(2011) 07 DEL CK 0406

In the Delhi High Court

Case No : LA. APP. 784 of 2005, LA. APP. 879 of 2005, LA. APP. 880-881 of 2005, LA. APP. 121 of 2006, 143 of 2007, LA. APP. 583 of 2009, LA. APP. 603 of 2009, LA. APP. 604 of 2009, LA. APP. 606 of 2009, LA. APP. 610 of 2009, 74 of 2010, LA. APP. 78 of 2010, LA. APP

Jamna — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4

Citation : (2011) 07 DEL CK 0406

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : L.B. Rai, I.S. Dahiya, D.S. Lakra, K. Sunil, Anuj Bhandari and Shadam Farashat, for the Appellant; Sanjay Poddar, Standing Counsel (LA), GNCT Delhi, Deepika, Sachin Nawani and Siddharth Panda Advs., Ajay Verma, Kanika Agnihotri, Kunal Sharma, Sumer Sethi, B.B. Sharma, Shobhna Takiar and Arun Birbal for DDA, for the Respondent

Judgement

Pradeep Nandrajog, J.—I am deciding the above captioned appeals and relatable civil miscellaneous applications which are by way of cross objections; all of which have been listed hereinabove.

2. The present decision concerns issue of fixation of fair market value of land in the revenue estate of Village Bakkarwala and village Mundka.

3. The dates on which fair market value of the land has to be determined may be graphically noted as under:

S. No. Name of Village Date of notification u/s 4 of the LA Act

1. Bakkarwala 24.9.2003

2. Bakkarwala 17.6.2005

3. Mundka 25.2.1997

4. Mundka 21.3.2003

5. Mundka 17.6.2005

4. It may be highlighted that the notification at serial No. 2 hereinabove, pertaining to village Bakkarwala, is the same pursuant whereto lands were acquired in the revenue estate of Village Mundka; as per serial No. 5 above.

5. Abutting NH-10, leading from the city of Delhi to the township of Rohtak in the State of Haryana, are villages Mundka, Ghevra and Tikri Kalan. Village Bakkarwala lies towards the other side of the Southern boundary of village Mundka. The difference between the topology of the two villages is; whereas the land of village Mundka abuts NH-10, that of village Bakkarwala does not so abut; being on the other side of the Southern boundary of revenue estate of village Mundka.

6. As we proceed from the city of Delhi to the township of Rohtak, village Mundka is crossed first, followed by village Ghevra and then village Tikri Kalan.

7. Agricultural lands in village Mundka were acquired pursuant to a notification dated 25.2.1997 issued u/s 4 of the Land Acquisition Act as per award No. 2/1999/2000. Agricultural lands in the revenue estate of village Mundka were further acquired pursuant to a notification dated 21.3.2003 issued u/s 4 of the Land Acquisition Act as per award No. 3/2005-06 as also award No. 1/2005-06. Further lands in the revenue estate of the same village were acquired pursuant to a notification dated 17.6.2005 issued u/s 4 of the Land Acquisition Act as per Award No. 13/2006-07.

8. Agricultural lands in the revenue estate of village Bakkarwala were acquired pursuant to a notification dated 24.9.2003 issued u/s 4 of the Land Acquisition Act as per Award No. 3/2004-05. Further lands in the revenue estate of the same village were acquired pursuant to a notification dated 17.6.2005 (the same notification under which lands in village Mundka were acquired) as per award No. 1/2006-07.

9. In a nut shell, the Land Acquisition Collector determined the fair market value of the acquired lands, under all the awards, with reference to the minimum price for agricultural land as notified by the Government of NCT Delhi.

10. For clarity I may note that pertaining to the notification dated 25.2.1997 under which agricultural lands in the revenue estate of village Mundka were acquired, the learned Land Acquisition Collector determined the fair market value with reference to the minimum price for agricultural land notified with effect from 1.4.1997 @ Rs. 10 lacs per acre and since the date of Section 4 notification was anterior in point of time, discounted the price for one year @ 11.5% per annum. This price was adopted for category A lands. For lands in category B, the value was further discounted by Rs. 90,000/- per acre. Pertaining to the notifications dated 21.3.2003 and 24.9.2003, the Land Acquisition Collector relied upon the notification fixing the minimum price of agricultural land as of 1.4.2001 and gave

no benefit of enhancement with reference to the fact that the fair market value of the lands to be determined was as of 21.3.2003 and 24.9.2003. Even pertaining to the notification dated 17.6.2005 which required fair market value of land to be determined in the revenue estate of village Bakkarwala and village Mundka as of 17.6.2005, the Land Acquisition Collector determined the same with reference to the notification fixing minimum value of agricultural lands in Delhi as of 1.4.2001 and gave no increase.

