

(2006) 04 DEL CK 0140

In the Delhi High Court

Case No : LA. Application No's. 158 of 2004, 314, 315, 316, 317, 320, 323, 324, 326, 327, 331, 332, 362, 363, 364, 365, 366-373, 374-77, 507, 676 and 678-82 of 2005 and 185, 186 and 187 of 2006

Kartar Kaur

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 17(1), 18, 23(1), 34

Citation : (2006) 129 DLT 813 : (2006) 90 DRJ 176

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Rajiv Verma, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—All the above appeals arise from a common judgment passed by the learned Reference Court in LAC No. 14/2001, Dayal Singh v. Union of India and common contentions have been raised before us by the learned Counsel appearing for the appellants on somewhat similar facts. Resultantly, we would dispose of all these appeals by this common judgment.

2. The challenge to the order of the Reference Court is primarily based upon the contention that the Reference court has failed to consider the evidence on record and has not awarded adequate compensation to the claimants which they were entitled to on the basis of the record.

3. This contention of the learned Counsel appearing for the appellants is without merit and in fact and as it appears to us, the present case is a case of "no evidence" led by the appellants and would hardly call for any intervention by this Court in the order impugned. We may refer to the necessary facts to the case.

4. The government issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") read with Sections 6 and 17(1) of the Act

dated 2.6.1989 and 10.7.1989 respectively acquiring the land measuring about 729 bighas 10 bids was in the revenue estate of Village Jaitpur. This land was acquired for an urgent public purpose namely "Construction of Ash Pond of Badarpur Thermal Power Station". After issuing notice to the concerned claimants in terms of Sections 9 and 10 of the Act, the Land Acquisition Collector made and published his award being Award No. 2/90-91 dated 26.4.1990. In terms of the award, the claimants were entitled to receive compensation @ Rs. 12,000/- per bigha with solarium and interest in accordance with the provisions of Section 23(1)(A) as well as the interest u/s 34 of the Act. The claimants were aggrieved and dissatisfied with the award of the Collector and they filed petitions u/s 18 of the Act which in turn were referred by the Administration to the Reference Court. While forwarding the reference, the Collector is stated to have annexed his statement to the reference petition that despite fixation of the market value @ Rs. 12,000/- per bigha, the Administration has decided to concede to the demands of the farmers for compensation up to Rs. 4.65 lacs per acre and the concession was confined to specific cases covered by the award in question. This concession is stated to have been extended at the rates for agricultural lands with effect from 27.4.1990 vide notification dated 3.5.1990. The learned Reference Court permitted the parties to lead evidence and recorded its findings on the two issues framed. Both these issues were answered against the claimants and the court vide its judgment dated 28.2.2005 recorded as under:-

For the foregoing reasons, I find no grounds for enhancement of the rates then already conceded by the UOI. Issue No. 1 and 1A are accordingly decided.

5. While recording the above findings on principle, thereafter the reference court dealt with individual cases in the same judgment as well.

6. The appellants being dissatisfied with the judgment of the Reference Court wherein their references u/s 18 were answered against them, have preferred the above appeals before this Court praying that they should be awarded compensation @ Rs. 50,000/- per bigha.

7. In particular, reference can be made to the facts in the case of Kartar Kaur v. Union of India where the appellant is the recorded bhumidaar of the land measuring about 6 bigha 12 bids was in the revenue estate of Village Jaitpur and their lands have been acquired as part of the above acquisition. The challenge raised by the appellants to the impugned judgment in the present appeal is that the Trial Court has failed to appreciate the judgments of the High Court in relation to adjacent village of Bhapur, Delhi which was binding and could be taken into consideration for determining the compensation payable to the appellants. Vide Ex.P1, the compensation of nearly Rs. 2000/- per sq. yd. was paid to the claimants in those cases for acquisition of their land vide notification dated 30.6.1978. It is further stated that the Trial Court further failed to appreciate that exhibits P2 to P6 had bearing on the potential and location of the acquired lands as these were the judgments relating to adjacent villages and

they could not have been ignored by the learned Trial Court. On the strength of these submissions, it is argued that the judgment of the Reference Court is liable to be set aside.

