
(2013) 04 DEL CK 0449

In the Delhi High Court

Case No : Regular First Appeal 204 of 1999

Mahant Atma Ram

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 4(1), 6

Citation : (2013) 04 DEL CK 0449

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

Bench : Single Bench

Advocate : Maldeep Sidhu, for the Appellant; Sanjay Pathak, for R-1 and Ms. Shobhna Takiar, for R-2/DDA, for the Respondent

Judgement

V.K. Jain, J.—The land of the appellant late Mahant Atma Ram was acquired by the Government of NCT of Delhi, by way of notification dated 12.10.1983 issued u/s 4(1) of the Land Acquisition Act, followed by a declaration dated 12.1.1984 made u/s 6 of the said Act. The award came to be passed by the Land Acquisition Collector on 27.8.1984 and the compensation awarded to the appellant was a laughable amount of Rs. 1 per square yard, as against the claim of Rs. 50,000/- per square yard. The land subject matter of the acquisition was already in possession of the respondent at the time notification u/s 4(1) of the said Act was issued, the same having been possessed during emergency. On being forcibly dispossessed from his land, the appellant filed a civil suit being CS(OS) No. 1190/1978 in this Court seeking recovery of possession along with damages etc from the respondents. The aforesaid suit resulted in a compromise whereby respondent agreed to acquire the aforesaid land under the provisions of Land Acquisition Act and pay compensation in accordance with law to the appellant. As a part of the settlement, DDA also agreed to lease out a plot measuring 225 square yards to the appellant at a pre-determined rate of Rs. 418 per meter. Pursuant to the said settlement, the appellant agreed not to object to the notification being issued under the provisions of Land Acquisition Act for formal acquisition of his land in accordance with law. Since the appellant was not

satisfied with nominal compensation awarded to him by the Land Acquisition Collector, a reference u/s 18 of the Land Acquisition Act was made to the learned Additional District Judge, Delhi. The learned Additional District Judge vide his order dated 8.12.1998 enhanced the compensation to Rs. 75 per square yard. Being still dissatisfied with the compensation awarded to him, the appellant filed this appeal seeking enhancement of the compensation to Rs. 50,000/- per square yard.

2. This appeal came to be decided by a Division Bench of this Court vide order dated 4.9.2001, whereby the compensation was enhanced to Rs. 12,500/- per square yard from Rs. 75 per square yard. The appellant was also held entitled to solatium @ 30% on the enhanced amount of compensation and interest @ 9 % per annum for a period of one year from 24.5.1982 and thereafter @ 15% per annum till the date of payment. It was further directed that in case interest is held payable on solatium by the Supreme Court in a pending reference made to a larger Bench in Khushi Ram Jain (deceased) and others vs. State of H.P. [AIR 1995 SC 3470], the appellant is also to be paid interest in terms of the decision of the Supreme Court.

3. An appeal came to be preferred by the respondent-Union of India against the aforesaid order passed by the Division Bench of this Court. Vide order dated 25.9.2012, the Supreme Court, noticing that in the appeal filed before this Court, Union of India through Secretary, Ministry of Home Affairs was the sole respondent and the said Ministry had nothing to do with the subject matter of the appeal but also noticing that vide subsequent order dated 30.3.2000, the Land Acquisition Collector, South District was also impleaded in the appeal as respondent no. 2 though there was nothing to indicate service of notice of the appeal on the said LAC, the appeal filed by the respondent was allowed and it was directed that the legal representatives of the appellant who had since died shall carry out necessary amendments in the cause title by describing the parties properly and would also implead DDA as party respondent. It was also directed that since DDA and LAC were already represented before the Apex Court, no further notice was required to be given to them. In compliance of the aforesaid order of the Supreme Court, an amended memo of parties was filed by the appellant on 30.11.2012 impleading the LAC, South District as respondent no. 2 and DDA as respondent no. 3 in the appeal.

4. It is not in dispute that the land acquired from the appellant is situated on the main Aurobindo Marg. A perusal of the site plan filed before the Reference Court would show that the land in question is a part of Yusuf Sarai on main road of Aurobindo Marg and there is no structure between the land acquired from the appellant and the main Aurobindo Marg. There is a petrol pump adjoining the land acquired from the appellant which seems to be surrounded by other DDA lands but no structure exists between the main road and the land in question which measures 132x50 ft. The appellant produced a number of documents before the Reference Court and those documents included certified copies of

various lease deeds executed by DDA in respect of commercial plots sold by it in the locality. Out of these lease deeds, three lease deeds i.e. Ex. PW 3/9, Ex.PW3/11 and Ex.PW3/2 are in respect of three commercial plots sold by DDA by way of auction held on 2.1.1984 in Yusuf Sarai Community Centre, which is a community centre developed by DDA on the road leading from Aurobindo Marg to Gulmohar Park/Niti Bagh. The size of the plots leased out vide lease deed Ex.PW3/9 and Ex.PW3/11 measures 150 square meter each whereas the size of the plot leased out vide lease deed Ex.PW3/12 was 225 square meter. The respondents filed before the Reference Court a document Ex.D1 which was a sale deed executed by the outgoing partner of a private partnership firm in favour of one of its partners in respect of some land situated in Kotla Mubarak Pur.

