
(2016) 09 AHC CK 0066
In the Allahabad High Court

Case No : First Appeal No. 10 of 2006 (Lower Court Misc. Case No.6 of 1997)

Housing Commissioner, U.P. Avas Evam Vikas Parishad,
Lucknow

APPELLANT

Vs

Rajiv Kapoor

RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 28, 32

Citation : (2016) 9 ADJ 350 : (2016) 6 AILLJ 25 : (2016) 6 AllWC 6269

Hon'ble Judges : Shri Narayan Shukla and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Madan Gopal Mishra, Advocate, for the Appellants; Arun Kr. Jaiswal, A.K. Jaiswal and Amit Jaiswal, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Anant Kumar, J.—These first appeals under Section 54 of the Land Acquisition Act, 1894 have been filed against award/decreed dated 25.07.2005 made by the Presiding Officer, U.P. Avas Evam Vikas Parishad Tribunal, Lucknow (hereinafter referred to as "the Tribunal") in Misc. Case Nos. 6, 5, 3, 4 and 7 all of 1997.

2. Since all these appeals are connected with each other and have been filed against a common award dated 25.07.2005, as such, all these appeals are being decided altogether.

3. Brief facts relevant for disposal of these appeals are that U.P. Avas Evam Vikas Parishad, Lucknow had prepared a land development scheme known as "Kursi Road, Lucknow Bhumi Vikas Evam Grih Esthan Yojna" and for the said purpose the land of the respondents herein was acquired under Section 28/32 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as "the Parishad Adhiniyam, 1965"). Since the land which was notified to be acquired is not under dispute, we do not want to submit a detail of the same in our

judgment and in fact the said land is detailed in the award of the Presiding Officer, U.P. Avas Evam Vikas Parisad Tribunal, Lucknow, which is impugned here.

4. When the notification under Section 28 of the Parishad Adhiniyam, 1965 was published on 25.08.1973, which is equivalent to Section 4 of the Land Acquisition Act, 1894, the respondents-claimants had challenged the said notification before the High Court by way of writ petition which was dismissed by this Court. The respondents-claimants, thereafter, preferred a special leave petition before the Hon'ble Apex Court as S.L.P. (C) No. 6400/1992 (S.D. Kapoor v. State of U.P.) connected with the leading case Civil Appeal No. 965/1991 (Gauri Shankar Gaur and others v. State of U.P. and others) and the said civil appeal was decided by the Hon'ble Apex Court on 12.08.1993 with the direction that "petitioners shall be paid compensation on the market rate prevalent in the year the declarations analogous to section 6 of the land acquisition Act, 1894 were issued."

5. At the very initial stage, objections were filed against the said land acquisition before the Land Acquisition Officer. After hearing the objections, the Land Acquisition Officer had passed an award regarding the said land @ Rs. 1.22 per sq. ft. It is pertinent to mention here that the possession over the land of the respondents was taken by the Competent Authority on 05.12.1986, whereas award regarding the compensation was made on 06.11.1996 and the Land Acquisition Officer passed an award @ 1.22 per sq. ft. Aggrieved by the said award, the references were made before the Tribunal. It was stated by the respondents before the Tribunal that the Land Acquisition Officer had passed the award arbitrarily and had not taken into account the situation of the land, whereas the said land is within the limit of Nagar Mahapalika, Lucknow and is equipped with all the facilities and is situated by the side of the road and the nearby localities are Mahanagar, Rahim Nagar, Shakhupura Colony, Vishnu Puri Colony and Aliganj Housing Scheme in the close vicinity. The said land is also developed land and is situated near Mahanagar Picnic Spot Road. All the communication facilities like road, transportation, electricity, school, bank, post-office, etc are also available nearby. It was also stated that regarding the same scheme in different judicial pronouncement an award of Rs. 2.75-Rs. 3.50 per sq. ft. has been passed which has not been taken into account. These assertions of the claimants/respondents were denied by the opposite parties. On the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the award made by the Land Acquisition Officer is insufficient and if so, what was the value of the land on 20.09.1980, i.e. the date on which the notification under Section 6 of the Land Acquisition Act, 1894 was published ?
2. Whether claimants are entitled for the benefit of Act No.68/1984 ?
3. Whether the claim of the claimants is barred by the provisions of Urban Land Ceiling Act, 1976 ?
4. Whether the reference is barred by time ?

5. Whether the claimants are entitled for any other relief ?

For Misc. Case No. 6/1997 following two issues were also framed:

6. Whether the claimants are entitled for a sum of Rs. 3 lac as compensation for trees ?

7. Whether the claimants are entitled for a sum of Rs. 88005/- as a compensation for the construction situated on the said land ?

