(2015) 08 AHC CK 0050

In the Allahabad High Court

Case No : First Appeal Nos. 220 and 221 of 2015

Dharamvir and Others — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 18, 23(1), 24, 4, 4(1)

Citation : (2015) 113 ALR 421 : (2016) 130 RD 304

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar Mishra, J

Bench : Division Bench

Advocate : Anil Sharma, for the Appellant

Final Decision : Partly Allowed

Judgement

Sudhir Agarwal, J—Both these appeals under Section 54 of Land Acquisition Act, 1894 (herein after referred to as the "Act, 1894") read with Section 96 of the Code of Civil Procedure (herein after referred to as the "C.P.C.") have arisen from a common Award/judgment and decree dated 01.11.2003 passed by Sri S.K. Bhatt, Additional District Judge, Court No. 3, Bijnor, adjudicating 5 Land Acquisition References (herein after referred to as the L.A.R.) determining market value of acquired land @ Rs. 135/- per sq. meter.

2. In the present two appeals, we are concerned with the aforesaid Award dated 01.11.2003 with reference to L.A.R No. 17 of 1995 which is subject matter of challenge in First Appeal No. 221 of 2015 and 72 of 1994 which is under consideration in First Appeal No. 220 of 2015.

3. At the instance of Hindustan Petroleum Corporation Ltd. (herein after referred to as the H.P.C.L), for construction of Petroleum Product Depot, State Government initiated proceedings for acquisition of land under the provisions of Act, 1894. Notification Under Section 4(1) was published on 07.07.1991 and under Section 6(1) of Act, 1894, on 05.10.1991. Possession of land was taken on

17.12.1992. Award by Special Land Acquisition Officer (herein after referred to as the S.L.A.O) was pronounced on 05.10.1993. The disputed land sought to be acquired, situate in village Tatarpur Lalu, Rahu Kheri Kora and Rahu Jhedi Gadhu, Tehsil Najibabad, District Bijnor. Total area of acquired land, in three villages mentioned above is as under:-

4. The SLAO collected 185 sale deeds in respect of village Tatarpur Lalu which were executed in the last three years, before the date of notification dated 07.07.1991, under Section 4(1) of the Act, 1894. The sale deeds from serial No. 1 to 38 (except 12) were mainly of the year 1988, 39 to 92 (except 41 & 56) of the year 1989, 93 to 153 (except 115 &153) of the year 1990 and all were rejected. Similarly from serial No. 154 to 185, though the sale deeds were of 1991 but relate to Abadi Land wherein consideration was founded on per square meter, hence SLAO rejected the same also. He, however, relied on the exemplars i.e. sale deeds at serial No. 12, 41, 56, 115 & 153 which were in respect of agricultural land and ultimately determined market rate as under:-

5. Similarly for the village Rahu Jhedi Gadhu, the SLAO relied on 32 exemplars executed in the preceding 3 years. The exemplars at serial Nos. 1, 3, 6, 9, 14, 15, 19, 21, 22 to 24, 36, 27, 29, 30 & 32 i.e. in total 18 relate to Abadi and the area of land under transaction was very small. The consideration was also on square meter/square yards. The acquired land was wholly agricultural, therefore all these 18 exemplars were rejected by him. He also rejected other exemplars for one or the other reasons except exemplars No. 17, 18 and 19, which show rate of land under transaction at Rs. 1,501/- per bigha. He ultimately relied on exemplar No. 17 and determined market rate of the acquired land in village Rahu Jhedi Gadhu as under:-

6. Proceeding further, for village Rahu Khedi Kora, the SLAO considered 16 exemplars executed in the preceding three years, but rejecting all, he relied only on exemplar No. 17 in respect of village Rahu Jhedi Gadhu and determined market rate on the basis thereof as under:-

In fact the court below found the market rate of acquired land at Rs. 150/- per square meter but applying 10% deduction had ultimately given award determining market rate at Rs. 135/- per sq. meter.

7. The court below consolidated all the LARs and LAR No. 72 of 1994 which is subject matter of appeal in First Appeal No. 220 of 2015 was made the leading case. Vide Exhibit list C-29, the claimants adduced following sale deeds as exemplars:-

8. The claimant also relied on the award dated 16.10.2003 in LAR No. 317 of 1993 Ganeshi Singh Vs. State of U.P. and others which relates to Village Tatarpur Lalu.

