(1998) 04 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Civil 1st Appeal No. 2/95

Collector, Land Acquisition U.E.E.D. — APPELLANT

Vs

Zamindarani Brari Nambal — RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:
Evidence Act, 1872 — Section 11
Land Acquisition Act, 1894 — Section 11(3), 18, 48

Citation : AIR 1999 J&K 93

Hon'ble Judges : Syed Bashir-ud-Din, J

Bench : Single Bench

Advocate : M. Amin, G.A, for the Appellant; Mohd. Ashraf, for the Respondent

Final Decision : Dismissed

Judgement

Syed Bashir-ud-Din, J.

Collector Land Acquisition Dull Development Project UEED Srinagar acquired 60 kanals and 17 marlas and one kanal and one marla of land

situated at Brari Nambal, of respondents for Pilot Project Brari Nambal Srinagar and the notification thereto as required under the provisions of

Land Acquisition Act was issued by the Collector in the months of May, July and November 1982. The respondents and interested claimants

demanded/claimed compensation at the rate of Rs. two lacs per kanal. The Collector on inquiry into the objection and on considering the facts,

circumstances and other factors, awarded the compensation payable for the land at the rate of Rs. 32,6407- per kanal for 61 kanals and 16

marlas of acquired land and Rs. 8,000/- per kanal for 'Gair Mumkin Nallah' measuring two marlas as, part of acquired land. Besides the

compensation for nonfruit bearing trees was assessed Rs. 12,480/- and compensation for one structure was awarded as Rs. 22,752/-. In addition

the solatium for compulsory nature of acquisition has been also awarded. It is to be taken note of that parties concede that the tentative award

framed by the collector and forwarded to the Revenue Minister for approval, on the basis of worked out average sale rate per kanal is Rs.

54,835.20 per kanal. However, this proposed compensation in the form of tentative award was slashed down to Rs. 32,640/- per kanal as shown

by the final award of the Collector. Respondents-interested persons aggrieved by the award moved applications before the Collector, seeking

reference of the matter u/s 18 of Land Acquisition Act (hereinafter for short Act) to the District Judge, as according to each of the claimant, the

rate of compensation assessed was not according to market value of the land and the final assessed award of compensation to the claimants, was

grossly inadequate and under valued and the market rate per kanal of the land in the locality was Rs. two lacs. The Collector made reference u/s

18 of the Land Acquisition Act to the District Judge Srinagar in November 1986 and District Judge after being seized of the matter raise the

following issues :--

1. What was the market value of the land acquired by Collector at the time of notification issued u/s 4 of the Land Acquisition Act ? O. P.

Applicant

2. What is the proper compensation regarding the standing crops and trees existing on the acquired land ? O. P. Applicant

3. Whether the application u/s 18 of the Land Acquisition Act is time barred ? O. P. Collector

2. The applicants and interested persons at whose instance reference was made, have examined ten witnesses. Besides their advocate has

appeared as their witness. The Collector Land Acquisition/Non-applleant has not examined any witness nor any other evidence has been led. The

Ist Additional District Judge, Srinagar on consideration and upon hearing the parties has determined the market value of acquired land at Rs.

54,835.20 per kanal. The award of the Collector regarding compensation awarded for standing crops and trees and the structure have been kept

intact. Ist Additional District Judge Srinagar has accordingly made award. The Collector unsatisfied with the finding and determination of compensation of the acquired land has preferred instant appeal.

3. The learned counsel for the parties have been heard and the available record has been perused. The counsel for the appellant argues that the Ist

Additional District Judge Srinagar has not scanned and appreciated the evidence on record, from the standpoint of determining the actual market

rate of the acquired land. The ocular as well as documentary evidence has not been considered. The compensation awarded has been excessive.

The Ist Additional District Judge was not justified to determine the compensation @ of Rs. 54835.20 per kanal of land. The amount of Rs.

