(2009) 12 AHC CK 0335

In the Allahabad High Court

Krishi Utpadan Mandi Samiti — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 50(2)

Citation : (2010) 2 AWC 1100

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—Heard Shri B.D. Mandhyan, learned senior counsel assisted by Shri Satish Mandhyan for the petitioners.

2. In Writ Petition No. 19466 of 1994 Shri S.D. Kautilya and Shri M.C. Singh have appeared for respondent No. 3 and in Writ Petition No. 17819 of 2004 Shri B. Dayal appears for the claimant respondent.

3. In both the writ petitions Krishi Utpadan Mandi Samiti, a Local Authority constituted for market area under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 for Sikandarabad District Bulandshahr, and Rampur, respectively have prayed for quashing the awards given by the Special Land Acquisition Officer, awarding compensation u/s 11 of the Land Acquisition Act, 1894 for acquisition of the land for construction of market yards.

4. In Writ Petition No. 19466 of 1994 the facts are that a notification u/s 4 read with Section 17 (1) and (4) of the Act was issued on 23.3.1992 and was published in the Gazette on 28.3.1992. The notification u/s 6 was published on 30.4.1992. The possession of the acquired land measuring 7 bigha and 13 biswa situate in village Sanwali, Pargana and Tehsil Sikandara District Bulandshahr was taken on 23.5.1992. The award was made on 30.6.1993, relying upon sale deed at SI. No. 54 and determining compensation of the total land at Rs. 39,01,500 and solatium at 30% of the market value of the land. The Special Land

Acquisition Officer found the market value of the land to be Rs. 5,10,000 per bigha on which the claimants were entitled to 30% solatium at Rs. 11,70,450, additional compensation at Rs. 71,830.35, interest at Rs. 3,09,188.54. In this manner he gave the award for a total sum of Rs. 54,52,968.89.

5. The award has been challenged by the Krishi Utpadan Mandi Samiti/ acquiring body on the ground that the compensation has been determined on the basis of sale deed by an interested person ignoring the sale deeds filed by the Krishi Utpadan Mandi Samiti. The respondent No. 3 was aware that the land was being acquired, and therefore two months before the acquisition he purchased the land to create false evidence of the market value. The maximum price demanded by the tenure holders was Rs. 3,93,000 per bigha, which was not accepted by the Mandi Samiti and that corrupt practices prevailed in awarding higher compensation.

6. In Writ Petition No. 17819 of 2004, the facts are that 2.45 hects. of land equal to 24,500 sq. mtr. was acquired in village Shahbad for construction of new market yard at Shahbad for which notification u/s 4(1)/17 was published on 17.1.2001, with the last date of publication as 16.3.2001 and the notification u/s 6(1)/17 was published on 9.1.2002 with its last date of publication on 21.1.2002. The possession was taken on 4.1.2002 and the award was made on 19.1.2004. The Special Land Acquisition Officer considered 34 sale deeds. He did not accept sale deed Nos. 16, 21, 26 and 27 filed by the Secretary of the Mandi Samiti, Shahbad and selected sale deed No. 20 for determining the compensation, which proved. that the fair market value of the land is 428 per sq. mtr. After deducting 25% he awarded Rs. 321 per sq. mtr. for 3366 sq. mtr. land adjoining the road and after reducing 50% from this rate awarded Rs. 160.50 for the remaining 21134 sq. mtr. of land. The total compensation was determined at Rs. 44,72,493 on which additional compensation for houses and trees was added for Rs. 6,77,110 and that after adding solatium at 30% u/s 23(2) of the Act of Rs. 14,28,780 and additional compensation at 12% at Rs. 10,30,288, the entire compensation payable was worked out at Rs. 76,08,671, on which the interest was payable u/s 34 of the Act after deducting the cost of registration at Rs. 1,720, and the cost of acquisition of the land at Rs. 7,60,867.

7. Shri B.D. Mandhyan, learned Counsel appearing for the Krishi Utpadan Mandi Samiti in both the cases submits that Section 50(2) of the Land Acquisition Act confers the local authority for whom the land is being acquired, a right to appear in the acquisition proceedings and also in the reference court and to adduce evidence for the purposes of determining the amount of compensation, and that since there is no right to file a reference given to the local authority u/s 18 or an appeal u/s 55 to the High Court, the local authority can avail the extraordinary remedies Under Article 226 of the Constitution of India for judicial review of the determination of compensation. He has relied upon U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., in which the majority opinion of the Constitution Bench of the Supreme Court recognised the

rights of the acquiring body, in furtherance to the law laid down in Neelagangabai and another Vs. State of Karnataka and others,

