

(2001) 08 DEL CK 0192

In the Delhi High Court

Case No : Regular First Appeal No. 571/88

Jai Lal (dead) through L.Rs.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Delhi Development Act, 1957 — Section 11
Delhi Land Reforms Act, 1954 — Section 22, 23
Land Acquisition Act, 1894 — Section 4, 4(1), 54, 6

Citation : (2001) 94 DLT 429 : (2002) 62 DRJ 227

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Vijayalakshmi, for the Appellant; Sanjay Poddar, for the Respondent

Judgement

Devinder Gupta, J.—Claimants have in appeals filed u/s 54 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) sought further enhancement in the amount of compensation, whereas Union of India and Food Corporation of India in their respective separate appeals are seeking reduction in the amount of compensation and in the other benefits allowed by the Reference Court to the claimants. Purpose of acquisition and date of notification u/s 4 of the Act being the same, counsel for the parties in the appeals were heard and this common judgment will govern all such appeals.

2. Villages Bhorgarh, Kureni and Mamurpur are located side by side and the lands were being used for agricultural purposes or purposes subservient thereto. The provisions of Delhi Land Reforms Act, 1954 were applicable to the land for which certain restrictions as contemplated u/s 22 and 23 of the Delhi Land Reforms Act were applicable. The land could be used only for agriculture, horticulture, animal husbandry etc. In the Master Plan also the land use was the same for which purposes lands were being used or utilised. The Ministry of Works and Housing, after inviting and deciding objections/suggestions, as required by sub-section (3) of Section 11-A of the Delhi Development Act, 1957 issued a

notification on 8.12.1982 notifying that in exercise of the powers conferred by sub-section (2) of Section 11-A of Delhi Development Act, the Central Government makes modifications to the Master Plan of Delhi with effect from the date of publication of the notification in the Gazette of India as regards the land use of an area measuring about 21.043 hec. (52 acres) located near Narela Town and situate on the West of Railway line to Ambala. The land use was thus changed from Agricultural Green Belt to Commercial (Warehousing and Storage depots) for a part of the land. On issuance of the aforementioned notification on 8.12.1982 the land use, as was restricted under the Master Plan thus stood changed to commercial (Warehousing and Storage Depots). In other words the land as on 8.12.1982 was considered fit for being utilised for commercial purposes.

3. As a consequence of issuance of the above notification, another notification was issued on 1.6.1983 with respect to certain lands situate in village Bhorgarh and on 2.6.1983 with respect to other parcels of land situated in villages Bhorgarh, Kureni and Mamurpur expressing the intention of the Government to acquire at public expense the entire land, the land use of which had been converted to commercial (Warehousing and Storage Depots) for public purpose, namely, construction of godowns. After complying with necessary formalities separate awards were made by the Collector, Land Acquisition, who offered amount of compensation to the claimants at varying rates. Following are the details of area acquired, the amount of compensation offered by the Collector, Land Acquisition, the dates of notification under Sections 4 and 6 of the Act:-

1. Village Bhorgarh, Delhi.

Award No. 52/1983-84.

Area acquired: 82-14 bids was

4 Notification dated : 1.6.1983.

Section 6 Notification dated : 2.6.1983.

Purposes : Construction of Godowns.

Rates of Section freed by the Block : Block-"A" = Rs. 9,000/- per bigha

Land Acquisition Block -"B" = Rs. 7,000/- per bigha

Collector

2. Village Bhorgarh, Delhi.

Award No. 51/1983-84.

Area acquired: 8-12 bids was

Section 4 Notification dated : 2.6.1983.

Section 6 Notification dated : 22.7.1983.

Rates offered by the : Rs. 9,000/- per bigha

Land Acquisition

Collector

3. Village Kureni, Delhi.

Award No. 40/1983-84.

Area acquired : 90-12 bids was

Section 4 Notification dated : 2.6.1983.

Section 6 Notification dated : 22.7.1983.

Purposes : Construction of Godowns.

