

(2006) 11 J&K CK 0007
In the Jammu And Kashmir High Court

Collector Land Acquisition and Another	APPELLANT
Vs	
Sajida Begum and Others	RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2007) 2 JKJ 448

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—This appeal is directed against the judgment/ award passed by learned District Judge, Baramulla, in a reference

titled as Sajida Begum and Ors. v. Collector, File No. 8 of 1989, whereby and whereunder the compensation came to be enhanced, which shall

be hereinafter referred to as impugned award.

2. Appellants had acquired 14 kanals and 16 marlas of land for development of Industrial Training Institute and out of which respondents were the

owners of 10.5 Kanals of land. Collector, Land Acquisition awarded Rs. 14000/- as compensation per Kanal, Rs. 1,54,695.45/- as cost of fruit

bearing trees and also 15% Jabrina. Respondents disputed the adequacy of compensation and made an application in terms of Section 18 of the

Land Acquisition Act, hereinafter referred to as Act, for making reference to the District Court. Learned District Judge framed the following issues:

1. Whether the petitioners have been awarded the compensation which is less than the market value? OPP

2. In case issue No. 1 is answered in positive what was the market rate of the land at the time of acquisition? OPP

3. Relief.

3. After hearing learned Counsel for the parties, learned District Judge came to the conclusion that compensation was not just and accordingly

enhanced the compensation to the tune of Rs. 50,000/- per kanal from Rs. 14000/- awarded by the Collector and also held that Mst. Sajida was

entitled to Rs. 19,008/- as the cost of fruit bearing trees.

4. Appellants feeling aggrieved of the said order preferred this appeal which is on the Board of this Court for the last 12 years.

5. The crux of the matter is whether the impugned judgment is legally correct?

6. In order to determine this point, it is necessary to give a brief resume of the evidence led by the parties herein:

7. Respondent has examined Mian Abdul Majid, Mst. Fehmida, Munir Ahmad Shah and Naseema Jan as their witnesses and also statements of

Mst. Sajida and Mian Ghulam Mohammad came to be recorded and appellants have not examined any witnesses.

8. It appears that appellants have not led any evidence in rebuttal.

9. Mian Abdul Majid has deposed that he had sold a piece of land measuring 13 marlas to Abdul Rashid and Khurshid Ahmad in lieu of Rs.

40,000/- The said land is just adjacent to the land acquired.

10. PW, Mst. Fahmida has stated that she has purchased a piece of land measuring 6 marlas for an amount of Rs. 35,000/-The said land is just

adjacent to the acquired land. In cross examination she has stated that she has purchased land for residential purpose.

11. Naseema Jan has stated that he had sold land to Noor Mohammad and Rafiq Ahmad for an amount of Rs. 49,000/- per kanal.

12. Muneer Ahmad, District Horticulture Officer had visited the spot in order to make assessment of the fruit bearing trees and staled that cost

price of trees of the respondent was not less than Rs. 19,008/- and had submitted report which came to be exhibited as EXP1.

13. This is the nutshell evidence on the file.

It is beaten law of the land that the status of the parties before the reference court is just like plaintiff and defendant and parties have to prove their

case accordingly.

14. Now question is whether the finding returned by the trial court viz-a-viz

issues 1 and 2 is legally correct?

15. The reference court has, on the basis of the statement of witnesses, held that the market value of the land acquired was not less than Rs.

50,000/- at the time of acquisition but reference court has not discussed that whether there was any evidence on the file to the effect that what a

willing buyer would have paid to a willing vendor in order to ascertain the prevalent market rate.

16. It was the bounden duty of the claimants/ respondents to prove that what a willing Vendee would have paid to willing vendor. There is not an

iota of evidence that what a willing buyer would have paid to the willing seller. There is also no evidence on the file that potential value of the

acquired land and of the land reference of which is made by the witnesses was same. There is no evidence on the file that the market value of the

acquired land and land reference of which is made in the statement of witnesses was same.

17. The Apex Court has held in case Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , as under:

7. Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence,

and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a

willing purchase in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in

the locality in which the acquired land are situated as on the date of the notification u/s 4(1) of the Act: but not an anxious buyer dealing at arm's

length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The

Judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent

buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The court is,

therefore, enjoined with the bounden duty of public Junction and judicial dispensation in determination of the market value of the acquired land and

compulsory acquisition.

