricultural lands at Rs. 2,000 to Rs. 3,000 an acre. According to him, the lands were essentially paddy fields, with high embankments, water-clogged during rains, and to convert them into building sites, would mean an expense of Rs. 15,000 to Rs. 20,000 an acre. In his view, the sale-deeds which the claimants relied upon and which mostly concerned building-sites in the Abadi, or close in vicinity, could not furnish the correct basis for valuation. He was, therefore, inclined to ignore these sale-deeds. Taking into consideration ten representative sales relating to agricultural lands, he divided the total value with the total rental payable and determined the multiple. That furnished the basis for his calculation. In addition, the Land Acquisition Officer gave 10% for potential value, besides the statutory 15% solatium. He also allowed 6% P. A. interest from the date possession was taken i.e. from 30-10-1964 till the payment was made.

7. The Additional District Judge, who heard the reference u/s 18, was of the view that the acquired land had substantial value as a building site on the date of the notification; houses were coming up in the vicinity of the Kasaridih abadi, which

was hardly 250 yards away, the land had the frontage of Uttai-Durg Road and on the other side of the Road were poultry farm and bungalows of the Officers, quite adjacent to the East was Sim's Bakery, Kaley's bungalow and Garage were hardly 100 yards away to the West and section 9 of the Bhilai Steel Plant was only a mile and half to the East. The plots, the learned Judge said, were being sold in the vicinity of the Kasaridih abadi at the rate of Re. 1 per square foot. Inderchand had sold plots to Bablani and Sonkaran at the rate of 75 Nos. and Re. 1 per square foot respectively on 13-8-1960, and these plots were similarly situate, with alike advantages, being only 150 yards away to the East. These plots have the frontage of Uttai-Durg Road. The learned Judge accepted these sales to be genuine transactions and on that basis, worked out the compensation. According to him, the two plots on the road side measuring 11,550 sq. ft., should fetch the market value at the rate of Re. 1 per Sq. ft. The rest of the area, he said, should be divided into two belts. The first belt of 1967 Square feet should be valued at the rate of 75 Nos. per Sq. ft. and the second belt of equal dimensions at the rate of 60 Nos. per Sq. ft. The learned Judge debited against the claimant an equal area of 19,767 Sq. ft. for development and lay-out, to provide approach-roads, drainage and other ancillary amenities.

8. Whereas the Land Acquisition Officer had made an award for Rs. 4,761 inclusive of 15% solatium, the. Additional District Judge determined the compensation at Rs. 49,651.50 Nos. (i.e. Rs. 38,175.25 Nos. for the market value of the land, plus Rs. 5,726.25 Nos. for 15% solatium, plus Rs. 5,000 for the three temporary sheds and other improvements made by the claimant). The excess amount of Rs. 44,890.20 Nos. thus found, was made payable with interest at 6% P. A. from the date possession was taken.

9. The claimant and the Collector have both come up in appeal. The former wants enhancement of the compensation at the rate of Rs. 1.12 Nos. per Sq. ft. She contends that there was no valid justification in debiting against her, 1/3rd of her total area, for approach roads etc. According to her own plans, a proper development needed only 6,250 Sq. ft. for approach roads and not 19,767 Sq. ft. (as debited against by (be Additional District Judge). She has filed a map Ex. P-11-C, showing the development she had in contemplation.

The claimant further pointed out that there was error or a little more than a thousand square feet in the calculation of the total area. That needed correction. Besides, she made a grievance that she ought to have been paid Rs. 11,800 for the structures, the culvert, the fencing and the approach roads she had built on the land She had been paid, instead, only Rs. 5,000.

The Collector on the other hand contends that the lands at the time of the acquisition were essentially paddy fields; there was no pressure of building activity in that direction; the lands possessed, if at all, nominal potential value for their adaptability for house-building purposes, and that too, in very distant future. The learned Additional District Judge, therefore, should have valued the lands basically as agricultural lands and the value could be anything between Rs.

3,000 to Rs. 4000 an acre.

10. This Court had occasion to deal with Sixty seven appeals arising out of these very Land Acquisition Proceedings in Mehtar and Another Vs. The Collector, Durg and Others, An earlier decision of this Court relating to acquisition of 24.37 acres made under notification dated the 27th October, 1960, of contiguous lands, was pronounced on 16-8-1974 in First Appeal No. 113 of 1968 : P.R. Modi Vs. The Collector, Durg, That order governed fifty appeals. If the map locating the situation of the lands were seen, it would be evident that the lands involved in the present appeals is sandwiched between the lands of some of the claimants who were parties to the earlier decisions. For lands having the frontage of Uttai-Durg Road, this Court had made an award at the rate of Rs.5,500 an acre. The appellant's land fell in the same category and our anxiety was that before we overlooked the comparable awards (which the earlier judgment of this Court provided) made in respect of the very contiguous land to the East and West, we should carefully scan the intrinsic value of the evidence which the appellant had given. If the additional evidence improved matters, the appellant was definitely entitled to a better award; or else she must fall in line with the other claimants.