Rates offered by the : Block-"A" = Rs. 10,000/- per bigha

Land Acquisition Block-"B" = Rs. 8,000/- per bigha

Collector Block-"C" = Rs. 5,000/- per bigha

4. Village Mamurpur, Delhi.

Award No. 46/1983-84.

Area acquired: 7-06 bids was

Section 4 Notification dated : 2.6.1983.

Section 6 Notification dated : 22.7.1983.

Purposes : Construction of Godowns.

Rates offered by the : Block-"A" = Rs. 13,000/- per bigha

Land Acquisition Block-"B" = Rs. 10,500/- per bigha

Collector

5. Village Mamurpur, Delhi.

Award No. 45/1983-84.

Area acquired : 55-11 bids was

Section 4 Notification dated 2.6.1983.

Section 6 Notification dated : 2.6.1983.

Purposes : Construction of Godowns.

Rates offered by the : Block-"A" = Rs. 13,000/- per bigha

Land Acquisition Block-"B" = Rs. 10,500/- per bigha

Collector

4. Feeling dis-satisfied with the amount of compensation offered to the claimants, references were sought, which accordingly were made by the Collector to the Reference Courts. The Reference Courts proceeded to answer the references by separate awards determining the market value varying from Rs. 18,000/- per bigha to Rs. 36,300/- per bigha. Still feeling dis-satisfied the claimants have filed appeals seeking further enhancement. A few appeals have also been filed by Union of India as also by Food Corporation of India, for whose benefit the land was acquired. It may be noticed at this stage that neither Union of India nor Food Corporation of India have filed appeals in all cases. They have been very selective in filing appeals only in a limited number of cases thereby implying that they have accepted the awards in those cases where appeals have not been filed. Claimants have sought further enhancement and the maximum claim is that the market value ought to be Rs. 1,12,000/- per bigha.

5. Learned counsel for the parties have taken us through the record.

6. For development of Narela Township land situate in five adjoining villages i.e. Bhorgarh, Kureni, Mamurpur, Narela and Tikri Khurd were acquired through the same notification issued on 30.10.1963. Towards North of Bhorgarh are located three villages, namely, Kureni, Mamurpur and Narela. Village Tikri-Khurd is towards its East. Shahpur-Garhi is located towards its Southern side. Village Kureni is also situate close to the Northern border of National Capital Territory of Delhi and is abutting on its North Western border with the boundaries of villages Mamurpur and Narela town. Towards Western and Southern side is village Bhorgarh and on Eastern side is village Singhola. Village Kureni lies in between G.T. Karnal Road on Eastern side and Delhi Sonapat railway line on its Western side. Land of village Mamurpur was surrounded by fully developed residential and industrial estates. So was the position with respect to land situate at village Narela. Thus the topography, potentiality and advantages attached and available to these five villages were almost same as on the date when notification u/s 4 was issued on 30.10.1963.

7. In several appeals question of determination of the amount of compensation payable for the lands situate at village Mamurpur acquired through the same notification issued u/s 4 of the Act for same public purpose came up for consideration before this Court. This court by its judgment in RFA 554/92 Dharambir & Ors. Vs. Union of India decided on 23.9.96 assessed the market value at Rs. 25,000/- per bigha but restricted payment of compensation to claimants @ Rs. 22,000/- per bigha against the assessment made by the reference court @ Rs. 17,500/- per bigha. Appeal was carried to Supreme Court in the said case and finally the Supreme Court in Civil Appeal No. 4405/97 Union of India Vs. Dharambir & Ors., while allowing the appeal of the State Government held that Rs. 16,750/- per bigha was the fair market value of all categories of land situate at village Mamurpur as on 30.10.1963.

