(1993) 05 SC CK 0021

In the Supreme Court Of India

Case No : Civil Appeal No''s. 8634-58, 8660-62, 8665 to 8669, 8670 and 8671-72 of 1983

Gulzara Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 11-05-1993

Acts Referred:
Land Acquisition Act, 1894 — Section 4(1), 23, 23(1)

Citation : (1993) 3 JT 668 : (1993) 2 SCALE 808(1) : (1993) 2 SCALE 808 : (1993) 4 SCC 245 : (1993) 3 SCR 645

Hon'ble Judges : R. M. Sahai, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K. Ramaswamy, J.—The common questions of law arose for decision in these appeals. Hence they are disposed of together. Notification u/s 4(1) of the Land Acquisition Act 1 of 1984 was published in the Punjab State Gazette on January 27, 1978 acquiring 89 acres 4 canals and 12 marlas of land situated in Dhuri village for public purpose, namely to set up new Mandi Township. The appellants claimed at the rate of Rs. 30,000/- per Bigha but the Land Acquisition Officer after classifying the lands into six blocks A to F, awarded market value ranging between Rs. 30,000/- to Rs. 6,000/- per acre. On reference u/s 18 of the Act, the District Judge, Sangrur in his judgment dated May 13, 1981 disagreed with the classification and found that all the lands are possessed of the same quality. Relying on sale-deeds, Ex. P-3 dated September 4, 1972, P-5 dated June 14, 1976, P-2 dated February 23,1977 and P-4 dated July 15,1977, all small extents, he calculated at an average of Rs. 1300/- per Biswa and awarded to the lands belonging to Jaswant Kaur, Baldev Singh and Gurdev Singh at the rate of Rs. 1,000/- per Biswa finding that their lands are abutting Abadi (village) and for the rest awarded at the rate of Rs. 800/- per Biswa with statutory solatium at 15% and interest of 6% per annum on enhanced compensation. Dissatisfied therewith the State filed the appeals and against disallowed claims, the claimants in one batch filed appeals and in another batch filed cross-objections. The learned Single Judge relied on Ex.P-3 and P-5 filed by claimants and Ex.R-4 and R-6 filed by the State as comparable instances and calculated the average which worked out at Rs. 750/- per Biswa. He found that the lands are possessed of potential value for future building purposes. Therefore, he carved out belting at a depth of 100 ft. from the main road to those lands, deducted 1/3rd towards developmental charges and awarded the market value at the rate of Rs. 750/- to the land situated abutting to the main road to the depth of 100 ft. and for the balance lands at the rate of Rs. 500/- per Biswa. The State appeals were allowed and of the claimants and cross objections were dismissed. The Division Bench confirmed the judgment of the learned Single Judge. The claimants filed these appeals by special leave. In the first batch no witness has been examined, but in the second batch witness were said to have been examined in proof of these documents but their evidence was not made part of the record. Equally of the sale deeds.

2. It Is seen that the documents in the second batch P-4 to P-10 include those filed in the first batch. Ex.P-5 is dated Sept. 4, 1972, in which 20 Biswas of land was sold for Ice Factory. It was situated in the town itself. The price fetched therein was Rs. 20,000/-Therefore, it worked out at the rate of Rs. 1,000/- per Biswa. Ex.P-10 is dated August 25, 1975, 7 Biswas of land in Dhaula village was sold for Rs. 75,000/-which works out at the rate of Rs. 1071/-per Biswa. Ex.P-7 is dated June 14, 1976, 3 Bighas 16 Biswas of land situated at Dhaula road side was sold for Rs. 4,500/- which works out at the rate of Rs. 1285/- per Biswa. Ex.P-8 dated June 15, 1977 is for 4 Biswas of land at Dhaula road sold for Rs. 4,000/- which works out at Rs. 1,000/- per Biswa. Ex.P-4 is dated Feb.23, 1977 3 Biswas of land in the heart of the town Dhuri was sold for Rs. 6,000/-, which works out to Rs. 2,000/- per Biswa. Ex.P-6 is dated May 18, 1977, one Bigha 7 Biswas were sold for Rs. 1,000/-, which works out to Rs. 370/- per Biswa. This land is away from the town and also from the acquired land. Ex.P-9 is dated July 12, 1977, 15 Biswas of land were sold for Rs. 24,000/- working out at the rate of Rs. 1,600/- per Biswa. Based thereon it was contended that Ex.P-9 fetches the highest market value and is nearer to the date of notification and would offer comparable price. The High Court ought to have fixed market value at that rate. The High Court committed illegality in relying on two sale-deeds of the claimants and two mutation entries on behalf of the State in working out the average. Therefore, fixation of the market value is illegal. The mutations are not admissible as neither sale deeds were filed nor any body connected with them are examined.

