
(1980) 01 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil First Appeal No. 60 of 1970

Hans Raj Bahl

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 25-01-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 24

Citation : (1980) WLN 119

Hon'ble Judges : C.M. Lodha, C.J.;N.M. Kasliwal, J

Bench : Division Bench

Judgement

C.M. Lodha, C.J.—This appeal u/s 54 of the Rajasthan Land Acquisition Act, 1953, thereafter referred to as "the Act") has been filed by the claimant, Hans Raj against the award and decree dated October 31, 1969, In Land Acquisition Reference No. 3 of 1968 by the Civil Judge, Jaipur City.

2. Proceedings for acquisition of land in village Bhojpura and Chak Sudershanpura for planned development of Jaipur City were initiated at the Instance of Secretary, Urban Improvement Board, Jaipur, and the Government of Rajasthan issued notification dated May 13, 1960, u/s 4 of the Act, published in the Rajasthan Rajpatra dated June 9, 1960, After taking further steps as prescribed under the Act, notification u/s 6 dated May 3, 1961, was also published in the Rajasthan Rajpatra dated May 11, 1961. The total area of the land notified under Sections 4 and 6 was 552 Bighas and 8 Biswas. Notice u/s 9(3) of the Act was duly served on the claimant Hans Raj on July 17, 1961. The claimant submitted the details of his claim on April 10, 1962, though the possession of the land has been taken over by the State or, August 10, 1961, He claimed compensation at the rate of Rs. 15/- per Sq. Yd in respect of 15 Bighas 19 Biswas of land belonging to him. In all he made a claim for Rs. 11,22,675/-. The Land Acquisition Officer, how ever by his order dated April 5, 1963, gave his award as follows:

1. Value of the land measuring 15 Bighas 19 Biswas at Rs. 350/- per Bigha. Rs.

5,582.50 2. Value of the structures, well, Dola etc. Rs. 5,761.60 3. An addition of 10 percent over the value of the structures, well, Dola and trees i. e., over Rs. 5. 76160/-, Rs. 30/-, Rs. 579.16 4. Interest at 4 percent per annum on the amount of compensation for land, Dolas and trees from August 10, 1961 upto April 5, 1963. Rs. 422.67 Total Rs. 12,375.93p.

3. Dissatisfied with the award made by the learned Acquisition Officer, the claimant got a reference made u/s 18 of the Act to the Civil Judge, Jaipur City, who by his judgment and decree dated October 31, 1969, modified the award as below:

1. Value of the land measuring 15 Bighas and 19 Biswas at the rate of Rs. 1, 500/- per Bigha, 23925.00 2. Value of structures, well, Dola etc. 5761.60 3. Value of trees 30.00 4. An addition of 10 percent over the value of structure, well, Dola trees etc. 579 16 Total 30,296 76

4. The claimant was, however, not satisfied with the award made by the Civil Judge, Jaipur City, and has consequently filed the appeal to this Court.

5. Learned Counsel for the appellant has pressed the following points before us:

(1) The market value for the land at the rate of Rs. 1,500/- per Bigha awarded by the Civil Judge is grossly inadequate;

(2) A sum of 10 per centum on the market value on consideration of compulsory nature of acquisition should have been awarded to the appellant; and

(3) That a direction should have been issued by the Civil Judge four giving two plots of land in exchange of the land acquired as assured by the Land Acquisition Officer vide his letter dated November 3, 1961 (Ex. 21).

6. We propose to dispose of all the points raised by the learned Counsel ad seriatam.

7. So far as the question of determination of compensation is concerned Section 23 lays down that in determining the amount of compensation to be awarded for land acquired, the Court shall take into consideration, inter alia, the market value of the land at the date of the publication of the declaration u/s 6, it is further laid down in Sub-section (3) that the market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value, is to be determined under the clause, and for the purpose of the market value, the Court shall take into consideration transfers of land similarly situated in similar use and shall not admit evidence that any price actually paid for similar land in similar use contains any element of the potential value of the land transferred for any more lucrative use.

8. The learned Civil Judge has held that land in question is an agricultural land. This finding has not been called into question before us and, in our opinion, rightly so. As already stated above, the Notification u/s 6 was published on 11, 1961. We have, therefore, to determine as to what was the market value of the

land on the said date, regard being had to the guidelines laid down in the Section 24 referred to above Three types of evidence seems to. be available on the record in this connection. The claimant has produced awards alleged to be in respect of lands acquired in the vicinity of the land in question. The second set of evidence consists of sale-deeds executed in respect of similar lands at or about the relevant time and lastly the oral evidence.