11. It would be pertinent to note that the claimant herself had relied on the awards made by the Additional District Judge in Miscellaneous Judicial Case No 21 of 1966 and Miscellaneous Judicial Case No. 9 of 1971, which matters came in appeal before us, and in turn the award was set aside and substituted by the compensation we determined in First Appeals Nos. 90 of 1973 and 113 of 1968. The learned Government Advocate, therefore, sought leave of the Court to tender the orders in First Appeals Nos. 90 of 1973 and 113 of 1968 as additional evidence He said that the judgments pronounced comparable awards and they were relevant.

The learned counsel for the claimant could not seriously oppose the prayer. The only contention was that the judgments, at best, were decisions inter partes, depending on facts and circumstances brought forth in those cases, and before they could be used, they must satisfy the usual test of relevancy and how they could be made applicable to the facts of the present case. He relied on the authority of the Mysore High Court reported in Additional Special Land Acquisition Officer, Mangalore v. P. Anantha Bhat AIR 1972 Mys 313.

The learned counsel for the claimant further said that the Additional evidence tendered at this stage by the Collector, might necessitate giving of additional evidence in rebuttal by the claimant, for which opportunity should be afforded.

12. We have no doubt whatsoever that the judgments in the First Appeals Nos. 90 of 1973 and 113 of 1968 satisfy all the tests of relevancy. The market value we determined in those cases was for lands in very close proximity, and the date of acquisition was the same in the former appeal, and in the latter, it was ten months ahead. Previous decisions in Land Acquisition Cases have always been held to be relevant in a subsequent case, where market value of the lands in the

same neighbourhood is in issue, [See Madan Mohan and Another Vs. Secretary of State,

As to giving an opportunity for evidence in rebuttal is concerned, the question hardly arises. The claimant herself relied on the judgments of the lower Court, which were then pending in appeal, and ought to have known that the result in appeal might recoil on her.

We have no hesitation in accepting the two judgments on record.

13. Before we discuss the evidence, we could reiterate the principles which should guide the determination of the market value :

(i) "Market value on the basis of which compensation is payable under S, 23 of the Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired." Raghu bans Narain v. The Uttar Pradash Government AIR 1967 SC 465.

(ii) "The value of the potentialities must be ascertained in such materials as are available, without Indulging in feats of imagination"....." The land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the near future.....The land must not be valued as though it had already been built upon.....It is the possibilities of the land and not its realised possibilities that must be taken into consideration." Vyricherla Narayana Gajpa(sic)"iraju v. Revenue Divisional Officer, Vizagapatam AIR 1919 PC 98.

(iii) "In the context of building potentiality many questions will have to be asked and answered; whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the overall picture drawn on the said relevant circumstances that affords the solution." Raghubans Narain v. The Uttar Pradesh Govt. AIR 1967 SC 465 at p. 467.

(iv) "Method of valuation may be (i) opinion of experts, (ii) price paid within a reasonable time in bona fide transaction of purchase of lands acquired and the lands adjacent to the lands acquired and possessing similar advantage and (iii) a number of years purchases of the actual or immediately prospective profits of the lands acquired;

For considering oral evidence, Court is not bound to accept the statements of

witnesses only because they have not been effectively cross examined or evidence in rebuttal has not been adduced, Judges are not computers.....They are bound to call into aid their experience of life and test the evidence on the basis of proba-bilities." Chaturbhuj Pande and Others Vs. Collector, Raigarh, .

(v) Comparable sales on the basis of which market price is determined should be of such lands as are (a) similar in character as far as may be, (b) reasonably proximus to the acquired land, "c) should have similar amenities and advantages and (d) these should be transactions of time reasonably proximus to the date of the acquisition.

14. We may state at the outset that the Additional District Judge was right in rejecting the basis of a multiple adopted by the Land Acquisition Officer. The choice of the ten representative sales on which the multiple was worked out, was not only arbitrary but the price paid in respect of each transaction was also not proved by the parties to the transaction or by those who had personal knowledge about it. It is also not known if the transactions related to lands which were in close proximity of the lands acquired, Time and again, this method of multiple for determining the market value has been condemned by this Court.

15. Insofar as the evidence before the Additional District Judge is concerned, the following transactions have been proved by the claimant:

Ex. No.

Date of sale

Area sold

Price paid

Kh No.

P-1C

24.11.58

11250 Sq ft.

Rs. 11250-00

48

P-2C

16.459

2 Decimal

27x30 Sq. ft.

