(2009) 11 GAU CK 0009

In the Gauhati High Court

Case No : Land Acquisition Appeal No. 1 of 2000

Ishananda Sarma Phukan APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 17, 18, 23(2), 23(IA)

Citation : (2006) 1 GLT 503

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : M.R. Pathak, for the Appellant; P.S. Deka, for the Respondent

Judgement

Anima Hazarika, J.—This appeal for enhancement of compensation arising out of and is directed against the judgment and award dated 5.6.2000 and 23.5.2001 respectively passed by the District Judge, Jorhat in LA Misc. Case No. 148/1994 arising out of LA Case No. 4/1987 on a petition made u/s 18 of the Land Acquisition Act, 1894 (for short ''Act'') for referring the petition to the District Judge, Jorhat for determining the actual value of the land and building and other compensation with interest on the determined value.

2. Notification u/s 4 of the Act was issued being No. R.L.A. 9/88/5 dated 21.3.1988 published in the Assam Gazette dated 23.3.1988 whereby and whereunder land measuring 1 Bigha 14 & ? Lechas of land at Malow Ali, Jorhat under Dag No. 836, Patta No. 3, Block No. 5 has been acquired by the Government of Assam through the Collector, Jorhat. By the same notification another plot of land measuring 12 & ? Lechas at Block No. 5, Patta No. 21, Dag No. 837 had also been acquired alongwith an Assam type house constructed in the year 1957, another part in 1962 and the remaining portion i.e. 700 square feet was built in the year 1977. The house measuring about 2500 square feet having six big rooms, equipped with independent water supply with a pond over the said plot of land with proper electrification and three sets of sanitary latrines and bath-rooms. Since 1957, the said house was under the occupation of the

office of the Deputy Director of Economics and Statistics, Jorhat. Thus, total area of 1 Bigha 2 Kathas 11 74 Lechas including 1 Bigha 1 Katha 7 Lechas of land with the house of the Appellant standing thereon at Jorhat town, Block No. 5, Mouza Nagarmahal, District Jorhat were acquired by the Government dispensing Section 5A and invoking urgency Clause u/s 17 of the Act. Notification and the declaration together were published in the Assam Gazette on 23.3.1988 and possession of the land alongwith the house standing thereon was taken over by the Collector and handed over to the acquiring authority on 9.5.1988.

3. Thereafter, the Collector, Jorhat started a proceeding being LA Case No. 4/1987 whereby an award of Rs. 4,85,122.50 (Rupees four lakhs, eighty five thousand, one hundred twenty two and paise fifty only) on account of compensation, both for building and the land (which included additional amount @ Rs. 12% per annum on the market value from 23.1.1988 to 9.5.1988 and additional compensation @ Rs. 30%) was made. Being not satisfied with the award, the Appellant took up the matter on the file of the Civil Court on a reference made u/s 18 of the Act.

4. Before the Civil Court, the Appellant claimed compensation at an enhanced rate of Rs. 9,20,000/- calculated @ Rs. 1,60,000/- per katha for the acquired land and Rs. 3,00,000/- in respect of the house exclusive of additional compensation and interest etc. besides other compensation and interest etc. against the said amounts.

5. The Civil Court, however, by its judgment dated 5.6.2000 enhanced the compensation from Rs. 18,650.55 (Rupees eighteen thousand, six hundred fifty and paise fifty five only) per katha as awarded by the Collector u/s 11 of the Act to Rs. 25,000/-(Rupees twenty five thousand only) per katha being the market value of the land considering the sale deeds executed during 1985, 1986 and 1987 in addition to the additional amount @ Rs. 12% per annum of the market value of the land. The Civil Court has awarded Rs. 60,000/- only as the value of the house against Rs. 2,50,300/-(Rupees two lakhs, fifty thousand and three hundred only) awarded by the Collector as value of the house including trees and other immovable things. Being aggrieved with the compensation awarded by the Civil Court alongwith the cost of the proceeding and considering the potentiality of the land being situated in the heart of the town and the house having six rooms with electricity supply and water supply alongwith a pond, the present appeal has been preferred praying for compensation at an enhanced rate as indicated hereinabove on the ground that the award passed by the Civil Court is unreasonably low than the compensation claimed.

6. Heard Mr. M.R. Pathak, learned Counsel appearing for the Appellant. Also heard Mr. P.S. Deka, learned Govt. Counsel appearing for the Respondent.

