(2002) 07 DEL CK 0193

In the Delhi High Court

Case No : Regular First Appeal 500, 501, 503, 504, 505, 506, 513, 514, 515, 542, 543, 544, 788 and 789

Jia Ram and Others APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:
Land Acquisition Act, 1894 — Section 17, 23(1A), 4, 54, 6

Citation : (2002) 99 DLT 392 : (2002) 64 DRJ 285

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : B.P. Gupta, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

1. These appeals are being disposed of by a common judgment since question of law and fact, which arise for consideration are same and similar.

2. On 26.9.1980 a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued expressing intention of the Government to acquire land situate in village Jharoda-Kalan at public expense for public purpose, namely, construction of "Duphia - Chaudani Out Fall Drain "Simultaneously emergency provisions were invoked and declaration u/s 6 and notification u/s 17 of the Act were issued. Collector Land Acquisition on 6.8.1981 made his award offering compensation to the claimants by classifying land in three categories A, B and C and fixing their respective market value at Rs.3,750/- Rs.3,200/- and Rs.1,800/-per bigha. Feeling dis-satisfied claimants sought references. The reference court by the impugned awards determined the fair market value of categories A and B land at Rs.9,000/- and Rs.7,640/- per bigha respectively. Still feeling dis-satisfied the claimants have sought further enhancement in these appeals filed u/s 54 of the Act. Their claim is to allow compensation at a flat rate Rs.25,000/- per bigha, irrespective of classification of land.

3. By a subsequent notification issued u/s 4 of the Act on 14.7.1982 and simultaneously issuing declaration u/s 6 and notification u/s 17 of the Act another parcel of the land situate in village Jahroda-Kalan was acquired at public expense for public purpose, namely, construction of Police Training School. The Collector Land Acquisition on 10.8.1983 passed his award No. 31/83-84 by classifying land in three categories A, B and C and offering compensation @ Rs.5,800/-, Rs.4,800/- and Rs.2,400/- per bigha respectively. Feeling dis-satisfied the claimants sought references. The reference court by impugned awards assessed fair market value at Rs.9,750/- per bigha. Still feeling dis-satisfied the claimants have filed the appeals seeking further enhancement in the amount of compensation.

4. We had heard learned counsel for the parties and been taken through the record. Similar evidence was led on behalf of the claimants and by the respondents before the reference court in the two sets of cases. Reliance on behalf of the claimants was placed on four sale deeds and on behalf of respondents on one sale deed, particulars of which are as under:-

Ex.	Date of sale deed	Consideration (in Rs.)	Area
A-1	18.2.1974	4,800/-	0-6 bighas
A-2	7.2.1976	20,000/-	4-16 bighas
A-3	7.2.1976	30,000/-	6-0 bighas
X-1	10.9.1980	38,640/-	4-4 bighas
R-1	7.2.1976	20,000/-	4-16 bighas

5. In addition to the afore mentioned sale transaction reliance was also placed on behalf of the respondents on a copy of award No. 29/80-81 by which compensation had been offered by the Collector for land, which was acquired through notification issued u/s 4 of the Act on 24.3.1977. Reliance was also placed during course of arguments by learned counsel for the claimant/ appellants on the amount of compensation, which was offered by the respondent to Shri Lakhi s/o Shri Kanha of village Tikri Kalan, whose land had also been acquired on the basis of notification issued on 26.11.1981 situate in village Tikri Kalan. The matter was taken in Lok Adalat held in High Court on 5.11.1992 and compensation was offered at Rs.22,000/- perbigha. Claimants thus urged that they should be allowed compensation at the same rate.

6. The reference court while assessing market value for the lands, which were acquired through notification dated 26.9.1980 placed reliance upon the sale deed dated 10.9.1980 being close to the date of issuance of notification u/s 4 of the Act by which 4-4 bigha land had been sold for Rs.38,640/- and discarded the remaining evidence. The reference court instead of taking sale consideration to be the one, as reflected in the sale deed, took the sale consideration at Rs.36,640/-, which was the amount paid before the Sub Registrar at the time of registration of sale deed and did not take notice of the additional amount of Rs.2,000/-, which admittedly had been received by the vendor from the vendee prior to the execution of sale deed, as per recital in the sale deed and thus

proceeded to assess the market value accordingly.

