(1990) 10 DEL CK 0011

In the Delhi High Court

Case No : Regular First Appeal No. 137 of 1990

Khazan Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 31-10-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1990) 42 DLT 624 : (1991) 20 DRJ 41

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : S.C. Dhamija and I.K. Bhushan, for the Appellant;

Judgement

V.B. Bansal, J.

(1) A notification u/s 4 of the Land Acquisition Act 1894 (hereinafter to be referred to as the Act) was issued by the Government indicating its intention that the said land was needed turn a public purpose, i.e. for the planned development of Delhi in respect of 16000 acres of land which included the area of 3919bighas 2 his was of village Haiderpur, After completing necessary formalities a notification u/s 6 of the Act was issued on 6lh December, 1986. Land Acquisition Collector considered the claims put forward by the different owners in respect of the land falling beyond Western Jamuna Canal. Award No.13/75-76 was passed by Land Acquisition Collector, Delhi on 28th November, 1975 in respect of land measuring 2316 Bighas 04 Biswas. This land was divided by the Land Acquisition Collector in three categories, namely (1) Abpash including Nehri, Chahi(2) G Abpash including Rosli and (3) Banjar Qadim/Patri Zadid.G.M. Khadda/GM. Bhatta etc. After considering the evidence adduced by the parties the Land Acquisition Collector assessed the value of the land in aforesaid three categories at the rate ofRs2,660.00 Rs.l,760.00 and Rs.l,000.00 respectively per bigha as fair and reasonable price. Part of land of Khazan Singh appellant was included in Block-A. while the remaining was included in Block-B, Khazan Singh was not satisfied with the aforesaid award and so on his request a reference u/s 18 of the

Act was made to the Additional District Judge, Delhi being No 239 of 1976. It was decided by Additional District Judge, Delhi on 4th January. 1980 who assessed, the land of Khazan Singh covered by Block-A at Rs.2,660.00 per bigha and the land falling in Block-B at Rs. 2,160.00 per bigha.

(2) Being still not satisfied with the assessment of his land by the Additional District Judge, Delhi, Khazan Singh has filed the present appeal being R.F. A .137 of 1980.

(3) Similarly other owners of land covered by the aforesaid award being not satisfied with the assessment of the value of their land filed applications on the basis of which different references u/s 18 of the Act were made to different Additional District Judges. These references have been disposed of vide separate judgments when there has been increase in some categories of the land in some cases while in others no relief was given The different owners were not satisfied with the valuation assessed by the Additional District Judges and so they have filed separate appeals being R.F.A. Nos. 535 and 584 of 1979. 17, 32, 83, 107. 120, 125, 133. 135, 137. 149, 164. 165, 166,178, 210, 253, 256, 270, 271, 275, 288..307, 308, 336 of 1980; 161, 193, 202. 204, 214. 221, 223, 231, 233. of 1982; 278 of 1983; 257, 269, 271, 272, 275, 286. 324, 325 of 1984 and 331 of 1987, and 292 of 1988, and 784 of 1988.

(4) A supplementary Award No. 50/80-81 was announced by Land I Acquisition Collector on 18th July. 1980 in respect of land measuring 1501 Bighas 10 bids was covered by the aforesaid notifications. Land was divided in Blocks I, Ii and Iii and the market value was assessed at Rs. 2,803.00 , Rs. 2,000.00 and Rs. 1,400.00 per bigha for the three categories.

(5) Not satisfied with this award on the application of different owners references u/s 18 of the Act were made to different courts of Additional District Judges who disposed of them by separate judgments. The market value assessed by these courts was not to the satisfaction of the owners and so they have filed R F.A. Nos. 73 of 1985 ; 15 and 439 of 1986 ; 426 of 1987 and 172 and 293 of 1988.

