

(2004) 02 DEL CK 0038

In the Delhi High Court

Case No : Regular First Appeal No's. 113 of 1990, 419/93, 580/89, 114, 455, 511, 644 and 848/90, 1/92, 418 and 579/93, 57, 78, 83, 460, 644/94 and 302, 318, 289 and 428/02

Gaini Ram and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : AIR 2004 Delhi 267 : (2004) 110 DLT 753 : (2004) 74 DRJ 14

Hon'ble Judges : Ramesh Chand Jain, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : R.S. Tomar, for the Appellant; S.S. Dalal, for the Respondent

Judgement

Dalveer Bhandari, J.—This judgment will dispose of aforementioned appeals filed against the judgment of the learned Additional District Judge, pertaining to award No.39/84-85 of village `Bijwasan". The land of this village was acquired by a notification u/s 4 of the Act on 18th June, 1984. The learned Additional District Judge decided a large number of appeals. Devender Singh's case was taken as a lead case by the trial court, Therefore, we would briefly recapitulate the facts of Devender Singh's case only in deciding these appeals.

2. The Land Acquisition Collector gave compensation to Devender Singh & Ors. @ Rs.17,000/- per bigha. Dissatisfied with the said judgment, they preferred appeals for enhancing the compensation before the Reference Court and the Reference Court by a comprehensive and a detailed judgment, enhanced the amount of compensation to Rs.21,076/- per bigha.

3. The appellants aggrieved by the said judgment have preferred appeals before this Court. Number of appellants have preferred appeals against similar impugned judgments of the learned Additional District Judge. These aforementioned appeals are being disposed of by this judgment. It may be pertinent to mention that the appellants in the cases of `Bijwasan" village in support of their cases have filed three sale deeds, Ex.P-1, P-2 and P-3 pertaining

to the adjacent land. Ex.P-1 is the sale deed of 12th May, 1983. Learned counsel for the appellants submitted that according to the said sale deed, the compensation works out to Rs.1,20,800/- per bigha and the appellants are entitled to the same amount of compensation for their land.

4. The learned Additional District Judge has dealt with sale deed Ex.P-3 in some detail and mentioned that the land covered by the said sale deed is surrounded by a boundary wall and there is a tube-well and power connection in it. Ex.P-3 cannot be of much help to the appellants because it is surrounded by a boundary wall and it has a tube-well. Any piece of land with these special features is bound to fetch much higher price and such sale deeds cannot justifiably be used for others' land which do not have these special features. This evidence is of no help to the appellants. The lands of other sale deeds, Exs.P-2 and P-3 were sold for Rs.48,000/- per bigha. Counsel for the appellants submitted that in any event they are entitled to atleast the compensation @ Rs.48,000/-.

5. It was argued by the respondent before the learned Additional District Judge that Exs.P-1 to P-3 also cannot be the basis to determine the market value of the appellants' land because the land in question is not adjoining to the land of the sale deeds Exs.P-1, P-2 and P-3. It was also urged that the land in question is not of similar quality and is not situated adjoining the land as per the sale deeds but is located far away from the lands of sale deeds Exs.P-1 to P-3.

6. The respondent Union of India filed a sale deed Ex.R-1 which related to the acquired land of same Bijwasan village. The compensation for the said land was paid at the rate of Rs.20,000/- per bigha. According to the submission made on behalf of the Union of India, that is the best available evidence and the Court must rely on that evidence and grant compensation on the basis of Ex.R-1.

7. The learned Additional District Judge also inspected the spot. The land in question, according to him, is an agricultural land though it is adjoining to the village abadi of village `Bijwasan". He observed that from spot inspection, it is evident that the land in question is surrounded by the developing colonies and the colonisers like Ansal Property Dealers are developing the land for building sites.

8. In the impugned judgment, the appellants did not examine any oral evidence in respect of the prevailing market value of their lands at the time of issuance of the notification u/s 4 of the Act. Though the land Exs.P-1 to P-3 are the sale deeds dated 12th May, 1983, 7th May, 1983 and 22nd June, 1983 and were purchased near about a year earlier to the present notification u/s 4 of the Act. The owners of the land are the colonisers or co-owners who had sold the land at a higher rate for building purposes. It is also observed that the appellants had to examine either the vendors of the aforesaid sale deeds Ex.P-1 to P-3 or the attesting witnesses of those sale deeds to prove the prevailing rate of the land as per these sale deeds. In absence of any oral evidence to prove the genuineness of these sale deeds or any witness about the prevailing market rate of the

appellants" land, the same transaction Exs.P-1 to P-3 cannot be the basis to determine the market price of the appellants" land.

