
(1997) 01 AHC CK 0079

In the Allahabad High Court

Case No : First Appeal No. 406 of 1982, connected with First Appeal Nos. 485, 470 of 1981 & 264, 265 of 1982

Kishan Sahai and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Citation : (1997) 01 AHC CK 0079

Hon'ble Judges : R.K.Mahajan, J

Final Decision : Disposed Of

Judgement

R.K. Mahajan, J.—First Appeal No. 406 of 1982 has been filed against the decree and judgment dated May 30, 1981 passed by IIIrd Additional District Judge, Meerut (Sri S. K. Bhargava) in L.A Reference No. 689 of 1979 awarding compensation for acquired plot No. 324/4 (area 2 bighas 18 biswas 13 biswansis) at the rate of Rs. 3.10P per square yard and an enhanced compensation solatium at the rate of 15% instead of demand rate of Rs. 8/ per square yard. The relief sought for in this appeal is for awarding compensation at the rate of Rs. 8 per square yard, as claimed. This appeal was decided on 30/4/1996 in the absence of the learned counsel for the appellant after hearing the learned counsel for the State whereby the appeal was partly allowed awarding compensation at the rate of 7.30 per sq. yard. A recall application has been filed which is allowed after hearing the learned counsel for the parties and the appeal is restored and heard on merit.

2. First Appeal No. 485 of 1981 has been filed against the judgment and decree dated 9/9/1981 passed by Sri S. K. Bhargava, I Addl. District Judge, Meerut L.A. Reference No. 677 of 1979. The relief sought in this appeal is for enhancement of the compensation of Rs. 1,17,522 (at the rate of Rs.11 per square yard instead of Rs. 8 per square yard. This appeal was also decided on 30/4/1996 disposing of the appeal in the absence of the learned counsel for the appellant after hearing the counsel for the State awarding compensation at the rate of Rs. 7.37 per sq.

yard. A recall application has been filed which is allowed after hearing the learned counsel for the parties and the appeal is restored and heard on merit.

3. First Appeal Nos. 470 of 1981, 264 of 1982 and 265 of 1982 have been filed against the decree dated 23121980 passed by Sri P.C. Jain, IInd Additional District Judge, Meerut in L.A. Reference Nos. 421 of 1978; 423 of 1978 and 428 of 1978 by the State praying the relief that the impugned orders be set aside and the award of the Land Acquisition Officer be confirmed. These appeals were also disposed of by the order dated 3041996 awarding compensation at the rate of Rs. 7.37 per sq. yard. Recall applications have been filed which are allowed and restored the appeals after hearing the learned counsel for the parties. The appeals have been heard on merits.

4. A notification under Section 36 of the Town Improvement Act corresponding to Section 4(1) of the Land Acquisition Act was published in Gazette dated 711967 and it was followed by another notification under Section 32(i) of U.P. Avas Evam Vikas Parishad Adhiniyam corresponding to Section (6)(1) read with Section 17 of the Act which was published in the U.P. Gazette dated 23111968. The possession was taken on 2351970 and the Special Land Acquisition Officer, U.P. Avas Evam Vikas Parishad Lucknow gave his award on 2271.

5. Since in the appeals filed by the claimantappellants, relief sought for is for enhancement of the compensation and in the appeals filed by the State, the relief sought for is for setting aside the order of the court below and maintaining the award passed by the Land Acquisition Officer. I would like to dispose of the above appeals by a common order.

6. I have heard the learned counsel for the parties at substantial length on merit.

7. The grievance of the claimantappellants is that all the plots, which were acquired under Section 4 of the Land Acquisition Act is by one notification by the U.P. Avas Evam Vikas Parishad for its Housing Accommodation and Street Scheme No. 3 and belting system adopted by the court below granting less rate than Rs. 8 per sq. yard with respect to other plots is not warranted by law and is arbitrary. The court below granted Rs. 8 per sq. yard with respect to other plots, viz; Nos. 349/1 and 367/4, except plot No. 372/4 for which he has awarded Rs. 3.10 per sq. yard.

