
(1972) 01 DEL CK 0015

In the Delhi High Court

Case No : Regular First Appeal No. 154 of 1967

Dewan Anand Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-01-1972

Acts Referred:

Citation : AIR 1973 Delhi 102 : (1972) 1 ILR Delhi 635

Hon'ble Judges : Hardayal Hardy, C.J.;V.S. Deshpande, J

Bench : Division Bench

Advocate : Ved Vyas, B.S. Grewal, Deepak Chaudhary and A.K. Marwaha, for the Appellant;

Judgement

Hardayal Hardy, C.J.

(1) The Land Acquisition Collector as per award No. 1653, awarded compensation to the appellant at the rate of Rs. 5,500.00 per bigha for nehri and other kinds of land except 15 bids was in Field No. 205/1 min which was a pond. For that a rate of Rs. 4,500.00 per bigha was allowed. The appellant claimed enhancement on the basis of the alleged market-value of land at the rate of Rs. 60.00 per square yard and sought a reference to be made to the District Judge which was heard by an Additional District Judge.

THE Union of India contested the claim of the appellant and that led to the framing of the following issue :-

"TO what enhancement in compensation, if any, is the claimant entitled ?"

(2) In order to show higher valuation of his acquired land, the appellant produced copies of the sale deeds (Exs. at to A4 and A8) in addition to the copies of the Jamabandi (Ex. A5), a copy of the mutation (Ex. A6) and copies of judgments Exs. A7 and A9. Copies of the sale-deeds (Exs. A I to A4 and A8) were produced to show rising trend in land prices in the neighborhood of the appellant's land. The appellant also relied upon copies of the judgments (Exs. A7

and A9) and on the copy of the mutation (Ex. A6). The Land Acquisition Collector however relied upon award No. 1552 although he did say that it was difficult to calculate as to what could be the market price of the appellant's land as no sale transaction of similar land in a similar situation was available for the years 1959, 1960 1961 and 1962. He Therefore adopted the rate given in Award No. 1552 in which the date of section 4 notification was 25-8-1962 saying that the situation of that land and the land under acquisition was the same and accordingly a rate of Rs. 5500.00 for the acquired land was awarded except in respect of 15 bids was of land in Khasra No. 205/1 min which as said before, was a pond and Therefore a rate of Rs. 4500.00 per bigha was awarded for that area.

(3) At the stage of reference, the learned Addl. District Judge assessed the market-value of the appellant land at Rs. 11000.00 per bigha except for 15 bids was area for which a rate of Rs. 10,000.00 per bigha was allowed. As a result, the appellant was awarded an additional sum of Rs. 1,88,375.00 for his acquired land plus Rs. 28,256.25 as solarium, making a total of Rs. 2,16,631.25 with interest at six per cent per annum from the date the Collector entered into possession till payment was made.

(4) Aggrieved by the order of the learned Additional District Judge, the appellant has come to this Court and his prayer in appeal is that he is entitled to an enhancement at a rate which is definitely more than Rs. 40.00 per square yard. He Therefore prays for the deficiency of Rs. 29 per sq. yard being made up in his case.

(5) The Addl. District Judge had before him a copy of the Aks Shajra (Ex. R5) which showed that Field No. 640/15/1 which measures 30 bighas 10 biswas, abuts on a passage connecting it with G.T. Road. On the other side of the G.T. Road there are Rana Pratap Bagh Colony, Jain Colony and Delhi Electricity Supply Undertaking Colony. These colonies are fully developed with all the amenities. Exhibits A I to A4 which relate to sample sales in Rana Pratap Bagh Colony showed that the land price in that colony ranged between Rs. 55.00 per sq. yard and Rs. 87 per sq. yard from 1957 to 1961. The market- price of the land assessed in Ex. A9 which is a copy of the judgment under Land Acquisition Case No. 28 of 1958, is Rs. 8.50 per sq. yard as on 26-7-1957. The land involved in that judgment is contiguous to the appellant's land with this difference that the appellant's land abuts on a passage connecting it with G.T. Road whereas the land covered by Ex. A9 abutted on the G.T. Road itself.