3. The question, therefore, is whether these sale transactions would reflect the prevailing market value of the land of the total extent of 90 acres. It is seen that in the first batch no-one was examined to prove the documents. In the second batch though witnesses were said to have been examined, the evidence is not on record. Neither the reference court nor the High Court discussed the evidence and no finding was given. So we do no have the advantage of any finding in that

behalf. The State filed 5 mutation entries which were marked. The sale entries Ex.R-6 is of October 4, 1977 and Ex.R-5 of November 13, 1977. The rates of lands in Sale-deeds executed between March 7, 1977 to November 13, 1977, i.e. R-2 on 7.3.77, R-3 on 8.6.77, R-4 on 31.8.77 and R-5 on 30.11.77 work out between Rs. 83/ - to Rs. 450/- per Biswa. It is settled law that to determine the market value of the land u/s 23(1) of the Act the sales of the land under requisition, if any, or the sales in the neighbourhood lands that possessed of same or similar potentialities or fertility or other advantageous features would furnish basis to determine just and fair market value on the premise of hypothetical willing vendor and willing vendee. The willing vendor who offer the land and willing vendee who would agree to purchase the land as a prudent man in normal market conditions as on the date of the notification is the acid test. It is also settled law that the sale and purchase of lands at a throw away price at arm's length or depressed sales or facade of sales brought into existence in quick succession to inflate the market value would not offer any basis to determine just market value. In order to adjudge whether sales are bonafide sales between willing vendor and willing vendee and whether the consideration mentioned in the deed was, in fact and really passed on under transaction; whether the lands covered by sale-deeds and relied on, possessed of same or similar potentialities or fertilities or advantageous features would be brought on record only by examining the vendor or the vendee or if neither of them is available, the attesting witness who has personal knowledge of the bargain and passing of the consideration are mandatory. Vide Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, wherein this Court surveyed the entire case Law in that respect. Since none has been examined in the first batch the sale transactions referred to either by the State or by the claimants cannot be relied upon. In the second batch since the evidence has not been referred to by the courts below nor discussed by them nor we have the advantage to go through the same, we cannot rely on the same to further enhance the market value. Therefore, we are left with no option, but to reject those sale-deeds. Moreover, except Ex.P-9 all other sale-deeds are of very small extents. this Court consistently has taken the view in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, Mirza Nausherwan Khan and Another Vs. The Collector (Land Acquisition), Hyderabad, (Land Acquisition), Hyderabad; Ram Rattan and Others Vs. State of Uttar Pradesh, ; Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, Padma Uppal v. State of Punjab and Ors. (197)1 SCR 329; Administrator General of West Bengal Vs. Collector, Varanasi, and Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, that sale deeds of small extents being retail price do not offer comparable basis to fix compensation when large block of land is acquired. To an intending bonafide purchaser if such block of 90 acre is offered for sale, would he agree to purchase at retail price or far less value? Under no circumstance he. would agree to purchase at retail prices mentioned above. In view of the settled legal position the sale-deeds, sought to be relied upon, do not be give us any basis to determine the market value. Every endeavour would be made to fix fair and reasonable market value. If sale transactions: relate to the lands under acquisition and if found to be genuine and bonafide transaction between willing vendor and vendee then it may be considered but reasonable margin must be given in fixing whole sale price. Therefore, all the documents except P-9 are rejected.

