

(2007) 12 AHC CK 0026
In the Allahabad High Court

Jagdish Chand, Mahabir Singh, Bhule Ram and Gopi Chand APPELLANT
Vs

New Okhla Industrial Development Authority (NOIDA) and RESPONDENT
State of U.P.

Date of Decision : 14-12-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23

Citation : (2007) 12 AHC CK 0026

Hon'ble Judges : V.C. Misra, J;Amitava Lala, J

Bench : Division Bench

Judgement

V.C. Misra, J.—All the aforesaid connected first appeals arising out of one and common judgment and award dated 28.8.2000 passed by the Xth Additional District Judge, Ghaziabad determining compensation payable to the claimants in reference suit filed u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), have been heard together and are being decided by this common judgment and order having binding effect upon all the aforesaid first appeals.

2. By the present appeals the appellants have prayed that the aforesaid award dated 28.8.2000 be modified enhancing the compensation from Rs. 148.75 per square yard to Rs. 297.50 per square yard and have challenged the deduction of 50% of the sale amount by the Reference Court and claimed solatium and additional compensation as well as interest having accrued thereupon.

3. The facts of the case, in brief, are that preliminary notification u/s 4(1) of the Act was issued on 30.10.1987 for acquiring the total area of land admeasuring 494-9-19 bighas (309.060 Acre) in village Chalera Banger, Noida district Ghaziabad now in district Gautam Budh Nagar. The said notification was published in the official Gazette dated 27.2.1988 as well as in the daily newspaper on 11.6.1989 and subsequently a corrigendum was issued on 18.6.1989 and 24.6.1989 correcting and modifying the notification published in the Gazette dated 27.2.1988. The reference court held the relevant date of

notification to be the last date of publication i.e. 24.6.1989. Following the same a notification u/s 6 of the Act read with Section 17(4) of the Act was issued on 15.12.1989 and possession over the land in question was taken on 31.3.1990, 6.10.1990 and 30.9.1991. The Collector passed an award on 4.2.1992 on the basis of 62 sale deeds executed in respect of different plots of the village, in question, i.e. Chalera Banger of the last three years and determined the compensation at the rate of Rs. 43.64 per square yard on the basis of sale deed dated 29.8.1987 while in the said sale deed the land was sold at the rate of Rs. 54.54 per square yard, after allowing 20 percent deduction in the said rate. Being aggrieved the appellant/claimants preferred reference, under protest, which was referred for adjudication to the Civil Court u/s 18 of the Act. The reference Court relying upon an agreement to sell dated 19.4.1989 as exemplar taking into consideration the potentiality of about six bigha adjoining land of the same village identically situated as the land, in question, held the market value of the land at the rate of Rs. 297.50 per square yard and after deducting 50 percent; of the said sale amount, awarded compensation at the rate of Rs. 148.75 per square yard which is under challenge.

4. Being aggrieved, the appellant/claimants preferred the present appeals challenging the validity of said deduction of 50 percent from the market rate made by the reference Court on the ground that it was unsustainable in the eye of law and that the appellant/claimants were entitled to solatium and additional compensation as well as interest accrued upon it as the same was payable under the Act and its denial was illegal as awarding of interest on solatium and additional compensation is no longer res-integra and more so, as the land of the individual tenure holder was of similar size as that of the exemplar and no deduction, whatsoever, was called for under the facts and circumstances of the instant case in spite of the fact that the market value of the land was much more than Rs. 1000/- per square yard.

5. Learned Counsel for the appellant/claimants has submitted that the sale exemplar was rightly relied upon by the reference Court which was of an area of 5-18-10 bigha land and the agreement to sell was duly executed in April, 1988, which was followed by different sale deeds executed at the same rate of land, as mentioned in the agreement to sell, bonafides of which were never seriously questioned and was accepted to be a bonafide transaction by the reference Court. The largeness of the land has to be seen in the context of the size of the exemplar with that of the acquired land of individual tenure holder. Clubbing the holding of different tenure holders, in order to make deduction, of the entire acquisition, is legally impermissible in view of the following proposition of law laid down by the Hon"ble apex Court in Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another, which are reproduced as under:

12...With reference to the question of acquisition being of a larger area, the error is, when we scan, we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each

landholder's land is clubbed together, then the area becomes large. Each landowner's holdings are of small area....

