
(2007) 11 AHC CK 0175
In the Allahabad High Court

Executive Engineer, Electricity Janpat Divisiona-I, Parichachha
Thermal Power Project

APPELLANT

Vs

Ghan Shyam, Raghuvir Singh, Narain Singh and Roop Singh

RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2008) 104 RD 339

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—This appeal is directed against the award of civil court dated 6-1-1998 passed by the IInd Additional District Judge, Jhansi in L.A. Case No. 8 of 1988.

2. The State of U.P. acquired a vast piece of land of village Richhaura for the purpose of construction and establishment of Parichcha Thermal Power Station at Jhansi. The notifications u/s 4 and 6 of the Land Acquisition Act were issued by the State Government on 22-4-1978 and 29-4-1978 respectively. An area of 13 acre 3 37 decimel land of the claimant-respondents No. 1 to 4 was included in the aforesaid notifications. The Special Land Acquisition Officer by its award dated 12-4-1979 awarded the compensation at the rate of Rs. 3,000/- per acre. Feeling aggrieved by the said award, an application for making a reference to the civil court to determine the market value of the land thus acquired was filed by the claimant respondents before the District Magistrate. The District Magistrate referred the question of market value of the land thus acquired to the civil court. The court below in reference has enhanced the compensation to Rs. 35,000/- per acre. It also enhanced solatium from 15% to 30%. as also it awarded additional compensation. Feeling aggrieved against the aforesaid judgment of the reference court, the present appeal has been filed.

3. Heard Sri Bhagwati Prasad Singh, learned Counsel for the appellant and Smt. Mala Srivastava and Sri S.C. Srivastava, Advocates, learned Counsel for the

contesting respondents. The learned Counsel for the appellant has raised the following grievances, in the appeal:

1. The reference before the civil court was barred by time.
2. The compensation awarded by the reference court at Rs. 35,000/- per acre is excessive, arbitrary and against the material on record.
3. The court below was not justified in granting the enhanced amount of solatium and interest as also the additional compensation.

In reply, the learned Counsel for the contesting respondents has tried to support the judgment and award of the court below.

Considered the respective submissions of the learned Counsel for the parties.

Point 1:

4. This point has been examined by the court below under Issue No. 2. it has been found that the reference application was not barred by time as it was filed on 22-5-1979 against the impugned award dated 12-4-1979. The learned Counsel for the appellant could submit only this much that the reference application was ante dated in as much as it sounds strange that the said reference application allegedly filed on 22-5-1979 remained pending before the District Magistrate for a period about 9 years. Except the above circumstance, the learned Counsel for the appellant could not point out any material or evidence to conclude that the reference application was ante dated. There is no cogent evidence on the record on the basis of which it can be held that the said reference application was ante dated or there was some manipulation in the office of the District Magistrate. In absence of any material in the shape of evidence, it is difficult to accept the submission of the learned Counsel for the appellant. It appears that no attempt was made before the reference court to get summoned the record of the District Magistrate to support the above plea of ante dating. In the written statement also, no such plea of ante dating has been raised. Only this much has been averred that the reference application is barred by time. In this view of the matter, the said argument is meritless and is, therefore, rejected.

Point II:

5. The Land Acquisition Officer had granted the compensation at the rate of Rs. 3,000/- per acre. It has treated the sale deed dated 1-12-1977 as the best exemplar. In reference application the claimant respondents claimed the compensation at the rate of Rs. 50,000/- per acre. In support thereof they examined one witness, namely, Ghanshyam. This witness stated that on the relevant date of Notification u/s 4 of the Act market price of the land was around Rs. 30,000/- to Rs. 40,000/- per acre. On behalf of the State of U.P. one Santosh Kumar Gupta, Ahalmad of the Special Land Acquisition Office was examined who deposed that he was working in the Land Acquisition Office for the last 24 years

and has knowledge about land acquisition proceedings in question. He had brought original record of the case with him and stated that the compensation awarded at Rs. 3,000/- per acre by the Special Land Acquisition Officer is most appropriate amount. He further deposed that one member of each family whose land has been acquired is being given job in Parichcha Thermal Power Project. In cross examination, he denied the suggestion that the compensation awarded is towards the lower side. He further states that in two decisions the compensation has been enhanced to Rs. 10,000/- per acre but cannot give the particulars of those cases without looking into the record.