8. While determining the amount of compensation payable for the land situate at village Narela acquired through the same notification issued u/s 4 of the Act on

30.10.1963 Division Bench of this Court in Ram Kumar Vs. Union of India, held fair market value at Rs. 25,000/- per bigha. In this case also appeals were carried to Supreme Court. The Supreme Court by its decision rendered in Civil Appeal No. 2360/2000 Union of India Vs. Nathu decided on 3.4.2000 and in other connected appeals has set aside the decisions of this Court and held the fair market value as on 30.10.1963 @ Rs. 16,750/- per bigha. In reducing the amount of compensation reliance was placed by the Supreme Court in its earlier decision in Union of India Vs. Dharambir & Ors. (Supra).

9. On the same reasoning, as had prevailed while determining the amount of compensation for lands acquired in village Mamurpur and Narela a Division Bench of this Court in RFA 598/93 Mange Vs. Union of India decided on 27.9.1996 assessed the amount of compensation at Rs. 25,000/- per bigha for the lands situate at village Kureni. We are informed that appeals carried to Supreme Court against the decision of this Court are pending disposal. Two of such appeals are Civil Appeal Nos. 5858 & 5859/97.

10. For the lands situate at village Tikri Khurd and Bhorgarh which were acquired under the same notification dated 30.10.1963 and for the same public purpose determination has now been made by this Court in RFA 120/82 Hari Singh (deceased) through L.Rs. & Anr. vs. Union of India decided on 14.3.2001 at Rs. 16,750/- per bigha.

11. Thus Rs. 16,750/- has been held to be the fair market value of all categories of land situate in these villages as on 30.10.1963. Land use had not changed thereafter and continued to be the same, namely, agriculture and other allied purposes such as horticulture, animal husbandry etc. No other material was brought on record by the claimants as regards potential of the land other than agriculture and animal husbandry etc. In some cases Reference Courts proceeded to make their own determination relying upon evidence which had individually been adduced in those cases.

12. In some cases evidence was led later on and it was brought to the notice of the Reference Courts that as on 30.10.1963 the market value had finally been determined at Rs. 16,750/- per bigha. The Reference Courts then proceeded to determine market value accordingly by placing reliance upon the decisions of this Court and allowing appreciation @ Rs. 1,000/- per bigha per year on the market value of Rs. 16,750/- and held that as on 2.6.1993 the fair market value would be Rs. 36,300/- per bigha. Only in one case pertaining to village Bhorgarh giving rise to RFA 571/88, Jai Lal (dead) through L.Rs. vs. Union of India, 4 cases of village Kureni, one of which is RFA 406/99, Om Prakash vs. Union of India and two cases of village Mamurpur, one of which is RFA 68/94, Hari Ram & Ors. vs. Union of India the Reference Courts have allowed compensation @ Rs. 36,300/- per bigha. In other cases compensation has been allowed at lesser rates. Further enhancement is sought in these appeals urging that the land use stood already changed from agriculture green belt to commercial in December, 1982. Notification u/s 4 was issued on 1/2.6.1983, Therefore, as on the date of

notification potential value of the land had to be considered as commercial and not agricultural. Market value of Rs. 16,750/- per bigha as on 30.10.1963 was for agricultural lands and not for commercial lands. Whether allowing appreciation on this market value of agricultural land for a period of 20 years either @ 12% p.a. or @ Rs. 1,000/- per bigha per annum on the market value as on 31.10.1963 will be proper or not in order to arrive at a fair market value of commercial land is a question which require consideration. Reliance, however, was placed by the learned counsel for the claimants to a notification issued by the Land and Development Officer notifying schedule of market rates of lands in different areas of Delhi and New Delhi. In support of their submissions increase in the land rates of commercial plots, as compared to plots for agriculture or for residential purposes it was urged that commercial plots always fetch more than double the amount as compared to the land meant for agricultural purposes or for purposes of raising residential buildings.

13. It was also pointed out that for all intents and purposes location, potentiality, topography of the three villages was same and similar and even the Collector, Land Acquisition had in his awards compared the three villages saying that same were similarly situate having similar advantages and disadvantages.

