(2005) 03 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : CIMA No. 181 of 1999

Collector Land Acquisition APPELLANT

Vs

Mahinder Kumar and Another RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:
Land Acquisition Act, 1990 — Section 18, 4(1), 6

Citation : (2005) 2 JKJ 592

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : A.H. Qazi, AAG, for the Appellant; Raghubir Singh, Adv, for the Respondent

Judgement

S.K. Gupta, J.—The land aggregating 06 kanals 09 maralas contained in Khasra No. 115 min. located in Village Siot, Tehsil, Sunderbani,

District Rajouri has been acquired by the State for the construction of the ""Siot-Kalakot"" Road, as per the final award issued by Collector,

Rajouri, vide his No. AC/LA/704-06 dated 29.12.1990, whereby the Collector has awarded compensation of Rs. 8,000/- per kanal with

Jabrana/solatium @ 15%.

2. The claimants/respondents, namely, Mahinder Kumar and Kevel Kishore sons of Ghardhari Lal accepted the compensation and received the

payment under protest. They applied for a reference u/s 18 of the Land Acquisition Act. The reference Court after hearing the parties, enhanced

the compensation for the land acquired from Rs. 8,000/- to Rs. 15,000/- per kanal plus 15% solatium/Jabrana and 4% interest from the date of

the notification till the realization of the amount awarded to the claimants/respondents from the Collector, Land Acquisition, Rajouri and the indenting Department.

3. Aggrieved by the compensation awarded by the reference Court, this appeal has been preferred by the Collector, Land Acquisition, Rajouri,

challenging the decree on the ground that the increase in the award is not justified on the evidence let in by the owners. The appellant's admitted

case is that on account of ban on sale and purchase of land after coming into force the Agrarian Reforms Act, no sale and purchase of large chunk

of land has taken place in the locality for acquiring the land. It was, however, reported by the Tesildar, Sunderbani that an average rate Rs.

1682.50 per Kanal of land is prevalent in the locality for the last three years. Award issued by the Collector, Land Acquisition, Rajouri, further

recited that recently an irrigated piece of land, was acquired for 33/11/KV/R/ Station @ Rs. 10,000/- per kanal. The said land is stated to be

located near the crossing chowk ""Siot More"" and has a commercial value @ 8,000/- per kanal plus Jabrana @ 15%. The appellant further stated

that it was after considering the reasonability of the rates, the District Collector, Rajouri, accorded the sanction of the same to be adopted in the

instant case.

4. The reference Court, however, has heavily relied upon the agreement to sell in respect of a land alienated by one Kesar Singh to Sham Lal @

Rs. 10,000/- per marla which is duly registered by Sub-Registrar, Nowshera, besides the statements of PW Inder, Bicheter Ram and Krishan Lal

to fix the market rate of Rs. 15,000/ per kanal, payable to the owners, of course, with jabarana @ 15%. The evidence provided by PWs Kesar

Singh and Sham Lal is to the effect that 10 maralas of land located in Village Lamberi covered under khasra No. 573 was purchased by Sham Lal

from its owner PW Kesar Singh. The transaction in respect of this land had taken place in the year, 1986. According to PW Sham Lal, the land in

question is located in Siot and is at a distance of 21/2 kilometers from his purchased land. Whereas, PW Kesar Singh had given intervening

distance of the land acquired as one kilometer from the land sold to PW Sham Lal. PW Krishan Lal examined by the claimants, on the other hand,

has given hypothetical statement as regards the market value of the land at a place where the land is acquired for the construction of ""Siot-Kalakot

road in expressing his willingness to purchase a land @ 15, 000/- per kanal, if some one is ready to sale it. The evidence of PW Inder also does

not provide any assistance, as he stated that he has no knowledge in which year the land was acquired. He also expressed his ignorance about the

market value of the land about 5/6 years ago. The statement has been recorded in the year 1993. He has also stated that the land of the

respondents/claimants is located at a distance of one furlong from the ""Siot Morh"" where many shops have come up and the area is developing. In

the like manner, PW Bichiter Ram stated that the land acquired is at Jammu-Rajouri road at ""Siot Morh"" and its market value was Rs. 35,000/-per

kanal when the same was acquired by the government. It is also in his evidence that many people are purchasing the land in that area and 20 to 25

karyana shops, besides hotels have come up there. He, however, did not state that as to when the land was acquired for the construction of ""Siot-