(6) Award No. 55/7374 dated 6th February, 1974 was. passed by Land Acquisition Collector, Delhi in respect of land measuring 47 bighas 9 bids was arising out of the same notifications under Sections 4 and 6 of the Act. Land Acquisition Collector had assessed the market value at the rate ofRs2,200.00 per bigha. Being dissatisfied with the assessment of the market value, Tara Chand moved an application on the basis of which a reference u/s 18 of the Act was made to the Additional District Judge. Market value was enhanced to Rs. 2,660.00 by an Additional District Judge, Delhi vide order dated 20th November, 1979. Being still not satisfied Tara Chand has filed appeal No. Rfa 108of 1980. Another appeal being R.F.A.No. 122 of 1980 was also filed by Attar Singh and Others. Award No. 24/81-82 was announced by Land Acquisition Collector on 17th October, 1981 in respect of land in Khasra No 978/324 at the rate of Rs. 2,800.00 per bigha and of Khasra No. 979/324 at th6 rate of Rs. 2,000.00 per

bigha. Not satisfied with the award Girdhari moved an application on which a reference u/s 18 of the Act was made to the Additional District Judge who enhanced the rate of compensation to Rs. 3.600.00 per bigha. This valuation was not to the expectation of Gidrhari and so he has filed R. F.A.. 81 of 1985.

(7) This judgment will dispose of these appeals since they involve common question about the actual value of the land at the time of the issuing of the notification u/s 4 to the Act.

(8) It is the admitted case of the parties that the land covered by Award No. 13/75-76 dated 28th November, 1975. Award No. 50/80-81 dated 18th July, 1980 and Award No. 55/73-74 dated 6th February. 1974 is a big chunk of land which is surrounded by village Shahipar, Yakatpar, Pritampura, Badli and Abadi Deh of village Haiderpur. Most of the land under acquisition in this award was being irrigated by the Weather Jamuna Canal. These facts have clearly been mentioned by the Land Acquisition Collector in the said awards which facts have not been controverter by learned counsel for the parties during arguments.

(9) Learned counsel appearing for the appellants have submitted that the appellants are entitled to get the market value of their respective lands as it existed on the date on which notification u/s 4 of the Act was issued and the market value would mean what a willing seller would get for the sale of his land to'' a willing purchaser keeping in view the size of the land its location, the purpose for which it was being used and the purpose for which the land Is being used in the localities. There can possibly be no dispute with regard to the aforesaid legal proposition.

(10) The only question for consideration is as to what was the value of the land and whether the whole of it should be given the same value or there should be different value for different blocks the court, in fact, has to ascertain (be value of the potentiality of land on such materials as are available to it and without indulging in facts of imagination. Submission that the land of a owner should be valued solely with reference to its ordinary agricultural value seems to be an incorrect proposition. A change in the neighborhood and removal of restrictions on the use of land in the immediate vicinity are relevant factor which have necessarily to be kept in view while assessing the value. The land is not to be valued merely by reference to the use it was being put at the time at which its value has to be determined but also with reference to the use it is reasonably capable of being put to in future. It is difficult (o believe that an owner knowing that. his land can be used in the immediate future for a building purpose will still be ready and willing to sell the same as waste land or land used for agricultural purposes without keeping in view its potentiality for being used for building purposes.

(11) In the instant case the Land Acquisition Collector had assessed valuation of the land of village Haiderpur keeping in view the value of the land of village Shahipur adjacent to the land in question. We may note that in case Jai Ram

Singh Vs. Union of India and Others, the land in question was of village Shahipur regarding which notification under .Section 4 of the Act was issued on 24th October, 1961 and thereafter a notification u/s 6 of the Act was issued on 15th July, 1966. Vide this judgment the market value of land was assessed at Rs. 7,000.00 per bigha. We may also note that Rfa 139 of 1975 was one of the cases disposed of vide judgment Pt. Jairam Singh v. Union of India & Others (Sopra). A personal of the said file indicates that the Land Acquisition Collector had divided the whole area into three blocks and be fixed the value of the land of three blocks at the rate of Rs. 2.000.00 , Rs. l,400.00 and Rs. 1,600/ per bigha. The Additional District Judge increased value of some land raising it to the rate of Rs. 2,500.00 per bigha but dismissed the claim for enhancement of compensation regarding the rest of the land. While disposing of the appeals the Division Bench at this Court in the said judgment assessed the whole land at the rate of Rs. 7,000.00 per bigha, meaning thereby that the potentiality of the whole land was found to be the same for the purpose for which the land was being acquired