11. Aggrieved by the determination of the fair market value of the lands by the Land Acquisition Collector, the land owners sought a reference u/s 18 of the Land Acquisition Act 1894 and on the reference being made, vide various judgments and decrees, which are under challenge in the above captioned appeals, the Reference Court took corrective action, as per the view of the Reference Court, and enhanced the fair market value.

12. In a nut shell, pertaining to the notification dated 25.2.1997 vide which agricultural lands in village Mundka were acquired, the Reference Court adopted the same notification as was adopted by the Land Acquisition Collector under which the Government of NCT Delhi had fixed the minimum value for agricultural lands in Delhi i.e. 1.4.1997, but as against the Land Acquisition Collector depressing the price @ 11.5% for full one year; adopting the percentage 11.5, decreased the value by only 34 days inasmuch as the date with reference whereto Government had notified the minimum value was 1.4.1997 and the notification u/s 4 of the Land Acquisition Act was dated 25.2.1997. This was the value fixed for category A lands and for category B lands; with reference to the values for category A land depressed the same by Rs. 90,000/- per acre.

13. Thus, for category A lands the Reference Court determined the fair market value @ Rs. 9,89,288/- per acre and for category B land the same was determined @ Rs. 8,99,288/- per acre.

14. Pertaining to the notifications dated 21.3.2003 and 24.9.2003 whereunder agricultural lands in village Mundka and village Bakkarwala respectively were acquired, the Reference Court took note of the fact that after the Government had notified the minimum rates for agricultural lands in Delhi as of 1.4.2001 the next revision was as of 30.8.2005. Using the said dates and the minimum price notified by the Government of NCT Delhi, the Reference Court adopted the principle of mean average. What the Reference Court did was to adopt the value as of 1.4.2001 and increasing the same by 10% per annum determined the enhanced price as of 21.3.2003 as also 24.9.2003. Thereafter the Reference Court took the value notified as of 30.8.2005 and depressing the same by 10% per annum determined the sum arrived at as of 21.3.2003 as also 24.9.2003. The two sums arrived at were added and divided by two to arrive at the mean figure as of 21.3.2003, which I note comes to Rs. 15,92,083.33 per acre (In some decisions I note the sum arrived at is Rs. 15,92,215/-). For the date 24.9.2003 the price determined was Rs. 20,41,000/- per acre.

15. Pertaining to the notification dated 17.6.2005 pursuant whereto agricultural lands were acquired in village Bakkarwala and Mundka the learned Reference Court adopted the minimum price for agricultural lands notified by the Government of NCT Delhi with effect from 1.4.2001 and giving increase @10% per annum determined the value and with respect to the lands in village Mundka, on account of locational advantage, being abutting NH-10 gave 5% more and determined the fair market value as of 17.6.2005 in sum of Rs. 21,37,017.75 per acre and for village Bakkarwala the price determined was Rs. 20,35,255/- per acre.

16. In the aforesaid backdrop of the factual scenario in which I have penned profiled the reasoning of the Land Acquisition Collector as also that of the Reference Court, I delve into the arguments advanced before me during hearing today.