6. Learned Counsel for the appellants relying upon the said decision submits that the same situation exists in the present case. It has been further submitted that the nature of acquisition in the present case is of public purpose for development of Regional Park, as is clear from the object of acquisition and the present acquisition is not an acquisition for establishment of residential or commercial colony which requires leaving of lands for road, park, development, sewerage, drainage and many other purposes for which the so called developmental deductions are actually made. It has been stated that the land in question, admittedly by Noida, falls fully within the developed area and moreover for the purpose of acquisition being development of Regional Park, not an inch of land is going to be wasted or left out and the entire land would be utilized for the said purpose and hence, the fact that large area is to be left out for various purposes, as in the case of residential and commercial acquisition, is totally absent in the present case. Reliance has been placed on the oral testimony of Jai Kisan dated 28.3.1995 D.W.1 and Lala Ram Lekhpal D.W.2 dated 25.4.1995. Learned Counsel for the appellant/claimants has also relied upon the judgment of Division Bench of this Court rendered in National Thermal Power Corporation v. State of U.P. and Ors. 2007 (7) ADJ 955 wherein it has been held that no deduction on account of largeness in area is justified and since the area of each tenure holders individually was very small and as the land was not very large the appellant/claimants were entitled to compensation at the market value for the acquisition of his area without any deduction.

7. In respect with the entitlement to compensation at the rate of Rs. 297.50 per square yard it has been submitted that the circle rate of the area in the year 1988 and 1989 was Rs. 550/- per square yard as well as in the year 1991 and 1992 it was Rs. 1600/- per square yard indicating rising market trend of the area. Material on record indicates that in the village, in question, there was increasing trend of the market price and the fact that small pieces of land owned by different persons had been acquired, there was no justification for reducing the market rate to the extent of 50 percent towards deduction on the ground that relevant sale deed exemplar was for a smaller piece of land. On the point of interest on solatium and additional compensation reliance has also been placed by the learned Counsel for the appellants on the decisions of the Hon'ble apex Court given in Sunder Vs. Union of India, and in Patel Joitaram Kalidas and Others Vs. Spl. Land Acquisition Officer and Another,

8. Learned Counsel for the appellants in support of his contention submitted that it is well settled proposition of law that when an statute prescribes a particular mode of doing a thing, the thing must be done by that very mode and all other modes are legally forbidden. In this connection he placed reliance upon catena of decisions of Hon'ble the Apex Court and of this Court rendered in the cases namely, Taylor v. Taylor 1873 (1) Chancery Division 426; AIR 1936 253 (Privy

Council) Deep Chand Vs. The State of Rajasthan, Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, ; State of Uttar Pradesh Vs. Singhara Singh and Others, ; Nika Ram Vs. State of Himachal Pradesh, ; Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, A.K. Roy and Another Vs. State of Punjab and Others, ; State of Mizoram Vs. Biakchhawna, ; J.N. Ganatra Vs. Morvi Municipality, Morvi, ; Babu Verghese and Others Vs. Bar Council of Kerala and Others, and in the case of Smt. Kesari Devi v. State of U.P. and Ors. 2005 (3) UPLBEC 2727 and has submitted that no rules or regulations have been framed under Sections 23 and 24 of the Act which prescribe/authorise for making of any such deductions, either on the ground of development or with regard to the largeness of the area Even if, for the sake of argument it is accepted that any such Government instruction etc. are in existence, the same being in contravention of Statute are unenforceable and in the context of Government instruction, if any, the Division Bench of this Court observed in the case of Basdeo Singh Vs. State of U.P. and Others, that the quantum of compensation is to be determined in accordance with Section 23 of the Act alone. The relevant para 19 of the said decision is reproduced as under:

19. It may further be noticed that the quantum of compensation in respect of the acquired land has to be determined in accordance with the statutory provisions contained in Section 23 of the Land Acquisition Act. The provisions contained in para 94 of the Land Acquisition Manual at the most could be taken to be providing only guidelines. The Statutory provisions contained in Section 23 of the Act cannot be deemed to be superseded or their effect taken away in any manner by such guidelines which have to be taken to be of the nature of administrative instructions only.