Rs. 800-00

763-3

P-3C

5.12.58

25x60

1500 Sq ft.

Rs. 2000-00

763-1

P-4C

24.4.58

1440 Sq ft.

Rs. 1500-00

763-1

P-5C

13.8.60

2500 Sq. ft.

Rs. 2500-00

937-1

P-6C

13.8.60

10000 Sq ft.

Rs. 7500-00

940

P-7C

1.4.59

1800 Sq. ft.

Rs. 2000-00

726-1

P-8C

25.1.58

4 Decimal

1431 Sq. ft.

Rs. 2000 00

763-3

P-9C

3.7.58

480 Sq. ft.

Rs. 500-00

763-3

P-10-C

4.2.59

1800 Sq ft.

Rs. 2363-50

763-1

The learned Additional District Judge in para 9 of his order, makes the following observations in respect of the plots out of Khasra Nos. 48, 763-1, 763 3, and 726-1.

So far as Khasra No. 48, 763-3, 763-1, 763-1, 726-1 are concerned, they are situated just Dear the residential locality of Kasaridih. They are more than three to four furlongs away from these acquired lands. Naturally they cannot serve as a good basis for assessing the value of acquired land. However, these sale deeds namely Ex. P-1, P-2, P 3, P-4, P 7 to P-10 show the prevailing rate of lands used as building site near the residential locality of Kasaridih.

We entirely agree with the Additional District Judge that the transactions relating to plots out of Khasra Nos. 48, 763-1, 763-3 and 726-1 could not furnish any comparable basis. They were on Borsi Road, opposite to the residential locality of the Kasaridih abadi, providing to the plot holders all the amenities of a township. Whereas the abadi was on this side of the road, the plots lay on the other side. Refer to Ex. P-9-C and Ex. P-10-C and particularly to the boundaries of the plots sold thereunder. In Ex. P-9-0, the plots lay surrounded by residential houses of Shivdayal, Manbodh and Nathu In Ex. P-10-C, the plot had on one side Gokul Agrawal's house and on the other side Savant Gond's house. Having regard to the building activity that side, the plots might be fetching good price.

16. If we exclude eight such transactions from consideration, we are left with only two. They are Ex P-5-C and Ex. P-6-C dated the 13th August, 1960 Under there two sale deeds Inderchand is said to have sold plots measuring 2500 Sq ft. and 10.000 Sq ft. to Soakaran and Bablani for Rs. 2,500-00 and Rs. 7500 0 respectively out of Khasra Nos. 937 and 940.

We are inclined to reject these sales for two reasons. Firstly, the transactions are post-notification transactions. The notification for acquisition was issued on 4-12-1959 and the purpose of acquisition was extension of the abadi. The entire locality was to be developed for residential purposes. The expectation of improved communications and other amenities which the Municipal committee or the Government contemplated to provide, was bound to influence the prices of the lands in close vicinity. For ought we know the sales eight months after the notification brought an inflated price. Even other wise, post notification sales are usually accepted with caution. They are generally treated to be of doubtful value See; Harbansh Narain Singh and Another Vs. State of Bihar, following The Assistant Development Officer Vs. Tayaballi Allibhoy Bohori,

Secondly, Inderchand. Sonkaran and Lalchand Bablani were all affected by subsequent acquisition made under notification dated the 27th October, 1960 and in the State Appeal preferred against the award made by the Additional District Judge u/s 18 of the Act, this Court has held the two transactions to be collusive and speculative. Hence they were awarded compensation at the rate of Rs. 5500 an acre, despite the transactions indicating price at the rate of. 75 Nos. and Rs. 1 per Sq. ft. See : Order in P.R. Modi Vs. The Collector, Durg,

17. In effect, therefore, there is no evidence whatsoever of any transaction which can furnish comparable data for determining the market value. We have rejected all the ten sale-deeds. Sarojkumari must therefore, fall in line with the other claimants who have been paid at the rate of Rs. 5500/- per acre for their land adjoining the Uttai-Durg Road. Many such claimants arrayed either as appellants or respondents in the connected appeals decided along with First Appeal No. 113 of 1968.

18. it was argued that the claimant's land was not paddy field on the date of the acquisition. That she had levelled the ground, had constructed an approach road for the plots laid out, had a tube-well bored, a culvert constructed, besides three sheds erected. She had also fenced the land with barbed wires.

We regret to note that whatever improvement was done, could not be taken into consideration, since it was done without the sanction of the collector and after the date of the publication of the notification u/s 4 subsection (1) of the Act. Section 24(Seventhly) of the Act is clear on the point. If after the publication of the notification u/s 4, the owner of the land invests capital in the land proposed to be acquired, he does it at his own risk. [See : The Secretary of State for India in Council and Another Vs. Munshi Qamar Ali,

19. We must, therefore, value the land with all its potentialities and adaptabilities as on the date of the notification u/s 4(1) of the Land Acquisition Act. We would like to reproduce what was said about the potential value in the previous order of this Court. No additional evidence has been given to improve matters.