54,835.20 per kanal is the sum set by the Collector as valuation in the tentative award forwarded to Revenue Minister for approval, which came to

be slashed by the Revenue Minister. Notwithstanding the fact that the Collector led no evidence whatsoever in the case, there is no material on

record to justify the award of compensation of Rs. 54,835.20 per kanal for the acquired land, as determined by the District Judge.

4. The counsel for the appellant submits that District Judge after receipts of reference u/s 18, has not issued summons and served notice on all

concerned, as required u/s 20 of Section 48 (sic) of Land Acquisition Act, which has vitiated whole proceedings.

5. The counsel for the respondents counters the argument of appellant's counsel and can- vases that having regard to the market value of the land

as on the date of notification issued and published u/s 6 of the Act, the damage suffered by the claimants by the acquisition, charge of business and

loss of profits, the compensation of Rs. 54,835.20 per kanal awarded by the Additional District Judge Srinagar is not just, sufficient and proper

and compensation awarded by the Collector of Rs. 32,6407- per kanal is farcical.

6. The land acquired is in heart of Srinagar City, surrounded by number of roads and above all the land is the price land in the sense that it is the

rich land which has immense potential for malyari (vegetables) and the claimants and their families are dependent for their livelihood on this land.

The witnesses, copy of sale deed and the Collector have posted much higher market value for the land.

7. The Ist Additional District Judge has shown his inability to find satisfactory evidence qua market rate of acquired land on record. He has relied

on the valuation set by the Collector in the tentative award, (forwarded to

Revenue Minister for approval) to reach the nearest valuation of the

market rate of the land.

8. The land has been acquired on the requisition of Executive Engineer S & D Division of the Urban Environmental Engineering Department

(UEED) in connection with Pilot Project Brari Nambal Srinagar. From the notification as also the award and other record it is shown that for the

land indenting department is U. E. E. Department of J. and K. State. There is nothing on record nor any thing has been placed before the Court to

show that the land has been acquired out of the funds under control or managed by local authorities or any person or body of persons. The

Collector Land Acquisition appears to be the party in the sense that the objection in this case has been in regard to the amount of compensation.

There has been service of notice on the Collector as required u/s 20 of Land Acquisition Act. The Collector has throughout contested the case

before District Judge in reference proceedings u/s 18 of Land Acquisition Act. In a case where conditions as provided by Section 48 of the Act

apply the local authority or person or body of person concerned may appear and adduce evidence for determining the amount of compensation in

proceedings before the Court. The Section 48 of the Act nowhere provides that notice has to be served on the intending department. Therefore

the contention of the counsel that the acquisition proceedings u/s 48 of the Act are vitiated on this count appear wholly misplaced and not merited.

9. From the judgment of the Court of refer-ence/Ist Additional District Judge Srinagar, it evinces that the Court has referred to the statements of

claimants witnesses Gh. Mohd Parrey, concerned patwari of Halqa, Gh. Mohd Dar, Ab. Rahim Kara, Gh. Hassan Bhat, Mohd Sultan Dar, Gh.

Mohd, Bhat, Assadullah, Ganie, Manzoor Ahmad Bhat and Mohd Ashraf Bhat Advocate. While discussing their evidence, the Ist Additional

District Judge Srinagar has found that Gh. Mohd. Parrey Patwari, has failed to get his statement recorded in full. His examination has been

recorded in part. He has not been cross-examined. Obviously his statement has not been relied on or considered. Gh. Mohd. Dar, Ab. Rahim

Kara, Gh. Hassan Bhat. Mohd Sultan Dar, Gh. Mohd. Bhat and Assadullah Ganie have spoken of the market value of the acquired land in the

range of Rs. two lacs and three lacs per kanal, but none of the witnesses has purchased any land on quoted price. Their statements appear more or less in omnibus terms. They have also spoken of the acquired land being rich in the sense that the land on the relevant date was under Malyari (vegetables) and the claimants use to get good income from the land which usually was any sum in the range of Rs. 10,000/-to 15,000/-. Again the statement is not supported by any instances. Labour and other inputs in cultivating the crops have not been given in physical or money terms and similarly the expenditure involved and the net profit/gain or the income derived is not also spoken of and given. These statements run in omnibus terms and are too sweeping in character.

