(2009) 09 SHI CK 0024

In the High Court Of Himachal Pradesh

Land Acquisition Collector APPELLANT

Vs

Kaila and Others
 Lala Ram Vs Land Acquisition Collector RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 54

Citation : (2010) 1 ShimLC 25

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—This judgment shall dispose of all the aforesaid regular first appeals filed by the appellants u/s 54 of the Land Acquisition Act (here-in-after referred to as "the Act") against the award, dated 1.6.2000, passed by the learned District Judge, Bilaspur.

2. Briefly stated the facts of the case are that the lands of the petitioners and other persons were acquired by the State of Himachal Pradesh for the construction of Brahmpukhar-Ghagus Road. A Notification u/s 4 of the Act was issued on 23.11.1981 and it was duly published on 12.6.1982. The Land Acquisition Collector entered into reference and assessed the market value of the land. The petitioners filed reference petitions u/s 18 of the Act before the learned District Judge, who awarded compensation as under:

-- Sl. Name of the case Area Amount Amount No. awarded awarded by by the the District Collector Judge -- 1. LAC v. Kaila, for the land 0-19 Bigha Rs. 14,631/- Rs. 30,400/- situated at Village Nalwar. -- 2. LAC v. Ram Saran, for the 1-0 Bigha Rs. 20,536/- Rs. 32,000/- land situated at Village Nalwar. -- 3. LAC v. Anil

Kumar, for the 1-1 Bigha Rs. 4,474/- Rs. 33,600/- land situated at Village Nalwar. -- 4. LAC v. Lal Ram, for the 0-19 Bigha Rs. 19,509/- Rs. 30,400/- land situated at Village Gassour -- 5. LAC v. Chuni Lal, for 2-4 Bigha Rs. 45,179/- Rs. 70,400/- the land situated at Village Nalwar. -- 6. LAC v. Ramku, for the 1-9 Bigha Rs. 3,655/- Rs. 46,400/- land situated at Village Nalwar. --

The petitioners were also awarded solatium, additional compensation and interest by the Court of the learned District Judge.

3. It was also alleged by the appellant/Land Acquisition Collector that the learned trial Court had unreasonably enhanced the market rate to a sum of Rs. 1600/- per Biswa as against Rs. 770/- awarded by the Land Acquisition Collector. It was also alleged that the learned District Judge had wrongly granted interest from the date of possession instead of publication of the Notification which was contrary to the law laid down by the Apex Court, hence the appeals filed by the appellants.

4. This judgment shall also dispose of an appeal filed by the appellant Lala Ram being RFA No. 305 of 2000 u/s 54 of the Act. It was alleged that the market value of the land was Rs. 80,000/- per Bigha or Rs. 4,000/- per Biswa but the learned District Judge had granted compensation on the lesser side. The area of the land was only 19 biswa and the learned trial Court had granted inadequate compensation and as such, the appeal is liable to be accepted.

5. I have heard the learned Counsel for the parties and have gone through the record of the case.

6. The first point raised by the learned Assistant Advocate General for the appellant in the appeals preferred the Land Acquisition Collector was that the learned trial Court had wrongly enhanced the compensation awarded in favour of the respondents which deserves to be reduced considerably. It was submitted that the learned District Judge unreasonably-enhanced the market value of the land to a sum of Rs. 1,600/- per Biswa instead of Rs. 770/- per Biswa as granted by the Land Acquisition Collector.

7. On the above point, it was submitted by the learned Counsel for the appellant Lala Ram that the learned trial Court had relied upon a sale transaction Ext.PW-3/B proved in evidence by the witnesses, but the deduction of 60% was made wrongly in the rate as per this sale-deed though no deduction should have been made keeping in view the fact that this sale transaction had taken place prior to the issuance of Notification u/s 4 of the Act. It was also submitted that the land in dispute was a valuable cultivable land and acquired land was only 19 Biswa and, therefore, no deduction should have been made and the deduction of 60%

made is highly excessive which should be reduced considerably. It was submitted that the transaction has been proved to be bona fide and genuine and, therefore, the market value ought to have been determined at Rs. 4,000/- per Biswa.

8. Before I refer to the case law cited in this regard, I may refer to the evidence led to prove the sale transaction Ext.PW-3/B relied upon also by the learned trial Court. A perusal of the sale-deed Ext. PW-3/A shows that one Shri Badu had sold one Biswa of land in village Gasaur on 13.3.1979 for a consideration of Rs. 4,000/- to Lekh Ram. The said Lekh Ram has been examined as PW-4 who has stated that he had paid the consideration of Rs. 4,000/- to Shri Badu. According to Ext. PW-3/B, which is a copy of the sale-deed, dated 20.4.1979, Shri Badu had sold two biswa of land for a consideration of Rs. 8,000/-to Smt. Krishna Devi, which fact has been proved by PW-3 Krishnu Ram, who had stated that his father-in-law Badu had sold these lands to Lekh Ram and Krishna Devi for a sum of Rs. 4,000/- and Rs. 8,000/-, respectively.