14. It is now well settled that instead of proceeding of feats of imagination the Court has to sit in the arm chair of a prudent purchaser and then consider whether a prudent purchaser would be willing to purchase such a large extent of land as is the subject matter of the present appeals and if so at what price. Whether a prudent purchaser would have ventured to purchase such a large extent of land or even small plots of lands without knowing the purpose or reason for the land being notified for being used as commercial property (Warehousing and Storage depots). No evidence has been led by the claimants/appellants before the Reference Courts to show that what would have been the market value as on the date of notification, had the property been sold for the purpose of warehousing or godowns. Except by relying upon a fact that market rate of agricultural lands stood settled as on 30.10.1963, no other evidence was led by the claimants. As noticed above they have been urging that by allowing a reasonable appreciation periodically fair market value can be arrived at as on 1/2.6.1983 which would be the market rate for agricultural land. As the land had been notified to be commercial, the market rate thereof can be arrived at by doubling that figure which would be the fair market value of the land.

15. In the absence of any other evidence there will be no option left with us except to make assessment of the market value by some guess work. In Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another, it was held that somewhere in the process, where difficulties crop up, either because of lack of evidence or other material the courts employ rule of thumb, since compensation has to be assessed and arms cannot be raised in despair. It is the bounden duty of the Court while ascertaining compensation to see that it is just, not merely to the individual whose property is

taken, but to the public which is to pay for it, even if it be a public corporation set up for the public needs. It is also fairly known that market value cannot be fixed with mathematical precision but it must be fixed on sound discretion. It is equally true that a claimant has a legitimate right to a fair and a reasonable compensation to the land, of which he is deprived of by legal process. The claimant has to be recompensated for rehabilitation or to purchase similar lands elsewhere.

16. In the light of the above principles and taking into consideration the fact that Rs. 16,750/- per bigha has been held to be the fair market value of all categories of agricultural land of the three villages as on 30.10.1963, we are of the view that it will be possible for us to work out fair market value of the acquired land as on 1/2.6.1983 on allowing a reasonable appreciation over the market value as on 31.10.1963, as per various decisions of the apex court and of this court.

17. In *Prakash Chand Kashyap vs. Union of India* AIR 1988 Delhi 316 annual appreciation @ 12% p.a. was considered to be a fair rise in the market value when hypnotically prices were found to have freezed. In *Rameshwar Solanki Vs. Union of India*, discarding the earlier practice followed by this Court to allow escalation @ Rs. 1,000/- per bigha per annum it was held that allowing an escalation @ 12% p.a. will meet the ends of justice. These two decisions Along with few other decisions of Supreme Court in *Harbans Lal Jain Vs. Union of India* (UOI), , *Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others*, , *Gokal Vs. State of Haryana*, and *Mehtab Singh and others etc. etc. Vs. State of Haryana*, were duly considered by us in *Bedi Ram vs. Union of India*, RFA 585/87 decided on 23.3.2001. Escalation at different and varying rates i.e. 6% p.a. from 1959 to 1965 @ 10% for every year from 1966 to 1973 and @ 12% p.a. from 1975 was considered to be reasonable to arrive at a fair market value assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Applying the same principle to the facts and circumstances of this case, namely an increase of 10% every year progressively from 1963 to 1973 and @ 12% every year progressively up to the date of acquisition the amount would work out at Rs. 1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period the amount would work out at Rs. 1,08,397/-. Allowing appreciation @ 12% for every year not cumulatively but at a flat rate of 12% p.a. from 1963 to 1983, the amount would work out at Rs. 56,112/- per bigha. It cannot be lost sight of that market value of Rs. 16,750/- per bigha which was assessed as on 31.10.1963 not of commercial land but for agricultural land. Taking into consideration the dictum of Supreme Court that when in the process of determining the market value difficulty crops up, it is the rule of thumb which can be applied, since compensation has to be assessed and arms cannot be raised into despair, Therefore, applying the rule of thumb, in case mean of the two figures is taken it may be possible to arrive at a fair market value of commercial plots. There are two options. Either to take mean value of the two figures of Rs. 1,28,889/- and

Rs. 56,112/- or of Rs. 1,08,397/- and Rs. 56,112/-. We would take it towards lower side since area being large and, Therefore, would hold that Rs. 82,255/- per bigha would be the fair market value of all categories of land, situate in the three villages as on 1.2.1983 and claimants would be entitled to compensation at that rate.