5. As far as the sale deed filed by the respondent is concerned, no reliance on this document can be placed primarily for the reason that the land subject matter of the sale deed is situated in Kotla Mubarak Pur which is an altogether different locality situated far away from Aurobindo Marg where the land acquired from the appellant is situated. On the other hand, plots which the DDA sold by way of public auction on 2.1.1984 are almost adjoining the land acquired from the appellant there being at a distance of only some yards between these plots and the land acquired from the appellant, as would be evident from the site plan Ex.PW1/1 which was filed before the Reference Court.

In *Karan Singh and others etc. Vs. Union of India*, , Supreme Court held that the consideration in terms of price received for land under bona fide transaction on the date of notification issued u/s 4 of the Act or few days before or after the issue of notification u/s 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land has to be assessed in terms of those transactions. It was further held that the sale of land on or about the issue of notification u/s 4 of the Land and Acquisition Act was the best piece of evidence for determining the market value of the acquired land, though quite often evidence on transaction of sale of land on or few days before the notification u/s 4 is not available and in the absence of such evidence contemporaneous transactions in respect of lands which had similar advantages and disadvantages would be the good piece of evidence for determining the market value of the acquired land. In case the same is not also available, the other transaction of land having similar advantages nearer to the date of notification u/s 4 of the Act would guide in determination of the market value of acquired land.

Since the exemplars provided by the appellant to the Reference Court were only the appropriate evidence produced by the parties to show the market value of the land in question around the time it was acquired, no reliance on the other documents filed by the parties before the Reference Court can be placed. The rate per square yard in terms of lease deed Ex.PW3/9 comes to Rs. 14525/-, in terms of lease deed Ex.PW3/11 comes to Rs. 12882.68 and in terms of lease deed Ex.PW3/12, it comes to Rs. 12940.52.

6. The next question which arises for consideration is as to which rate the Court should adopt for the purpose of determining the market value of the land acquired from the appellant. The learned counsel for the appellant has relied upon the decision of the Supreme Court in *Mehrawal Khewaji Trust (Regd.), Faridkot and Others Vs. State of Punjab and Others*, where this issue came to be examined by the Court and the following view taken by the Court in this regard would be relevant for our purpose:

12. As pointed out above, the Reference Court failed to take note of the highest exemplar, namely, the sale transaction under Ext. A-61 dated 22.07.1977. In this regard, it is useful to refer the decision of this Court in *Sri Rani M. Vijayalakshamma Rao Bahadur, Ranee of Vuyyur v. Collector of Madras* (1969) 1 MLJ 45 (SC). In this case, this Court has held thus "where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

13. 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.

14. This Court in *Anjani Molu Dessai Vs. State of Goa and Another*, after relying upon the earlier decisions of this Court in *M. Vijayalakshamma Rao Bahadur (supra)* and *Hansraj (supra)* held in para 20 as under "20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered." Again, in para 23, it was held that "the averaging of the prices under the two sale deeds was not justified."

15. 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.

In view of the above referred decision of the Supreme Court, the appellants are entitled to computation of market value of their land on the basis of highest exemplar in the form of lease deed Ex.PW3/9 which shows the average rate of Rs. 14525 per square yard.

7. The next question which arises for consideration is as to what deduction, if any needs, to be made from the aforesaid price of land considering that the land sold by DDA was situated in a Community Centre developed by it whereas the land acquired from the appellant was not part of the community centre though it is situated on the main Aurobindo Marg, and the size of the plots sold by DDA were much smaller as compared to size of the land of the appellant, it can hardly be disputed that Aurobindo Marg is the main road going from AIIMS towards IIT and there are commercial shops and offices situated throughout on the main Aurobindo Marg. The Community Centre developed by DDA on the other hand is situated on the side road leading from Aurobindo Marg to Niti Bagh. The plots by DDA were sold for commercial purpose, but then there is no material to indicate that the land acquired from the appellant was not a commercial land or could not have been used for a commercial purpose. Since the aforesaid land is situated on the main Aurobindo Marg, and is adjoining a petrol pump, as would be evident from the site plan Ex.PW1/1, the inference in the absence of any evidence to the contrary would be that this land was meant for commercial use alone. The appellant, who came in the witness box as PW-3, stated that he was making commercial use of the land in question having his business as well as office at the aforesaid site. He further stated that proper electricity and water connections were available and he was paying house tax in respect of the aforesaid land which was recorded as plot No. 44, in the record of MCD. It also came in the evidence that even in the Master Plan, the land use had been described as commercial.