In Misc. Case No. 7/1997 following issue as Issue No. 6 was framed:

6. Whether the claimants are entitled for a sum of Rs. 1,75,000/- as compensation for standing trees and construction ?

In Misc. Case No. 3/97 Issue No.6 was framed as:

6. Whether the claimants are entitled to receive a sum of Rs.48,000/- as compensation for construction ?

6. On behalf of parties, documentary as well as oral evidences were adduced and while deciding issues after considering the material on record, the learned Tribunal came to the conclusion that the respondents/claimants are entitled to the compensation of Rs. 3.50 per sq. ft. The learned Tribunal while considering a case law reported in AIR 2002 Supreme Court 1558; (Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd Hanif Sahib Bawa Sahib) has concluded that apart from the said compensation claimants are entitled for an enhancement @ 10 per cent per annum, which comes to Rs. 2.44 per sq. ft., so a sum for which the claimants were found entitled was Rs.5.95 per sq. ft., the rate on which any bona fide purchaser would have purchased the land. Accordingly, the references were allowed and the award passed by the Land Acquisition Officer was also enhanced. Aggrieved with the said award, the present appeals have been filed by the appellants.

7. We have heard learned counsel for the parties and have perused the material on record.

8. Learned counsel for the respondents have moved applications under Order 41, Rule 33 , read with Section 151 C.P.C. with the prayer that this appellate Court, which granted additional compensation in view of Section 23 (1-A) of the Land Acquisition Act, which provides that in addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated @ 12 per cent per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

9. On this ground, learned counsel for the respondents has stated that in fact the notification under Section 28 of the Parishad Adhiniyam, 1956, which is equivalent to Section 4 of the Land Acquisition Act was published on 25.08.73,

whereas declaration under Section 32 of the Parishad Adhiniyam, 1956 was published on 20.09.1980, which is equivalent to Section 6 of the Parishad Adhiniyam, 1956 and the possession of the land was taken on 5.12.86 and the relevant award in Section 11 of the Land Acquisition Act was declared on 6.11.1996 @ 1.22 per sq. ft. In this light, a prayer has been made for grating benefit of Section 23(1-A) of the Land Acquisition Act, as stated above.

10. It was ordered that the application under Order 41, Rule 33 of the Code of Civil Procedure shall be considered at the time of final disposal of the appeal. Accordingly, we have heard learned counsel for the applicants on this application also.

11. Perusal of the award of the Tribunal reflects that the learned Tribunal while passing the award has taken into account the effect of Section 23 (2) of the Land Acquisition Act and has granted the relief. This apart, when in compliance of the Hon''ble Apex Court's order passed in Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd Hanif Sahib Bawa Sahib (Supra), they have already been granted 10 per cent enhancement, so to our view, there is no need to grant any further enhanced interest thereon as particularly in the facts and situation the learned Tribunal has already considered this aspect in its award. So, to our view, the application under Order 41, Rule 33 read with Section 151 C.P.S. is not maintainable and is accordingly, rejected.

12. The learned counsel for the appellants has stated that the award/decreed passed by the learned Tribunal is erroneous as the learned Tribunal has not considered the sale exemplars filed by the appellants reflecting the market value of the land in question in the year 1980, which was approximately @ Rs. 1.00 per sq. ft. It is also argued that the learned Tribunal has erred in not considering the transactions of land, which is subject matter of Misc. Case No.8/97, which was purchased by the respondents @ 0.12 per sq. ft. on 07.08.1973, just before 18 days from the date of notification dated 25.08.1973 published under Section 28 of the Parishad Adhiniyam, 1965. It is also argued that the principal of adding 10 per cent per annum appreciation for determination of market value from the date of publication of notification under Section 28 of the Parishad Adhiniyam, 1965 up to the date of publication of notification under Section 32 of the Parishad Adhiniyam, 1965 is erroneous. The Tribunal has erred in not determining the market value of the land in question by adding appreciation of market value @ 10 per cent per annum to the value of land Rs. 0.12 per sq. ft. It is also stated that the learned Tribunal has relied upon the judgment of this Court passed in First Appeal No. 37 of 1985, which is also impugned in the appeal filed under Section 54 of the Land Acquisition Act by the appellants before the Hon''ble Apex Court in Special Leave Petition (Civil) No.26624 of 2004. In support of his argument, learned counsel for the appellants has cited a case law reported in (2009) 14 SCC page 758 Satish and others v. State of Uttar Pradesh and others, wherein the Hon''ble Apex Court has held in paragraphs 20 and 23, which is as under:

20. At the outset, it must be noticed that the learned Reference Judge as also the High Court refused to take into consideration a large number of deeds of sale relying on or on the basis of a decision of this Court in P. Venkaiah. Section 51-A of the Land Acquisition Act construction of which fell for consideration before this Court therein reads as under:

"51-A. Acceptance of certified copy as evidence - In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."