Kalakot"" road. Mahinder Kumar also appeared as his own witness and stated that one Bakshi Dev Raj had purchased the land for the shop @

Rs. 6000/- per kanal near the land acquired by the Collector Land Acquisition about 3 to 4 years ago. Neither Bakshi Des Raj has been examined

as witness nor the person from whom he had purchased the land. The statement of claimant, Mahinder Kumar, was recorded in February, 1998,

whereas the land has been acquired in the year 1990.

5. It is pertinent to point out that the market price is that price which a normal and prudent buyer wants to pay after evaluating the prices prevailing

in the roundabout area and which a normal and prudent seller is willing to accept. It is, therefore, the consensus between the buyer and the seller

which would decide the price at which a particular property is brought or sold. In other words, the test for fixing the market value of acquired land

for payment of compensation is the location of land and not the extent of area.

6. In the instant case, the sale instances relied upon by the claimants can hardly be treated as comparable instances on two counts; firstly, the sale

instances relate to small parcel of land, i.e., 10 marlas. Only one sale instance was sought to be proved by the claimants through the evidence of

PWs Kesar Singh and Sham Lal and, secondly, this land is acquired in the vicinity of about 21/2 kilometers away from the land acquired by the

Collector, Land Acquisition, Rajouri, which shows that the purchase is not roundabout the land acquired, so as to provide sale instance of the land sold to determine the market value of the land acquired by the Collector, Land Acquisition, Rajouri. So, the sale instance given by the claimants

being of small area, cannot be said to be the comparable sale instance to determine the market value of 6 kanals and 9 marlas of acquired land.

Other evidence adduced by the claimants consisted of only the oral testimony of the witnesses who did not have the knowledge about the area

when the land was acquired. Another sale instance given by Mahinder Kumar, claimant, pertains to the land purchased by Bakshi Des Raj near the

acquired land but neither the seller nor the purchaser has been examined to prove the sale transaction. That apart, the acquired land, according to

PW Mahinder Kumar, is located at a distance of one furlong from the land purchased by one Bakshi Des Raj. The oral evidence, therefore, could

hardly be accepted as a guide for determining the market price of the acquired land.

7. 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. The reference Court, while determining the market value of the land acquired, enhanced the award @ Rs.

15,000/-per kanal instead of Rs. 8,000/- per kanal as awarded by the Collector, Land Acquisition, Rajouri, at the time of passing the award.

Most of the land adjacent to the acquired land is the land allotted to the refugees and no sale has been effected in the area and further the sales of

the land were prohibited under the Agrarian Reforms Act and, thus, the reference Court has made the basis of the enhanced compensation @ Rs.

15,000/- per kanal.

8. This cannot, in my mind, be the sound and valid basis for determining the market value of the land acquired for enhancing the amount of

compensation than the one awarded by the Collector based on the report of Tehsildar after in-depth enquiry. As regards the market price of the

land prevailing in the locality in a comparable sale, the features are : (1) it must be within a reasonable time of the date of notification u/s 4(1) of the

Land Acquisition Act, (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or of the land adjacent to the land

acquired and (4) it should possess similar advantages. It is only when all these factors are present that it could merit consideration as a comparable sale. The sale instances given by the witnesses examined by the claimants pertain to the land in Lamberi Village and other places which are at a

distance of 21/2 kilometers away and all are of small pieces of land and, thus, same cannot be said to be the comparable sale instances and market

price of acquired land cannot be based on it.