9. We may observe straight away that the oral evidence produced by the claimant with respect to the market value of the land in question is not of much assistant. The claimant himself has stated that the market value of the land at the relevant time was Rs. 15/ per sq. yd but his bald statement cannot be accepted as ipsi dixit as he is a highly interested party being the claimant himself Then we have the statement of one Sudhakar Shastri PW 4. He has stated that he had talk with the claimant Hans Raj for purchase of the land in the year 1980 and had given an offer of Rs. 10/- per sq yd and consequently, the negotiations failed. It is interesting to point out that the statement of the claimant himself is conspicuous itself by silence on this point. More over, in the cross examination. Sudhakar Shastri has stated that he had offered Rs. 10/ to Rs. 12/- per sq. yd. under the impression that the land was Abadi land and that he did not know at that time, that it, was an agricultural land. We are not prepared to place any reliance on such a solitary statement uncorroborated by any document and not even supported by the claimant himself Then there is evidence to the effect that notices were issued to Thikana Shived in 1955, 1956 and 1961, to the effect that the Thikana had encroached upon land in the vicinity of the land in question and that the Urban Improvement Trust would charge price of that land at the rate of Rs. 8/- per Sq yd. This is statement of AW 3 Gokul Chand Kamdar of Thikana Shivad corroborated by the notice Ex. 24. It is sufficient to point out that the rate of land mentioned in the notice was only to terrorize the trespasser and cannot be taken to represent the market value of the land prevailing at the relevant time This is all the oral evidence on the point, and as stated above, it is not at all helpful in determining the market value of the land.

10. The petitioner has also placed on record copies of the awards in respect of similar lands acquired at or about the lime the land in question was acquired, The learned Counsel for the appellant has, in this connection, placed reliance on awards Exs. 2, 6, 8 and 28 has referred to The State of Madras Vs. A.M. Nanjan and Another, in support of his submission that if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rules found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. IN the present case, it is interesting to note that assuming for the sake of argument that the land covered by the awards relied upon, is comparable with the land in question, the rate of market value adopted in one award is so much at variance with that in another that we consider it highly unsafe to place reliance on them To illustrate our point, we may mention that in the award Ex. 8. the market value was assessed at Rs. 14/- per sq yd. whereas in the award Ex. 2, the rate

determined by the Land Acquisition Officer was Rs. 7,692.30 per Bigha and when the matter came to this Court in appeal, the award was increased to Rs. 10,000/- per Bigha (DB Civil First Appeal No. 135 of 1973 Smt. Lilawati Devi Garg v. State of Rajasthan decided on November 2 1979). It may be that for certain special features of the land, a high rate was awarded. But we find it difficult to adopt that rate in the present case. In award Ex. 6. the rate awarded is Rs. 5/- per sq. yd. and In Ex. 28, it is Rs. 4/8/- per sq yd, In the present case, the Land Acquisition Officer has determined the rate at Rs. 350/- per Bigha, In this state of affairs, even though the awards may constitute a relevant piece of evidence but we are unable to consider them as a reliable material to afford a basis for determination of market value. We are constrained to observe that though the market value is determined on estimate basis but it appears to us that a too arbitrary view has been taken by the Land Acquisition Officer in some of these awards with the result that there has been a great variance in the amount of compensation determination in the awards referred to above.

11. This brings us to the evidence regarding sale-deeds. Three sale deeds Exs. 12, 13 and 14 dated November 6, 1959, May 19, 1961 and Nov. 6, 1969, respectively, which all are registered, have been placed on the record. We have also found by reference to the plan Ex. 1 that these lands are situated in the vicinity of the land in question and are, more or less, similar in situation. The lands which are the subject matter of sale deeds Exs. 12 and 14, have been sold at the rate about Rs. 6,000/ per Bigha and more or less the same appears to be the rate in sale-deeds Ex. 13 also. These sale-deeds have not been relied upon by the learned Civil Judge on the ground that the lands of the sale-deeds are better. With respect to Exs. 12 and 14, it has been further observed that godowns were constructed on the land by the purchaser and it appears that the purchaser was more anxious to purchase these lands than the seller to sell. With respect to Ex. 13, it has further been observed by the learned Civil Judge that the sale-deed has been proved by the agent Swaroop Chand and the purchaser and the seller have not been produced and that the agent Swaroop Chand, PW 8, is not able to state whether the land was purchased for residential purpose. He has also observed that the residential houses had already been built near these lands when they were sold. In the last analysis, he has held that the purchaser had purchased the lands covered by Exs. 12, 13 and 14 with the intention of constructing residential houses thereon and that is why they had paid a higher rate for the lands even though they were agricultural lands.