There is yet another fact which indicates that this land was meant for and actually being used for commercial purposes. A perusal of the judgment of the learned District Judge would show that in the year 1969 a piece of land measuring 200 square meter was leased out by the appellant to one Labh Chand Jain, who could have tin roof/chhapar for sitting and working of the labourers on the job. This is an indicator that the aforesaid land has actually being used for commercial purposes. As noted earlier, there is no evidence that the land acquired from the appellant was being used for a purpose other than the commercial or that the land use prescribed under the layout plan in respect of this land was other than commercial. If the land in question under the layout plan of the locality was earmarked for some purpose other than commercial it was for the respondent to produce evidence to this effect before the Reference Court, particularly when the appellants were heavily relying upon lease deeds in respect of commercial plots sold by DDA by way of auction on 2.1.1984. It would, therefore, be difficult to dispute that the land acquired from the appellant was also a commercial land as was the position with respect to the plots sold by DDA by way of auction.

8. Admittedly, DDA had sold the plots on lease hold basis and its allottees have to pay a fixed percentage of the land by way of ground rent after expiry of five years from the date of allotment. No such ground rent, however, is payable in respect of freehold land. For this reason alone, the land available in the market on freehold basis, fetches higher price than the land available on leasehold basis. The other reason which depresses the market value of the leasehold land allotted by DDA is that in the event of the lessee seeking to transfer such land has to pay 50% of the unearned increase to the lessor whereas no such payment is required in case of sale of freehold land.

9. I also take note of the fact that a commercial land situated on main Aurobindo Marg is likely to fetch higher price than the price which a land situated in a Community Centre developed by DDA on a side road would fetch. It is true that a number of facilities are provided by DDA while developing the Community Centre but no evidence has really been led by the respondent to prove what those facilities were and further that the facilities provided by DDA in its community centre were not available in respect of land acquired from the appellant. In the absence of any such evidence from the respondent it would be difficult to say that the land in question, had it been sold on 2.1.1984, would have fetched a price lower than the price fetched by DDA for the commercial plots sold by way of auction on that date, in the community centre developed by it.

Even if I proceed on the basis that some amenities provided by DDA in its community centre such as parking may not be available qua the land acquired from the appellant, considering the other factors which would appreciate the value of the land of the appellant such as land being situated on the main road and being freehold land, no deduction in my view needs to be made from the land price available in the form of exemplar by way of Ex.PW1/9, except deduction based upon the size of the plots.

10. In Mehrawal Khewaji Trust (Registered), Faridkot (supra), the Supreme Court considering that the area of the land under EA61, which was an exemplar available to the Court was smaller as compared to the acquired land, made a deduction of 20%, while calculating the resultant value of the acquired land. Therefore, in my opinion, a similar deduction needs to be made from the price arrived at on the basis of lease deed Ex.PW3/9.

11. Yet another deduction which needs to be made from the price arrived at on the basis of Ex.PW3/9 is on account of the time lag between the date of notification u/s 4 of the Land Acquisition Act and the date on which the plot subject matter of Ex.PW3/9 was sold by way of public auction. The notification u/s 4 of the Land Acquisition Act came to be issued on 12.10.1983 i.e. 82 days before the land subject matter of Ex.PW3/9 was auctioned on 2.1.1984. Applying backward appreciation rate of 12% per annum, if the price of Rs. 14525 as ascertained from the lease deed Ex.PW3/9 is reduced @ 12% per annum, the resultant price comes to Rs. 14133/- per square yards, as on 12.10.1983. After deducting 20% of the aforesaid prices, i.e., Rs. 2826 per square yard,

considering the size of the plots sold by way of public auction and the size of the land acquired from the appellants, resultant price comes to Rs. 11307/- per square yards. The appellants, in my view, are entitled to compensation at the aforesaid rate of Rs. 11307 per square yard. In addition to the compensation at the above-referred rate of Rs. 11307/- per square yards, the appellants are entitled to solatium at the rate of 30% of the aforesaid price of land. The appellants are also entitled to interest @ 9% per annum for one year with effect from 24.5.1982 and thereafter @ 15% per annum till the date of payment on the market value arrived at rate of Rs. 11307/- per square yard. The appellants shall also be entitled to interest on the amount of solatium @ 9% per annum for a period of one year with effect from 28.5.1982 and thereafter @ 15% per annum till the date of payment. The appeal stands disposed of accordingly.