

(1960) 04 MP CK 0011
In the Madhya Pradesh High Court
Case No : F.A. No. 43 of 1957

Collector Jabalpur

APPELLANT

Vs

Babulal

RESPONDENT

Date of Decision : 30-04-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 53
Provincial Insolvency Act, 1920 — Section 5(2)

Citation : (1961) J LJ 1088

Hon'ble Judges : T.P. Naik, J; S.B. Sen, J

Bench : Division Bench

Advocate : R.J Bhawe, for the Appellant; A.P. Sen, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Naik, J.—This is an appeal by the Collector, Jabalpur, against an award under the Land Acquisition Act made by the Second Additional District Judge, Jabalpur, on 31st January 1957.

2. The plot in question is situate in plot No. 76, block No. 14 of Miloniganj, Jabalpur. The area to be acquired is 5,400 sq. ft. and is part of plot No. 76. The plot is held by the owner in permanent lease hold rights free of assessment. Though the area is not on the main road, it is situate in a busy locality and is easily accessible from schools, hospitals, police-stations. etc..... The advantages and disadvantages of the plot have been detailed by the Learned Additional District Judge as follows and are not in dispute. Its advantages are its situation in the heart of the town and its easy accessibility and its usefulness as a plot for leasing out to tenants by the owner himself, while its disadvantages are that it lies at the back of the main residential building occupied by the owner, has latrines on all its sides and abuts on a nala.

3. The Land Acquisition Officer assessed its value at -/12/- sq. ft. and that of semar tree at Rs. 10/-, which with 15 % for compulsory acquisition came to Rs.

4,669/-. He accordingly offered to the respondent Rs. 4,669/-. Being dissatisfied with the award, the respondent Baboolal referred the matter to the Civil Court, and the learned Second Additional District Judge, Jabalpur, enhanced that figure by about Rs. 3.892/12/-. He awarded Compensation for the plot at Rs. 1/6/- per sq. ft, and Rs. 20/- for the semar tree, which together with additional compensation for compulsory acquisition came to Rs. 8,561/12/.

4. The Collector has appealed against the enhancement, while the respondent Baboolal has filed a cross-objection claiming compensation at Rs. 2/- per sq. ft.

5. I agree with the learned Additional District Judge that the compensation awarded by the Land Acquisition Officer was on very inadequate data and could not furnish a reliable guide for determining the amount of compensation. Though the sale-deeds taken by him as a guide were more or less contemporaneous with the transaction in question, and were in respect of open plots of land, they related to plots which were neither in the locality nor near about it and ranged from -/4/- sq. ft. to Rs. 1/- sq. ft.. It was also not known if the plots were sold for any special reason or their sales were in the ordinary course to determine if the prices paid by the vendees for them were the market price. The assessment of compensation has to be somewhat arbitrary because it is not always easy to get the market price of a plot very nearly identically situated, but even so we are of opinion that the award by the Collector could not be accepted.

6. In *South Eastern Railway Co. Vs. London County Council* (1915) 2 Ch. 252. Eve. J. summarised the general principles relating to compensation as follows:-

(a) The value to be ascertained is the value to the vendor, not its value to the purchaser.

(b) In fixing the value to the vendor all restrictions imposed on the user and enjoyment of the land in his hands are to be taken into account, but the possibility of such restrictions being modified or removed for his benefit is not to be overlooked.

(c) Market price is not a conclusive test of red value.

(d) Increase in value consequent on the execution of the undertaking for, or in connection with which the purchase is made be disregarded.

(e) The value to be ascertained is the price to be paid for the land with all its potentialities and with all the use made of it by the vendor.

(f) The true contractual relation of the the parties.....that of purchaser and vendor..... is not to be observed by endeavouring to construe it as another contractual relation altogetherthat of indemnifier and indemnified."

7. In *Sri Raja Vyricherla Narayan Gajapatiraju Bahadur Garu Vs. The Revenue Divisional Officer Vizagapatam* ILR (1936) Mad 532. Lord Romer, delivering the judgment of the Board, said:

The compensation must be determined therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser The value of the land is not to be estimated at its value to the purchaser. But this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and that is what must be meant in general by the "market value" in Section 23. But sometimes it happens that the land to be valued possesses some unusual and it may be unique features, as regards its position or its potentialities..... 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 future..... If the owner of the land is the only person who can do, the value to him must be ascertained by reference to what profits he might thereby have been able to derive from the land in future. Take as example, the case of an owner of vacant land that adjoins his factory. The land possesses the potentiality of being profitably used for an extension of the factory. But the owner is the only person who can turn that potentiality to account. In valuing the land, however, as between him and a willing purchaser the value to him of the potentiality would necessarily have to be included..... The value of the potentiality must be ascertained by the arbitrator on such materials as are available to him and without indulging in feats of imagination. Upon the question of the value of the potentiality where there is only one possible purchaser..... the value should be the sum which the arbitrator estimates a willing purchaser will pay and not what a purchaser will pay under compulsion."