7. Criticizing the Judgment of the Civil Court, Mr. Pathak, would urge that the Civil Court has committed an error apparent on the face of the record in determining the valuation of the property on the date of notification. The sale

deeds dated 27.2.1986 and 5.8.1986 which were exhibited as Exhibit -1 and Exhibit-2 ought to have been taken into consideration for assessment of the actual and proper value of the acquired land as the awarded amount is too law in comparison to the value shown in the aforesaid sale deeds. Mr. Pathak has further submitted that the valuation of 6 lechas and 1.9 lechas of land shown in the said sale deeds fetched Rs. 36,000/- (Rupees thirty six thousand only) and Rs. 17,000/- (Rupees seventeen thousand only) respectively and accordingly, the valuation of land per katha would be Rs. 1,20,000/- (Rupees one lac twenty thousand only) and Rs. 1,78,947/- (Rupees one lac seventy eight thousand nine hundred and forty seven only) and therefore, the valuation of land would be more than Rupees 1 (one) lac per Katha and hence, interference is required in order to fetch the corret compensation so that none of the parties are enriched.

8. Mr Pathak would further urge that the learned Court below has committed an illegality in fixing the market value of the acquired land at Rs. 25,000/- (Rupees twenty five thousand) only per katha solely on the basis of Ext. F which is the sale statement prepared by the Collector without production and proof of the sale deeds from the side of the Collector which has been admitted by the learned Court below itself, even so fixed the value of the land arbitrarily ignoring the sale deeds proved by the Appellants vide Exts. 1 and 2 and hence, the Judgment and award requires interference in order to enhance the amount of compensation of the acquired land and house in the facts and circumstances of the case.

9. Mr. Pathak has further drawn the attention of the Court to the evidence of 4(four) witnesses whereby the Appellant has proved mat the land involved in Exts. 1 and 2 are only 330 yards away from the acquired land with the same revenue block and the acquired land has greater potentiality as the said land is situated within the Jorhat Municipality which is near Janambhumi Newspaper Press, the State Transport Bus Station, District Court, market and near the old Circuit House and as such, the learned Court has committed illegality in not taking into account the potentiality of the land which is developed and high land within the heart of Jorhat town and as such, the determination of valuation of land per katha amounting to Rs. 25,000/-is in the lower side which deserves inteference by enhancing the compensation in the interest of justice.

10. Drawing the attention of the findings arrived at by the learned Court, Mr. Pathak would urge that the compensation amounting to Rs. 60,000/- (Rupees sixty thousand only) in respect of the house standing on the land measuring 12? lechas is occupied by the office of the Deputy Director of Economics and Statistics, Jorhat and the said Assam Type house is consists of 6(six) rooms with all facilities of water, electricity supply, having three sets of bathroom and latrine, the compensation of the house would fetch much more valuation than as awarded at Rs. 60,000/- and hence, the entitlement of enhanced compensation cannot be denied in the facts and circumstances of the case.

11. In support of his submissions Mr. Pathak has relied upon the following decisions viz.,

1. The Collector of Lakhimpur Vs. Bhuban Chandra Dutta,

2. Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat,

3. Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality,

4. Hasanali Khanbhai and Sons and Others Vs. State of Gujarat,

5. Gheevarghese Mathew etc. Vs. State of Kerala and another etc.,

6. Sunder Vs. Union of India,

7. Kasturi and Others Vs. State of Haryana,

8. Ravinder Narain and Another Vs. Union of India (UOI),

9. Tejumal Bhojwani (Dead) through Lrs. and Others Vs. State of U.P.,

10. The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others,

11. Kiran Tandon Vs. Allahabad Development Authority and Another,

12. Hans Raj Sharma (Dead) by Lrs. Vs. Collector Land Acquisition, Tehsil and District Doda,

13. Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat,

14. (2005) 9 SCC 594 : Land Acquisition Officer and Revenue Divisional Officer v. Ramanjidu and Ors.

15. The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others,

16. Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others,

17. Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another,

12. Mr. P.S. Deka, learned Government Advocate representing Respondent, supported the judgment rendered by Civil Court contending inter alia that the sale deeds produced and exhibited vide Exts. 1 and 2 cannot form safe basis for valuation of large tracts of plot in comparison to small plots which are not compatible properties and hence, submits that no interference is called for by this Court.

13. Considered the submission advanced by the learned Counsel appearing for the parties. Also perused the judgment delivered by the District Court under reference and the award of the Collector, made u/s 11 of the Act alongwith the evidence led by the parties. On the points urged at the hearing the following points fall for consideration:

(a) Whether the estimate of the market value of the acquired land at Rs. 25,000/- (Rupees twenty five thousand) per katha is unreasonably low and the same is arrived at ignoring the evidence on record and settled principles of valuation?