5.1 So far as the documentary evidence is concerned, it appears that the parties filed certified copies of the judgments and awards passed by the reference court in respect of the lands which were also the subject matter of the same acquisition under the said notifications and were part of the same award. On behalf of the claimant respondents certified copies of certain awards of the reference court were filed wherein the reference court had enhanced the compensation from Rs. 3,000/- to Rs. 10,000/- per acre. Similarly, on behalf of the State of U.P. certified copies of the awards of reference court were filed wherein the award made by the Special Land Acquisition Officer awarding compensation at the rate of Rs. 3,000/- per acre was confirmed.

5.2 Copy of one such award of the reference court passed in L.A.R. No. 29 of 1988 decided on 9-2-1993 by the District Judge, Jhansi in the case of Raghunath and Ors. v. State of U.P. and Anr. being paper No. 59-C and part of the paper book shows that in the matter of Bhagwati Prasad and Ors. the reference court by its order dated 17-11-1988 enhanced the compensation amount to Rs. 10,000/- per acre. The basis of the said award was the sale deed which was in respect of 0.10 acre of land. The said order I was challenged unsuccessfully by the State Government before, the High Court. The High Court rejected the petition on the ground that it was barred by time. On the basis of the said award of the reference court, in the case of Kalka Prasad and Ors. in reference No. 214 of 1986 decided on 12-2-1990, the compensation was fixed at Rs. 10,000/- per acre.

5.3 Further it has been noted that there are three other awards and judgments of the reference courts wherein the reference courts confirmed the award of the Land Acquisition Officer and maintained the market value of the land at Rs. 3,000/- per acre. One of them being L.A.R. No. 236 of 1986 decided on 14-11-1990 in the case of Ghanram.

5.4 From the above, it is evident that so far as the reference court is concerned, in some cases it had enhanced the compensation amount to Rs. 10,000/- per acre while it was not so in other cases.

5.5 The award of compensation at the rate of Rs. 10,000/- per acre was the subject matter of challenge, at the instance of the State of U.P., before this Court in First Appeal No. 452 of 1993-State of U.P. v. Sri Ram Swaroop and Anr. The

said appeal was heard and decided by me by the judgment dated 3-10-2006. The judgment of the reference court awarding compensation at the rate of Rs. 10,000/- per acre was confirmed by me by the following observations:

The second point raised by the learned Counsel for the appellant relates to the determination of the quantum of compensation. The court below has discussed the matter under Issues No. 1 and 2 and has held that the land of the claimant respondents was irrigated and fertile land. The said land is situate on National Highway namely Jhansi-Lucknow Road. The irrigation facility by way of well is also admitted to the parties. Before the reference court the judgment and order of other claimants were produced as exemplar/guideline for fixation of the compensation. In the case of Bhagwati the reference court had granted compensation at the rate of Rs. 10,000/- per acre. Similarly the judgment and order of other tenure holders namely Kalka Prasad, Avtar Singh etc. were produced. The contention of the learned Counsel for the appellant is that against the aforesaid judgment and order appeal was filed which was dismissed as barred by time and the said order was confirmed by the Apex Court. His argument is that this Court had no occasion to examine the legality and validity of the compensation awarded in the case of Bhagwati etc. Be that as it may the fact remains that the compensation at the rate of Rs. 10,000/- per acre has been granted to other tenure holders whose lands are adjoining to the present claimant respondent No. 1, there is no justification for not granting the compensation at the same rate to the present claimant respondent No. 1. The court below has placed reliance upon the judgment of the Apex Court in the case of Krupa Rangiah Vs. Special Deputy Collector, Land Acquisition, It has been held in the said case that while determining the compensation under the Land Acquisition Act, the compensation awarded to the nearby plots and acquired under the same notification should be awarded to the other tenure holders. It is not the case of appellant that the land of the claimant respondent No. I was in any way inferior in quality than the land of Bhagwati. Moreover, from the reading of the judgment of the court below it appears that on the contrary the land of the claimant respondent No. I is better situated as it is abutting the National Highway. In this view of the matter the finding of the court below that the compensation should be awarded at the rate of Rs. 10,000/- per acre is perfectly justified in law. It is based on relevant consideration and material on record. The learned Counsel for the appellant was not able to point out any perversity or factual error therein.