8. Analysing the evidence with advertence to the aforesaid principles, we agree with the learned Additional District Judge that the applicant (respondent) has grossly exaggerated the value of his plot, and the evidence led by him [see the evidence of Ratanchandra (A. W. 3), Ramji (A. W. 4), Motisingh (A. W. 5) and Phoolchand (A. W. 8) to establish that in 1948-49 he was offered Rs. 18,000/- or Rs. 19,000/- for the plot in question is equally unconvincing and cannot be accepted. Similarly, the sales of plot [deposed to by Gaurishankar (A W 2). Ratanchandra (A. W. 3) and Bakridi (A. W. 7) cannot be any guide because those sales were for special considerations. As regards the sale referred to by Ratanchandra (A W. 3) of a plot 160" X 225", which was sold for Rs. 51,000/-, the learned Additional Government Advocate pointed out that that sale could not be any guide because it had a building on it. We agree with him, and in our opinion that sale could furnish no guide for the determination of the market value as it was situated in Wright Town, a locality far removed from the locality in question. Similarly, the late examination of Rangnath (A. W. 6) robs his testimony of all value. Phoolchand (A. W. 8), who is a broker, stated that plots in Golbazar, which were very much better situated, had a market value of about Rs. 2/- per sq. ft., but that could furnish no guide for assessing the value of the plot

in suit, which was in the heart of the town.

9. Now, examining the evidence of the witnesses for the appellant (non-applicant), we agree that the evidence of C. S. Gangadhar (NA W. 1) Corporation Engineer, to the effect that the plot in suit was more valuable than the plots in South Miloniganj and that the plots in South Miloniganj were selling at -/6/-,/8/- and-/12/- per sq ft. does furnish some guide for the determination of the market value. Baijnath (NAW 2) speaks of plots selling at Rs. 4 or Rs. 5 per sq ft. in the Kotwali area, but that statement was only his opinion based on no data and could not be accepted. The value of the evidence of Nanhelal (NAW 3) is nil because the plot he purchased was far out of the town. The Land Acquisition Officer had taken into consideration a sale deed, dated 1st July 1950, for a plot situated in South Miloniganj and which was sold at -/13/6 per sq. ft. Now, if the plots in the area in question are of double the value, the upward limit of their value would not be above Rs. 1/11/- sq. ft in any case.

10. On the basis of the aforesaid evidence, which, in our opinion, is by no means adequate for a satisfactory determination of the question, our conclusions are as follows. The value of the plots in the area in question would range from -/8/- sq. ft. to Rs. 1/11/- sq. ft, depending on the location of the plot and its future potentialities. The plot in suit is at the back of a building which belongs to the owner. There is no evidence that in any reasonably near future he was going to build on it; though a bare possibility of it was always there. Though the plot is in a congested locality, its location was not conducive to its easy or early development. Consequently, taking into consideration as a rough measure; the value of ordinary plots which were neither very well situated nor ill-situated to be -/8/- sq. ft. in the South Miloniganj, the value of the suit plot would be Re. 1/per sq. ft. In computing this figure we have borne in mind the fact that we are determining the value of a plot to the vendor with all restrictions imposed on the user and the enjoyment of the land in his hands which he alone could have modified or removed.

11. It was contended that an owner of an adjacent plot, which was also the subject-matter of compulsory acquisition in these very proceedings, had accepted the offer of the Land Acquisition Officer and consequently that should, be taken as a guide for the determination of the market value. This is not acceptable to us. We do not know why and under what circumstances, she accepted the offer: and if what is suggested in the judgment under appeal be correct (and there is material for that suggestion on record), we agree that her acceptance could not be any guide.

12. We are, therefore, of opinion that the most reasonable and adequate value of the land which a willing buyer would be expected to pay to a willing seller would be Re. 1/per sq. ft. At this rate, the compensation payable to the respondent would work out to be Rs. 6,233/ as follows;

13. The appeal is, therefore, allowed and the amount of compensation

determined by the learned Additional District Judge is reduced to Rs. 6,233/- As the success and failure has been practically evenly balanced, the parties shall bear the costs of this appeal as incurred. The costs of the trial Court shall be paid by the appellant.

14. As regards the cross-objection, it is contended by the learned counsel for the appellant that no cross-objection lies in appeals against awards. u/s 53 of the Land Acquisition Act, the CPC has been made applicable to land acquisition proceedings in a language which is stronger than the language used in sub-section (2) of Section 5 of the Provincial Insolvency Act. In the latter case, the provisions relating to cross-objections contained in R. 22 of O. XLI of the CPC have been held to be available to a respondent: (Alagappa Chettiar vs. Choakalingam Chettiar ILR Mad. 904 and Jaikrishna vs. Sawatram ILR 1942 Nag. 156) I respectfully agree with the reasoning of Sadasiva Ayyar, J. in Alagappa Chettiar vs. Choakalingam Chettiar (supra) to the effect that if a substantial right of appeal is given somewhere in the Act, then R. 22 of O. XLI of the CPC merely allows the respondent to avail himself of an additional rule of procedure by a memorandum of cross-objections as provided in R. 22 of O. XLI to exercise his right of appeal.

15. On merits, however, we consider that there is no substance in the cross-objection. There being no evidence of the fact of severance nor of the fact that the severance, if any had caused to the respondent any damage, the contention that the acquisition has resulted in severance cannot be entertained. Similarly, the learned Additional District Judge has held that there was no evidence that the respondent's latrines were located in the acquired land, and nothing has been pointed out to us to come to a different conclusion. As regards the market value of the land being Rs. 2 per sq. ft. for the reasons given by us in the appeal, we cannot entertain it.

16. The cross-objection, therefore, fails and is dismissed. There shall be no order as to costs of the cross objection.