9. Apart from that, merely on a ground that no sale transaction has been taken place because of the prohibition under Agrarian Reforms Act in the

adjoining area to the land acquired, the assumed value @ Rs. 15,000/- per kanal to be genuine on the whims of the reference Court, cannot be

fixed, particularly when the sale instances given by the claimants are of the parcels of land located between 2 and a half kilometers away from the

acquired land.

10. The Collector, Land Acquisition, Rajouri, in this case seems to have based the compensation awarded to the respondents/claimants on the

report of the Tehsildar. It is in the evidence of Mohd Bashir Bhat, Assistant Collector, Rajouri, that the land was acquired in the year 1990 and is

located in Village Siot. He further stated that the rate of the land was approved for Rs. 8,000/- with jabrana @ 15% by the then Collector in

taking into consideration the quality of land, the crop and its commercial value. The declaration u/s 6 of the Act was made in 1990 and the award

was passed on 26.12.1990. He also stated that in taking the average rate of three preceding years by the Tehsildar, the amount comes to Rs.

1632.50 NP per kanal. Whereas, the rate of the land as per the market value prevalent at that time was granted to the claimants. The witness has

also given the locations of the shops at a distance of 2 or 3 furlongs from the place of acquired land. It is, however, not a central place for Rajouri

or Kalakot, though there is a small mini bus stand. It may further be indicated the basis of compensation given in the award by the Collector, which

reads as under:-

Due to ban on sale and purchase of the land after enforcement of Agrarian Reforms Act 1976, no sale and purchase in large chunks of land took

place in the locality. However the Tehsildar Sunderbani has reported an average of Rs. 1682-50 per kanal for the preceding 3 years to be

prevalent in the locality. Recently an irrigated piece of land, was acquired for 33/11/KV/R/Station @ Rs. 10, 000/= pk. The land is located near the crossing Chowk ""Siot More"" and possesses commercial value. Keeping in view the location and commercial value of the land a rate of Rs.

8,000/= per kanal plus jabarana@ 15% was recommended to the Distt. Collector (Deputy Commissioner) Rajouri for approval to be adopted in

the instant case. The Distt. Collector after considering the reasonability of the rates accorded the sanction of the same to be adopted in the instant

case on the office note of the case file. Hence the rate being sanctioned by the competent authority is adopted in the instant case.

11. It is, therefore, clearly gatherable that the compensation was determined by the Collector, Land Acquisition, Rajouri, on the report of the

Tehsildar. The Tehsildar in his report referred to above has stated that an irrigated piece of land was recently acquired for 33/11/KVYR/Station @

Rs. 10,000/- per kanal and this land is located near the crossing Chowk, ""Siot More"" and possesses commercial value, and the Collector also

keeping in view the commercial value of the acquired land determined the market price of the land at Rs. 8,000/- per kanal without assigning any

reason and proper justification.

12. The Tehsildar, after a proper enquiry as regards the potentiality of the land, its location and the price prevailing in the locality where the

acquired land is located and also giving comparable rate of the land recently acquired for 33/11/KV/R/Station, submitted a report. As per his

report, Rs. 10,000/- per kanal was the market price of the land in the area roundabout the acquired land. According to the report of the Tehsildar,

Rs. 10,000/- per kanal should have been determined the prevalent market value of the land acquired. No serious objection seems to have been

taken with regard to the report of the Tehsildar before the District Judge and so is also before this Court so as to persuade the Court to reject the

said report.

13. Adverting to the report of the Tehsildar and indicating the basis on which the market rate of the land acquired was determined at Rs. 15,006/-

per kanal, the District Judge has only referred to the statements of the witnesses that there has been no land transaction adjacent to the land

acquired, as the same was in the possession of the refugees and no such sale had been effected in the area, which inspired confidence in him to

conclude that the rate of Rs. 15,000/- per kanal is genuine and reasonable, particularly when the evidence provided by the witnesses with regard

to the location stated and commercial value is not qualitatively of any worth to provide sufficient and satisfactory material on which the market

value of the land could be determined at the rate, while enhancing the compensation to Rs. 15,000/- per kanal for the acquired land. The other

evidence accepted by the District Judge is oral evidence of certain witnesses, which, in my considered view, do not furnish any base for

determining the market rate of the land acquired.