(6) The judgment (Ex. A9) is however of no use in the present case as it relates to market value-of the land on 26-7-1957. Meanwhile there is evidence to show that the prices have been steadily rising from 1955 to 1963. The market-price of Field No. 93 was assessed at Rs. 10758/ per bigha as on 26-10-1961 vide copy of the judgment Ex. A7. This field was purchased by claimant in that case on 26-9-1961, at a public auction held by the Ministry of Rehabilitation for Rs. 24,200. The purchaser, however, paid the price partly in cash and partly by adjustment of displaced persons" claim. The market-price of the displaced

persons" claims was 12 annas .per compensation rupee in 1960. The true price of Field No. 93 was Therefore reduced to Rs. 19,995.00 as remarked by Shri Hans Raj, Additional District Judge at page 3 of Ex. A7. Field No. 93 abutted on the G.T. Road whereas the appellant's land is on a passage connecting the same with that road. The purchase however relates to the period September 1961 and it is the case of the appellant that since then there has been considerable rise in the market-price of the land.

(7) The Land Acquisition Collector also turned to award No. 1552 in which the date of notification u/s 4 was 25-8-1962. The award related to 70 Bighas of land in this very village in which the appellant's land is situated, and in which a rate of Rs. 5500.00 per bigha was given. According to the Land Acquisition Collector, the situation of that land and the land under acquisition was the same. In the opinion of the Collector there was not much rise in the price of un-developed lands in Delhi after the issue of notification of 13-11- 1959. He Therefore considered the rate of Rs. 5500.00 per bigha for nehri and other kinds of land to be reasonable on 27-3-63. The Additional District Judge did not agree with the Collector and was definitely of the opinion that there had been a steady rise in land prices between the years 1959 and 1963.

(8) The Addl. .District Judge also look the view that the appellant's land is surrounded by fully developed colonies on ail sides and as such it has a potential value and adaptability for building purposes. Taking into consideration the situation and condition of land and its proximity to the G.T. Road and the availability of all the amenities of life in close proximity to the fully developed colonies and the rising trend inland prices in the locality preceding 7-3-1963, the Additional District Judge was of the view that the market price of the appellant's land should be assessed at Rs. 11,000.00 per bigha.

(9) On behalf of the Union of India, Exhibits R1, R2 and R4, copies of mutations and a copy of the judgment (Ex. R3) were produced. The land covered by Exs. R1, R2 and R4 is shown in blue in the copy of the Aks Shajra (Ex. R5). These lands were far away from the appellant's land and furnished no basis for assessing the market price of that land. Ex. R1 relates to the sale of land at Rs. 3508.80 per bigha as on 1-9-1960. The entry shows that the seller was not in possession of the sold area and was thus not in a position to deliver possession of the same to the purchaser. The land covered by Ex. R2 was sold on 31-12-1959 at the rate of Rs. 5667.00 per bigha. Ex.R4 related to the sale of land on 29-5-1961 at the rate of Rs. 2917 per bigha. The seller was a widow and was not in possession of the sold area and thus could not deliver possession of the same to the purchaser. Exhibit R3 is a copy of the judgment in Land Acquisition Case No. 404 of 1963. The claim for enhancement for Field No. 517/70 covered by Ex. R3 was rejected because the field was purchased by the claimant himself at a public auction for Rs. 1500.00 on 6-6-1958 from the Custodian of Evacuee Property. We are convinced that in that view of the matter the learned Additional District Judge was fully justified in rejecting the evidence

that was placed before him on behalf of the respondent.

(10) The question however is whether the market rate of Rs. 11000.00 fixed by the Additional District Judge is proper having regard to the situation of the appellant's land and whether it calls for further enhancement.

(11) Counsel for the appellant invited our attention to Land Acquisition Case No. 28 of 1958 decided by Shri Gurbachan Singh, Additional District Judge Delhi on 27-2-1961 where an area measuring 82 bighas 17 bids was of land situated at village Rajpur Chhavni was acquired by the Government for construction of houses for the Delhi State Government Employees' Co-operative House Building Society. The notification u/s 4 was issued in the year 1955 and a declaration u/s 6 was issued on 26-7-1957. The Land Acquisition Collector fixed the market price of land at a flat rate of Rs. 3500.00 per bigha in addition to payment for certain super-structures etc. The Additional District Judge enhanced the compensation to Rs. 8.50 per sq. yard.