8. Shri B.D. Mandhyan submits that the Special Land Acquisition Officer in both the cases has brushed aside the exempler sale deed filed by the Secretary of the Krishi Utpadan Mandi Samities and has relied upon sale deeds produced by the claimants giving excessive and fancy sale consideration. He submits that this Court has consistently held that small tracts of the land purchased, for a particular purpose may fetch fancy prices in terms of their location and the need for acquisition by the vendee, but the same basis cannot be applied to each tract of land, which are yet to be developed for public purpose. There can be no comparison with regard to value of the land covered by the sale deeds relied upon by the Special Land Acquisition Officers, and the land proposed to be acquired. He has relied upon The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, Ravinder Narain and Another Vs. Union of India (UOI), and Rishipal Singh and Ors. v. Meerut Development Authority and Anr. 2006 (2) AWC 1597 (SC), in support of his submission that where large area is the subject-matter of acquisition, the rate at which small plots are sold cannot be said to be a safe criterion.

9. Shri B.D. Mandhyan further submits that the awards have been actuated with legal mala fides inasmuch as the Special Land Acquisition Officer has brushed aside the exemplar sale deeds produced by the Mandi Samities without giving good reasons. In Writ Petition No. 19466 of 1994 the land holders were demanding Rs. 3,93,000 per bigha. The Khalsa Sanyukt Sahkari Kheti Samiti-respondent No. 3, very cleverly got several collusive sale deeds executed in favour of the Sahkari Samiti inflating the price to be set up as exemplars and then colluded with the Special Land Acquisition Officer for awarding compensation at higher amount. The sale deeds between 1989 and 1991 were executed for nearly an amount of Rs. 1 lac per bigha and that there could be no such jump in prices, to calculate the market value at Rs. 5,10,000 per bigha. The petitioner filed sale deed dated 4.1.1992 in respect of plot No. 362 area 12 biswa sold for Rs. 1,21,665. There was Anor sale deed dated 27.3.1992 in respect of plot No. 459 area 9 biswa 16 biswansis with sale consideration of Rs. 2,72,000 per bigha. Anor sale deed dated 13.3.1992 in respect of plot No. 184 measuring 6 biswa 3 biswansis for Rs. 70,000 per bigha was on record. In the sale deeds dated 3.3.1992 and 10.8.1992 the plots were sold at Rs. 1,35,000 and Rs. 90,000 per bigha.

10. In Writ Petition No. 17819 of 2004 Shri B.D. Mandhyan submits there after brushing aside the sale deeds filed by the Krishi Utpadan Mandi Samiti including the sale deed Nos. 26 and 27 of khata Nos. 1427, 1426, 1658, 1669, 1670 and 1674 in which 2 hects. of land on 19.10.2000 was sold for Rs. 4,05,427 at the rate of about 20 per sq. mtr., the Special Land Acquisition Officer has relied upon

sale deed No. 20 of a land adjacent to Shahbad Dhakia road of 168 sq. mtr. at Rs. 428 per mtr. and that after giving 25% deductions he has determined the rate of the land at Rs. 321 per sq. mtr. for 3366 sq. mtr. of land adjoining the road and Rs.160.50 for remaining 21134 sq. mtr. of land.

11. Shri Mandhyan submits that in both the cases the Special Land Acquisition Officer has colluded with land owners to cause severe loss to the Mandi Samiti.

12. In both these writ petitions the entire compensation has been deposited, and the entire amount has been withdrawn by the claimants.

13. In U.P. Awas Evam Vikas Parishad v. Gyan Devi (supra), the Constitution Bench of the Supreme Court held that the acquiring body has a right to notice and to be heard before the compensation is determined. The acquiring body also has right to lead evidence. Where notice has been served on the local authority and opportunity was given to it to lead evidence, the remedy available to the local authority Under Article 226 of the Constitution of India, is available on the grounds on which judicial review is permissible under Article 226 of the Constitution. The judicial review of the quasi-judicial orders passed by the authorities invested with statutory powers, is limited to the grounds namely that the determination is mala fide; prompted by extraneous considerations ; made in contravention of the principles of natural justice; or any constitutional or any statutory provisions. In such judicial review the Court does not exercise appellate powers to correct mere errors of law or fact. The jurisdiction Under Article 226 is discretionary but it must be exercised alongwith recognised lines and should not be arbitrary, and based only upon the discretion of the Court. The High Court does not ordinarily enter upon determination of questions, which demand elaborate examination of evidence to establish the right. The High Court is also not authorised to reappreciate the evidence and to hold otherwise than that has been held by the Government regarding sufficiency of the material or evidence to arrive at a conclusion. The High Court should be careful not to substitute its own decision and confine itself to the questions : (i) whether the decision making authority exceeded its powers; (ii) committed an error of law; (iii) committed breach of the rules of natural justice; (iv) reached an unreasonable decision; or (v) abuse its powers vide Mansukhlal Vithaldas Chauhan Vs. State of Gujarat,