9. The respondents had also proved the copy of the sale-deed which is Ext.R-1, which was not relied upon by the learned trial Court on the plea that the respondents had not examined the vendor or the vendee in support of the sale-deed. Ext.R-2 is the copy of notification only. However, according to the law laid down by the Apex Court, it is not necessary to examine the vendor or the vendee and the sale transaction can be considered otherwise also. In this regard, I am supported by the decision of the Apex Court in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, wherein it was held that certified copy of the sale-deed relating to similar lands situated in vicinity can be relied upon without examining vendee or vendor or anybody else connected with the sale.

10. A perusal of Ext. R-1, copy of the sale-deed tendered in evidence by the respondents shows that it dated 2.5.1981 and vide this sale-deed, land measuring 1 Bigha 16 Biswa was sold by Badu for a sum of Rs. 4,000/- only. According to the above decision of the Apex Court, the Court may take such certified copy without the vendee or vendor having been examined but the discretion has been given to the Court to consider as to whether this certified copy can be relief upon or not without examination of vendor or vendee, who could prove the purpose of the sale or the location of the land. A perusal of the sale-deed shows that the vendor had mentioned therein that this land is at quite a distance from the residential house and, therefore, he cannot manager the same and further that he needs money, he is selling the land. The land comprised in Village Nalwar, Pargana Bahadurpur, Tehsil Sadar, District Bilaspur, H.P. There is no mention of the location of this land from the acquired land or anything about the quality of the land. A perusal of the copy further shows that the sale-deed is dated 2.5.1981 but the copy has been attested on 20.5.2000, which also raises a doubt about this copy being an authentic copy of the original sale-deed. Keeping in view the facts of the case and the fact that the location of the land is not clear from the acquired land or its quality, I am of the opinion that this document was not relied upon rightly by the learned trial Court, though for

other reasons, this is not helpful in arriving at correct value in determining the market value of the land.

11. The learned trial Court, on the basis of Ext.PW-3/A and Ext.PW-3/B, had held that the average sale price of these sales comes to Rs. 4,000/- per Biswa and since the land sold was a small piece of land and, therefore, a deduction of 60% was made for determining the correct market value of the acquired land. Thus, it was held that after deducting 60% of the average sale price of Rs. 4,000/-, the market value of the acquired land was held to be Rs. 1600/- per Biswa and it was held to be Rs. 32,000/- per Bigha. Therefore, the compensation was enhanced accordingly.

12. The learned Counsel for the appellant Lala Ram had submitted that the deduction was wrongly made at the rate of 60%. To substantiate his submissions, he had relied upon the decision of this Court in H.P. Housing Board v. Ramesh Dutta and Ors. 1998(2) Shim. L.C. 357, wherein it was held that the sale transactions, as cited, are not applicable as they pertain to small area of land and therefore, deduction for development etc. was allowed at the rate of 40%. Reliance was also placed upon another decision in Shimla Development Authority v. Krishan Devi 1990 (2) Shim.L.C. 98, wherein it was observed that the price fetched for the small plots of land cannot be accepted as such in fixing the market value of much larger plot of land acquired as in the present case. After relying upon the decision of the Apex Court, it was held that expenses up to 53% for such development purposes can be deducted.

13. I may make a reference to a decision of this Court in Shimla Development Authority v. Krishna Devi 1990 (2) Shim.L.C. 98, wherein in relation to the price of small plots, a deduction of 40% was held to be proper. Accordingly, in my opinion, the deduction should have; been made by the learned trial Court at the rate of 40% from the rate of the sale i.e. at the rate of Rs. 4,000/- per Biswa and deducting the price at the rate of 40%, the price, per Biswa, comes to Rs. 2,400/- or Rs. 48,000/- per Bigha.

14. The contention put forth by the learned Assistant Advocate General was that the learned District Judge had wrongly awarded interest from the date of taking of possession, though, as per the decision of the Apex Court, the interest can be awarded only from the date of issuance of the Notification.

15. A perusal of the impugned award passed by the learned District Judge shows that the learned District Judge has also held that the petitioners are entitled to additional compensation at the rate of 12% u/s 23(1-A) of the Act w.e.f. 1.1.1966 till the date of award i.e. 22.9.1986. Interest has also been awarded by the learned trial Court at the rate of 9% per annum for one year from the date of award i.e. 22.9.1986 and thereafter they are entitled to interest at the rate of 15% per annum till the amount of enhanced compensation is paid or deposited.

16. According to the above decision of the Apex Court, the interest cannot be awarded from the date of taking over the possession but from the date of

issuance of the notification u/s 4 of the Act. The Notification was issued on 12.6.1982 and, therefore, the award passed by the learned trial Court is liable to be amended to this extent that the petitioner shall be held entitled to interest at the rate of 9% from 12.6.1982 instead of 1.1.1966 till the date of award.

17. In view of the above discussion, the appeals filed by the State; of H.P. i.e. RFAs No. 170, 210, 211, 212, 213 and 214 of 2001 are allowed and the respondents shall be entitled to interest, as mentioned above. The appeal filed by Lala Ram being RFA No. 305 of 2000 is allowed and he is held entitled to compensation at the rate of Rs. 2,640/- per Biswa, which shall be calculated by the Land Acquisition Collector alongwith interest as awarded by the learned trial Court and as modified in the above appeals of the State and shall be paid within three months. All the appeals stand disposed of accordingly.