(12) The argument advanced by the learned counsel for the appellant was that if the appellant's land was acquired in 1955 then on the basis of Ex. A9 he would have been allowed at least Rs. 10.00 per sq. yard for the basis on which the Additional District Judge assessed the market value of the land at Rs. 8.50 per square yard was given by him as under :-

"IT is stated by Ram Kishan Jain, Public Witness 3, who is the Secretary of the D.L.F., who developed Rana Partap Bagh Colony that in those days 35 per cent area was consumed by roads etc. and that development charges amounted to Rs. 4/8 to Rs. 5.00 per sq. yard. According to these calculations, if there is plottable area 1000 sq. yards, area of the plots will be 650 square yards. The price of these 650 square yard at Rs. 22.10 np per square yard could come to Rs. 14,365.00. In this amount is included the sum of Rs. 5000.00 as development charges at the rate of Rs. 5.00 per square yard. Thus the net balance remains 9,365.00. Out of this is to be deducted the brokerage, interest on investment during the time all the plots are sold etc. which I assess roughly at Rs. 865.00. Thus the net price of 1000 square yards would be Rs. 8500.00 or at the rate of Rs. 8.50 per square yard."

The case went up in appeal before the Punjab High Court (being Regular First Appeal No. 91-D of 1961) which was disposed of on April 29, 1964. The Division Bench consisting of D.K. Mahajan and S.K. Kapiir, JJ. approved the basis, adopted by the District Judge and observed :-

" THE next contention has been concentrated on the value of the Rana Partap Bagh Colony in respect of which about 26 sale deeds of small plots of land have been produced. The appellant's learned counsel has leveled his criticism against these sale deeds on the ground that being small plots their price cannot serve as a safe and valuable guide for fixing the value of a big area like the one with which we are concerned. It is undoubtedly true that normally speaking sales of small areas of land do fetch a higher price than a large area forming subject-

matter of one sale. but, at the same time, it is noteworthy that when a big plot is converted into small ones, a plot of area is left out, as it must necessarily be left out, for the purposes of developing the colony. In the case in hand the Court below has dealt with the instance of the Rana Partap Bagh Colony in a very satisfactory manner and has come to the conclusion that on this basis the price would come to Rs. 8.50 np."

Counsel for the appellant contended that the Division Bench had approved the basis of plotted area of the land in that case and Therefore Exs. at to A4 on which the appellant in the instant case placed reliance, had to be taken into account. Ex A4 relates to the sale of plot of land measuring 233.33 sq. yards on 10-9-1957 for Rs. 12.833 at the rate of Rs. 55 per sq. yard. Another plot of land measuring the same area was covered by Ex A3 and was sold on 1-4-1958 for Rs. 13,998 at the rate of Rs. 60 per sq. yard. Yet another plot of land with an area of 116.6 sq. yards which was covered by Ex. A2 was sold on 27-2-1959 for Rs. 8162.00 at the rate of Rs. 70 per square yard. Another plot of land measuring 181.8 sq. yard covered by Ex. at was sold on 21-8-1961 for Rs. 16,000.00 at the rate of Rs. 87.00 per sq. yard. All these plots were in Rana Partap Bagh Colony not far away from the appellant's land and the sales of these plots showed that there had been appreciable increase in the land prices in this locality from 1957 to 1961.

(13) The argument advanced on behalf of the appellant was that his land was surrounded by developed colonies. To the north-east of this land there is the Gupta Colony while to the north there is the New Gupta Colony. To the west there is the Delhi Transport Undertaking Colony and the Delhi State Employees Colony. In between the Delhi Transport Under-taking Colony and Delhi State Employees Colony there is Grand trunk Road and to its south-west there is the Rana Partap Bagh Colony while to the south there is the Jain Colony and Delhi Electricity Supply Undertaking Colony. To the south-east there is the village Rajpur Chhavni and an approach road which is stated to be 30 feet wide, takes off from Grand Trunk Road and joins the appellant's land.

(14) In these circumstances, it was urged that the appellant's land had vast potentiality and could be developed into a colony where the plotted area could in no case be less than 60 to 65 per cent of the gross area. The value of small plots of land in these developed colonies particularly in Rana Partap Bagh Colony, was Therefore of great significance. It not merely showed the rising trend in prices from 1957 to 1961 but also showed that even if half of the land was to be left for common purposes and a sum of Rs. 8.00 per square yard was taken towards the development and a further amount of Rs. 1.50 per sq. yard on account of other expenses in getting the plan sanctioned from the Municipal Corporation, the market value of undeveloped land in the area could in no case be less than Rs. 40.00 per sq. yard in the year 1963.