8. The record before the court clearly shows that both the parties did not step into the witness box. Even the claimants did not choose to step into the witness box. All that the petitioner did was to tender in evidence Exhibits P1 to P6 which are the awards/judgments of the court relating to village Bhapur, Chokri Mubarikabad and Tuglakabad. On the other hand, the respondents led no evidence, either documentary or oral. The evidence led by the petitioners, i.e. Ex.P1 to P6 were not considered relevant piece of evidence by the Reference Court as they related to different villages and there was no evidence on record to establish the fact that the potential, location and utility of the acquired lands was somewhat similar, if not identical, to that land which was subject matter of these judgments. It cannot be disputed in law that the awards or judicial precedents are the best pieces of evidence for determining the fair market value of the acquired land. Before this principle could be applied, the petitioners are obliged to prove before the court that either the award is of the same land and/or is of the nearby lands, the potentiality, utility and market value of which is similar to the acquired lands. Once these factors are proved, then alone the court can hold that such instances are comparable and can be made the basis for determining the fair market value of the land in question. Since the petitioners defaulted to lead any evidence to show such similarities of potentiality, utility and/or that the lands were adjoining to the lands which are subject matter of these awards, the court cannot find any fault with the findings recorded by the Trial Court. Reference can be made to the judgment of the Supreme Court in the case of Kanwar Singh and Others Vs. Union of India, where the court held as under:-

The contention that the claimants deserved to be awarded the same rate of compensation as was awarded to the claimants of the adjoining villages, in the present facts and circumstances of the case, is not tenable. Going by the compensation awarded to the claimants of the adjoining village, it would not lead to the correct assessment of market value of the land acquired in the appellants' village. For example village "A" adjoins village "B", village "B" adjoins village "C", village "C" adjoins village "D", so on and so forth and in that process, the entire Delhi would be covered. Generally there would be different situation and potentiality of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same. The High Court in the present case found that the situation and potentiality of the land in Village Malikpur Kohi are different than that of Village Masoodpur. This finding of the High Court is based on correct appreciation of the evidence on record and does not call for interference.

9. The learned Counsel appearing for the appellants has not been able to show from the records before us or even from the record of the reference court and for that matter even of the Collector that there was any other evidence which could

be of any advantage or benefit to the claimants. The claimants miserably failed to discharge onus placed upon them for providing sufficient or adequate material for determining the fair market value of the land, which in any way could be higher to the compensation awarded to them by the Collector and affirmed by the Reference Court. From the record of the reference court it is clear that the appellants led no evidence to prove the similarities in potentiality, utility, scope for development of the lands in question and the lands referred to in the three villages including the Village Tuglakabad. This is a matter of fact and has to be established by leading cogent and proper evidence. The court cannot raise such a presumption or take a judicial notice of such facts. Even for that there is no material before the court on the basis of which some inference could be drawn of similar location and potentiality between the lands in these different villages.

10. The learned reference court after rejecting the said evidence , i.e. Ex.P1 to P6, referred to the policy of the government as declared vide notification dated 3.5.1990 whereby the minimum value of the agricultural land in Delhi was stated to be 4.65 lacs per acre w.e.f. 27.4.1990. The notification in the present case was issued on 2.6.1989. The minimum price declared by the government in this notification and the policy decision of the government is obviously intended to achieve a different object than determining the "fair market value" of the land. Learned counsel appearing for the respondents while relying upon a Division Bench judgment of this Court in the case of Hukum Singh and Others Vs. Union of India (UOI) and Others, argued that the impugned judgment does not call for any interference, as awarding of compensation in terms of the policy was a gracious act on the part of the State and is permissible in law.

11. The amount of compensation awarded by the Collector @ Rs. 4.65 lacs per acre is in accordance with the policy of the government and in any case the reference court cannot interfere with the order of the Collector to reduce the compensation awarded by the Collector. The amount awarded by the Collector can also be justified with reference to the evidence led by the claimants themselves before the Collector. During the pendency of the proceedings before the Collector, the Union of India had produced 9 sale deeds which were registered during the year 1988 on the average of which the land was sold @ Rs. 9,864.08 per bigha. The claimants (in the case of Lakhani Singh) had also produced a sale deed dated 24.12.1983 wherein the land measuring about 1 bigha formed part of Khasra No. 107/3 was sold for a sum of Rs. 49,000/- in Village Jatpur. Calculated on this basis the value of the land would be Rs. 2,03,840/- per acre as in the year 1983. Even if a reasonable increase is given for the period 1983 to 1989 (the year of notification of the land in question) still the reasonable fair market value of the land would fall below the amount awarded by the Collector. We are of the considered view that the compensation awarded by the Collector to the claimants and as affirmed by the Reference Court is the fair, reasonable market value of the land on the date of the notification. The reference court has neither fallen in error of law or appreciation of evidence in determining the market value of the land in question. In our

opinion, the present appeals and even the reference petition filed by the claimants before the reference court is a case of "no evidence" in support of their claims. The claimants have miserably failed to discharge their onus before the Reference Court, thus, we find no merit in these writ petitions. The same are accordingly dismissed, while leaving the parties to bear their own costs.