12. It is true that the land in question is agricultural land but it is common knowledge that with the expansion of City of Jaipur, big plots of land, which were erstwhile put to agricultural use, were being converted into residential areas. It cannot be denied that the land in question like many other plots of agricultural land was acquired for construction of residential houses and business premises. In these circumstances, we are of the opinion, that the learned Civil Judge was not justified in rejecting the sale-deeds on the ground that the lands comprised therein had been purchased by the purchaser with an intention to construct

residential houses on the other hand, it appears to us that the land acquired should be valued not only with reference to its condition at the time of the declaration but its potential value should also be taken into consideration to a certain degree.

13. Smt. Tribeni Devi and Others Vs. Collector of Ranchi, the Supreme Court observed as follows:

The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain 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. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value....

14. Again, in The Collector, Raigarh Vs. Harisingh Thakur and Another, Jaswant Singh J., speaking per majority observed as follows:

The question as to whether a land has potential value as a building site or not is primarily one of fact depending upon several factors such as its condition and situation, the user to which it is put or is reasonably capable of being put, its suitability for building purpose, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extensions, whether the nearby town is a developing or a prospering town with prospectus of development schemes and the presence or absence of pressure of building activity towards the land acquired or to the neighbourhood there of.

15. Thus, in view of what their Lordships have observed in the cases referred to above, we are of opinion that it would not be irrelevant to take into consideration the potential value of the land acquired. It appears to us that the learned Civil Judge was led away by the fact that the land in question is agricultural land but kept out of consideration the potential value of the land, which, in our opinion, should have not been lost sight of. We are alive to the fact that the market value of the land in such cases cannot be determined with precision and has to be determined by estimate. The land in question is situated on Jaipur-Tonk-Road, a little away from the road. The land was being acquired for building activity. Thus even after having due regard to the fact that the lands covered by the sale deeds Exs. 12, 13 and 14 may be a little better situated, the estimated market value of Rs. 1,500/- per Bigha, as determined by the Civil Judge appears to us to be quite inadequate.

16. Mr. Mathur, learned Additional Government Advocate, however, invited our attention to the documents Exs. A1 and A2 in support of his contention that the

market value of the land in question at the relevant time was not more than Rs. 350/ per Bigha. We have looked into these documents. They are only copies of mutation record. It appears to us that the purchaser had purchased the land for the purpose of cultivation and even as the time of purchase, crop was actually standing thereon. Copies of the sales deeds have not been put on the record and there is a mere reference in Exs. A1 and A2 that the land had been sold at a rate which comes about to Rs. 350/- per Bigha, In absence of the copies of the sale-deeds, a mere reference to sale-price in the mutation entries can not be taken into consideration, The mutation entries have not been taken to be a safe guide even by the learned Civil Judge who has enhanced the rate from Rs. 350/- to Rs. 1,500/-per Bigha. The State has not come in appeal against the award by the learned Civil Judge and therefore, it does not lie in the mouth of the respondent to urge that the correct market-value in the present case would be Rs. 350/ per Bigha. In our opinion, the documents Exs. A1 and A2 do not furnish the requisite material for determination of the market value of the land in question.

17. Having an over all view of the evidence led by the parties, we find it safe to adopt the rate contained in the sale-deeds Exs. 12, 13 and 14 and even after making due allowance for difference in situation, if any, we consider it just and proper to assess the market value of the land in question at the relevant date as Rs. 4000/- per Bigha.

18. We might now take up the second point. Section 23(2) of the Act, which has bearing on this point, reads as under:

23. Matters to be considered in determining compensation. (1)

... ..

(2) In addition to the market value of the land as above provided the Court shall, in every case except where a certificate has been granted under Sub-section (5) of Section 17, award a sum of ten per centum on such market value in consideration of the compulsory nature of the acquisition:

Provided that the sum of ten per centum shall not be awarded when any land has been acquired for, the purpose of an improvement or development trust unless such land consists of:

(a) building in the actual occupation of the owner or his tenant or occupied free of rent by a relative of the owner and land appurtenant thereto; or

(b) gardens not let out but used by the owner.