The aforesaid decision has been followed by another Division Bench of this Court in the case of Krishi Utpadan Mandi Samiti Vs. Khushi Ram and Others, where in para 17 it has been observed as under:

17. In our opinion the Court below has also wrongly relied upon the Government order which directed that exemplar sale deed of the highest value should be treated as the basis of determination of value. These Government Orders have no statutory force and in fact they were subsequently withdrawn. The court below has to apply its own judicial mind for determining the valuation and it can not be held bound by the aforesaid Government Orders....

9. At one place the increase in the value of the land so acquired to which it will be put when acquired and the outlay and improvements on or disposal of the land so acquired made or effected without the sanction of the Collector after the date of the publication of the notification u/s 4(1) of the Act u/s 24 are not be taken into consideration and on the other hand deductions in market value for arriving at just compensation is being made is contrary to the spirit and benefit provided in favour of the erstwhile owner or its representative.

10. Learned Counsel appearing for the respondent-Development Authority has

submitted that the land acquired by means of the said notification is an agricultural and undeveloped land which comprised of a very large area and this fact was stated by P.W.1 - Man Singh in his statement that the land in question was agricultural land and crops were grown upon it. He further submitted that it is true that exemplar of small plots can be taken into consideration but appropriate deduction towards the development and other relevant matters have to be taken in consideration while assessing the correct market value and the reference court acting on this principle has rightly deducted 50 percent amount towards the development charges in assessing the correct market rate of the plots so that the market value so assessed may come at par with the small plots. He also submitted that, no doubt, Section 23 of the Act is silent with regard to any deduction towards the development charges in assessing the market value but Section 24 of the Act clearly provides that the Court shall not take into consideration any damage which is likely to be caused to the land acquired after the date of the publication of the declaration u/s 6 or in consequence of the use to which it will be put and also any increase to the value of the land acquired likely to accrue from the use to which it will be put on being acquired. It has also been submitted that so far as deduction towards the development charges are concerned if the land acquired is situated within a developed locality or developing locality it is normal to deduct a sum towards the cost of development. Reference has also been made to the decision in the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . In the case of Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, , the apex Court has discussed the principle of valuation and it has been clearly held that for the purpose of converting the big plots into small plots, it would be necessary to provide roads, parks etc. and the benefit of such roads and parks etc would accrue to the plot-holder without payment of any extra price, which means, the price of the land under road and parks etc., would be included in the price of smaller plot. It is in this background that while assessing the market price of the acquired area, the process necessarily involves deduction of the cost of factors required to bring the undeveloped land at par with the developed land.

11. Learned Counsel for the respondent- Development Authority has also placed reliance upon the decision of the Hon"ble Supreme Court rendered in Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, on the point for determining the market value of a large property on the basis of sale transaction for smaller property holding that a deduction should be given.

12. In the case of Ranvir Singh and Another Vs. Union of India (UOI), the Apex Court has clearly held that the market value of a fully developed land cannot be compared with a wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, the nature of land plays an important role. A judgment or award determining the amount of compensation is not conclusive and the same would merely be a piece of

evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. Thus as per judicial principle laid down by Courts the necessary deduction is made where large tracts of land are acquired and these deductions are made for assessment of market value particularly when sale transactions of smaller plots are taken into consideration. To the correct market value of large plots so that its value may come at par with the smaller plots the process necessarily involves deduction of the cost factors required to bring undeveloped land at par with the developed land and for the purpose of converting the big plots into small plots, it would be necessary to provide roads, parks etc. and these benefits would accrue to the plot holders without payment of any extra price, as such the price of land and parks etc would be included in the price of the smaller plots made out of the big one. These deductions are made towards the development charges for providing free amenities to the later plot holders and these charges are included in the price of the plot after having been developed to be charged from the purchaser of plot holder in future and it has nothing to do with the compensation to be paid to the claimants. It is justified to deduct to assess the correct market value which may come at par with the exemplary sale transaction and once the correct market values are assessed then on that bases compensation is assessed which is to be paid to the claimants. Thus, the cost factor in deduction is charged from the future purchaser for providing them free amenities.

