(1966) 10 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Reg. First Appeal No. 1-D of 1963

D.L.F. Housing and Construction (P) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 18-10-1966

Acts Referred:
Land Acquisition Act, 1894 — Section 23

Citation : AIR 1967 P&H 325

Hon'ble Judges : S.K. Kapur, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : J.C. Bhatt, Ravinder Narain, Keshav Dayal and Daya Krishnan, for the Appellant; S.N. Shankar, C.G.C. and N. Srinivas Rao, for the Respondent

Judgement

S.K. Kapur, J.—This judgment will dispose of Regular First Appeals Nos. 1-D of 1963, 5-D of 1963, 14-D of 1963 and 16-D of 1968. Regular First Appeal No. 1-D of 1963 is by Messrs. D. L. F. Housing and Construction (Private) Limited while Regular First Appeal No. 5-D of 1963 is by Khushi Ram and others. The other two regular first appeals we cross-appeals by the Union of India.

2. On 3rd September, 1957, there was a notification u/s 4 of the Land Acquisition Act, 1894, issued by the Chief Commissioner, Delhi, notifying a total area of 407.86 acres of land for acquisition for the execution of the Interim General Plan for the Greater Delhi. The land is situate in village Basiadara Pur. Some area was subsequently withdrawn from the notification and ultimately land measuring 227 Bighas 2 3/4 Biswas belonging to Messrs D. L. F. Housing and Construction (P) Limited and about 391 Bighas belonging to Khushi Ram and 52 others was acquired. The land abuts on Delhi-Najaf Garh Road and is situate opposite Rajauri Garden Colony which Colony has been developed into residential plots by M/s. D. L. F. Housing and Construction (P) Limited, New Delhi.

The Land Acquisition Collector under his award dated 29th March, 1960, divided the acquired land into three categories. In the first category, called Block I, he placed field No. 2157 measuring 45 Bighas 11 Biswas that abuts on Najaf Garh

Road. Fields Nos. 2087-88 measuring 28 Bighas 2 Biswas were placed in Block 3 and the remaining land in Block 2. So far as the appellant Messrs D. L. F. Housing and Construction (P) Limited are concerned, 7 Bighas 18 Biswas of their land falls in Block 1 and 219 Bighas 43/4 Biswas in Block 2. With respect to the land of Khushi Ram and others, 33 Bighas 4 Biswas were held to fall in Block 1 and the remaining in Block 2. The Collector described 28 Bighas 2 Biswas belonging to Khushiram and others as lying in depression but the learned Additional District Judge, Delhi, awarded compensation for that area also at the same rate as for the other land in Block 2 and that is one of the grievances of the Union of India. The Collector awarded Rs. 3,500 per Bigha with respect to the land characterised as Block 1, Rs. 3,000 per Bigha for the land in Block 2 and Rs. 2,500 for the third category of land.

The Additional District Judge, however, by his judgment dated 10th September. 1962, increased the rates to Rs. 6,000 per Bigha for the land in Block 1 and Rs. 4,000 per Bigha for the land in Block 2. Messrs D. L. F. Housing and Construction (P) Limited claimed Rs. 12,000 per Bigha before the Additional District Judge but limited their claim to Rs. 10,000 per Bigha before us. Khushi Ram and others, however, claimed Rs. 8 per sq. yard and I may mention that that claim has somewhat influenced my decision in arriving at the rate which should be allowed. It is not disputed that the land in question has been within the Municipal limits since 1954 and it is also borne out by the evidence of Shri Ganesh Duttaray Kadu (A. W. 1) and Shri Ram Saran Kumar (A. W. 5). It has also been found by the learned Additional District Judge that on 28th January, 1956, Messrs. D. L. F. Housing and Construction (P) Limited (hereafter referred to as D. L. F.) submitted to the Delhi Development (Provisional) Authority the lay out plan of this block of land and this is evidenced by Exhibit A. W. 19/1, a letter from D. L. F. to the Delhi Development Authority dated 28th January, 1956. In the said letter a request was made to sanction the lay out plan of the area and it was also pointed out that the lay out plan and the development scheme of D. L. F.''s Rajauri Garden Colony had already been sanctioned by the Delhi Improvement Trust. The above mentioned evidence clearly shows that the land was in a developing colony and the lay out plans of the surrounding areas had already been sanctioned. As a matter of fact, this is not seriously contested by the Union of India.