10. Manzoor Ahmad Bhat, has tendered statement that he purchased 10 marlas of land in the locality under survey No. 1102 and Khewat No. 49/min from one Haji Khazir Mohd. Bandh and others vide sale deed executed on 27-11-81 and registered on 13-3-1982 for Rs. 38,000/-. This land is adjacent to his residential house. The attested copy of sale deed has also been placed on record. This piece of land being shallow, was purchased at a lesser price.

11. The Sub-Registrar, has endorsed the admission of receipt of whole consideration by Khazir Mohd. Bandh and others, the executants of the documents. This endorsement, referred to in Section 59 read with the certificate issued by the Registration officer, u/s 62 of the Registration Act, is an admissible piece of evidence to prove the fact of admission of the passing of whole consideration to executants of the sale deed.

12. Mohd Ashraf, advocate, who appears to have tendered statement on behalf of all claimants, has deposed that the acquired land is under different vegetables and land owners/occupiers use to get their livelihood by cultivation of these vegetables. The acquired land is quite beautiful piece of land in the city of Srinagar and is surrounded by number of roads leading to and coming from other parts of Srinagar. The claimants laid claim of Rs. two lacs per kanal before the Collector. They produced sale deed before the Collector (referred to in his statement by Manzoor Ahmad Bhat). The applicants lost their livelihood by acquisition of land. The acquired land on average use to give income of Rs. 12,000/- per kanal annually for each land holder. Even the Collector and Tehsildar came on spot and heard the claimants on the question of market value of the

acquired land,

13. It is seen that there is only one sale deed referred to and deposed to by Khazir Mohd. Bhat in his testimony before Court which gives the value

of land as Rs. 76,000/- per kanal in November 1981, about eight months earlier to the issuance of declaration and publication of notice u/s 6 of

Land Acquisition Act. From the statements of the witnesses and on examination of the attested copy of the registered sale deed, the land is quite

adjacent to the acquired land. Apart from this, there is no other evidence to disclose the market value of the land on the relevant date, that is,

actual price, which similar land with like character and advantages would have fetched in the market. Similarly there appears justification on record

that valuation of the acquired land cannot be determined on capitalization basis as there is no evidence of the net income derived from the acquired

land. Even the evidence is lacking regarding the actual inputs which have gone in raising vegetables and expenditure involved thereto no expert

evidence has forthcome in this case. The contention that the compensation for the land in question can be assessed on cumulative consideration of

the sale deed referred to in the statement of Khazir Mohd. location of the land, loss of business and profits and the valuation set by the Collector in

the tentative award referred to Revenue Minister as basis for arriving at near market value of the acquired land, seems somewhat plausible.

14. The ocular version of the witnesses that the land can fetch any price up to two lacs, does not appear, given the probabilities and circumstances

of the case, even near valuation or estimation of the market price of the acquired land. There is no evidence available to determine the profits of the

land. In absence of the evidence and details of income and expenditure with probabilising certainty the method of capitalizing the actual or

immediate prospective profits or the rent of number of years purchase cannot be restored to, to ascertain the market value of the land in question.

15. No doubt the price fetched for similar lands with similar advantages and probabilities under bona fide transactions of sale at or near time of

issuance of notification u/s 6 of Land Acquisition Act is the usual best evidence of the market price but same is not coming forth, in the instant case.

It appears that the Collector in his tentative award proposed compensation at the rate of Rs. 54,835.20/- per kanal for the acquired land while forwarding the case to the Revenue Minister for approval under and in terms of Section 11 of the Act.

16. Section 11(2) of the Act provides that where on enquiry the Collector assessees tentative compensation in excess of the specified amount, the

Collector in that case shall refer the record of the case along with statements of tentative assessment of compensation for approval to Revenue

Minister or an officer specially empowered in this behalf. Admittedly it is not in dispute that in this case assessed tentative compensation had to be

forwarded to Revenue Minister and was no forwarded by the Collector.