5.6 Following the same, the market value of the land in question can be fixed at Rs. 10,000/- per acre on the relevant date. But, before doing so it is proper to examine the correctness of the reasonings given by the reference court while awarding compensation at the rate of Rs. 35,000/- per acre, also.

The reference court proceeded to determine the market value of the land on the relevant date of notification firstly by rejecting various judgments and awards of the reference court relied by the respective parties in a slipshod manner. It took

into account the fact as to whether against those judgments and awards of the reference court any appeal was filed or not is not on the record. The parties did not file copies of the reference applications of those cases and lastly, it was of the view that those decisions, being of "coordinate court, are not binding on it. This approach of the reference court is far from satisfactory. It was under an obligation to examine the certified copies of various judgments of the reference court to arrive at a conclusion as to which one it has to prefer. Without discussing them, the rejection in whole as the parties failed to lead evidence as to whether those decisions were the subject matter of appeal or not, is wholly unjustified. Also the approach of the court below that those decisions, being of coordinate court, are not binding on it, is not in consonance with the judicial discipline. Even assuming for a moment that those decisions were not binding, certainly the decisions were relevant and had some evidentiary value so far as it relates to the question of determination of the market value of the land is concerned.

5.7 After rejecting the documentary evidence, in the manner indicated above, strangely enough the reference court preferred to rely upon oral testimony of the claimants. Ghanshyam was examined on behalf of the claimants who deposed that the market value of the land was in between Rs. 30,000/- to Rs. 40,000/- per acre. Ghanshyam, obviously being one of the claimants, is an interested person in the matter. His statement should have been considered and relied upon with caution in the light of the other evidence on record. The Land Acquisition Officer has relied upon a sale deed dated 1-12-1977 to determine the market value of the land in question.

5.8 It is an acknowledged legal position that market value of the land is to be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. It has been held in *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, that for determination of compensation payable to the owner of the land, the market value is to be determined by reference to the price which may be reasonably obtained from a willing purchaser. But, since it may not be possible to ascertain this with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard.

5.9 To determine the market value the following methods have been recognised by various judicial pronouncements, viz. (a) the price paid within a reasonable time for the land (b) rents and profits of the land received shortly before the acquisition; (c) the price paid for adjacent land possessing similar advantages and (d) the opinion of valuers or experts.

6. There is no evidence on the record on behalf of the claimant respondents as to what was the price which a willing purchaser was expected to pay. At the most, the evidence led by the claimant respondents is that they were willing to sell the land at Rs. 30,000/- to Rs. 40,000/- per acre. Oral testimony not corroborated by any evidence or circumstance and that too of an interested person is a very weak kind of evidence and it should be scrutinised carefully before placing any

reliance on it. Without making any analysis of the oral deposition, the court below proceeded to place reliance upon it. This is not enough.

6.1 Much emphasis was led by the court below that it has been admitted by Santosh Kumar, the witness examined by the State of U.P. that National Highway passes through the village Parichcha and there is a Railway Station and source of irrigation. It, therefore, drew an inference that moral amenities are available to the disputed land. The said approach is also incorrect. The land in question lie in village Richhaura and not in village Parichcha. The amenities, if any, available to village Parichcha is of no consequence or is of a little consequence so far as the valuation of land of village Richhaura is concerned. These villages may be adjoining to each other, but there is nothing on record to show that any such facility was available to village Richhaura. The other minus factor is that the land in question is about 6 to 7 kms. away from Nagar Palika limit of Chirgaon and also 5 Kms, away from Town Area Baragaon. The land in question does not lie either in Nagar Palika limit or in any Town Area limit. These factors were wrongly ignored by the court below.

