

(2014) 12 SC CK 0099

In the Supreme Court Of India

Case No : C.A. Nos. 9910, 9912, 9913, 9914, 9915, 11232, 11233, 11234, 11235, 11237, 11238, 11239, 11240, 11295, 10320, 10322, 10333, 10334, 10335, 10336, 10337, 10338, 10339, 10340 of 2011, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 677, 678, 679, 680, 24

Krishan Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 24, 4, 51A

Citation : (2015) 2 RCR(Civil) 597 : (2015) 3 SCALE 263

Hon'ble Judges : H.L. Dattu, C.J.; Madan B. Lokur, J.; Arjan Kumar Sikri, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Arjan Kumar Sikri, J.—In these appeals, which arise out of common judgment and order dated 7th June, 2011 passed by the High Court of Delhi, we are concerned with two Notifications that were issued for acquisition of lands in the revenue estate of Village Burari as well as Jharoda Mazra Burari. Vide Notification dated 24.07.1998, land ad-measuring 705-07 bigha situate in the revenue estate of Jharoda, issued Under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") was acquired. The purpose of acquisition was to set up a "Dairy Colony". However, ultimately the land was utilised, after acquisition, for setting up of a "Bio-Diversity Park". Second Notification is dated 18.07.2003 issued Under Section 4 of the Act vide which 1448-01 bigha (301.66 acres) land situate in the revenue estate of Village Burari was acquired. Village Burari is adjoining village Jharoda Mazra Burari. This land was acquired for the development of a "Bio-Diversity Park, Phase-II".

2. There is no challenge to the aforesaid acquisition. The dispute pertains to the quantum of compensation that has been awarded for the acquisition of the aforesaid lands. The compensation which has been awarded by Land Acquisition

Collector (LAC), Reference Court as well as the High Court in respect of these two villages is recapitulated hereunder in summary form: Jharoda Mazra Burari:

3. The LAC, vide his award passed in the year 2000, discussed the potentiality and fertility of the land to ascertain the quality thereof. He also took note of its proximity to the nearby habitation on the basis of aforesaid parameters. The LAC classified the land in three categories as under:

4. We may observe at this stage itself that the High Court has specifically noted in the impugned judgment that there is no basis given by the LAC in his award in classifying the land into three categories mentioned above.

5. While fixing the compensation for the subject land the Land Acquisition Collector considered 4 sale instances out of which 2 instances were of the same village and as per which land ad-measuring 500 sq. yds. Each was sold for Rs. 50,000/- on 07.08.1997, whereas the other 2 sale instances were of village Wazirabad, a village in the nearby vicinity. The first sale deed dated 27.01.1998 was in respect of the land ad-measuring 1028 sq. yds. and the sale price was Rs. 1,00,000/- and the second sale deed dated 26.05.1977 was in respect of land ad-measuring 1600 sq. yds. which was sold for Rs. 3,00,000/-. The Land Acquisition Collector thus noted in the award that the indicative price as per the four sale deeds would come to Rs. 139/- per sq. yd. However, he did not rest his award on these sale deeds inasmuch as the said price resulted in the land value being less than the minimum price notified by the Government as per Office Order dated 24.9.1998 under which the minimum indicative price fixed by the Government for agricultural land in Delhi was Rs. 11,20,000/- per acre i.e. 4 bigha and 16 biswa as of 1.4.1998.

6. Taking into consideration these factors, the LAC determined the compensation payable for three acres of land in the following manner:

7. Some compensation was also awarded for the trees existing on the land. Needless to mention, other statutory benefits admissible as per the Act were also granted.