4. The next contention is that the sale-deed Ex.P-9 of 15 Biswas were sold for Rs. 24,000/- which works out at the rate of Rs. 1,600/- per Biswa and whether this highest price should be given to the appellants. As stated earlier we have no evidence before as as to under what circumstances this document came to be executed and what is the distance between the lands and for what purpose the land was sold and what is the comparable nature of the land, fertility and potentialities of the land, etc. are lacking. The contention relying on The State of Madras Vs. A.M. Nanjan and Another, that highest value should be fixed cannot be accepted in view of the consistent later view of this Court. In Collector of Lakhimpur's case (supra), this Court accepted the principle of average, but however, rejected the small extent of the lands and enhancement based on the average at Rs. 15,000/- per Bigha was reduced to Rs. 10,000/- per Bigha. In Smt. Kaushalya Devi's case (supra), this Court noted that large extent of land in the developed Aurangabad town was acquired for medical College, accepted the principle of average worked out by the reference court, varying between Rs. 2.25/- to Rs. 5.00 per sq. yard and this Court ultimately fixed the market value at the rate of Rs. 1.50/- per sq.yard. In Administrator General of West Bengal's case (supra) this Court upheld rejection of the small plots of lands and accepted two sale-deeds of large extent working out the average rate at Rs. 500/- per Decimal and ultimately reference court fixed the market value at the rate of Rs. 200/- per Decimal. It is, therefore, clear that the court in the first instance has to determine as to which of the sale deeds are relevant, proximate in point of time and offer comparable base to determine market value. Thereafter the average price has to be worked out. It would be seen that this Court has taken consistent view of working out average and further deductions have been made in fixing just and fair market value when large chunk of the land was acquired. We respectfully agree and adhere to the principle and we find no compelling reason to divert the stream or arrest the consistence.

5. The question then is whether the reduction of the market value by the learned Single Judge is warranted on facts and under law. In his judgment the learned Judge found that the acquired lands are situated between railway line on the one side and link road going from Dhuri to Sarona on the other side. On the third side it is surrounded by the inhabited area of Dhuri town. A small portion is Khasra No. 2585 was abutting the Dhola road and the rest of the acquired land is just behind the inhabited area. While acquiring these lands the Govt. have excluded the built up area. He also found that there is tendency of extension of Abadi village towards acquired lands. Therefore, he found that the lands are possessed of "potential value for being housed for urban purpose in the near future and, therefore, has to be valued as such".

6. Thus we have the evidence that the lands are possessed of potential value tor being used for building purposes. In fact, the acquisition itself is for construction Mandi Township. The principle of belting is perfectly legal and unexceptionable as the lands abutting the main road upto a specified depth, depending on factual material on record, would fetch higher market rate than the lands situated in interior area. However, on facts of this case the belting is not warranted for the reason that as seen on three sides there exist roads and abutting the village. As per the plan as found by the High Court there exists a road cutting across the acquired lands. Therefore, there is not only access on three sides but also to interior lands. Thas in our view belting and fixation of differential rates of value is not justified.

7. The next question is what would be the reasonable and just market value the lands likely to fetch. In view of the fact that there is no evidence available and since the High Court found that the lands are possessed of potential value the rate of Rs. 1,000/- per Biswa as awarded by civil court to the lands abutting abadi and the lands upto a depth of 100 ft. is upheld. In view of the preceding finding we hold that the fixation of uniform rate of Rs. 1,000/- per Biswa is legal.

8. It is seen that this acquired land of 90 acres is undoubtedly undeveloped area and necessarily requires development by laying the roads, parks, drainage, lighting and other civic menities. In Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, this Court deducted 53% of the undeveloped land towards developmental charges while fixing market value at decimal rate etc. towards amenities. In Special Tehsildar Land Acquisition, Vishakapatnam 's case (supra) this Court made deduction at 1/3rd. The appellant placed reliance on Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, where this Court did not deduct any land towards developmental charges. But in that case it was found that the lands acquired are situated in fully developed area. On those circumstances this Court did not deduct any land towards developmental charges. It is seen that the consistent view of this Court now is that deduction of at least 1/3rd is necessary towards developmental charges. Therefore, we uphold deduction of 1/3rd towards developmental charges from the market value and determine the market value at Rs. 670/- per Biswa. The learned judge while deducting 1/3rd fixed market value at Rs. 750/- of frontage lands and Rs. 500 to interior land, Rs. 750/- is obvious mistake, but the Stole did not take any action to have it corrected nor filed appeals. Fixation of Rs. 750/- per Biswa of lands from road upto a depth of 100 ft. became final. So we cannot interfere or correct it in claimants' appeal. But for the rest of the lands we award Rs. 670/- per Biswa, with solatium at 15% and interest at 6% on the enhanced market value from the date of taking possession till date of payment.

9. The appeals are accordingly allowed to the above extent. In the circumstances parties are directed to bear their own costs.