18. In the appeal filed by the Food Corporation of India it has been urged that it was not necessary party and some of the claimants had unnecessarily imp ledged Food Corporation of India as party before the Reference Court, Therefore, no award ought to have been passed against Food Corporation of India. Such a submission has no force and cannot be accepted since the Food Corporation of India, for whose benefit land was acquired, would be a person interested and would at least be entitled to put in appearance before the Reference Court, in view of the provisions of Section 50 of the Act and Therefore, it cannot be held that it was an unnecessary party. Another objection was raised on behalf of the Food Corporation of India about the statutory benefits allowed to claimants by the Reference Courts by the impugned awards, which are allowable under the Land Acquisition (Amendment) Act, 1984. Such submission has also to be negated for the simple reason that notification u/s 4 of the Act was issued on 2.6.1983 after the date of introduction of the Land Acquisition (Amendment) Bill in the Parliament. As on the date of coming into force the Land Acquisition (Amendment) Act, 1984 reference petitions were pending before the Reference Courts, Therefore, the claimants would be entitled to the benefits as have been allowed by the Reference Courts.

19. There was an additional argument addressed on behalf of Shri Ram Kishan, claimant/appellant in RFA 453/99 that in addition to the market value of the land he would also be entitled to further enhancement towards the value of structures and value of fruit trees standing on the land, for which it was urged that adequate evidence had did not care to examine it.

20. We have gone through the evidence adduced in Land Acquisition case No. 134/84, Ram Kishan vs. Union of India. In order to proved the market value of fruit trees the claimant examined Shri Sultan Singh, a retired Joint Director Agriculture as P.W. 4, who proved his report Ex. A.W. 4/A, but during cross examination admitted that he had not counted the trees at the site. Number of trees was taken by him from the award of the Collector and he took the life of trees on the basis of the entries in Khasra Girdwari. He also deposed that he had not verified the ages of the trees at the site. In addition to this evidence, no other evidence was adduced on the market value of the fruit trees. It was urged by Mr. Vashisht, appearing for the appellant that as the evidence adduced by the appellant had remained unrebutted the claimant ought to have been allowed a sum of Rs. 2,58,860/- over and above the market value of the land. This submission cannot be accepted by us considering that the land had potential for being utilised for commercial purposes also. In such circumstances, on the ratio of the decision of Supreme Court in Joginder Singh Saini etc.etc. Vs. State of

Haryana and another, , Koyappathodi M. Ayisha Umma Vs. State of Kerala, and State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, the claimant/appellant would be entitled only to the value of wood of trees and not the value as fruit trees for which there is no material on record and moreover, the amount allowed by the Collector, Land Acquisition in our opinion on these counts is perfectly justified.

21. No other point was urged before us.

22. Consequently the appeals filed by claimants are allowed with proportionate costs. The appeals filed by Union of India and Food Corporation of India are dismissed. The claimants are held entitled to compensation @ Rs. 82,255/- per bigha. Over and above this amount the claimants will also be paid solarium @ 30% on the enhanced amount of compensation, interest @ 9% p.a. for a period of one year from the date of Collector taking possession and thereafter @ 15% p.a. till payment of compensation and an additional amount @ 12% on the market value for the period commencing on or from the date of publication of the notification under sub-section (1) of Section 4 of the Act to the date of the award of the Collector or the date of taking over of possession of the land, whichever is earlier. It is also directed that in case interest is ultimately held payable on solarium by the Supreme Court in pending reference made to the Larger Bench by order dated 10.8.1998 in Kapur Chand Jain Vs. Union of India AIR 1991 SC 3470 the claimants will also be paid interest accordingly.