6.2 The approach of the reference court that since the land was acquired for construction of a Power House and, therefore, the claimant respondents are entitled for higher compensation as the importance of the electricity cannot be undermined is palpably incorrect and cannot be approved. It will not make any difference if the land has been acquired for the establishment of a Power House. The observation of the reference court in the judgment that for this reason the higher compensation is payable other than those admissible to an ordinary land is to say the least and is against the principle known to law.

6.4 The Apex Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, has laid down the following factors which should be there in the mind of the reference court while disposing of a reference:

1. Determined as on the crucial date of publication of the modification u/s 4 of the Land Acquisition Act (dates of Notifications under Sections 6 and 9 are relevant).
2. The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the valuer is a hypothetical purchaser willing to purchase the land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.
3. In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.
4. Only genuine instances have to be taken into account, (some times instances are rigged up in anticipation of acquisition of land).
5. Even post notification instances can be taken into account (I) if they are very

proximate, (2) genuine and (3) the acquisition itself has not motivated a higher price on account of the resultant improvement in development prospects.

6.5 The claimant respondents were in a position of plaintiffs and they have to show that the price offered for their land in the award is inadequate. The burden lie on them to lead such evidence which may inspire confidence. The oral testimony of Ghanshyam does not inspire confidence to show that the market value of the land on the relevant date was Rs. 35,000/- per acre. This evidence is insufficient to prove that the market value of the land was Rs. 35,000/- per acre, specially when the claimants had claimed the compensation at the rate of Rs. 50,000/- per acre in the reference application. The judgment of the court below is solely based upon oral testimony of Ghanshyam. The finding of the court below on the question is thus vitiated and cannot be approved. The same is hereby set aside.

6.6 The reference court by the judgments of the same day in two other references had granted compensation at the rate of Rs. 25,000/- per acre. Those judgments have been modified today in First Appeal No. 952 of 1999 and First Appeal No. 953 of 1999. In the case on hand it granted a higher compensation at the rate of Rs. 35,000/- per acre and the grant of higher compensation is sought to be justified on the ground that the land is nearer to the road. While doing so the reference court has lost sight of the fact that the land involved herein is of much bigger area and a large piece of land will not fetch the same price as a smaller one. The largeness of the area is a minus factor while determining market value of the land and some deduction has to be made on account of largeness. However, as in the other cases the compensation has been awarded at the rate of Rs. 10,000/- per acre, in this case also the same rate of compensation should be awarded to the claimant respondents and they are not entitled for any higher rate of compensation. The compensation, thus, at the rate of Rs. 10,000/- per acre is awarded.

Point III:

7. The court below has granted additional compensation at the rate of 12% u/s 23(1-A) of the Land Acquisition Act for the period 22-4-1978 to 14-4-1979. It has been held by me in First Appeal No. 452 of 1993-State of U.P. v. Ram Swaroop and Anr. decided on 3-10-2006 (already referred in the earlier part of the judgment) that the claimant is not entitled to get additional compensation at the rate of 12%. The learned Counsel for the claimant respondents could not place any material in this appeal to take a different view. The award of additional compensation at the rate of 12% is not sustainable in law and the same is hereby set aside. The additional compensation as held by the Apex Court in Union of India and Ors. v. Filip Tiago De Gama AIR 1990 SC 981 will be available to only such cases where the acquisition proceedings were pending before the Collector as on 30-4-1982 in which he has not made award before that day. In the case on hand, the award of the Collector is dated 1-12-1978.

8. Viewed as above, the judgment and award of the court below cannot be sustained. The appeal is allowed in part and it is held that the claimant respondents are entitled to receive the compensation at the rate of Rs. 10,000/- per acre. It is further held that the claimant respondents are not entitled to receive any amount towards additional compensation u/s 23(1-A) of the Land Acquisition Act. The award so far as it relates to other items i.e. enhanced rate of interest and solatium is hereby confirmed.

9. The appeal is allowed in part, as indicated above, with proportionate cost.