

(1991) 04 DEL CK 0093

In the Delhi High Court

Case No : Regular First Appeal No. 71 of 1979

Kesho Dass

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 4(3)

Citation : (1991) 44 DLT 375 : (1991) 21 DRJ 25

Hon'ble Judges : Sunanda Bhandare, J;J.K. Mehra, J

Bench : Division Bench

Advocate : Rajeev Sharma, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This appeal was heard along with various other appeals relating to acquisition of land in village Khureji Khas. The Notification u/s 4 of the Land Acquisition Act (Hereinafter referred to as "the Act") was published on 13th November 1959 for acquiring the land for public purpose, ie.. Planned Development of Delhi, while declaration u/s 6 was published on 18th March 1966.

(2) Out of appellant's land acquired about 52 "bighas fell in the revenue estate of village Mandoli while 23 bighas 16 bids was fell in village Khureji Khas bearing Khasra Nos. 47/18, 47/23. 47/14/1, 47/14/2, 47/17 and 47/24. Compensation for the acquisition was determined vide Award No. 33/70-70-71 and paid. Aggrieved by the said Award various parties including the appellants sought a reference to Court which was disposed of by Shri H.KS. Malik, Addl. District Judge vide his judgment dated 8.9.78 whereby the amount awarded by the Land Acquisition Collector was enhanced from Rs. 1100.00 per bigha to Rs. 2016.00 per bigha. The appellant was also awarded solarium equal to 15% of the said amount and interest at the rate of 6% pa. u/s 28 of the Act from the dale of possession all the date of payment. Since the Notification u/s 4 of the Act was issued on 13th November, 1959 and Notification u/s 6 was issued duly on 18th

March 1967. the claimant/appellant was also awarded interest on the market value at the rate of 6% p.a. from 13th November 1962 onwards in accordance with Section 4(3) of the Land Acquisition (Amendment & Validation) Act, 1967 (hereinafter referred to as "the Amending Act").

(3) Peeling aggrieved by the valuation fixed by the learned Addl. District Judge, the appellant has filed the present appeal. The appellant has claimed that the compensation should be enhanced from Rs. 2016.00 per bigha to Rs 21.000.00 per bigha. The main reasons for such enhancement, according to the appellant, were two, firstly, that in August 1959 which was only a few months before the acquisition of land a sale deed was registered for a consideration of Rs 6.000.00 in respect of a plot of land measuring 200 sq yards and secondly, the land had the potential of urbanisation in view of the said land being surrounded by colonies like, Krishan Nagar, Gandhi Nagar and Geeta Colony which even at the time of acquisition were developed colonies. In addition certain unauthorised colonies had also come up in the vicinity.

(4) A perusal of the record shows that the said sale deed dated 14th August 1959 whereunder 200 Sq yards of land had been sold for Rs. 6.000.00 did not form part of the record before the learned Addl. District Judge nor was it a document produced or relied upon by the Government. Furthermore, from the award, we find that on the same date. i.e., 14th August 1959 in the same village, 200 sq. yards of land was sold for Rs. 300.00 i.e. at the rate of Rs. 1500.00 per bigha. Several other sale deeds have been referred in the award which were registered in the years 1958 and 1959 and the rate therein appears to be ranging between Rs 2008.00 and Rs. 2966.66 per bigha. The learned counsel was unable to enlighten us about special features of the plot listed S. No. 16 in the impugned award, where the plot of 200 sq. yds sold at Rs. 6,000.00 , but while pursuing the judgment in another connected appeal relating to the same village being Rfa No. 421/79 Nooruddin v. Union of India, the statement of the plot-owner has been referred to where he has clearly stated that the said plot was situated on the metallic road and was being put to commercial use also that it fell in one of the unauthorisedly developed colonies unlike the land of the appellant which was agricultural land. Therefore, we consider that it will not be a safe guideline to be governed by one stray case of a small plot which was being put to commercial use unlike the use to which the land in question is being put as a measure of determining the market value of the land in question. Particularly when various other small plots of land in the vicinity of land in question were sold at much lower price and another sale deed was also registered on the same day, i.e., 14 8 59 which records the sale of 200 sq. yds for Rs.300.00 only. In ignoring the said solitary instance, we are also supported by the Supreme Court's observations in *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta*, . Counsel for the appellant has also cited before us ruling of Hon'ble the Supreme Court of India reported as *Shri Rani M. Vijayalakshamma Rao Bahadur v. Collector of Madras*: 1968 Scj 369. The relevant portion is at page 370 and stressed that the sale deed disclosing highest

value should be relied upon for determining the market value. We feel that the said judgment is also of no avail to the appellant because the Hon"ble Supreme Court after considering all the facts and circumstances has laid down in that case: "Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