18. While going through this judgment, the acid test is that what a willing buyer

in a normal human conduct would be willing to buy as a prudent man in a normal market conditions prevailing in the open market in the locality. The test is not what an anxious buyer will offer in order to inflate the market value. It is the duty of the Judge to sit in the armed chair of the said willing buyer and seek answer.

19. I am of the considered view that the appellants have not produced any evidence indicating what a willing buyer would have paid and accepted by a willing seller.

20. It is beaten law of the land that sale deeds of small portions of land could not be taken into consideration while assessing the compensation.

21. The Apex Court has held in a judgment passed in State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, , that the sale

instance relating to a small parcel of land cannot be the guiding factor. It is profitable to reproduce relevant portion of the said judgment herein;-

10. Coining to the challenge as regards the enhanced compensation for the land we find that the sale instances relied upon by the claimants can

hardly be treated as comparable instances. The sale instances relate to small parcels of lands not more than 3 to 4 marks each. Only one sale

instance was sought to be proved by the claimants through the evidence of Mohd. Shaban, who had stated that three marks of land in the close

vicinity of the acquired land was sold to a co-operative society @ Rs. 33,000/- per kanal. Other sale instances although produced on record but

the same were not proved by the claimants either by examining the vendor or the vendee. As stated earlier these sale instances are of a very

smaller area and, therefore, they cannot be said to be comparable sale instances to determine the market prices of such a big chunk of required

land. The other evidence adduced by the claimant is consisted of the oral testimonies of lumbardars and local zamindars. Their oral evidence could

hardly be accepted as a guide for determining the market prices of the acquired land because they were not experts. The net result, therefore, is

that the evidence of the claimants as regards the sale instances cannot be accepted as a measure to determine the market price of the acquired

land....

22. While going through this judgment, one comes to an inescapable conclusion that test is one or two sale instances of three or four marlas of land

could not be used as a guiding factor and further their Lordships have also laid down that oral evidence could not be accepted as guide for determining the market price of the acquired land.

23. It is also profitable to reproduce relevant portion of para-6 of the Apex Court judgment titled Union of India v. Ram Phool reported in 2003

(10) SCC 166 herein;-

6 ...It has been held in a catena of decisions of this Court that the sale price in respect of a small bit of transaction would not be the determinative

factor for deciding the market value of a vast stretch of land. As has been stated earlier, the extent of land acquired in the case in hand i.e. 5484

bighas. In that view of the matter, we have no hesitation to come to the conclusion that the High Court has wholly erred in relying upon Exhibit A-1

in determining the market value of the acquired land extending to 5484 bighas. Since the onus is on the claimant to lead evidence on the

determination of market value and if Exhibit A-1 is taken out of consideration, then there is no residue of evidence on which the determination

made by the High Court enhancing the compensation awarded by the Reference Court could be sustained. We, therefore, set aside the impugned

judgment of the High Court and affirm the market value as determined by the Reference Court. These appeals are allowed. Cross appeals filed by

the claimants are dismissed.

24. While going through these judgments, one comes to an inescapable conclusion that the sale of small plot cannot be a guiding factor.

25. Reference Court has also failed to take into consideration the 'Seh Sala report' prepared by the revenue agency in order to ascertain the

prevalent market rate at the relevant point of time. Entire record was before the Reference Court and the Collector had also made reference of

'Seh Sala report' in the award at page 2. 'Seh Sala Report' is admissible in evidence and Collector had to take into consideration the said report.

The Apex Court has held in case titled State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, , that 'Seh Sala Report' is the best

piece of evidence in order to ascertain and assess what was the prevalent market rate which would have been paid by a willing buyer to the willing

seller.

26. In the given circumstances, I am of the considered view that Reference Court

has wrongly enhanced the compensation from Rs. 14000/- to Rs. 50,000/-per kanal.

27. The Horticulture Officer has prepared the report and assessed the cost of fruit bearing trees of the respondent to the tune of Rs. 19,008/-

which came to be exhibited as EXP1. Appellant has not led any evidence in rebuttal. Viewed thus, the report of District Horticulture Officer, is to be accepted.

28. Having glance of the above discussion, I am of the considered view that finding returned by the Reference Court whereby the compensation

came to be enhanced from Rs. 14,000/- to Rs. 50,000/- is set aside and the finding returned by the reference court to the extent of holding that

Mst. Sajida is entitled to Rs. 19,008/- as compensation of the fruit bearing trees is upheld.

29. Registry is directed to prepare a decree sheet accordingly and send down the record along with copy of this judgment and decree.

This appeal is accordingly disposed of along with all connected CMP(s).