13. Lastly it has been submitted by the learned Counsel for the respondent-Development Authority that in the present case the reference court has rightly deducted the development charges to the tune of 50 percent because it is admitted fact that the land has been acquired for development of park and the use of park will be free of cost to the future purchaser without even paying a single penny from their pocket. Hence cost factor for providing free amenity like park has to be charged from the future purchaser and not from the claimants. Looking into the facts and circumstances it is in the interest of justice that in the present case the deductions should be more than 60 percent instead of 50 percent because this facility is being provided free of cost to the future purchaser.

14. After hearing the learned Counsel for the, parties and perusal of the Word the following issues arise for deciding the present appeals:

1. Whether there is any provision of deduction towards development provided under the Act, Rules, Regulations or Guidelines, if so its justification?

2. Whether in the present case the entire land so acquired and earmarked exclusively for "Park" requires any deduction in the market value for arriving at a just compensation for the purpose of development of the Park?

15. The relevant provisions in respect to the determination of compensation provided under Sections 23 and 24 of the Act are as under:

1. Matters to be considered in determining compensation.-- (i) In determining the amount of compensation to be awarded for land acquired under this Act, the

Court shall take into consideration-

First, the market value of the land at the date of the publication of the (notification u/s 4, Sub-section (1))

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land. (1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 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.

Explanation: In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of (thirty per centum) on such market value, in consideration of compulsory nature of the acquisition.

24:- Matters to be neglected in determining compensation- But the Court shall not take into consideration-

first, the degree of urgency which has led to the acquisition;

Secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit,

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration u/s 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired, will be put,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification u/s 4, Sub-section (1)] [or]

[eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.]

Under the aforesaid provisions of Section 23 and 24 of the Act, the criteria is laid down upon which the amount of compensation in respect of the acquired land is to be determined. It is settled view that once the market value is valued on the basis of the sale (exemplar method) which has been found to be the best method for determination of compensation and nothing is revealed/prescribed by the Statute that the authority/reference Court is empowered to deduct any amount from the market value already determined, then in absence of any such provision of such deduction on any ground in the Statute, the deduction so made by the reference Court is patently illegal. On a query made by the Court from the learned Counsel for the parties that in absence of any provision for deduction provided at all in the Statute how could the concerned authority at the time of passing of the award or disposing of the reference deduct an amount towards development charges of the land in arriving at a correct market value for payment of just compensation of the land already acquired and possession taken over under the provisions of the Act from the erstwhile owner of the land whose all rights, titles and ownership over the land had come to an end, they could not forward any reply to the same.

16. On acquisition of the land the just compensation is paid to the owner of the land on the basis of correct market value of the property at the time of issuance of the notification u/s 4(1) of the Act. This market value is assessed as per the nearest sale deed exemplar in point of time and place. This compensation is paid on the basis of an award passed u/s 11 of the Act. It is note worthy that once the land is acquired and possession has been taken, by the acquiring body after the issuance of the notification u/s 4 and 6 is made the erstwhile owner loses all its rights, title, interest in the land vested in it and all of it stands vested with the acquiring/requireing body even though the symbolic acquisition is on paper. At this stage any deductions towards development/betterment charges are made at the time of awarding compensation to the erstwhile owner is not justiciable, more so since there is no statutory provision i.e. in the Act or Rules or Regulations etc. which provides for such deduction. After the acquiring/requireing body takes over

the ownership of the land it is for it to develop or not develop the land and to what extent and all investments made for the same are to be borne by it and not by the erstwhile owner. It may, which it does charge from the new purchaser while selling of the land in plots and the price includes the betterment charges for the roads, parks etc. with interest. The concerned Authority and in the present case NOIDA once it charges from the new/subsequent purchaser all such charges cannot also be charged under the garb of deduction while awarding compensation to the erstwhile owner and gain double benefit. In such circumstances such deductions are unjustified and are required to be reversed. In the present case the land which is earmarked for "Park" no development of the land has been shown to have taken place nor any amount has been spent for the same then there can not be any justification for deduction from the correct market price for the payment of compensation to the petitioners. The issues are decided accordingly.