3. This takes me to the instances available on the record for determining the compensation which should be awarded. Before I do so I would like to mention that the plan Exhibit A. 43 shows that a part of the land acquired falls on the main Najaf Garh Road and facing the said land, on the other side of the said road, is Rajauri Garden area, a fully developed colony. On the Ring Road side across the said road is another area known as Raja Garden. The first instance available on the record is the acquisition of 144 Bighas for die construction of the Ring Road itself, which was notified on 22nd September, 1953. This acquisition was subject-matter of award No. 850 dated 10th April, 1958. The compensation awarded was Rs. 3,800 per Bigha for the land on the road and Rs. 2,800 for the

land removed from the road. A part of the land for which compensation was awarded at Rs. 3,800 per Bigha fell in Raja Garden. The rates fixed by the said award have been increased by the District: Judge by his judgment dated 1st April, 1966, to Rs. 5,380 per Bigha for the first category, and Rs. 4,000 per Bigha for the second category of land. An application has been filed before us for permission to place a certified copy of the judgment of the District Judge on record. I, however, do not propose to take that into consideration as it is not known whether the Union of India has filed an appeal against that judgment or not. Of course, if an appeal has not been filed it would provide a good indication in the matter of price.

Then there is evidence of Shri Ram Kishan Jain (A. W. 29) showing that the increase in prices in that area between August 1956 and September 1957 was about 33 per cent. This witness has not been cross-examined on that point, and probably rightly so, for it is a matter of common knowledge that prices of land in Delhi have jumped by leaps and bounds progressively sice 1950 onwards. The following other instances of sale in the area are also available on record :--

(1) Sale deed Exhibit A. 2 dated 29th March. 1957, which was a private sale of a vacant plot of land measuring 175. square yards in Rajauri Garden at Rs. 25.60 np. per square yard. This sale deed has been proved by Shri Harbans Lal (A. W. 4).

(2) Sale deed Exhibit A. 5 dated 9th April, 1957, whereunder 189 square yards of land were resold in Rajauri Garden at Rs. 25.50 np. per square yard.

(3) Sale deed dated 21st May 1957 (Exhibit A. 6) whereunder an area of 276.7 square yards in Rajauri Garden was sold at Rs. 24.28 np. per square yard. This document, Exhibit A. 6, has been proved by Shri Yash Pal, A. W. 8.

4. Shiv Ram Sharma (A. W. 27), Head Accountant of D. L. F., appeared as a witness and spoke about die cost on development of Rajauri Garden and Rajauri Extension colonies at Rs. 38,38,973.75 np. Then there are documents Exhibits A. 3 and A. 4 showing sales of plots of land in Raja Garden between Rs. 18/- and Rs. 20/- per square yard in 1955. It is not disputed that electricity and water had been laid in the area when the notification was made.

5. The instances of sale mentioned by me above are of developed plots and, therefore, it is necessary to arrive at a proper value on the basis that the land in question had yet to be developed and made into plots. In Land Acquisition Case No. 28 of 1958 (Hanuman Pershad and others v. Union of India) decided on 27th February, 1981, the learned Additional District Judge, Delhi, based his calculations as under:--

"It is stated by Ram Kishan Jain, P. W. 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 5/- per square yard. According to these calculations if there is plottable area 100 square yards, area of the plots will be 850 square yards. The price of these 650 square yards at Rs. 22.10 np. per square yard could come to Rs. 14,365/-. In this amount is included the sum of Rs. 5,000/-as development charges at the rate of Rs. 5/-per square yard. Thus the net balance remains Rs. 9,365/-. 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/-. Thus the net price of 1000 square yards would be Rs. 8,500/- or at the rate of Rs. 8.50 per square yard."

This matter came up in appeal before this Court, being Regular First Appeal No. 91-D of 1961, which was disposed of on April 29, 1964 (Punj). This Court while approving of the basis adopted by the learned Additional District Judge 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 levelled 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 purpose 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."