9. Besides some more documents i.e. copies of Khasra were also filed. As oral evidence claimants produced five witnesses which included claimant Dharamvir

as P.W. 1, Sri Rajiv Kumar, P.W. 2. Smt. Vijay Laxmi, P.W. 3, Amar Jeet Singh, P.W. 4 and Tahir Hussain, P.W. 5.

10. The claimant also relied on the award dated 16.10.2003 in Exhibit list C-Ga-103 in LAR No. 317/1983 Ganeshi Singh Versus State which relates to village Tatarpur Lalu.

11. On behalf of the respondents, Sri Virendra Kumar Verma and Sardar Baljit Singh deposed their statements as D.W. 1 and D.W. 2. They relied on a single exemplar, i.e. sale deed dated 17.10.1994 executed by one Hakim etc. in favour of Smt. Chand Gupta.

12. Aggrieved of the award of SLAO, land owners/tenure holders made applications for Reference under Section 18 of Act, 1894 to the District Judge, in furtherance whereof, Five LARs including 17 of 1995 and 72 of 1994 with which we are concerned in these appeals, came to be decided by Court below vide award dated 01.11.2003. Though, the Court below has enhanced market rate by partly accepting claim setup by land owners/tenure holders, determining at Rs. 135/- per square meter in all the three villages but the claimants are not satisfied, hence these two appeals.

13. Sri Anil Sharma, learned counsel for the appellant contended that the appellants relied upon certain exemplars but the court below has not looked into the same and therefore has omitted to consider relevant and material relevant evidence for determination of adequate and appropriate market rate for the purpose of payment of compensation to the claimants.

14. Per contra learned counsel Sri Vikas Budhwar appearing for the respondent HPCL as also the learned Standing Counsel argued that land was acquired for the purpose of construction of Petroleum Product Depot, the Court below had already sufficiently enhanced market rate and hence no interference is called for in these appeals.

15. We have heard learned counsel for the parties and perused the record.

16. Before coming to the merits of the impugned award it would be relevant to look into the general principles for determination of the market value of acquired land, which have been settled in the past more than hundred years, by way of various precedents of Apex Court as well as this Court and various other High Courts. Instead of making digest of the precedents, this Court finds it appropriate to bring on record only a few of such new authorities which throw light on these aspects.

17. It cannot be doubted that whatever material was placed before SLAO, that has no relevance before court considering Reference under Section 18 of Act, 1894 unless such document is presented before it and proved. An award passed by SLAO is like an offer and not to be treated as judgment of trial court. It is well settled, when the land holders are not agreeable to accept the offer made by Land Acquisition Officer, they have a right to approach Collector under section 18

of the Act, 1894, by a written application, for referring the matter to Court, for determination of the amount of compensation or if there is any dispute regarding measurement of land for that also. In the present case the References in question were made at the instance of claimants for determining the amount of compensation.

18. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, AIR 1988 SC 1652 : (1988) 3 JT 106 : (1988) 2 SCALE 43 : (1988) 3 SCC 751 : (1988) 1 SCR 531 Supp : (1988) 2 UJ 318 , the Court has said that a Reference is like a suit which is to be treated as an original proceeding. The claimants are in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate. However, for the said purpose the Court would not consider the material, relied upon by Land Acquisition Officer in award, unless the same material is produced and proved before the Court. The Reference Court does not sit in appeal over the award of Land Acquisition Officer. The material used by Land Acquisition Officer is not open to be used by the Court suo motu unless such material is produced by the parties and proved independently before the Reference Court. Determination of market value has to be made as per market rate prevailing on the date of publication of notification under section 4 of Act, 1894. The basic principle which has to be followed by Reference Court for determining market value of land, as if, the valuer i.e. the Court is a hypothetical purchaser, willing to purchase land from the open market and is prepared to pay a reasonable price, as on the crucial day, i.e., date of publication of notification under section 4 of the Act, 1894. The willingness of vendor to sell land on reasonable price shall be presumed. The Court, therefore, would co-relate market value reflected in the most comparable instance which provides the index of market value. Only genuine instances would be taken into account. Sometimes even post-notification instances may be taken into account if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. Proximity from time angle and from situation angle would be relevant considerations to find out most comparable instances out of the genuine instances. From identified instances which would provide index of market value, price reflected therein may be taken as norm and thereafter to arrive at the true market value of land under acquisition, suitable adjustment by plus and minus factors has to be made. In other words a balance sheet of plus and minus factors may be drawn and the relevant factors may be valuated in terms of price variation, as a prudent purchaser would do. The market value of land under acquisition has to be deduced by loading the price reflected in the instances taken for plus factors and unloading for minus factors.