14. In the cases at hand the Krishi Utpadan Mandi Samitis were issued notices and were allowed to participate in the proceedings. The exemplar sale deeds filed by the Mandi Samities were considered by the Special Land Acquisition Officers. He has not violated any procedure or established principles of law. The assessment of the rate of compensation is based upon the exemplar sale deeds, which were considered to find out the fair market value in accordance with the considerations u/s 23 of the Act and on the principle that fair market value of the land is based upon the price, which a willing buyer is ready to pay to the willing vendor. In Cement Corporation of India Ltd. Vs. Purya and Others, and Ranvir Singh and Another Vs. Union of India (UOI), it was held that the market value of a fully developed land cannot be compared with a wholly underdeveloped land

although they may be adjoining or at a little distance. The sale deed pertaining to the portion of lands, which are subject to acquisition are the most relevant piece of evidence for assessing the market value of the acquired land even the market conditions prevailing as on the date of the notification are relevant. The sale of small piece of land cannot be basis of determination and that isolated sale deed showing a very high price should not be made the sole basis for determination of the market value. In Kanta Devi and Ors. v. State of Haryana and Anr. (2008) 15 SCC 201 : 2008 (4) AWC 3752 (SC), it was held that the 70% deduction towards development charges to make land suitable for purposes for which the land was acquired is on the higher side. The Court found the deductions of 60% to be reasonable in the said case.

15. In Writ Petition No. 19466 of 1994, the Special Land Acquisition Officer found that the notification u/s 4(1) was made on 23.3.1992. The exemplar sale deed No. 1 to 37 related to the periods 1989-90 to 1990-91, which was more than two years prior to the acquisition. There was considerable increase in price of land after 1990-91. The sale deed Nos. 38 and 39 were executed in the year 1992 and that 18 sale deeds related to the same land, which was acquired. If the sale deed relates to the same land, which was acquired, he could rely upon the sale deeds of the land, which was acquired for finding out correct market value and that according to this sale deeds the rate of land was between Rs. 4 lacs to Rs. 6 lacs per bigha. Out of these 9 sale deeds were executed on the same day on 30.1.1992 at Rs. 5,10,000 per bigha : and 8 others on different dates. The sale deed No. 54 was of the largest area of land, in which land was also same quality namely ''jangal avval aavi''. The Special Land Acquisition Officer found it safe to rely upon the sale deed for determining the market value at Rs. 5,10,000. The objections of Shri B.D. Mandhyan that sale deed was collusive and did not give the correct value of the land is not based on any material produced on record. The Mandi Samiti itself submitted that prior to the acquisition the farmers had demanded Rs. 3,93,000 per bigha, which is not much below the compensation fixed by the Special Land Acquisition Officer. We do not find that the rate fixed by the Special Land Acquisition Officer, was arbitrary, highly excessive or fanciful or that he had no basis to determine the market value of the land.

16. In Writ Petition No. 17819 of 2004 the exemplar sale deed filed by the Mandi Samiti were considered by the Special Land Acquisition Officer. The sale deed Nos. 16 and 21 were of the land, which was far away from the acquired land and that sale deed No. 26 related to 20 mtrs. of land at the rate of Rs. 1,000 per sq. mtr. and other sale deed was in respect of same gata No. 1426 of 2 hectare at Rs, 4,05,427 at the rate of Rs. 20 per sq, mtr. The Special Land Acquisition Officer found that it was clear from such a low rate that Shri Krishna Gopal, the purchaser had executed the sale deed to evade stamp duty and Income Tax and that the sale consideration was not realistic. He relied upon the other sale deeds and has found sale deed No. 20 to be best exemplar of the sale deed of the land adjacent to road. By this sale deed 168 sq. mtr. of land without any construction was sold at the rate of Rs. 428 per sq. mtr. While accepting this sale deed the

Special Land Acquisition Officer did not accept the sale deed No. 3 of 20 sq. mtr. of land at Rs. 1,000 per sq. mtr. and sale deed No. 18 of 79.42 sq. mtr. of land at Rs. 1,259 per sq. mtr. The Special Land Acquisition Officer has thereafter deducted 25% and has accepted Rs. 321 per sq. mtr. for 336 sq. mtr. and by deducting another 50% he has fixed the rate of the remaining 21134 sq. mtrs. at Rs. 160.50 per sq. mtr.

17. We cannot say that the Special Land Acquisition Officer has acted arbitrarily or has fixed highly excessive and fanciful rates. He has considered all the sale deeds and given good and valid reasons to accept the sale deed No. 20 to be the best exemplar for fixing market value and has thereafter made adequate deductions.

18. In both the writ petitions the compensation has been deposited and has been paid to the claimants.

19. For the aforesaid reasons, we do not find any good ground to interfere. Both the writ petitions are accordingly dismissed.