17. Sub-section (3) of Section 11 of the Act provides that on reference by the Collector, on consideration of the report of the Collector and after

making such further enquiry as may be necessary, Revenue Minister or specially empowered Officer shall determine proper value of the property

to be acquired and communicate the same to the Collector and the value so determined shall form the basis of compensation to be al-lowed for the

land. Sub-section (4) of Section 11 of the Act, provides that Collector shall accordingly make final award on the reassessment.

18. On plain reading of Section 11(3) of the Act, it is clear that the Revenue Minister on receipt of the tentative assessment of compensation with

record is under legal obligation to consider the report of the Collector and after making necessary enquiry determine the proper value of the

acquired property which shall be the basis of compensation for the acquired land. In case Revenue Minister agrees with the Collector's assessment

and approves the tentative assessed compensation, the question of consideration and enquiry would not arise. However, where the tentative

assessment of compensation is not acceptable to the Revenue Minister, the requirement of consideration and making of inquiry is a legal

requirement. The Division Bench of this Court in Collector, Land Acquisition Vs. Ali Mohd. Bhat and Others, has observed as under (at page 39

of AIR)):

The words 'after considering the report of the Collector and after making such further enquiry as may be necessary; Occurring in sub-section (3)

of Section 11, are full of meaning. They unmistakably suggest that the Revenue Minister should make a speaking order after calling in further

evidence, if necessary. Consideration implies application of mind. There can be no application of mind unless the mind is disclosed. There can be

no disclosure of mind, unless the action is supported by reasons and logic. The Revenue Minister, will be deemed to adopt the reasoning given by

the Collector where he approves the tentative award. Where he does not propose to approve the tentative award he must give his reason which

must be based upon, the objective assessment of the available evidence. Therefore, we are not inclined to agree with the learned Counsel for the

State that the Revenue Minister will be competent to depart from the recommendations made by the Collector in the tentative award, without

assigning any reasons.

. 19. In case the Revenue Minister does not agree with the tentative assessment of the compensation by the Collector, he is under a legal duty to

give reasons and obviously the order has to be speaking one. There is application of mind disclosed to the outside world only if the action is

supported by reasons and logic. The Ist Additional District Judge Srinagar has not found from record that any reason whatsoever, is on record to

reveal that the Revenue Minister while slashing down the tentatively assessed value of land has held any enquiry or taken into consideration any

material or evidence whatsoever on record. The opinion does not appear to be based on any document, record or material. As even conceded to

by the Govt. Advocate no reasons are recorded for taking a different view from the view taken by the Collector on the question of assessment of

compensation. It is further seen from record that the Ist Additional District Judge despite directions and providing sufficient opportunities to the

Collector, the present appellant, to produce the record before that Court has not produced the record. The conclusion of the. Court of reference

that the Collector withheld the record from that Court intentionally and thereby adverse inference merits to be drawn against the Collector, is

justified in the facts and circumstances of this case. The Court of reference has been deprived of opportunity to examine the basis if any, for

revenue Minister's view in altering the tentatively assessed compensation of the land by the Collector. The record has not been produced even at

this stage. In this case Ist Additional District Judge is justified to hold that the Revenue Minister has set and assessed the value of acquired land

arbitrarily without application of mind. In the facts and circumstances of the case, the Revenue Minister could not slash the tentative award at his

whim. The award in any case is not binding on the Court of reference. The rates proposed by the Collector in tentative award when considered in

the totality of facts and circumstances of the case, represent nearest approximation to the market value more so keeping in view the copy of sale

deed deposed to by Manzoor Ahmad, loss of profits and business, location of the land and after making margin for developmental charges of the

acquired land. In fact learned Ist Additional District Judge Srinagar has been fair to the State in arriving at the compensation of Rs. 54,835.207-

per kanal as just and proper compensation for the acquired land. It merits, to be noted that the appellant/Collector, has not led any evidence

whatsoever before the Court of reference. The evidence led by the respondents claimants before the Court of reference is not wholly satisfactory.