17. With reference to the evidence led in LAC No. 384/2004 Jamna v. UOI and Ors., it was urged by Sh.L.B. Rai, learned Counsel for the Appellant in LA App. No. 784/2005, which argument was adopted by other learned Counsel who appeared for the other Appellants, that the learned Trial Judge was not justified in ignoring the sale deed Ex.P-1 whereunder 1 bigha and 3 biswa of agricultural land in village Mundka was sold as of 5.8.1996 for a sale consideration of Rs. 4,75,000/-. Rs. 38,000/- was incurred towards sale duty and thus the price of the land would be Rs. 5,13,000/- and calculated with reference thereto, land price per bigha would come to Rs. 4,46,000/- as of 5.8.1996. Learned Counsel would urge that there is no reason not to hold that fair market value of agricultural lands in village Mundka was Rs. 4,46,000/- per bigha as of 5.8.1996. Taking the argument forward, it is urged that with reference to the said price, fair market value needs to be determined as of 25.2.1993, 21.3.2003 and 17.6.2005, i.e. the dates when notifications u/s 4 of the Land Acquisition Act were issued pursuant whereto agricultural lands were acquired in village Mundka, by increasing the price progressively, if not by 12% per annum at least by 10% per annum. It is urged that on the same basis, land price should be determined for the agricultural lands in village Bakkarwala. Alternatively, it was urged that since villages Tikri Kalan, Mundka and Bakkarwala are contiguous villages, and in fact village Tikri Kalan is further towards the township of Rohtak, some increase be made in the value of the land in village Mundka and Bakkarwala with reference to the judgment and decree dated 19.12.2008 deciding a batch of Land Acquisition Appeals, lead matter being LA Appeal No. 193/2006 Pratap Singh (Deceased) Thr.L Rs v. UOI as per which fair market value of land, per bigha, was determined in the revenue estate of village Tikri Kalan as of 16.11.1995, 11.6.1996 and 17.12.2002 at Rs. 2,15,164/- for category A land and Rs. 1,73,500/- for category B land; Rs. 2,35,850 for category A land and Rs. 1,90,150/- for category B land; Rs. 4,02,850/- for category A land and Rs. 3,24,850/- for category B land, respectively.

18. I may note here that in various land acquisition references, various parties

have proved a number of sale deeds executed from time to time, but during arguments today before me, learned Counsel for the land owners have only relied upon the sale deed Ex.P-1.

19. Per contra, Sh. Sanjay Poddar learned Counsel for the UOI would urge that the sale price as per Ex.P-1 cannot be adopted as the yardstick for the reason, to be a representative sample of the whole, the sample must bear some adequate proportion to the whole. For example, learned Counsel would urge that if it has to be determined whether what percentage of stones are mixed in a bag of rice it would not be a safe method to pick only one grain, for if it happens to be the grain of rice one would lead to the conclusion that the bag is 100% full of rice and if that one grain happens to be a piece of stone, one would reach to the conclusion that the bag is full of stones. At least a fistful should be lifted and then checked as a representative sample, is the example given. The second reason on which learned Counsel would attack the sale deed as not being representative of the price is the reason that people do come to know about pending acquisition inasmuch as before acquisitions are made, land in the area is surveyed. Without a survey it would be difficult to issue even the notification u/s 4 of the Land Acquisition Act. Learned Counsel would concede that the reasons given by the learned Reference Court are not sound, but would urge that the two contentions advanced by him should be considered by this Court as the reasons as to why Ex.P-1 be not taken as the basis to determine the fair market value of lands in village Mundka and Bakkarwala. Thirdly, learned Counsel would further urge that the four sale deeds Ex.R-1 to R-4 referred to in the decision of the learned Reference Court pertaining to sale deeds dated 6.1.1995, 30.5.1997, 4.6.1997 and 8.9.1997 relied upon by UOI would show the actual market value of the land and thus learned Counsel would urge that the said four sale deeds should be considered, but hastens to add, that since value reflected therein is less than the minimum price notified by the Government, the price fixation should be with reference to the minimum price notified by the Government which is nearest to the point of time when the respective notifications were issued u/s 4 of the Land Acquisition Act.

20. An independent and alternative argument is also advanced by learned Counsel for the Union. The same rests itself on a decision of a Division Bench of this Court reported as 2006 (135) DLT 231 Jai Singh v. UOI.

21. The decision in Jai Singh''s case (supra) concerns itself with the determination of the fair market value of land in village Bakkarwala which were acquired pursuant to a notification dated 15.10.1993 at Rs. 1,32,000/- per bigha. Learned Counsel would urge that the said decision has attained finality inasmuch as Petitions for Special Leave to Appeal filed before the Supreme Court by either side have been dismissed. Learned Counsel takes the argument forward by urging that by adopting the fair market value of land in village Bakkarwala as of 15.10.1993 at Rs. 1,32,000/- per bigha, the fair market value should be ascertained by increasing the price progressively by 10% per annum to

determine the market value of land in village Bakkarwala as of 24.9.2003 as also 17.6.2005. Learned Counsel would urge that in view of the locational advantage of village Mundka, fair market value of land in village Mundka should be determined as of 25.2.1997, 21.3.2003 and 17.6.2005, by giving 5% increase.