(b) Whether the valuation of the building at a mere amount of Rs. 60,000/- (Rupees sixty thousand) only calls for an upward revision?

14. Admittedly the District of Jorhat is the costliest district of the State of Assam. The acquired land had the potentiality for building purpose. The acquired land is situated at the Tri Junction of the Malow Ali, Rajguru Phukan Road and the road leading towards Janambhumi Press starts there from. The land is near to school, Court building, transport station and market. The Southern side of the acquired land is attached to Tarun Ram Phukan Road. The eastern end of the said road is linked to the front of Shankar Talkies. The land acquired is better located with better developmental scope than that of the land sold out by Alhaz Motiur Rohman vide Ext-1 dated 27.2.1986 which is situated at Old Circuit House Road, Jorhat. The land acquired can be used for commercial purposes including opening shops. Therefore, it can safely be held that the land had the potentiality for building purposes as disclosed by the evidence during the proceedings.

15. The Civil Court has relied on Ext-F while determining the value of the acquired land and discarded Exts. 1 and 2 on the ground that the documents vide Exts. 1 and 2 relates to comparatively smaller areas of land and the acquired land is a large area. The value of the acquired land therefore cannot be enhanced on the basis of the said deeds pertaining to smaller areas of land. Ext.F is a comparative statement prepared by the District Collector showing the value of the various plots of land of the locality, on the basis of dates from sale deeds collected from the Sub Registrar''s Office, Jorhat. The average market value as shown in the remark column in Ext.F is Rs. 18,650.55/- (Rupees eighteen thousand, six hundred fifty and paise fifty five) per katha on the basis of which assessment of the valuation of the land was made by the Collector ranging from Rs. 25,000/- to Rs. 10,000/- the lowest during the year 1985, 1986 and 1987. But the learned Civil Court realised that these sale deeds examined by the Collector in finding out the average market value of the land in the vicinity of the acquired land were not submitted to the Court from the side of the Collector to enable the Court to make an independent assessment of the valuation of the land per katha, as per sale deeds appearing in Ext.F and the Civil Court, therefore, enhanced the valuation of the acquired land @ Rs. 25,000/- per katha.

16. The market value of urban land and price fetched for comparison of smaller plot of land sold out about the time of issue of notification u/s 4 of the Act furnishes best evidence of valuation as has been held by the Apex Court, though a caution has been made that where large tracts are acquired, valuation in transgression in regard to smaller properties do not offer a proper guideline but subject to deduction of 25% and/or 1/3rd in case of larger area is acquired from the valuation of the smaller area.

17. Having regard to the compulsory nature of the acquisition, the sale deeds of comparable lands and the potential value of the acquired land in view of the land

being in the developed area of Jorhat town and being close to Schools, Court, Market and in Injunction Portion, the Court seems it proper to accept the valuation of two sale deeds vide Exts. 1 and 2 wherein 6 (six) Lechas and 1.9 Lechas of land were sold out at Rs. 36,000/- and Rs. 17,000/- respectively in the year 1986 which is two years prior to the notification. The rate per katha of the aforesaid plots of land would be Rs. 1,20,000/- and Rs. 1,78,947/- respectively in the vicinity of the acquired land. On the other hand, no evidence was led by the Collector or any official witness to dispute Exts. 1 and 2 showing the price fetched in the vicinity area of the land acquired. In absence of any evidence relating to the value of the land on the part of the Respondent side, the Court seems it just and proper to accept the price value of the land as per Exts. 1 and 2. The document exhibited by the Appellant vide Exts. 1 and 2 would show that as indicated above the price of the small area fetched at Rs. 1,20,000/- and Rs. 1,78,947/- per katha respectively nearby the acquired land. Considering the fact that the land vide Exts. 1 and 2 being smaller area, 25% of the average fetched/ market value to be deducted in determining the price of the acquired land which is a bigger area. Therefore, after deduction of 25% from average value per katha of the aforesaid two plots vide Exts-1 and 2 would come to Rs. 1,12,105/- (Rupees one lakh, twelve thousand, one hundred and five only) and the compensation is enhanced to Rs. 1,12,105/-per katha from Rs. 25.000/- (Rupees twenty live thousand) per katha as awarded by the Civil Court. Accordingly, Point No. A is held and answered in positive enhancing the compensation as indicated above.