8. The Appellants herein were not satisfied with the award of the LAC and, therefore, sought reference Under Section 18 of the Act. The Reference Court also took into consideration the minimum rate notified by the Government which was Rs. 11,20,000/- per acre for category "A". However, since these rates were fixed as on 31st March, 1998, the Reference Court gave an increase @ 11.5% for the period from 1.4.1998 till the date of Notification, i.e. till 24.7.1998. On that basis, compensation for category "A" was enhanced to Rs. 11,60,580.82 paisa. The land price of category "B" and category "C" was depressed by 10% each over the value fixed in respect of category "A" land and, accordingly, compensation figure arrived at by the Reference Court in respect of these three categories of lands was as under:

9. Still not satisfied, the Appellants filed appeals in the High Court. The High

Court, after looking into the entire material, accepted that the basis to determine the fair market value has to be Government Office Orders fixing minimum price at Rs. 11,20,000/- per acre as on 1.4.1998. Thereupon, he gave 11.5% per annum increase treating it as progressive price rise, as a thumb rule. On that basis, the High Court found complete justification in the reasoning of the Reference Court and dismissed the appeals of the Appellants. Village ? Burari.

10. As mentioned above, 301.66 acre of lands situate in revenue estate of Village Burari was acquired by issuing Notification dated 18.07.2003 Under Section 4 of the Act. In this case, LAC gave his award bearing No. 2/LAC/N/05-06. According to him, the land in question is on the Eastern side of the Forward Bund and this land was not prone to Burdhi and/or Baramadi, i.e. it was not prone to alluvium or diluvial effects of the river currents. Land was also "Do Fasli", which means two crops were grown on the said lands, each year. Here also, the land was categorized in three categories. The LAC made Office Order dated 09.08.2001 passed by the Government fixing circular rate at Rs. 15,70,000/- per acre, as the basis. He held this to be fair market value for category "A" land and assessed the remaining lands at Rs. 5,05,000/- per acre. We would like to mention here itself that High Court has remarked that no reasons are given for fixing the value at Rs. 5,05,000/- lacs per acre for the remaining land.

11. On reference being made Under Section 18 of the Act, the Reference Court also adopted the Government Order dated 09.08.2001 as the basis of fixing the market value. Since vide the said Notification the circular rate was fixed at Rs. 15,70,000/-, the Reference Court gave increase @ 11.5% per acre therefrom till the date of Notification which was issued on 18.07.2003 and, thus, arrived at the figure of Rs. 19,20,568/-. It would also be worthwhile to note here that the Reference Court specifically held that there was no reason to demarcate the land in different categories and, thus, fixed unique rate of compensation for the entire land acquired by the said Notification.

12. The High Court, here as well, has accepted the Government Order dated 09.08.2001 as the basis for fixing the market value. Thus, it agreed with the approach of the Reference Court by giving an enhancement of 11.5% per annum thereby granting compensation of Rs. 19,20,568/- per acre. However, the High Court has categorized the lands into category "A" and category "B". The aforesaid compensation is maintained for category "A"; insofar as category "B" lands are concerned, the said figure is reduced by 10% thereby arriving at the market value of Rs. 17,28,512/- in respect of category "B" lands. In this manner, all the appeals of the Appellants were dismissed and the appeals of the Union of India as well as its cross-objections are allowed by reducing the compensation in respect of category "B" lands.

13. It is in this backdrop that we deal with the present appeals.

14. The primary submission of various counsel appearing for the Appellants was that the courts below have ignored a particular sale deed pertaining to the area

in question which would reflect the real market value. The only sale deed which is pressed into service to highlight this point is Exhibit PW-1/2. It is the sale deed dated 09.12.1993 under which 7 bighas and 15 biswas of land in Village Burari was sold for a sum of Rs. 39,17,000/-. On the basis of consideration reflected in the sale deed, it was argued that the price of the land in Village Burari should be worked out as on 19.12.1993 and an increase @ 11% per annum should have been given on the aforesaid value till the dates of two Notifications issued in the years 1998 and 2003 respectively. It is, thus, argued that the market price fixed by the High Court is totally depressed and unrealistic as it does not reflect the real market value of the lands. In this vein, it was also submitted that there was no reason to take into consideration the Government Orders fixing circular rates, as it is a matter of common knowledge that such Government Orders are not reflective of the real market value. Furthermore, such Government Orders are issued only for the purposes of registration of the sale deeds, so that there is no avoidance of the stamp duty.