19. Some of the illustrative examples of plus and minus factors given by the Court in Chimanlal Hargovinddas (supra) are as under:

20. The size of the land, therefore, would constitute an important factor to determine market value. It cannot be doubted that small size plot may attract a

large number of persons being within their reach which will not be possible in respect of large block of land wherein incumbent will have to incur extra liability in preparing a lay out and carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers etc. The Court said that in such matters, the factors can be discounted by making deduction by way of an allowance at an appropriate rate ranging between 20% to 50%, to account for land, required to be set apart for carving out road etc. and for plotting out small plots.

21. The concept of smaller and larger plots should be looked into not only from the angle as to what area has been acquired, but also the number of land holders and size of their plots. When we talk of concept of a prudent seller and prudent buyer, we cannot ignore the fact that in the category of prudent seller the individual land holder will come. It is the area of his holding which will be relevant for him and not that of actual total and collective large area which is sought to be acquired.

22. In V.M. Salgoacar and Brother Ltd. Vs. Union of India (UOI), (1995) 1 SCALE 220 : (1995) 2 SCC 302 : (1995) 1 SCR 188 the land acquired by notification dated 06.07.1970 in village Chicalim near Goa Airport belonged to a single owner. The Court observed, when land is sold out in smaller plots, there may be a rising trend in the market, of fetching higher price in comparison to the plot which are much higher in size. Having said so the Court further said "though the small plots ipso facto may not form the basis per se to determine the compensation, they would provide foundation for determining the market value. On its basis, giving proper deduction, the market value ought to be determined".

23. Again in Shakuntalabai (Smt) and Others Vs. State of Maharashtra, (1995) 8 JT 501 : (1995) 6 SCALE 693 : (1996) 2 SCC 152 : (1995) 5 SCR 618 Supp acres of land in Akola town was sought to be acquired by notification published on 11.08.1965 under section 4(1) of Act, 1894 which was also owned by a single person. It is in this context the Court said "the Reference Court committed manifest error in determining compensation on the basis of sq. ft. when land of an extent of 20 acres is offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider valuation sitting on the armchair of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feat of imagination is necessary to reach the conclusion. The answer is obviously no".

24. We need not go into a catena of other decisions rendered in the last several decades since we are benefited of a recent Division Bench decision of this Court in First Appeal No. 454/2003 and other connected matters, Meerut Development Authority through Its Secretary vs. Basheshwar Dayal (since deceased) Through His L.Rs and another decided on 01.08.2013 wherein the legal principles settled by Apex Court in various judgments, relevant for determination of market value have been crystallized as under:

(i) Function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of the notification under Section 4(1),

(ii) The method for determination of market value may be:

(a) Opinion of experts,

(b) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages,

(c) a number of years purchase of the actual or immediately prospective profits of the land acquired.

(Ref. Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, (1994) 2 JT 604 : (1994) 2 SCALE 298 : (1994) 4 SCC 595 : (1994) 1 SCR 368 : (1994) 2 UJ 17)

(iii) While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive but subject to the following factors:-

(a) Sale must be a genuine transaction,

(b) The sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,

(c) The land covered by the sale must be in the vicinity of the acquired land,

(d) The land covered by the sales must be similar to the acquired land.

(e) the size of plot of the land covered by the sales be comparable to the land acquired.

(f) If there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land.

(iv) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition which are as under:-

(v) For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(vi) Deduction not to be done when land holders have been deprived of their holding 15 to 20 years back and have not been paid any amount.

(vii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. (Ref. (2011) 8 SCC page 9, Valliyammal and another Vs. Special Tahsildar Land Acquisition and another, paras 13, 14, 15, 16, 17, 18 and 19.

(viii) When there are several exemplars with Reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. (Ref. Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, AIR 2012 SC 2721 : (2012) 114 CLT 696 : (2012) 3 CTC 396 : (2012) 4 SCALE 628 : (2012) 5 SCC 432 : (2012) AIRSCW 2822 : (2012) 4 Supreme 66 .