18. In regard to Point No. B, as formulated hereinabove, admittedly the Assam-Type house was constructed in the year 1957, 1962 and in 1977 and the house was under occupation by the office of the Deputy Director, Iiconomics and Statistics Department, Jorhat at the time of acquisition. The house consists of 6(six) rooms and is equipped with independent water supply, proper electrification and three sets of sanitary latrines and bath rooms and total area of the house is measured about 2500 Square feet. The Collector granted compensation for the house at Rs. 2,50,300/- and the Civil Court, however, awarded Rs. 60,000/- for the house, which, according to the Appellant is unreasonably low. The house was under occupation by the Department of Economics and Statistics, Government of Assam at the time of acquisition. The house contains a considerable number of carpentry works and the windows and doors are constructed by Titachopa and Bonchom variety of timber and the timber used in the roof was by matured kA'' Class timbers. A portion of the house i.e.700 Sq. feet was constructed in the year 1977.

19. Considering the above factors, it is submitted on behalf of the Appellant that the cost of the house would be around Rs. 3,00,000/- (Rupees three lakhs only). However, there is no evidence, either oral or documentary on the part of the Respondent disputing the claim of the Appellant as regards the cost of the house. Therefore, this Court deems it fit and proper to accept the valuation of the house as awarded by the Collector amounting to Rs. 2,50,300/-.

20. Accordingly, the compensation for the Assam-Type house is accepted as awarded by the Collector amounting to Rs. 2,50,300/- and the Point No. B is thus answered as indicated above.

21. The decisions cited and reported in Hasanali Khanbhai and Sons and Others Vs. State of Gujarat, relates to determination of market value of the acquired land and the factors to be considered including the evidences on record and answered accordingly. In Gheevarghese Mathew etc. Vs. State of Kerala and another etc., the Apex Court has held that the reference Court must evaluate the relevant facts to find out the reasonable market value, which the lands are capable to command in open market. The Apex Court in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, has held that when large area is the subject matter of acquisition it cannot fetch a price at the same rate at which small plots are sold. In Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, . Hasanali Khanbhai and Sons and Others Vs. State of Gujarat, and The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, the same principle as enunciated in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, has been applied relating to larger area and smaller area if under acquisition and the determination of value thereof, in Kasturi and Others Vs. State of Haryana, , Tejumal Bhojwani (Dead) through Lrs. and Others Vs. State of U.P., , Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat, , The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others, , Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, and Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, the Apex Court has held that the deduction of 1/3,25%, 20%, 15%, 33%, 20%, and 10% amount of compensation would be adequate just and proper in comparison to land acquired which are larger in area than the small compact area under acquisition. In (2005) 1 SCC 535 (supra) the Apex Court while deciding the case has opined that the High Court was justified in taking instances of sale of smaller chunk of land as reasonable, comparable instances of sale and fixing market value of the acquired land based thereupon. In Shree Vijay Cotton and Oil Mills Ltd. Vs. State of Gujarat, and (2001) 7 SCC 211 (supra), the Apex Court has dealt with the cost and interest under Sections 28 and 34 of the Act. There is no ambiguity in the above proposition of law. The detail discussion of the case referred to is avoided which would otherwise burden the judgment, more so, following the principles laid down by the Apex Court in the above referred decisions, the compensation of the land and building in question has been calculated.

22. In the result, the appeal is allowed with cost modifying the judgment and decree dated 5.6.2000 and 23.5.2001 passed in Land Acquisition Miscellaneous Case No. 148 of 1994 by the learned District Judge, Jorhat enhancing the compensation from Rs. 25,000/- (Rupees twenty five thousand) to Rs. 1,12,105/- (Rupees one lakh, twelve thousand, one hundred and five only) per katha of land and accepting the award relating to the house amounting to Rs.

2,50,300/- (Rupees two lakh fifty thousand three hundred) only as awarded by the Collector, Jorhat.

The Appellant is entitled to statutory interest u/s 34 of the Act @ 9% from 9.5.1988 to 8.5.1989 and @ 15% from 9.5.1989 to 22.1.1990 on Rs. 4,85,122.50 paisa, which amount was paid to the Appellant by the Collector, Jorhat as compensation, inasmuch as, in the present case, possession of the Appellants'' land was taken over on 9.5.1988 and the Collector, Jorhat paid him compensation only on 22.1.1990. The Appellant is also entitled u/s 28 of the Act for interest on the sum awarded as compensation in excess of the sum which the Collector awarded as compensation and such interest will be @ 9% from the date of taking possession for the first year and if not paid within that period then @ 15% thereafter till the date of payment in the Court. Solatium on the market value for compulsory acquisition of the land @ 30% of the market value as provided u/s 23(2) If not paid earlier and interest at the rate of 12% on the enhanced compensation, u/s 23(IA) of the Act for the period from 23.3.1988 to 9.5.1988 be paid to the Appellant.

23. Prepare a decree accordingly.