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23. A Constitution Bench of this Court in Cement Conpn. of India v. Purya opined that by reason of the insertion of Section 51-A, Parliament merely enabled a party to get over the problem, namely, calling for the original form the vendor or the vendee and proving the same and, thus, the decision of this Court in Collector v. Kurra Sambasiva Rao was held to be not laying down the correct proposition of law, holding : (Purya case, SCC p. 279, paras 18-20)

"18. From the above, it is seen that till the judgment of the three-judge Bench in Narasaiah case, the consensus of judicial opinion was that Section 51-A was enacted for the limited purpose of enabling a party to produce a certified copy of a registered sale transaction in evidence only and for proving the contents of the said document the parties had to lead oral evidence as contemplated in the Evidence Act.

19. A careful perusal of the judgment in Kurra Sambasiva Rao Case and other cases which fall in line with the said view discloses that they proceeded on the basis that prior to the insertion of Section 5-A in the LA Act, the evidence Act did not permit the production of a certified cop of the registered sale transaction in evidence. Therefore, by the insertion of Section 51-A the legislature merely enabled a party to get over that problem. Thereafter, according to the said judgments, the party concerned had to prove the contents of the document by adducing oral evidence separately to prove the contents of the document.

20. The above view of the Court in Kurra Sambasiva Rao case, in our opinion, is not the correct position in law. Even prior to the insertion of Section 51-A of the Act the provisions of the Evidence Act and the Registration Act did permit the production of a certified copy in evidence. This has been clearly noticed in narsaiah case wherein the Court relying on Sections 64 and 65(f) of the Evidence Act read with Section 57(5) of the Registration Act held that production of a certified copy of a registered sale document in evidence was permissible in law even prior to insertion of Section 51-A in the LA Act. We are in agreement with the said view expressed by this Court in Narasaiah case.

The Constitution Bench, thus, laid down the law that for paying for a certified

copy of a registered deed of sale, the vendor and vendee thereof need not be examined.

13. Basing this case law, learned counsel for the appellants has stressed that the learned Tribunal had not relied upon the exemplars produced on behalf of appellants and also has failed to appreciate that the respondents had purchased the land on the very meager amount and on calculation it comes to Rs.0.12 per sq. ft. and the Tribunal has granted compensation arbitrarily on a very high rate which is not admissible in law.

14. So far as the grounds raised by the learned counsel for the appellants in these appeals to the effect that the learned Tribunal has not taken the exemplars produced on their behalf in their right prospective and has wrongly assessed the value of the land under appeals @ 3.50 per sq. ft. is concerned, it is evident from the impugned judgment that the learned Tribunal has referred the various exemplars, which are from paper no. Ga-41 to Ga-61 and has taken into account these documents. This apart, the learned Tribunal has also taken into account various cases decided by the Tribunal itself and by this Court regarding a similar notification of the village Khurram Nagar. The learned Tribunal has considered the paper nos. Ga-64, Ga-65, and Ga-66, which are the cases decided by the Tribunal and by this Court regarding the same area of land and has come to the conclusion that the Tribunal as well as this Court has already granted compensation to the land which is in the vicinity of the land covered under the appeals at a sum of Rs. 3.50 per sq. ft.. To our view, very purpose of considering the exemplars is to enable the authority who is assessing the value of the land to come to a correct conclusion, so far as the land under reference is concerned, the exemplars are usually produced before the authority concerned just to show the example regarding the value of the land which is prevailing at the relevant time in the locality where the land is situating. To our view, when the tribunal has considered its own judgment as well as judgment of this Court regarding the land of village - Khurram Nagar, which was already decided, this was the best piece of exemplars before the Tribunal and to our view in considering those judgments, the learned Tribunal has not committed any error. The perusal of the order of the learned Tribunal also reflects that the learned Tribunal has also considered the paper nos. Ga-31, Ga-32, Ga-33, Ga-34 and Ga-35, which are the orders passed by the learned Tribunal as well as the order passed by this Court regarding the land situating at village Khurram Nagar, wherein the value of the land has been assessed @ 3.50 per sq. ft, so to our view, there is no force in the argument of learned counsel for the appellants that the value of the land assessed by the Tribunal had a higher side and also there is no force in the argument that the Tribunal has not considered the exemplars produced on their behalf. So far as, the arguments of learned counsel for the appellants to the effect that in fact Shri Rajeev Kapoor has purchased the land in dispute few days before the notification @ 12 paisa per sq. ft has also not much relevance because of the fact that as per the judgment passed in the matter of Gauri Shankar Gaur (Supra), the Hon"ble Apex Court has directed to assess the value of the land on the date of

notification under Section 6 of the Land Acquisition Act, so the value of the land on the date of the purchase of the land which is in the year 1973 has got no relevance and in fact the value of the land is to be assessed on the date of notification under Section 6 of the Land Acquisition Act, which is dated 20.09.1980 and taking into account the various factors as stated above, to our view, the learned Tribunal has not committed any error in assessing the value of the land @ 3.50 per sq. ft. This apart, learned counsel for the appellants has not pressed any other point before this Court like rate of interest or the rate of solatium etc. So to our view, the assessment of value of the land @ 3.50 per sq. ft as well as the rate of interest as granted by the Tribunal while deciding Issue No.2 has got no error and is liable to be affirmed. 10 per cent per year enhancement granted by the learned Tribunal following the case law reported in the case of Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd Hanif Sahib Bawa Sahib (Supra) is also said to be payment of calculation factor were detailed by the appellants for petty long period.