15. It is clear from the above that the submissions of learned Counsel for the Appellants have two limbs, namely:

(i) For ascertaining the market value of the acquired land, the sale deed pertaining to the land in that very area was the best exemplar. There was no reason to discard Exhibit PW-1/2 which was produced to reflect the market value of the land in the year 1993, which was much before the two acquisition Notifications of the year 1998 and 2003. This was, according to them, the best exemplar.

(ii) The Government Orders which are made the basis for fixing the market value of the land by the courts below could not have been relied upon for such a purpose as they are not the true indicia of the market price.

16. From the aforesaid twin prepositions, reliance was placed on the following judgments of this Court:

17. In Cement Corporation of India Ltd. Vs. Purva and Others, , this Court observed:

"35. A registered document in terms of Section 51-A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf.

39. While it is clear that Under Section 51-A of the LA Act a presumption as to the genuineness of the contents of the document is permitted to be raised, the

same can be relied upon only if the said presumption is not rebutted by other evidence. In the said view of the matter we are of the opinion that the decision of this Court in the case of Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, lays down the correct law."

18. In National Fertilizers Ltd. Vs. Jagga Singh (Deceased) through L.Rs. and Another, , this Court observed:

"25. The Division Bench of the High Court has thus relied upon its order in Karam Singh (RFA No. 906 of 1988) passed on 8-11-1989 which was marked in the reference proceedings as Ext. A-15. The land in the case of Karam Singh was acquired for a municipal park by a notification issued Under Section 4 of the Land Acquisition Act on 30-8-1983 and is located within the municipal limits. In Karam Singh case there was evidence of three transactions of sale of the same date i.e. 29-6-1973, showing that some land in the area had been sold at the rate of Rs. 100 per square yard, some land in the area had been sold at Rs. 70.30 paise per square yard and some land in the area had been sold at the rate of Rs. 62.50 per square yard and the Court took the average rate of the three sale transactions which worked out to Rs. 80 per square yard. The Court then added an increase of 12% per annum for ten years to arrive at the value of the land in the year 1983 when the land was acquired and the figure worked out at Rs. 176 per square yard.

28. Regarding quality of the land acquired in the present case, the learned Counsel for the Appellant submitted that the land in Karam Singh case was developed urban land meant for residential and commercial purpose, whereas the land acquired in the present case was low, waterlogged agricultural land. We, however, find from the evidence of Basant Singh Patwari, Land Acquisition, Industries Department, Government of Punjab, Chandigarh, examined as RW 1, that the level of the land, which was acquired in the present case, was that of the existing land of the township of NFL. The learned Additional District Judge in his order dated 29-4-1991 has in fact held, after considering all the oral and documentary evidence adduced by the parties, that the market value of the land acquired in the present case has to be determined on the basis of its potentiality for urban development and not on the basis of the revenue or agricultural classification of the land as done by the Collector because the land acquired in the present case had great potential value for urban purposes i.e. commercial, industrial and residential."

19. In Chindha Fakira Patil (D) through L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon, , this Court observed:

"14. In our view, the approach adopted by the High Court was clearly erroneous. There is no basis for the assumption that the purchaser of the land must have offered higher price for special reasons. Exhibit 28 was proved by Shri Arjun Sukdeo Patil, who had appeared as witness on behalf of the Appellants. It was open to the counsel for the Respondent to cross-examine the witness and elicit

the special reasons, if any, for sale of land allegedly at a higher price. However, the fact of the matter is that no such question was put to the witness.

15. As a matter of fact, it is neither the pleaded case of the Respondent nor has it been argued before us that the sale deed Exhibit 28 had not been proved or that the price mentioned therein was not the highest price paid for jirayat land in the area. Therefore, we have no hesitation to hold that the High Court was not right in interfering with the fixation of market value by the Reference Court for jirayat land at the rate of Rs. 3 lakhs and for bagayat land at the rate of Rs. 6 lakhs per hectare. The mere fact that average sale price of the transactions relied upon by the Respondent was substantially less could not be made a ground for discarding Exhibit 28."

20. In Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others, , this Court observed:

"15. In State of Punjab and Another Vs. Hans Raj (Dead) by Lrs. Sohan Singh and Others, this Court has held that method of working out the "average price" paid under different sale transactions is not proper and that one should not have, ordinarily recourse to such method. This Court further held that the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands are the real basis to determine the market value.

17. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

21. Summing up their submissions, it was sought to be emphasized that even if sale deed Exhibit PW-1/2 was not to be acted upon for the purpose of fixing the market value, the Government Orders which were relied upon by the High Court could also not be treated as the appropriate basis. In such a situation, the Court was supposed to apply guess work to arrive at a "guesstimate" with reference to the data on record. It was submitted that since Government Orders do not represent the actual value at which a last transaction is normally entered into, a suitable increase ought to be made to determine fair and reasonable compensation to these Appellants who lost small parcels of land held for generations.

22. We would first deal with the submissions predicated on Exhibit PW-1/2. The reason given by the Reference Court in discarding this piece of evidence does not appear to be correct. The Reference Court has noted that since this sale deed is of the year 1993 and the acquisitions took place 5 and 10 years thereafter, respectively, the sale deed of 1993 would not reflect the market price that was prevailing in the years of acquisition. If the sale price stated in the said sale deed is of the year 1993, the value of the land would even be higher in the year 1998 and 2003. Therefore, this reason is not convincing at all. However, at the same time, we find that very justifiable grounds are given by the High Court in discarding Exhibit PW-1/2. A perusal of the impugned judgment, touching upon this aspect, would reflect that the High Court has gone through the relevant evidence. This piece of land was purchased by one company known as Motor General and Finance Limited (MGF). Its Director, Shri Arun Mitter, had appeared as PW-2 in LAC No. 140/1/206. He admitted that he was not familiar with the topology of the area and had no proof of any earnings from the land during the period it remained with the company and virtually admitted not having put the land to any use. The High Court, thus, observed that Director of the Company who purchased the land did not give convincing reasons of having put the land to any use. It was only stated that flowers were grown therein by a Mali, though the witness could not even depose as to who employed him and in what manner salary was paid to him. Leaving this ignorance of the Director's aside, even otherwise, his claim that flowers were grown and were consumed in the house was found by the High Court to be the most uninspiring. From the aforesaid and other related/attendant facts, the Court came to the conclusion that the speculative nature of the transaction was self-evident. It was more so as nearly six years after the purchase of the said land, MGF sold the same at a meager price rise of Rs. 3,73,000/-, which gave not even 1% increase in the value of the land spread-over nearly six years. All these aspects clearly demonstrated that MGF was not an informed buyer. Referring to the decision of this Court in Mohammad Raofuddin Vs. The Land Acquisition Officer, , the High Court opined that such a speculative transaction could not be taken as reflective of the real market value inasmuch as in respect of sale of land it is settled law that the test is the price which an informed buyer would pay to the willing seller and to be an informed buyer there must be evidence that the buyer has knowledge of the topology of the area, the land available for sale and such other factors showing that the buyer was an informed buyer.

23. We also find from the record that counsel for the Respondent had pointed out to Exhibit RX-1, a sale deed dated 22.11.2003 executed in favour of one Nisha Tyagi, which showed that she had purchased agriculture land in Village Burari on 22.11.2003 for Rs. 6,32,000/- in respect of land ad-measuring 5 bigha and 19 biswa. There was also a sale deed Exhibit RX-2 dated 02.01.2004 which reflected that Raj Bal, his wife, Usha Tyagi and his sister in-law Shobha Tyagi had purchased 02 bigha and 10 biswa land in the same village for Rs. 2,65,651/-. These sale deeds were clear indicators, reflecting that MGF sale deed (Exhibit

PW-1/2) showed inflated figure therein.

24. We find that the aforesaid finding of the High Court, on a proper appreciation of the evidence on record, is absolutely valid thereby rejecting the credit worthiness of Exhibit PW-1/2 for the purposes of ascertaining the market value of the land. In view thereof, judgments relied upon by the Appellants' counsel on this aspect have no application in the instant cases.