(5) It is nobody's case that the said transaction of sale was either filed. or relied upon by the Government. In these circumstance, we fell that the appellant has not been able to make out a case for enhancement of the market value of the land beyond what has been fixed by Shri N.C. Kochbar, Dddl./ District Judge in his judgment referred to hereinafter.

(6) Coming to the question of potential value of land, we feel that in determining the market value of the land the values solely with reference to its ordinary agricultural value does not appear to be a correct proposition. The Court in fact has to ascertain the market value keeping in view the potentiality of land on such materials as are available on record. The factors such as neighborhood, likely removal of restrictions on the use of land, in the immediate vicinity are also relevant factors. The market value cannot be determined merely by reference to the use to which the land in question was being put at the given time, but also with reference to the use it is reasonably capable of being put to in future. If these considerations are kept in mind the division of various parts of land under acquisition into different blocks cannot be justified since the land is admittedly being acquired for the planned development of Delhi and in doing so, the fact of the land in question being surrounded on all sides by developed authorised and unauthorised residential colonies cannot be lost sight of. In case of village Nangal Dewat their Lordships of the Supreme Court in C.A. 830/81 had opined that all the claimants would be entitled to receive compensation from Union of India at the same time rate at which compensation was paid to two claimants whose land was treated as Category "A". This decision was followed by a Bench of this Court in Jai Lol etc. v. Union of India being Rfa 203/82. The similar view was expressed by another bench of this Court in Rfa 137/80; Khazan Singh v. Union of India and in certain other decisions of this Court, reported as Jai Ram Singh Vs. Union of India and Others, and Sham Krishan Chandiwalla and Another Vs. Union of India, . Accordingly, we hold that in the case of this village, Khureji Khas, also no distinction be observed between one plot of land and another as has been done by the land Acquisition Collector.

(7) Our attention has been drawn to a decision of Shri N.C. Kochhar, Addl District Judge, (as he then was) in respect of Award No. 22/70-71 which also related to land in village Khureji Khas wherein the learned Addl. District Judge had compared various sale deeds and bad also examined, the facts and circumstances governing the market value of land in the said village and after

considering all the material placed before him including various sale deeds had fixed the market value of the land in dispute in that case which also happens to be in the same village, i.e., Khureji Khas and which land lies in close proximity to the land in question at the rate of Rs. 8.00 per sq. yd. i.e. at the rate of Rs. 8064.00 per bigha.

(8) Although the Union of India has challenged the said decision of Sh. N.C. Kochhar in Rfa 10/81: Union of India v. Brij Bhusan etc. Rfa 80/81. Union of India v. Amolak Ram etc, Rfa 203/88: Union of India v. Ram Swaroop through L. Rs, etc. no one has appeared to assist us on behalf of the Union of India in these cases, in spite of our having awaited representation on behalf of Union of India on 2nd April 1991 and 3rd April 1991. We have with the help of various counsel appearing in different cases examined the judgment fixing the market value of the land at Rs. 8064 per bigha and find that the said judgment has been passed after considering the material before the learned Addl. District Judge and we also accept the said value as correct and hold that the market value of the land acquired village Khureji Khas be fixed at Rs. 8064.00 per bigha. The appellant will also be entitled to solatium at the rate of 15% of the said value of the land and interest at the rate of 6% p.a. on the enhanced compensation from the date of dispossession till the date of payment and proportion costs.

(9) As there is a difference of more than three years between the notification u/s (November 13, 1959) and declaration u/s 6 (18th March 66) of the Act the appellant shall also be entitled to 6% per annum interest on the market value of the land u/s 4 (3) of the Amending Act provided there is no overlapping in the payment of interest under S. 28 of the Act and Section 4(3) of the Amending Act.