8. The notification of the plot was issued and possession was also taken on 2351970 by the Special Land Acquisition Officer. This case is covered by the judgment dated 2nd July 1980 in First Appeal No. 120 of 1975 by a Division Bench of this Court consisting Hon"ble Satish Chandra, J. and Hon"ble K. C. Agarwal, J. in which the land was also acquired for Scheme No. 3, which is in the present case by the same notification and the claimant was given at the rate of Rs. 7.37 per sq. yard for all plots.

9. It may be pointed out that if the land is situated at some distance or depth from the front portion, the front portion has more value than the back portion

and as such the belting system is adopted to fix the value of different belt A B C etc keeping into considerations the distance from the front portion as well as the depth of the acquired land. The belting system adopted by the court below in the sense that he was granted less rate than Rs. 8 per sq. yard, which has been granted with respect to other plots forming part of the same scheme and having same potentiality is not warranted by law and is arbitrary.

10. Sri R. P. Goel, learned counsel for the claimantappellant submitted that electric wire and roads were in existence some distance from the acquired land and as such the land should be considered as developed area. I am of the view that even if some electric wire or road are in existence at some distance/depth, it does not mean that it has full civic amenities for the purpose of development etc. There are always in existence electric wire or roads passing somewhere in the vicinity. The exemplar of a smaller land as in this case cannot be compared with big chunk of land and deduction of 4060% depending on so many factors has been allowed for development purpose while awarding compensation of two plots. The District Judge has granted the compensation at the rate of Rs. 8 per sq. yards whereas the land was acquired in acres/bighas for establishing and developing housing colony.

11. There is a trend in Apex Court's ruling that when a big chunk of land is acquired, its value cannot be determined in square yards. I would like to quote the observations of the judgment of Supreme Court given in the case of State of U.P. v. Rajendra Singh reported in (1996) 7 SCC 347: 1996 (1) JCLR 696 (SC) It was observed at page 348 as under:

"It is settled law that in reference under Section 18 claimant being dissatisfied with the award of the Land Acquisition Officer, when the proceedings are taken under Section 20 of the Act, burden is always on the claimant like plaintiff to adduce reliable and acceptable evidence to prove proper, just and adequate compensation to the acquired land. If such an evidence was adduced, burden shifts on to the State to disprove it. It is further settled law that the sales transactions filed either in the narration of award or documents, without examination of either the vendee or the vendor is not evidence. It is the duty of the court to carefully assess the evidence on the touchstone of human conduct and prudent purchaser....."

12. Sri Goel learned counsel for the claimant submits that the court should speculates and from experience should fix price is of no avail at this situation would arise only if there is no evidence for determination of compensation or no sale has taken place or no other guide line is available. In my view it is not sustainable on the facts of the case.

Sri R. P. Goel, learned counsel for the claimant has also relied on Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer Vishakhapatnam Municipality reported in A.I.R. 1992 S.C. 2298 wherein it was held as under:

"The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."

13. The learned counsel for the claimants has also relied on Krishna Yachendra Bahadur aru v. The Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and others reported in A.I.R. 1979 S.C. 869 wherein it was held as under:

"Though several instances of sales have been relied upon by one party or the other in the appeals, it is not necessary to refer to them for the purposes of deciding what compensation should be awarded to the appellants in respect of the present acquisition made under the two notifications dated 30th October, 1951 and 18th January, 1954, because we find that there were two other acquisitions, one earlier and the other later, in respect of land comprised in the same Survey Nos. 6,9,10 and 11 and the awards of compensation in respect of these acquisitions have become final and they afford the clearest evidence for determining the compensation awardable."

14. The next case relied upon was Parmeshwari De i v. P.S.E.B. reported in AIR 1994 SC 1142 wherein it was observed as under:

".....When the similar lands situated very nearby i.e. 1500 sq. yards away from the land acquired and has been awarded at Rs. 82,000 per acre, the market value of the acquired land need to be determined. Since the lands under acquisition are of the same nature and possessed of the same potentialities, the claimants in these appeals are also entitled to similar treatment and award of proper compensation....."