(3)

19. The learned Civil Judge has observed that ten per cent compensation for compulsory acquisition u/s 23(2) cannot be allowed, "as Sub-clause (2) of Section 23 has been deleted in the year 1960 before the Notification for this land was issued and the award was given". It is true that u/s 3 of the Rajasthan Housing Schemes (Land Acquisition) Act, 1960, it is provided that for the

purpose of a housing scheme, the Rajasthan Land Acquisition Act (No. 24 of 1953) shall have effect in relation to such acquisition as if Sub-section (2) of Section 23 had been omitted. The question of validity of the aforesaid provision in the Housing Scheme Land Acquisition Act. came up for consideration before this Court in S.B. Civil Writ petition No. 1712 of 1971-Burmah Shell Oil Storage Distributing Co., v. State of Rajasthan and Ors. decided on May 8, 1975, and it was held that there was no justifiable reason for distinguishing cases of land which are acquired for housing scheme from those acquired for any other purpose. Reliance was placed on Nagpur Improvement Trust and Another Vs. Vithal Rao and Others, and it was held that the omission of Sub-section (2) of Section 23 of the Act No. 24 of 1953, in respect of acquisition of land for housing scheme is violative of Article 14 of the Constitution as being discriminatory. We do not see any ground for taking a different view from the one taken in *Burmah Shell Oil Storage and Distributing Co.*"^{scase (supra)}.

20. Now, looking to Sub-section (2) of Section 23, as it exists, it appeared that different principles of compensation have been laid down if the land is acquired for the purpose of an improvement or development trust. In the case of *Nagpur Improvement Trust* (4) (^{supra}), their Lordships held that as far as the owner is concerned, it does not matter for which public purpose, the land is acquired. The land may be acquired for a hospital or a school or a Government, building but all the three objects are public purposes. The court observed:

Article 14 confers an individual right and in order to justify a classification, there should be something which justifies a different treatment to this individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words, can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned, it does not matter to him whether the land is acquired by one authority or the other.

21. In an earlier case also, namely, *Balammal and Others Vs. State of Madras and Others*, while dealing with the provisions of Madras City Improvement Trust Act, 1950 (Act No. 37 of 1950) as also of the Land Acquisition Act, the Supreme Court held that Sub-clause (2) of Clause 6 of the Schedule to Act No. 37 of 1950, in so far as it deprives owners of the lands of statutory addition to the market value of the lands under Sub-section (2) of Section 23 of the Land Acquisition Act, is violative of equality clause of the Constitution and is on that account, void. If the State had acquired for improvement of the town under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value 15 per centum solatium u/s 23(2) of the Land Acquisition Act. In

other words, their Lordships held that deprivation of the solatium for acquisition of land under the Madras City Improvement Trust Act was discriminatory as it infringed the guarantee of equal protection of the law & was prejudicial to the owners of the lands which are compulsorily acquired. In this view of the matter, the provision of Sub-clause (2) of Clause 6 of the Schedule to Act No. 87 of 1950, was struck down as invalid.

22. From what has been stated above, it would be abundantly clear that deprivation of solatium at 10 per cent to an Owner whose land has been compulsory acquired on the ground that the land has been acquired for the purpose of an improvement or development trust, is discriminatory and cannot be given effect to. In our opinion, the proviso to Sub-section (2) of Section 23, in so far as it deprives the owner of a land acquired for the purpose of an improvement or development trust, of solatium, is invalid. As an inevitable consequence of this finding, the appellant would be entitled to get solatium at the rate of 10 per centum on the market value of the land and we hold accordingly.

23. This brings to the last point urged by the learned Counsel for the appellant, viz. that a direction may be issued to the authorities concerned for granting two plots of land in exchange for the land acquired, as assured by the Land Acquisition Officer. This point can be disposed of by a short answer and it is this that the jurisdiction of the Court, to which reference is made u/s 18 of the Act is only with respect to determination of the objections as to the measurement of the land, the amount of the compensation, the amount of costs allowed, the persons to whom it is payable, or the apportionment of compensation among the persons interested. The Court, therefore, has no jurisdiction to issue any such direction in a reference u/s 18 of the Act. It is, therefore, not necessary for us to examine this matter on merits at all. More over, under Sub-section (1) of Section 31, it appears that the sanction of the State Government is required for the purpose of grant of lands in exchange, mere assurance by the Land Acquisition Officer is of no avail. Be that as it may, so far as this Court is concerned, we are unable to grant any relief to the appellant on this score,

24. No other point was argued.

25. The net result of the foregoing discussion is that we partly allow this appeal and hereby direct that the compensation shall be awarded to the appellant for the land acquired at the rate of Rs. 4,000/- per Bigha and that the appellant will also be entitled to get, solatium at 10 per centum on the market value of the land calculated at the rate of Rs. 4,000/- per Bigha. The other items awarded by the learned Civil Judge are, of course, confirmed as the State has not filed appeal against those items. The appellant shall also be entitled to get interest at the rate of 4 per cent per annum on the total amount of compensation so awarded from the date of taking possession of land till the actual payment is made. In the circumstances of the case, we leave the parties to bear their own costs of this appeal.