The above basis should, therefore, provide the most satisfactory guide for determining the price. From the evidence on record the average sale price of developed plots comes to about Rs. 23/- per square yard. It has been proved by Shri R. P. Burman (A. W. 28) that the total plotted area in Rajauri Garden and Extension was 9,60,263 square yards out of 15,05,672 square yards gross area, that is, 63.7 per cent, and that 36.3 per cent area was lost for utilisation on account of roads and parks etc. Again, Shri S.R. Sharma (AW 27) has spoken about the total development cost at Rs. 38,38,973.75 p. which works out to about Rs. 41/2 per square yard. According to the evidence of Shri R.K. Jain (A. W. 29) brokerage expenses and administrative expenses were Rs. 3.70 per cent, which when charged on the price of Rs. 23/-per square yard would come to about Rs. 1/-per square yard. According to these calculations if there is a plottable area of 1000 square yards, area of plot would be 640 square yards and at Rs. 23 per square yard the price would come to Rs. 14,720. This amount would include Rs. 500 as development charges and Rs. 600 as sale and administrative expenses. The balance left would be Rs. 11,560 and consequently the net price of 1000 square yards would be Rs. 11,560 or Rs. 11.56 np. per square yard. Taking these instances into consideration, the maximum price for

Block 1 land would work out to Rs. 11.56 P. per square yard. On the other hand, compensation at the rate of Rs. 3.80 P. per square yard was awarded in award No. 850 for acquisition in 1953. Taking the increase into consideration from 1953 and the sales in Raja Garden in 1955 one would be inclined to hold that the price of Block 1 land may work to about Rs. 9 or Rs. 10 per square yard.

There are, however, some other factors which have Induced me to reduce this price slightly and those factors are that Khushi Ram and others for a much larger area out of which 38 Bighas were on the main road claimed an overall price of Rs. 8 per square yard. Again, D. I. F. purchased some land which forms part of the land acquired in 1956-57, at Rs. 2.50 to Rs. 3.80 per square yard. I will deal with the acquisition of land by the D. L. F. a little later but suffice it to say here that taking these factors into consideration, I am inclined to allow Rs. 8 per square yard for Block 1 land and Rs. 6 per square yard for Block 2 land. Mr. Shankar, the learned counsel for the Union of India, has asked us to take two factors into consideration and one of the factors is the acquisition by D. L. F., at a much lower rate. The other factor relied on by Mr. Shankar is that there was an impending fear of the land in the area being acquired resulting in non-availability of customers to purchase at the price claimed by the land owners. Some of the agriculturists who sold their land to D. L. F. in 1956-57 have disclosed in their evidence that they did so because of the fear of acquisition as some land had already been acquired earlier and that they did not have the resources to develop the land. The sellers may have that fear in their mind but that is no criterion for determining the compensation. A purchaser may dupe a seller and purchase his property at a much lower price or the seller may sell the same out of some fear, such as the fear of acquisition. Nothing has been brought on record that there was actually any fear of the land of D. L. F., or other land owners being acquired. As a matter of fact, the Secretary of D. L. F., appeared in the witness-box and no question was even put to him in this behalf.

Again, the non-availability of resources to develop the land may have induced the said agriculturists to sell their land at a cheaper price. Mr. Shankar then wanted us to take into consideration the fact that the land could not be sold unless the lay out plans had been sanctioned. We have to take the potentiality, into consideration and the fact that actually the lay out plan had not been sanctioned is, to my mind, not a very relevant consideration. The fact remains that D. L. F.. purchased the land for converting that into plots and selling the same. Even it some deduction be called for on account of non-sanction of lay out plan it is covered by the deduction from Rs. 11 to Rs. 8 per square yard for Block 1 land and to Rs. 6 per square yard for Block 2 land. Mr. Shankar then dealing with the land of Khushi Ram and others pointed out that about 28 Bighas were characterised by the Collector as land in Block 3 on account of depression. There is no evidence on the record to show that that was actually so and that appears to be the reason why the Additional District Judge has adopted a uniform rate for the land in Block 2 in which the said 28 Bighas have been included.

6. In the result, I hold that appellant D. L. F., are entitled to compensation at the rate of Rs. 8000 per Bigha for 7 Bighas 18 Biswas of their land in field No. 2157 and at the rate of Rs. 6,000 per Bigha for the remaining land. They will also be entitled to 15 per cent on account of compulsory acquisition together with interest at 6 per cent per annum from the date the Collector entered into possession till the payment is made. Similarly, Khushi Ram and others are entitled to compensation at the rate of Rs. 8000 per Bigha for 33 Bighas 4 Biswas and at the rate of Rs. 6,000 per Bigha for the remaining land. They will also be entitled to 15 per cent on account of compulsory acquisition and interest at 6 per cent per annum from the date the Collector entered into possession till the payment is made. Regular First Appeals Nos. 1-D of 1963 and 5-D of 1963 are allowed to the extent indicated above, while Nos. 14-D of 1963 and 16-D of 1963 are dismissed The parties will bear their own costs.

D.K. Mahajan, J.

7. I entirely agree.