(15) Counsel for the appellant also drew our attention to a recent decision of a Division Bench of this Court in Madan Mohan Manoharlal Vs. Union of India, . The

land in that case measured 50 bighas 19 bids was and was situated in village Sadhora Kalan. In Aks Shajra (Ex. R5) that land is shown as situated to the west of Rana Partap Bagh Colony and is along the railway track. While dealing with the market-price of that land, the learned Judges observed:-

"As stated earlier the Rana Partap Bagh Colony had been fully developed by 1956 and it is in evidence that all the plots therein had been sold by that year. On the one hand is the land of the proposed Sangham Park colony where no development had taken place by reason of the acquisition notices and on the other are the lands in Rana Partap Bagh colony where development had taken place a long time back and houses had been constructed. According to the Supreme Court decision referred to earlier, the existing condition of the land has to be taken into consideration along with its potential possibilities when laid out in its most advantageous manner infixing the market value which a willing purchaser would pay to a willing seller. There is no doubt that a willing purchaser will pay a higher price for land in a colony which has not only been fully developed but where houses have been constructed at the time of his purchase than for land which is still undeveloped and which has only a potentiality of development into a residential area. Even though these sales and resales in Rana Partap Bagh colony show a rising trend in the price of land, the percentage of rise in Rana Partap Bagh Colony cannot apply to the proposed Sangham Park colony where no development had taken place and where there had been no change in its shape since 1958. In our opinion, it will be reasonable to assess the rise in prices of un-developed land between February, 1960 and June 1961 on the same basis as the rise in prices of un-developed land between June to December 1958 and February 1960 which has been assessed by us earlier at Rs. 2,500.00- per bigha. On this basis the rise in prices between February 1960 and June 1961 would also be at the rate of Rs. 2,500.00- per bigha and Therefore the market price of undeveloped land in June 1961 would be Rs. 15,500.00 per bigha."

Learned Judges were right in saying that the sales and re-sales in Rana Partap Bagh Colony showing a rising trend in prices did not apply to Sangham Park Colony where no development had taken place and there had been no change in the shape of the land since 1958. The same applies to the appellant's land where even a lay-out plan had not been prepared. But when there is a fairly large pocket of undeveloped land which is surrounded on all sides by developed colonies and since 1957 there is an appreciable rise in the plotted area of developed land the market price of un-developed land cannot remain unaffected. The rise may not be as steep as in the case of developed land; but there has to be some rise. In Madan Mohan's(1) case the learned Judges assessed the increase in prices between February 1960 and June 1961 at the rate of Rs. 2,500.00 per bigha in the case of undeveloped land. The only question is the extent of rise in the case of appellant's land up to March 1963.

(16) On behalf of the respondent Shri Dipak Choudhry argued that after

13-11-1959 when a notification under S. 4 was issued by the Government about the acquisition of 34,000 acres of land, the land prices became stable and there was not much increase in the prices of un-developed land. In 1961 there was yet another notification about acquisition of further 16,000 acres of land. The prices in 1959 and 1961 should Therefore be taken as representing the correct measure of market prices of land in the year 1963. There can be no doubt that one of the effects of the blanket notifications issued by the Government in the years 1959 and 1961 was to stop private transactions 642 of sale in un-developed land in the territory of Delhi and that is why no sale transactions of similar lands in similar situations were available in 1959, 1960, 1961 and 1962. But it was laid down by the Privy Council in AIR 1939 98 (Privy Council)

" THE compensation must be determined by reference to the price which a willing vender might reasonably expect to obtain from a willing purchaser. The disinclination of the vender to part with his land and the urgent necessity of the purchaser to by must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that 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. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. To say that it is the value of the land to the vendor that has to be estimated is however not in strictness accurate. The land for instance, may have for the vendor a sentimental value for in excess, of its "market value". But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell "at the market price" !"

The Supreme Court in Raghubans Narain Singh v. Uttar Pradesh Government AIR 1967 S.C.465 followed the same principle and it was observed :-

" MARKET value on the basis on which compensation is payable under Sec. 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."

(17) The existing condition of the appellant's land at the time of notification u/s 4 of the Act was such that it was a barren piece of land, but it had potential possibilities when laid out in an advantageous manner as a residential colony and there was also no doubt that the prices in the area were rising from 1957 onwards. It is also true that after the blanket notifications of 1959 and 1961 there were no private transactions of sale. But during the years 1959 to 1963 the prices of plots in developed colonies showed a tremendous upward trend and that had its effect on un-developed land in the neighborhood of developed colonies.