It is admitted position that the acquired land lies in between Durg-Uttai road to the North and Kasaridih road to the South (Please see the map Ex. A-1). To the

North of the Durg-Uttai road are bungalows of the District Officers as shown in the map, then the poultry farm and then the open play-ground, or land kept reserved for the Central Jail. Thereafter lie paddy fields. To the South of the road are Kaleys' bungalow, their automobile workshop and at some distance Sim's Bakery (Map Ex. A-8 may be seen). In between and to the South are paddy fields. The land has been acquired for the extension of the abadi. The area is within Municipal limits. Possibility of increased house-building activity in that direction is not too remote. The Bhilai Sector 9 is at a distance of 1-1/2 miles. The land on the road side may be wanted for ancillary industries. Two houses have been recently constructed on Kaleys' plots.

Our pertinent query to the claimants was, how could Kaleys, Mangalu Sao and Modis acquire lands from the cultivators in 1958 and in February 1959 at Rs. 5,000 an acre, when everything they spoke of concerning the bungalows to the North, Kaley's garage and bungalows to the South the poultry farm, the Sim's Bakery and the Sector 9 of Bhilai had their impact on the potential value? Bhilai Plant had started functioning since 1956. The bungalows to the road already existed before the purchases were made by Kaleys, Modis, Mangalu Sao and Suganchand. What was the sudden spurt of activity to raise the price from Rs. 5000 to Rs. 40,000 in 1960.

We scanned the evidence, but to our surprise found the building activity in this direction almost negligible. Chhabilal Singh (A. W. 8) says that only 3 or 4 bungalows came up during these five years between the tank on one side and agricultural farm on the other. Shivnarayan Patwari (N. A. W. 8) is another witness who could give some positive data. He is a Patwari of Kasaridih since 1962. He says that during these five years after he took over charge, only 50 to 60 houses have come up in the Kasaridih Abadi. The average comes to 10 houses a year, which would cover an area of half an acre, all told. It indicates a very poor house building activity. The pace of progress between 1958 to 1960 was slow, almost negligible, in the direction of the acquired land, and therefore, there was no appreciable increase in the potential value. However, we propose to value the lands on the roadside at the rate of Rs. 5,500/ per acre instead of Rs. 5,000 and at the rate of Rs. 4,800 per acre instead of Rs. 4,300 for lands contiguous to the Kasaridih Abadi. The lands in between shall be valued at the rate of Rs. 4,400 an acre. We have taken into account the rise in potential value at 10% as assessed by the Land Acquisition Officer, which appeared to us reasonable, and we have fixed the rates accordingly. In determining the increase in potential value, we could act on no exact mathematical formula. We had to act on ordinary guess work, which, as is stated in Velayudum Chettier's case : Velayudum Chettiar v. The Special Tahsildar AIR 1959 Mad. 462 is permissible. The authority says :

Valuation of immovable property is not an exact science. It is an enquiry relating to a subject abounding in uncertainties, where there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons

for the conclusions arrived at.

20. We regret to note that the learned Government Advocate, who conducted the case before the Additional District Judge, Durg, should have led no evidence from the side of Collector in respect of transactions about which there was admission of Shri Chintaman Wasudeo Patankar, Advocate for Mangala Bai Kaley, and reference to which has been made in para 5 of the Land Acquisition Officer's award dated the 4th August, 1969, by which transactions valuable information as to the market value could be gathered. Should we infer that he had colluded with the claimant ? A bare reading of the award could suggest the importance of the evidence relating to those transactions.

21. Not much harm, however, has been done, since the two earlier decisions of this Court, which had extensively dealt with the evidence relating to transactions, both genuine and collusive, and which had made its own award, could be looked into as best instance comparable in time and quality.

22. In our view, the market value of the land should be assessed at Rs. 5,500 an acre, which would work out to Rs. 9,075. We would not interfere with the Court's award of Rs. 5,000 made for the sheds, culvert and other improvements. The evidence consisted of the uncorroborated testimony of Lajpatrai, husband of the claimant. Nothing better could be awarded, 15 per cent solatium for compulsory acquisition would work out to Rs. 2111.25 Nos. The excess amount payable over and above that paid by the Land Acquisition Officer, comes, to Rs. 11424.45 Nos. which shall have to be substituted for Rs. 4,4890.20 Nos., determined by the Additional District Judge. We order accordingly. The excess amount shall carry interest at 6 per cent P. A. from the date the Collector took possession of the land till payment. In case the payment as per Additional District Judge's order has been made, the claimant shall have to refund the excess amount received.

23. The Collector's appeal thus succeeds and is allowed with proportionate costs. The claimant's appeal fails and is dismissed. Counsel's fee as per schedule.