15. A case law cited on behalf of respondents is AIR 2004 SC 4135 (Om Prakash (D) by L.Rs. and others v. Union of India and another), relevant portion of the judgment is as under:

"In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs. 16,750/- per bigha as on 30-10-1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum for every year from 1966 to 1978 and @ 12% per annum from 1975 had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 had been considered to be reasonable increase to arrive at the fair market value assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10 % every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively up to the date of acquisition."

16. Another case law cited on behalf of learned counsel for the respondents is AIR 2003 SC 4382 (Bhim Singh and others v. State of Hariyana). In para 6 of the judgment, the Hon"ble Apex Court has held as under:

"6. On behalf of the Appellants it was submitted that the High Court erred in not taking into account the sale instances which had been brought on record. It was pointed out that the High Court had held, in respect of most of the sale instances, that they could not be relied upon as the vendor and/or vendee had not been examined. Reliance was placed upon the Judgment of this Court in the case of Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah. In this case reliance was placed upon Section 51A of the Land Acquisition Act and it was held as follows:

"If the only purpose served by Section 51A is to enable the court to admit the copy of the document in evidence there was no need for a legislative exercise because even otherwise the certified copy of the document could have been admitted in evidence.

The State has the burden to prove the market value of the lands acquired by it for which the State may have to depend upon the prices of lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the state officials it was a burden to trace out the persons connected with such transactions mentioned in the sale deeds and then to examine them in court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51A was introduced in the LA Act. When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document" it enables the court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence.

The words "may be accepted as evidence" in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned."

It was submitted that even though the Reference Court and the High Court had not taken the sale instances into account in view of the then prevailing law, this Court can and should take into the sale instances to arrive at the compensation payable. A number of sale documents were shown in this Court. It was submitted that if an average of all these sale instances is taken the price would come to over Rs. 500 per square yards. We are unable to accept this submission. In many of the sale instances the price is inclusive of price of the structures standing on the land. Even otherwise when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding this Court has already approved the rate fixed then in our view the best method would be to look at the earlier Judgments and Awards. Therefore the High Court cannot be faulted for having fixed compensation on the basis of earlier Judgments.

17. In a similar matter of village Khurram Nagar, the Division Bench of this Court while deciding First Appeal No. 10 of 1995 (B.N. Tandon v. State of U.P. Avas Evam Vikas Parishad and others) has also granted compensation @ Rs. 3.50 per sq. ft.

18. Whereas, learned counsel for the respondents has stated that in fact now it is well settled proposition of law that respondents-claimants are entitled to get the

market value of the acquired land prevalence on the date of notification under Section 6 of the Land Acquisition Act, which is akin to the notification under Section 28 of the Parishad Adhiniyam, 1965, so it is wrong to say that the calculation should have been made @ Rs. 0.12 per sq. ft., the rate on which the claimants had purchased the land in the year 1973. It is evident that the notification under Section 28 of the Parishad Adhiniyam, 1965 was published on 20.9.1980 and the award was passed on 06.11.1996. It is also argued on behalf of the respondents that the learned Tribunal has considered various case laws and the orders passed by this Court, wherein for the same award @ 3.50 per sq. ft. was passed. This apart, the learned Tribunal has rightly granted 10 per cent enhancement while applying the law enumerated by Hon''ble Apex Court in the case of Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd Hanif Sahib Bawa Sahib (Supra), so the order passed by the Tribunal is justified and it does not require any interference of this Court.

19. In view of the aforesaid facts, to our view, the learned Tribunal has rightly assessed the value of the land, interest factors and the learned counsel for the appellants has failed to persuade us to take any different view than what has been taken by the learned Tribunal and there is no material on record to take any different view in the matter and to our view there is no such material irregularity or illegality in the order of the Tribunal, which may be interfered with in this appellate jurisdiction, so these appeals have got no force and are liable to be dismissed.

20. Accordingly, these appeals are dismissed.

21. The application under Order 41, Rule 33 read with Section 151 C.P.C. (C.M. Application No. 27062 of 2015 in First Appeal No. 10 of 2006), moved by the respondents is also rejected.