14. A similar situation crept up before the Apex Court in case titled State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, ,

wherein it was held as under-doming 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 marlas

each. Only one sale instance was sought to be proved by the claimants through the evidence of Mohd. Shaban, who had stated that three marlas of

land in the close vicinity of the acquired land was sold to a cooperative 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 price of such a big chunk of

acquired land. The other evidence adduced by the claimants is consisted of the oral testimonies of lumbardars and local zamidars. Their oral

evidence could hardly be accepted as a guide for determining the market price 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. The only evidence which would have a bearing upon determination of the market price of the land is the report of local Tehsildar. It

is not disputed that D.C. of Distt. Pulwama had asked the local tehsildar to inspect the acquired land and make a thorough enquiry as regards the

price prevailing in the locality where acquired land is situated. Accordingly he submitted his report dated 14-5-1987 which is Annexure 5 annexed

with Transfer Case (C) No. 43/96. This report was relied upon by the land acquisition Collector and at the trial it is taken on record without being

objected to by the State of Jammu and Kashmir and Union of India. No challenge to the said report was made by either of the appellants before

the District Court as well as before the High Court. The Tahsildar in his capacity as Government Official in discharge of his duties submitted the

report and in his report he had stated that the market price of the acquired land would be Rs. 30,000/- per kanal. No serious arguments were

advanced before us on behalf of the Union of India or State of Jammu and Kashmir which could persuade us to reject the said report. In these

circumstances we are of the considered view that the report dated 14-5-1987 furnished by the Tehsildar was rightly relied upon by the Courts

below for determining the market price of the acquired land. The District Judge and the High Court while enhancing the compensation to Rs.

45,000/- per kanal for the acquired land mainly relied upon the sale instances which we have discarded as not being comparable. The other

evidence which found favour with the District Judge and the High Court was the oral evidence of local Lambardars, Zamidars and one of the

claimants. Their evidence in our considered view would not furnish any basis for determining the market value. The Courts below in our considered

view have committed a serious error of law in relying upon the sale instances which were found by us not comparable while enhancing the market

value of acquired land. In view of this factual position, we are of the view that the respondents/ claimants would not be entitled for compensation in

respect of their lands for more than Rs. 30,000/- per kanal.

15. Relying on the ratio of the aforesaid judgment and keeping in mind the factual matrix of the case, I am clearly of the view that the respondents,

claimants are not entitled to receive compensation for more than Rs. 10,000/-per kanal in respect of the acquired land. The trial Court has landed

in a serious error, while enhancing the compensation to Rs. 15,000/- per kanal mainly on the ground of suitability and commercial value when no

sale transaction has been taken place in the area on account of prohibition under the Agrarian Reforms Act and also most of the land is allotted and

in possession of the refugees. The evidence brought on record by the respondents/ claimants with regard to comparable sale instances, in my

opinion, is difficult to be accepted.

16. In view of the aforesaid reasons, the appeal is partially allowed. The judgment and decree/award passed by the trial Court is modified to the

extent of valuation of the land acquired. The-respondents/claimants would be entitled to receive compensation in respect of their land acquired @

Rs. 10,000/- per kanal plus jabrana @15% alongwith interest allowed by the reference Court and not Rs. 15,000/- per kanal as awarded by the

District Judge. The executing Court, however, shall finalize in determining the amount of compensation payable to the respondents/claimants in

accordance with law and in terms of this judgment. In case any excess payment has been received by the respondents/claimants, the same shall be

returned to the appellant with interest @ 10% per annum from the date the amount was received till it is paid back.

17. There will be no order as to costs.

18. The appeal stands disposed of accordingly.