Amitava Lala, J. (In concurrence)

17. In this case the principle question is whether any deduction can be made by the authority from the awarded amount of compensation to be paid to the land losers or not. The case of the authority itself is that after development, price is fixed including betterment/development charges etc. to be recovered from the ultimate beneficiaries. Hence, if we pass any affirmative order, the authority will be doubly benefited. It will be benefited by way of deduction from the amount of compensation to be paid to the land losers and by receiving betterment/development charges from the ultimate beneficiaries. Land Acquisition Act, 1894 has not made any provision to deduct/adjust any amount from compensation. Sometimes on the basis of individual facts and circumstances of any case, Court passes an order. As an example, if a large area is needed to be developed for commercial or residential purpose, for which a substantial portion of land is required to be excluded for the common facilities and amenities from which the authority is not able to earn that too with the test of reasonableness on the basis of evidence of the individual case, a deduction can be made but not as a matter of course. There is no scope of routine deduction. There is a reason for saying so. A State can not unjustly enrich itself. Whether it is unjustly enriching itself or not, it has to be proved with the supportive evidence, Noida (New Okhla Industrial Development Authority) is considered to be a fast developing area and part of national capital zone. Valuation of the landed property is enormously rising day by day. The location of the land, as stated, is nearer to developed area of Noida. The land is acquired for the purpose of making park. Neither it is required for commercial purpose nor for residential purpose. No question of largeness of the land is available, Therefore, we are not aware what is the basis of deduction.

In paragraph 9 of the judgement of this Bench reported in 2007 (7) ADJ 595 [National Thermal Power Corporation v. State of U.P. and Ors.], it was held as follows:

9. The last submission of the learned Counsel for the appellant is that the reference Court erred in law in not making any deduction from the market value so determined. In this regard, it may be relevant to repeat that the acquisition of the land was made for establishing a thermal power plant of the NTPC. The land has not been acquired for any commercial or residential purpose which may require development and providing of civic amenities. Normally where the land is acquired for such purposes, the Courts have laid down that deduction from the market value should be made for the purposes of development while awarding the compensation. No evidence has been adduced by the NTPC to establish the extent of development needed or with regard to expenditure likely to be incurred on such development. Therefore, the said rule would not be applicable in the present case and it would not be prudent to make any deduction on this ground. The extent of acquisition of land is also not very large and is confined only about 19 bigha and 6 biswa 12 biswansi of land. The exemplar relied upon by the reference Court is of an area of 6 bigha 12 biswa 10 biswansi which is comparatively quite large. Accordingly, no deduction on account of largeness in area is also justified.

18. It was also held in the further judgement of this Bench reported in 2007 (8) ADJ 665 (DB) [National Thermal Power Corporation Vidyut Nagar, Ghaziabad v. State of U.P. and Anr.] as under:

We do not find any specific provision of law for making deduction from the market value on account of largeness in area or for development purposes, except for the law declared by the courts. A welfare society cannot be doubly benefited by paying lesser amount of compensation by deducting development purposes, from the market value and at the same time by realizing cost of the development from the ultimate purchasers of the land.

Previously the lands were being acquired for the public purpose. Now in many occasions the lands are being acquired in the garb of public purpose. Previously zamindar or rich people were holding huge areas of lands. Even after independence large areas of lands were under the control of rich families. The legislature thought it fit to distribute such lands to the people at large, thereby several projects were launched. Therefore, lands were acquired for the public purpose in real sense. The present scenario is just reverse. Due to fast urbanisation, authority is acquiring land even from the small plot holders on payment of meagre amount of compensation and making deduction even thereafter. This is not the equitable principle. There is marked distinction of life style between urban and rural areas. People of rural areas may not like to live in urban areas and vice versa. Therefore, they will be virtually pushed back. However, they have to settle afresh. Livelihood and rehabilitation of many land losers may be dependable fully upon the compensation. Therefore, in the changed circumstances, the definition of public purpose is to be understood with utmost importance. If we become forgetful, we shall welcome future anarchy.

Therefore, I endorse the view of brother V.C. Misra, J.

Sd- Amitava Lala, J.

19. Accordingly, the impugned reference and the award to the extent of deduction made from the correct market value for arriving at the amount of compensation to be paid to the petitioners is concerned is hereby quashed and the respondents are directed to recalculate the amount of compensation without deducting any amount towards development charges and pay the same to the petitioners within three months from today along with interest @ 10 % per annum to be calculated on the same from the date the amount of compensation was to be paid till the date of payment.

20. With these observations the first appeals and/or cross objections of the respective parties are disposed of. No order is passed as to costs.