In fact the best evidence on either side regarding comparable sale deed of the relevant period affording similar ' advantages as acquired land is

lacking. Some amount of estimation by Court in arriving at the market rate, has to be there, In CIA Nos. 4 and 5 of 1975 'Collector Land

Acquisition v. Bharat Singh', Division Bench of this Court observed :--

It is well settled that some amount of guess work is permissible where evidence is lacking on both sides as regards sale transactions in respect of

land similar to the land acquired. It is true that even where the Court should act with an amount of objectivity.

20. From record it is seen that the Court of 'reference, learned Ist Additional District Judge Srinagar has on objective consideration of the available

material and evidence, on estimation of fair price on the relevant date, reached the conclusion that the fair, just and proper compensation for the

land is Rs. 54,835.20/-. The counsel for the appellant has referred to the provisions of Section 11 and Section 12 of the Act for his submission that

the Collector in inquiry, on the material and evidence, after following required procedure has determined market value of the acquired land and

therefore, the District Judge had no occasion to disturb it and reach the conclusion that the compensation of Rs. 54,835.20/- per kanal is the

proper compensatory value of the acquired land at the relevant date. In support of his contention, he has cited authorities, referred hereinafter.

21. In Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of

Estate Duty, Andhra Pradesh and Others, it has been observed that

while estimating the value of the acquired property at the relevant time the Assessing Authority shall have regard to the peculiar nature of property,

its marketability and the surrounding circumstances. It is further held that the Court of reference cannot award amount as compensation below the

figure determined by the Collector in the final award. There can be hardly any other view of the law laid down by the Apex Court. The authority

does not over the factual matrix and legalities of this case.

22. In AIR 1933 Rang 176 the Court while interpreting Section 26 of the Land Acquisition Act 1894, observed that award of the Collector u/s 26

clause (2) of this Act is not same as an award by the Collector u/s 11. This authority is not applicable to the facts of the case.

23. AIR 1936 Rangoon 206 has laid down that the award u/s 11 has to be based oh Collector's own opinion of compensation to be awarded.

Any instruction as to matters the Collector should take into account in assessing such compensation is ultra vires and award based on such

instruction is unsustainable. This authority too is not applicable to this case.

24. In M. Dodla Malliah and Others Vs. The State of Andhra Pradesh and Land Acquisition Officer, Warangal, , it is held that an. inquiry by the

Land Acquisition Collector as to the value of acquired land and the amount of compensation required to be paid for its acquisition culminating in an

award, is an administrative and not a judicial proceeding and if the owner of the land desires that the value of the land should be ascertained

judicially he is to request the Collector to refer the matter to the Court for determination. This is not the issue arising in this appeal.

25. In State of West Bengal Vs. Kalicharan Mudi, it has been laid down that no application under Article 227 of the Constitution of India is

maintainable against the Collector's award u/s It of the Land Acquisition Act, as the Collector acts as an officer of the Government. This again is

beside the point and the issues raised in this appeal are quite different and the question of maintainability of the proceedings is not an issue in this

appeal.

26. AIR 1974 Kant 122 has been also cited. This authority in terms is not applicable to the facts of this case. In this authority it has been inter alia

held that while the claimants fails to adduce evidence, the Court is still to apply its mind and make an award. Court of Reference cannot simply

confirm the award of Land Acquisition Officer or dismiss the claim of claimant or reject the reference. Admittedly despite unsatisfactory evidence

and failure of respondents to lead any evidence, the Court of reference has proceeded to decide the reference on merits.

27. Yet another authority cited is Alihusain Abbahbai and Others Vs. Collector, Panch Mahats, for the legal proposition that an award u/s 11 of

the Land Acquisition Act is a mere offer on the part of the Government and if the person interested does not accept it a remedy is provided by

Section 19 of Land Acquisition Act. There can be no second opinion about this position of law. It is only because of the provisions of Section 18

of the Act that the claimants have moved the Collector who has referred the matter to the Court of reference for determination of just and proper

compensation arid the case has reached to this Court in first appeal.

28. For the aforesaid reasons, the appeal is dismissed without any order as to costs.