15. I have considered all these rulings and they are not applicable at all. In the facts and circumstances of the case, the existence of electric line and road at some distance etc. does not mean that the area is developed. The ruling of the case of Parmeshwari De iv. P.S.E.B. (supra) has also no application as in this case, the land is situated at a distance of 1500 sq. yards away from the land acquired and had been awarded at Rs. 82,000 per acre while to the land situated, compensation of Rs. 25,600 per acre was granted by the civil court. The High Court interfered and affirmed the award of Land Acquisition Officer which was determined at the rate of Rs. 9,900 per acre. So in this situation the High Court observed that the appellants were entitled compensation at the rate of Rs. 25,600 per acre as granted by the civil court but the Supreme Court again

observed that it is for the claimants to prove the sale transactions as genuine. In case it is not done, the Court would be justified in rejecting sale. This ruling is not applicable.

16. Sri Goel, learned counsel for the claimants, has again stressed that this Court may award compensation at the rate of Rs. 28.35 per sq. yard in respect of Scheme No. 7 for which notification under Section 4 of the Land Acquisition Act was issued on 951970 while in the present case, the notification under Section 4 was issued on 23111968, i.e. prior one and half years and the land is situated in Scheme No. 3. It was prayed that the rate of 2835 per sq. yard be granted. It cannot be taken as a precedent on account of the fact that the notification is of different date and there is always a trend in the rise of the prices in subsequent period. Therefore, I am unable to agree with the submission.

17. Sri Sabhajeet Singh, learned Standing Counsel appearing for the State in these appeals, Whether in the capacity of appellant or respondent, submitted that there is no need of enhancement of compensation in the appeals filed by the claimants. He has also relied upon K. Vasundara De i v. Re enue Devisional Officer (LAO) AIR 1995 SC 2181 wherein it was held as under:

"Land Acquisition Act (1 of 1894), S. 23 Compensation Determination Reliance placed on genuine and reliable sale instances of smaller land as compared to land under acquisition Same will not form sale basis to determine market value of large track of lands under acquisition Sufficient deduction should be made to arrive at such market value 40% deduction of value of land given by High Court held, justified."

So the rationable behind this ruling is that if the land acquired is undeveloped or the area where any question of civic amenities involved, the development charges may be deducted.

18. I would like to recapitulate the facts and also the mistake occurred. The court below granted compensation at flat rate at the rate of Rs. 8 per sq. yard on the ground that the land is situated near Meerut University and Medical College and also he relied on exemplar the sale deed dated 261965 registered on 2471965. It was executed by Mahabir in favour of Ratau Prakash in respect of 300 sq. yards of plot No. 185 Aurangahapur Diggi for a consideration of Rs. 4,000.

19. It appears that the judgment dated 2nd July 1980 of a Division Bench of this Court consisting of Hon"ble Satish Chandra, J. and Hon"ble K.C. Agarwal was not brought to the notice of the court below i.e. Shri S. K. Bhargav III ADJ who passed the order on May 30,1981 and in this way the mistake has crept in by not following the view in fixing the rate of compensation at the rate of Rs. 7.37 per sq. yard.

20. Considering the facts and circumstances of the case and weighing the submission of the learned counsel for the parties, I am of the view that the impugned orders in the aforesaid appeals require modification to the extent that

the compensation should be awarded at the rate of Rs. 7.37 per sq. yard which is covered by the decision of the Division Bench, referred to above.

21. In the result, the impugned orders in the aforesaid appeals are modified to the extent awarding the compensation at the rate of Rs. 7.37 per sq. yard only. In other respect, the impugned orders confirmed.

22. With the aforesaid modifications in the impugned orders, all the appeal are disposed of finally with no costs to either party.

Appeals disposed of.