22. With respect to the sale deed Ex.P-1, whereunder 1 bigha and 3 biswa of agricultural land was sold in Village Mundka as of 5.8.1996, it would assume importance that the sale is about 7 months prior to the date of the notification issued u/s 4 of the Land Acquisition Act, which was issued on 25.2.1997. It is a matter of common knowledge that preceding the publication of a notification u/s 4 of the Land Acquisition Act, survey''s are carried out with the object of determining as to what lands, comprised in which khasra numbers and fields are required to be notified for the proposed acquisition and when this happens people in the area come to know that very soon there is every likelihood that the lands would be acquired. In Delhi, the large scale acquisition policy enjoins upon the Government to allot, at pre determined rates, a plot of developed residential land to the ones whose lands are acquired and thus, it is not uncommon, for persons to purchase small parcels of lands in areas where acquisitions are likely to take place; these transactions are speculative and cannot be taken to be a representative measure of the fair market value of land as on the date of the sale. Further, the principles of ratio and proportion as also the principles of averages and the principles of sampling tell me that to be representative of the whole, a sample must bear at intelligible proportion to the whole. Thus, not for the reasoning advanced by the learned Reference Court, but for the twin reasoning hitherto-fore noted, I hold that Ex.P-1 cannot be good evidence wherefrom market value of the land could be determined. There is an additional reason not to rely upon the said sale deed. The sale deeds Ex.R-1 to Ex.R-4, dated 6.1.1995, 30.5.1997, 4.6.1997 and 8.9.1997 are also pertaining to Village Mundka and reflect a sale price much lower than the sale price recorded in Ex.P-1. In fact, the sale price in the said 4 sale deeds averages much less than even the minimum price for agricultural land in Delhi notified by the Government.

23. Thus, the fair market value of the lands would be required to be fixed either with reference to the decision of this Court in Jai Singh''s case (supra) or Pratap Singh''s case (supra).

24. I highlight that both decisions, penned by the Division Bench of this Court have been upheld by the Supreme Court.

25. The decision in Jai Singh''s case (supra) determined fair market value of land in Village Bakkarwala in sum of Rs. 1,32,000/- per bigha as of 15.10.1993, and the perusal thereof would show that the Court assessed the fair market value with reference to sale deeds executed between the years 1990 till the year 1996 either in Village Tikri Kalan or Village Mundka, apparently on the premise that being contiguous villagers, sale price of agricultural land in the 2 adjoining villages would be indicative of fair market value of land in Village Bakkarwala.

26. In Pratap Singh''s case (supra), the Division Bench was concerned with agricultural lands in Tikri Kalan and another adjoining Village named Ghevra and pertaining to various notifications issued u/s 4 of the Land Acquisition Act determined the fair market value of agricultural lands in Village Tikri Kalan and Ghevra as under:

S. No. Date Village Price per Bigha

1. 24.07.1995 & 16.11.1995 Tikri Kalan Rs. 2,15,160/- for Block A & Rs. 1,73,500/- for Block B land

2. 11.06.1996 Tikri Kalan & Ghevra Rs. 2,35,815/- for Block A & Rs. 1,90,156/- for Block B land

3. 17.12.2002 Tikri Kalan Rs. 4,02,850/- for Block A & Rs. 3,24,850/- for Block B land

27. Following the judgment in Pratap Singh''s case (supra) I have decided the fair market value for the land situated in revenue estate of Village Ghevra, which was acquired pursuant to notification dated 6.2.2003 in the batch of appeals being Land Acquisition Appeal No. 489/2009, Chiranji Lal v. Union of India and Anr. on 2.6.2011. I have determined the fair market value of the lands in Village Ghevra at Rs. 4,03,425/- per bigha as of 6.2.2003. On the issue of comparability of land in village Bakkarwala with village Mundka, Ghevra and Tikri Kalan, it is no doubt true that whereas village Bakkarwala does not abut NH-10, as do the other villages, but it has to be highlighted that it is more proximate to the urban areas of Delhi vis-?-vis Ghevra and Tikri Kalan and to that extent, qua said 2 villages, has an advantage. Since exactness can never be achieved in the matters of assessing fair compensation, it is the broad probabilities and similarities which matter. Thus, I hold all 4 villages to be equivalent, unless qua some land special features can be shown.