25. It has come on record that apart from the aforesaid sale deed, the counsel for the parties had not produced any other sale deeds either of the year 1998 or of the year 2003. Some sale deeds post 2003 were produced in evidence but the parties rightly chose not to refer to them, a fact specifically noted by the High Court. This would show that there is no sale deed of the area in question which could provide an exemplar for fixing the market value of the land. We are, thus, left with the Government Notifications issuing circular rate of the lands in question. There is a Notification dated 1st April, 1998 as per which the value of the land is fixed at Rs. 11,20,000/- per acre for category "A". Then, there is Notification dated 09.08.2001 fixing circular rate at Rs. 15,70,000/- per acre.

26. We would like to point out at this stage the argument of Mr. Shishodia, learned senior counsel who appeared in some of these appeals, to the effect that in the absence of any evidence of exemplar depicting sale value, the Court is required to do guesswork. In support of this proposition, he placed reliance upon the decision of this Court in the cases of Trishala Jain and Another Vs. State of Uttaranchal and Another, as well as K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, . In the present case, as the only sale deed on which reliance was placed (Exhibit PW-1/2) stands rejected, there is no other exemplar in the form of sale deed. The learned Counsel wants us to "guesstimate" the market value. In Trishala Jain (supra), the Court laid down the circumstances when application of "guesstimate" principle is to be applied. This can be found in para 65 of the said judgment which reads as under:

"65. It will be appropriate for us to state certain principles controlling the application of "guesstimate".

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified Under Sections 23 and 24 of the act and cannot be made in detriment thereto."

27. Keeping in view the aforesaid principles, and having peculiarity of the present appeals where there is total absence of exemplars, we are of the opinion that some increase, but only marginal one, can be ordered over and above the

circular rates fixed by the Government Orders. In the case of Special Land Acquisition Officer Vs. Karigowda and Others, , following pertinent observations were made by this Court:

"90...The Court is entitled to apply some [amount] of reasonable guesswork to balance the equities and fix a just and fair market value in terms of the parameters specified Under Section 23 of the Act."

28. This Court can indulge in the same reasonable guesswork to balance the equity for fixing just and fair market value. In the absence of any other exemplar in the form of sale deed, though it is difficult to say as to what extent the actual market value was higher in contradistinction to the value of land fixed by the Government in the aforesaid Notifications, we are of the opinion that as a thumb rule an increase of Rs. 1,00,000/- per acre be granted, in the peculiar facts and circumstances of this case.

29. Accordingly, we fix the market value of the land situate in Village Jharoda Mazra Burari, which was acquired vide Notification dated 24.07.1998, at Rs. 12,60,580/- and in Village Burari, which was acquired vide Notification dated 18.07.2003, at Rs. 20,20,568/-.

30. This brings us to the land aspect of the matter which was argued by those Appellants whose lands are classified in inferior category, namely, whether it was proper to categorize the land and after fixing the market value for category "A" land, depress the same by 10% each for category "B" and "C" respectively.

31. Insofar as land situate in Village Burari is concerned, as already noted above, though the LAC had given the categorisation, the Reference Court had refused to accept the same finding that the entire land was to be treated uniformly as category "A" land. Apart from the topography of the land, which was almost identical, the Reference Court also pointed out that the distinction had no relevance because the acquisition was for the same purpose, namely, "Bio-Diversity Park", and, therefore, potentiality of the land would be the same for the aforesaid purpose and it did not matter as to whether a particular parcel of the land was different from the other (though it was not even factually correct). We find this reason to be quite convincing. There appears to be no manifest justification in the judgment of the High Court in re-introducing the said categorization. We, therefore, are of the opinion that the compensation should be awarded to all the Appellants uniformly at Rs. 20,20,568/- per acre. For the same reasons, similar treatment is to be accorded to the Appellants whose lands in Jharoda Mazra Burari are acquired by granting compensation at uniform rate of Rs. 12,60,580/- per acre.

32. These appeals are, accordingly, allowed partly by fixing market value of the land acquired vide Notification dated 24.07.1998 at Rs. 12,60,580/- and for the lands acquired vide Notification dated 18.07.2003 at Rs. 20,20,568/-. Interest @ 9% per annum on the enhanced compensation shall be paid from the date of High Court judgment, in addition to all other statutory benefits available to these

Appellants along with proportionate costs. The Civil Appeals stand disposed of in the aforesaid terms.