(12) Sham Krishan Chandiwala and Another Vs. Union of India, is another judgment of a Division Bench of this Court wherein the land under acquisition was divided into two categories of Abbi Chahi and Rosli which was being acquired for the planned development of Delhi. It was held that the potentiality of the land wood be the fame regardless of it being AbbiChabi or Rosli and the same rate was allowed for the whole of the land.

(13) The question for consideration regarding categories in these cases, bow ever ,need not be gone into with reference to other case law cited by counsel. Suffice it to say that whole deciding referenced u/s 18 of the Act the same rate has been given in some cases for the land included in three blocks and that finding has not been challenged by the respondent. R.F.A. 474 of 1987 is one such cases filed by Ratan Singh and Others. Their land was included in Block-A, Block-B and Block-C by the Land Acquisition Collector. On an application by them a reference u/s 18 of the Act was made to Additional District Judge for enhancement of compensation which has been disposed of by an Additional District Judge. Delhi vide order dated 5th May, 1986. The learned Additional District Judge in effect de categorised the land and enhanced the compensation to Rs. 4,100.00 per bigha for the whole of the land of the appellants. They Were not satisfied with this valuation and have thus filed R.F.A. 474 of 1987 against the rate in respect of the whole of the land.

(14) SIMILARLY. Bishan Singh and Others were the owners of land which was included in category A & B by the Land Acquisition Collector. In a reference u/s 18 of the Act vide order dated 9th December, 1987 being L A.C. No. 134 of 1980 the Additional District Judge fixed -the market value of the whole of the land at Rs. 3,600.00 thus putting the whole land of A and B blocks in one block Still being not satisfied with the enhancement Bishan Singh and Others have filed R F A 292 of 1988 praying for enhanced compensation. It would, thus, be clear that in respect of some of the land subject matter of the same award the land has

been de categorised and one value has been assessed for the land covered by the three blocks. There is no reason to differ from the aforesaid decisions assessing the land of the three blocks atone rate We are of the considered view these these circumstances the land of the appellants included in three different blocks has to be given the same value.

(15) As already referred to the value of the land was assessed by the Land Acquisition Collector in his Award No. 13/75-76 under reference on the basis of the Award of village Haiderpur. Award Nos. 50/80-81 and 55/73-74 are also in respect of the land of same village and covered by some notification. In Pt. Jai Ram Singh''s case (supra) a Division Bench of this Court had fixed the land of village Hsiderpur at the rate of Rs. 7,000/ per bigha in respect of which notification u/s 4 of the Act was issued on 24th October. 1961 and u/s 6 on 15th July, 1966. In these circumstances, there is no escaped from the conclusion that the land of the appellants has also to be assessed at the rate of Rs. 7,000.00 per bigha.

(16) Learned counsel for the appellants submitted that they were not pressing their claims for additional compensation for garden, well etc. made in certain appeals.

(17) In view of the aforesaid discussion the appeals are allowed .Market value of the land of the appellants is assessed at Rs. 7,000.00 per bigha. Whatever has been paid shall be deducted. The appellants are also entitled to a solarium of 30% on the market value of the land as a deter minded in the appeal in view of amended section 23(2) of the act. It is further ordered that the appellants shall be entitled to interest at the rate of 9% per annum from the date on which the collector took possession of the land till the date of the payment of such excess part into court provided that if that period is more than one year the rate of interest shall be 15% per annum from the date of the expiry of one year on the amount of such excess part from what has not been paid into court before the date of such expiry. It is further ordered that the appellants are allowed interest at the rate of 6 per annum on the market value of the land u/s 4(3) of land acquisition amendment act, provided that there is no over-lapping in the payment of interest u/s 28 and section 4(3) if the amendment act. The parties are, however left to bear their own costs.