28. Since the decision in Pratap Singh''s case (supra) deals with notifications more proximate in point of time to the notifications with which I am concerned, I am of the opinion that it would be just, fair and proper to determine the fair market value of lands with which I am concerned in relation to the fair market value of lands determined in Pratap Singh''s case (supra). As per the decision in Pratap Singh''s case (supra) for the date 24.7.1995, for Category A lands fair compensation assessed was Rs. 2,15,160/- per bigha and Rs. 1,73,500/- per bigha for Category B land. The first notification with which I am concerned is 25.2.1997 whereunder lands in Village Mundka were acquired. The time span sweeps 1 year and 216 days i.e. 581 days. In Pratap Singh''s case (supra) the annual increase was determined to be 10% per annum (flat). Thus, pertaining to Category A lands, the fair market value assessed is Rs. 2,49,408.75 per bigha i.e. Rs. 11,97,162/- per acre and for Category B lands, I assess the fair market value at Rs. 2,01,117/- per bigha i.e. Rs. 9,65,361.60 per acre.

29. The next notification with which I am concerned is dated 21.3.2003

pertaining to Village Mundka. In Chiranji Lal''s cas (supra), with reference to the decision in Pratap Singh''s case (supra), for agricultural lands in Village Ghevra pertaining to a notification issued u/s 4 of the Land Acquisition Act on 6.2.2003, the fair market value assessed was Rs. 4,03,425/- per bigha. This was uniformly applied. Since there is a time gap of just a little over 1 month, I am of the opinion that pertaining to the notification dated 21.3.2003, fair market value of land in Village Mundka should be Rs. 4,03,425/- i.e. Rs. 19,36,440/- per acre, which I hereby fix.

30. I propose to deal with the notification dated 24.9.2003, after dealing with the notification dated 17.6.2005 pursuant whereto agricultural lands were acquired in Village Mundka and Village Bakkarwala.

31. As noted hereinabove, in Chiranji Lal''s case (supra), pertaining to the notification dated 6.2.2003, fair market value assessed by me was Rs. 4,03,425/- per bigha and thus, increasing the same by 10% for 2 years and 131 days, the figure comes to Rs. 4,98,589/- per bigha, which comes to Rs. 23,93,227.20 per acre. The same is held by me to be the fair market value of land in Village Mundka and Village Bakkarwala as of 17.6.2005. I decree the same.

32. I am left with the notification dated 24.9.2003 pertaining to Village Bakkarwala and with reference to the fair market value assessed in Chiranji Lal''s case, I would require to appreciate the price by 10% per annum for a period of 201 days, the figure comes to Rs. 4,25,641/- per bigha i.e. Rs. 20,43,076.80 per acre, which I determine to be the fair market value of land in Village Bakkarwala as of 24.9.2003.

33. Accordingly, the appeals filed by the Union of India require to be dismissed and I hereby dismiss the same. The appeals filed by the land owners and the cross-objections filed by the land owners stands decreed as under:

i) For the land falling in Category A land in Village Mundka the fair market value is fixed at is Rs. 2,49,408.75 per bigha i.e. Rs. 11,97,162/- per acre and for Category B lands, the fair market value is fixed at Rs. 2,01,117/- per bigha i.e. Rs. 9,65,361.60 per acre, as on 25.02.1997.

ii) For the land situated in Village Mundka the fair market value is fixed at Rs. 4,03,425/- per bigha i.e. Rs. 19,36,440/- per acre, as on 21.03.2003.

iii) For the land situated in Village Mundka the fair market value is fixed at Rs. 4,98,589/- per bigha i.e. Rs. 23,93,227.20 per acre, as on 17.06.2005.

iv) For the land situated in Village Bakkarwala the fair market value is fixed at Rs. 4,98,589/- per bigha i.e. Rs. 23,93,227.20 per acre, as on 17.06.2005.

v) For the land situated in Village Bakkarwala the fair market value is fixed at Rs. 4,25,641/- per bigha i.e. Rs. 20,43,076.80 per acre, as on 24.09.2003.

vi) Appellants and cross-objectors who have succeeded would also be entitled to solatium and interest as per statute and as clarified in the decision reported as Sunder Vs. Union of India, for the compensation, paid originally and as enhanced by the Reference Court and finally on the sum enhanced by the present judgment and decree.

vii) The Appellants and cross-objectors who succeed would also be entitled to proportionate costs.

viii) All pending applications stand disposed of in terms of the prayers made therein.