9. The learned Additional District Judge observed that the sale deed Ex.R-1 is the best available evidence for determining the market value of the appellants" land. As per the sale deed, Ex.R-1 relates to the present award No.39 and at Serial No.27. The land was sold at Rs.20,000/- per bigha. The land in question is surrounded by a boundary wall and is also adjoining to the village abadi of village 'Bijwasan" which is also proved by the statement of RW-1 Chiranji Lal Patwari. Being the land of adjoining village, the land is also having its potential value but as per the sale deed, the land has been sold @ Rs.20,000/- per bigha, 13 months earlier to the present notification, it is the best guide available on the record to determine the market price of the appellants" land. The reference court arrived at the definite conclusion that Ex.R-1 is the best available evidence on record and ought to be followed for determining the market value of the appellants" land. The reference court consequently held that these appellants are entitled to compensation at the rate of Rs.20,000/- for acquisition of their lands. The reference court also increased the amount @ Rs.1,000/- per year and fixed the market price of the appellants" land @ Rs.21,076/- per bigha at the time of notification, i.e. on 18th June, 1984. The learned Additional District Judge also granted other benefits to the appellants.

10. The appellants dissatisfied with the judgment of the Additional District Judge, preferred appeals before this Court and prayed that the compensation be enhanced.

11. We have heard learned counsel for the parties at length and perused the documentary evidence, i.e. Exs.P-1 to P-3 and Ex.R-1 on record. Learned counsel appearing for the Union of India has drawn our attention to the judgment of the Supreme Court delivered in the case of Shakuntalabai (Smt) and Others Vs. State of Maharashtra, . In this judgment, their Lordships have categorically observed that when on record there is evidence of the value of the acquired land itself, then it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent land. The relevant portion of the said judgment reads as under :-

"It is seen that if there is evidence or admission on behalf of the claimants as to the market value commanded by the acquired land itself, the need to travel beyond the boundary of the acquired land is obviated. The need to take into consideration the value of the lands adjacent to the acquired land or nearabout the area which possessed same potentiality to work out the prices fetched therein for determination of market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where evidence of the value of the acquired land itself is available on record, it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands."

12. In view of the authoritative pronouncement of the Apex Court, since there is evidence of the value of the acquired land available on record, i.e. Ex.R-1, we have to restrict ourselves to the evidence available on record pertaining to the acquired land and we have to ignore the other evidence, i.e. Exs.P-1 to P-3 regarding adjacent land whereas sale deed Ex.R-1 relates to the acquired land itself. According to the sale deed Ex.R-1, the value of the land per bigha is Rs.20,000/-. According to the impugned judgment, the appellants are also entitled for the same amount of compensation for their lands. The learned Additional District Judge has enhanced the price @ Rs.1,000/- per bigha per year and consequently increased the entire amount of compensation from Rs.20,000/- to Rs.21,076/- per bigha for the acquisition of the appellants' land.

13. Counsel for the Union of India has also drawn our attention to a Division bench judgment of this Court in Rameshwar Solanki Vs. Union of India, . In this judgment, their Lordships relied upon earlier judgment of this Court, i.e. Prakash Chand Kashyap vs. Union of India, reported as AIR 1988 Delhi 316 and observed that wherein escalation @ 12% per annum has been given following the statutory provisions made by the amendments in the Act, the Court further observed that we think it appropriate to discard the practice of this Court to give escalation @ Rs.1,000/- per bigha. This judgment of the Division Bench has been approved by the Supreme Court in the judgment of Satpal and others, etc. Vs. Union of India, . While following these judgments, we deem it appropriate to modify the impugned judgment in the light of aforesaid judgment of the Division Bench which has been approved by the Supreme Court. The Court granted escalation to the appellants at the rate of 12% per annum. We have been told that with 12% per annum escalation for a period of 13 months, the amount of enhanced compensation payable would work out to be Rs.22,600/- per bigha. Consequently, the appellants in these appeals would be entitled to compensation at the rate of Rs.22,600/- per bigha. Besides that the appellants will also be entitled to solarium @ 30% and additional amount u/s 23(1-A) of the Act @ 12% per annum on the market value of land from the date of notification u/s 4 of the Act till the date of award or taking over possession of the land whichever is earlier along with 9% interest for one year from the date of award or taking over possession of the land whichever is earlier and thereafter the interest @ 15% per annum on the enhanced amount of compensation would be paid to the appellants till the date of payment.

14. In the facts and circumstances of these cases with the aforementioned modification, the impugned judgment is affirmed. All aforesaid appeals are accordingly disposed of with the modification indicated above.

The parties are directed to bear their own costs.