(18) It is in that light that one has to consider the market-value of the appellant's land. The appellant could not possibly sell his un-developed land to the public but when the Government acquired the land it knew that it was laid out in the most advantages manner as a residential colony. It had all its existing advantages and potential possibilities. The Government as the only buyer could not take advantage of its position. It had to pay the proper market value and if prices have been rising since 1957 or 1959 on-wards there is no reason why they would not have risen further if the blanket notifications had not been issued. If the criterion laid down by the courts is the price which a willing purchaser has to pay to a willing seller. then the Government has to be put in the position of a willing purchaser and it must pay market value on that basis.

(19) Counsel for the appellant also invited our attention to a decision of the Supreme Court in *The All India Tea and Trading Co. Ltd. Vs. The Collector of Darrang and Another*, where the land which was the subject-matter of acquisition was situated in a locality which was developed and were steady, increase in prices was taking place. The Supreme Court observed that the High Court was in error in not taking into consideration the evidence relating to the gradual rise in prices in the area since 1950.

(20) Our attention was also drawn to a Bench decision of Bombay High Court in *Chatusshakhiya Brahmavrinada Gayaran Trust and Others Vs. Union of India*, where it was said that if building activity and consequent development goes on the land near or round about the acquired land, the building and development potentiality of the requisitioned and subsequently acquired land in question would also increase and there would be a consequent rise in the market price thereof in spite of the fact that the lands remain un-built or un-developed because of the continued requisition. This authority also supports the view we have taken that when there is a rise in the prices of developed land, there is a consequent rise in the market price of un-developed land near or round about the developed land.

(21) The next case cited on behalf of the appellant was a decision of Mysore High Court in *T. Adinarayana Setty v. Special Land Acquisition Officer, Bangalore* AIR 1954 Mysore 71 where in assessing compensation for the acquisition of land the lay out of which was sanctioned, 25 per cent of the area was excluded as an area earmarked for roads and drains. It was argued that in the present case also if the land is allowed to be developed into a residential colony not more than 25 per cent of area would be excluded as earmarked for roads and drains. We have perused the Mysore judgment; but it appears to us that in that case there was no mention of other open places like parks, clubs and other amenities which are necessary for the purpose of development of a colony in Delhi. The contention of the claimant in that case was that reservation of more than a sixth of the total area was un-reasonable while the respondent had set apart more than 60 per cent of the area for the construction of drains and roads. On a consideration of the evidence of the engineer, the High Court held that the minimum percentage

of the area as stated by the engineers of the Corporation itself was 25 per cent.

(22) Apart from the fact that we are not concerned in this case with developed land as such, we have made use of the documents relating to sale and re-sale of developed land only for the purpose of considering the rise in prices. In the absence of evidence, we cannot hold that only 25 per cent of the area should be left for roads, drains and other amenities required for a residential colony in Delhi.

(23) Counsel for the appellant lastly argued that in Madan Mohan's(1) case where the notification u/s 4 was issued on December 9, 1958, the learned judges enhanced the compensation to the tune of Rs. 15,500.00 per bigha. It was urged that the land in that case suffered from a serious handicap. It was along side the railway tract and was near the only developed colony of Rana Partap Pagh. It is true that the owner of the land had prepared a lay-out plan for a residential colony; but that did not make much difference for the layout had not been approved. In the present case, the appellant's land was surrounded by several colonies. The moment it was decided to develop the land, the cost of development and other amenities would be less as the roads and drains would be easily connected with the roads and drains of developed colonies and would cost less. Its remoteness from the railway track would also make the life in the colony free from disturbances. The notification u/s 4 was issued in this case in March 1963 as against the notification in Madan Mohan's(1)case which was issued in December 1958. In between there has been some increase in the prices of land.

(24) Keeping all these facts in view, we are of the opinion that the enhancement in the present case should be to bring the market-price up to the level of Rs. 16,000.00 per bigha in the case of nehri and other land as against Rs. 11,000.00per bigha allowed by the Addl. District Judge. The enhancement in the case of 15 bids was out of field No. 205/1 min will be Rs. 15,000.00 per bigha. The appellant will also be awarded 15 per cent solarium on the enhanced amount in addition to what was allowed by the Addl. District Judge. He will have interest at the rate of six per cent per annum from the date the collector entered into possession till payment is made. The appellant will also have his costs of this appeal. The appeal is disposed of accordingly.