(ix) In view of Section 51A of the Act certified copy of sale deed is admissible in evidence, even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word ''may''. A discretion, therefore, has been conferred upon a Court to be exercised judicially, i.e., upon taking into consideration the relevant factors. Only because a document is admissible in evidence, the same by itself would not mean that the contents thereof stand proved. Having regard to the other materials brought on record, the Court may not accept the evidence contained in a deed of sale. (Ref. Cement Corporation of India Ltd. Vs. Purya and Others, (2004) 8 JT 327 : (2004) 8 SCALE 558 : (2004) 8 SCC 270 : (2004) AIRSCW 5534 : (2004) 7 Supreme 711).

(x) While fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:-

(a) Existing geographical situation of the land.

(b) Existing use of the land.

(c) Already available advantages, like proximity to National or State Highway or road and/or developed area,

(d) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

(xi) Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality.

(xii) The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing.

(xiii) In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with Reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". (Ref. Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others, AIR 2012 SC 2709 : (2012) 6 JT 185 : (2012) 6 SCALE 34 : (2012) 7 SCC 595 : (2012) AIRSCW 3986 : (2012) 4 Supreme 323 .

25. In the light of above general guidelines and also considering the fact that claimants have to be considered as plaintiffs before Reference Court, therefore, onus initially lay upon them to prove what is the appropriate market rate, we proceed to consider first in the present case such onus has been discharged by plaintiffs or not.

26. From the finding recorded by the Reference Court some of which are not disputed, it is evident that though land is sought to be acquired in three villages, but all are adjacent having common features and therefore, for the purpose of market rate of acquired land of three villages the court below did not find any reason to make a distinction. It has held that the entire village land has potential

of abadi and in the vicinity thereof dense abadi actually exists. It has held that on the basis of nature of soil no deduction was justifiable, by holding:-

"Acquired land had potential of abadi at the time of acquisition and was adjacent to Najibabad town at Haridwar bye-pass. Hence on the basis of classification of land, the award of compensation was not justified." (English Translation by Court)

27. In order to justify that no distinction should be made on the basis of land, whether forms in a village or other, the court below has said:-

"The three villages are adjacent and lie in same vicinity. From the evidence available on record, which has been discussed above, it is evident that all the acquired land of aforesaid three villages had the intense potential of abadi on the date of notification of acquisition under section 4 of the Act. " (English Translation by Court)

28. Therefore, the finding recorded by the Court below that rate of all the three villages should be determined at par cannot be faulted. We also find that various exemplars filed as sale deeds have been rightly rejected by the court below also on the ground that the same are in respect of very small pieces of land and did not provide correct factors so as to determine market rate on the date of issuance of notification under Section 4(1) of Act 1894. We find that papers No. C-30, C-31 and C-32 are three sale deeds dated 02.07.1982, 08.08.1989 and 23.10.1989 in respect of abadi land and have rightly been rejected by the court below as relevant exemplars. Papers No. C-33 and C-34 are in respect of very small piece of land i.e. 12.5 sq. meter and 5.01 sq. meter, hence could not have been relevant for determination of adequate market value. The sale deed of Ganeshi Singh dated 30.4.1991 relating to Village Rahu Khedi is very near to acquisition Notification dated 7.7.1991. It is true that area of land transferred in the aforesaid sale deed was 211.50 sq. meter only, but applying the principle of reasonable deduction, the same could have been validly relied for the purpose of determining market value. The deduction in such matters based on exemplars of small piece of land has been upheld varying 25% to 75%. In the present case, even if average of 37.5% deduction is applied, rate would come to more than Rs. 140/- per sq. meter. The actual will come to Rs. 158.75. In the award in LAR No. 317 of 1993, the market rate determined was Rs. 150/- per sq. meter but in the present case, while following the said award, the Court below has applied deduction of 10%, which in our view, is unjust and unreasonable.

29. It is also pointed out that against the award in LAR No. 317 of 1993, First Appeal No. 595 of 2004 had been filed before this Court, which has been decided on 10th July 2015 and this Court has held Rs. 150/- per sq. meter as the market rate for the land acquired therein as justified. In our view, the same should be applied in the present case also.

30. In the result, appeals are allowed partly. The impugned award of the Court below is partly set aside and it is provided that the claimant appellants shall be entitled to receive compensation of acquired land at the market rate of Rs. 150/-

per sq. meter. The award in respect of rate of solatium, interest etc. is hereby confirmed.

31. The appellants shall also be entitled to cost proportionate to their success in this Court.