7. The reference court in our view failed to properly appreciate the evidence adduced on record. The sale deed itself recited payment of Rs.2,000/- as advance and reflected a total sale consideration of Rs.38,640/-. At the time of registration of sale deed, the vendor also admitted having received a sum of Rs.2,000/- in advance and also admitted receipt of the balance amount of Rs.36,640/- before the Sub Registrar. The reference court also failed to take notice of another important recital in the sale deed that the vendee had paid a sum of Rs.3,120/- towards the stamp duty etc. Thus the vendee had to pay a sum of Rs.41,760/- in order to purchase 4 bigha 4biswas land. The land purchased was an undivided share in the land to the extent of 4 bigha 4 biswas. In addition the vendee had also to pay for registration charges. Thus the amount spent by the vendee in acquiring title to 4 bigha 4 bids was was Rs.41,800/-, which was wrongly taken Rs.36,640/-. As such Rs.41,800/- would reflect fair and reasonable market value of 4 bigha 4 bids was land in the revenue estate concerned in the month of September, 1980.

8. We are not in a position to appreciate the submission made on behalf of the appellants that they should be paid similar compensation since in Lok Adalat settlement market rate of Rs.22,000/- per bigha had been offered. That was the amount offered in settlement in Lok Adalat and cannot be treated as reflecting the true market value to which a claimant would be entitled on acquisition of his property. The instances relied upon by the respondents cannot furnish a true guide in arriving at the market value being too remote in point of time. The reference court was justified in taking the sale deed of 10.9.1980 to be the basis in arriving at the fair market value but erred in not taking the full amount paid to be the sale consideration.

9. As regards the land which was acquired by sub sequent notification dated 14.7.1982 the reference court also upon the sale deed of 10.9.1980 and the market value reflected on that day and allowed an increase @ 5% p.a. Though the principle applied was correct but sale consideration and rate of appreciation were not correctly taken. In our view for the period from 26.9.1980 to 14.7.1982 appreciation ought to have been allowed at least at the rate of 8% p.a.

10. The reference court was also not justified in continuing with the categories as had been made by the Collector Land Acquisition on the basis of classification as made in revenue records. In assessing fair market value by taking average price there was no lawful justification in having continued with the classifications as made in the revenue records.

11. Thus we are of the view that for the land which was acquired through notification dated 26.9.1980 fair amount market value would be Rs.9,500/- per bigha irrespective of classification of the lands and for the land which was acquired through notification dated 14.7.1982 the fair market value would be Rs.11,500/- per bigha.

12. We have noticed that the reference court in these cases in which the land was acquired through notification dated 26.9.1980 and for which the Collector had made his award on 6.8.1981 has also allowed, in addition to the other statutory amounts, the additional amount u/s 23(1A) of the Act, which in view of the decision of Supreme Court in K.S. Paripoornan Vs. State of Kerala and Others, ought not to have been allowed.

13. Consequently the appeals are allowed with proportionate costs and the awards of the reference court are modified. The claimants whose lands were acquired through notification dated 26.9.1980 are held entitled to compensation @ Rs.9,500/- per bigha and whose lands were acquired through notification dated 14.7.1982 are held entitled to compensation@ Rs.11,500/- per bigha. In addition the claimants are held entitled to solarium @ 30% on the enhanced market value and interest @ 9% p.a. for a period of one year from the date of Collector taking possession and there after @ 15% p.a. till the date of payment. Claimants whose lands were acquired through notification dated 26.9.1980 are held not entitled to the additional amount u/s 23(1-A) of the Act. Claimants whose lands were acquired through notification dated 14.7.1982 will be paid additional amount u/s 23(1A) of the Act. In addition the claimants will also be paid interest on solarium and wherever additional amount is payable interest on additional amount as well in view of decision of Supreme Court in Sunder Vs. Union of India, .

