
(2009) 04 SC CK 0216

In the Supreme Court Of India

Case No : Civil Appeal No. 2385 of 2009 (Arising Out of Special Leave Petition (Civil) No. 14209 of 2006)

Mohammad Raofuddin

APPELLANT

Vs

The Land Acquisition Officer

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Constitution of India, 1950 — Article 133
Land Acquisition Act, 1894 — Section 15, 18, 23, 24, 4

Citation : (2009) 2 AWC 1974 Supp : (2009) 1 CLR 1094 : (2009) 5 JT 439 : (2009) 5 SCALE 381 : (2009) 14 SCC 367 : (2009) 5 SCR 864 : (2009) 5 UJ 2228

Hon'ble Judges : R. M. Lodha, J;D. K. Jain, J

Bench : Division Bench

Advocate : D. Rama Krishna Reddy and Asha Gopalan Nair, for the Appellant; Anoop G. Choudhary Manoj Saxena, Rajnish Kr. Singh, Rahul Shukla and T.V. George, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.—Leave granted.

2. Challenge in this appeal by the claimant-land owner is to the judgment and order dated 16th September, 2004 rendered by the High Court of Judicature Andhra Pradesh at Hyderabad in A.S. No. 1472 of 1999 filed u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") for enhancement of the amount of compensation. By the impugned judgment, the High Court has affirmed the award made by the Reference Court, Medak in O.P. No. 25 of 1993 dated 31st December, 1998 and dismissed the appeal preferred by the appellant.

3. Lands measuring 4 acres 2 guntas situated in Survey No. 434, Manthoor village of Pulkal Mandal in Medak District of Andhra Pradesh were acquired for a public purpose, namely for submergence under the Singnoor project by issuing a Notification u/s 4(1) of the Act on 15th July, 1987. The possession of the land was taken on 19th November, 1987. Pursuant to the notice issued u/s 9 of the

Act, the appellant filed a statement claiming compensation for the land at Rs. 25/- per square yard. An additional amount at the rate of Rs. 5,000/- per year was claimed as damages on account of "ill" dispossession by the government. After following the requisite procedure, the Land Acquisition Officer made an award on 18th March, 1989, fixing the compensation at the rate of Rs. 9,000/- per acre.

4. Being aggrieved by the award, the appellant sought a reference u/s 18 of the Act for enhancement of compensation. According to the appellant, the village in which his land is located was fully developed and on the date of Notification, the market value of similar land, meant for house sites, was not less than Rs. 35/- per square yard. Upon appreciation of the material available on record, the reference Court fixed the market value of the acquired land at Rs. 20,000/- per acre i.e., an additional amount of Rs. 11,000/- over and above what had been awarded by the Land Acquisition Officer, alongwith the statutory benefits, viz. 30% solatium on the enhanced amount of compensation; interest at 9% per annum for one year from 18th March, 1989, i.e., date of passing award; interest at 15% per annum after one year of passing of award till the date of realization and additional interest at 12% per annum from 18th July, 1987 to 18th March, 1989.

5. Being not satisfied, the appellant preferred an appeal to the High Court seeking enhancement of compensation at the rate of Rs. 35/- per square yard. Relying on Ex. A.6, an order of the Reference Court in another O.P. No. 112 of 1987, in respect of land approximately 100 yards away, which was acquired for the same purpose vide Section 4(1) Notification dated 31st August, 1985, i.e., nearly two years before the acquisition of the subject land whereunder compensation was paid at the rate of Rs. 18/- per square yard, the stand of the appellant before the High Court was that the minimum amount of compensation had to be at the rate of Rs. 18/- per square yard. As noted earlier, by reason of the impugned order, the High Court has dismissed the appeal, maintaining the amount of compensation determined by the Reference Court. Dealing with the evidence adduced by the appellant, in particular, Ex. A6, the High Court observed as follows:

Admittedly, the lands that were acquired leading to the judgment of the Reference Court under Exs. A.6 and A.7 are not situated in the same village. The lands that are acquired thereunder were situated in Seripeddareddy Village. However, according to the appellant, the distance between the lands acquired leading to the judgment under Ex. A.6 and the acquired lands are at a distance of just about hundred yards. The lands are contiguous to each other. It is unnecessary to further dilate on this subject in view of the decision of this Court in A.S. No. 2336 of 1998 wherein this Court confirmed the judgment of the Senior Civil Judge, Medak in O.P. No. 109 of 1987 dated 7.10.1997 whereunder compensation has been awarded at the rate of Rs. 8,300 per acre. In the said O.P., an extent of Ac.3.09 $\frac{1}{3}$ guntas of land belonging to the claimants therein

situated at the same Manthoor Village which was acquired for the very same public purpose of construction of Singnoor Project under the draft Notification dated 4.1.1987. This Court assessed the market value of the acquired land therein at the rate of Rs. 8,300 per acre. The Notification in this case was published on 15.7.1987. In such view of the matter, it is not possible and permissible to take a different view other than the one taken by this Court in A.S. No. 2336 of 1998.

For the aforesaid reasons, we find no merit in this appeal and the same shall accordingly stand dismissed without costs. The appellant however shall be entitled to payment of interest on 30% solatium, apart from other statutory benefits that were already granted by the Reference Court.

6. Thus, the High Court preferred to rely on its earlier judgment and declined to rely on Ex. A.6, heavily relied upon by the appellant-land owner in support of his claim. Aggrieved, the claimant-land owner is before us.

7. Learned Counsel appearing for the appellant submitted that the Reference Court as well as the High Court erred in ignoring a decree of the Court (Ex. A.6) which was tendered in evidence by the appellant. It was pointed out that appellant's land was acquired at the rate of Rs. 9,000/- per acre whereas in respect of another strip of land situated only 100 yards away from his land, acquired about two years back, compensation was paid at the rate of Rs. 18/- per square yard. In support of the proposition that a judgment of the Court in a land acquisition case, determining the market value of a land in the vicinity of the acquired lands, even though not inter partes, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred, reliance was placed on a decision of this Court in Pal Singh and others Vs. Union Territory of Chandigarh, . Learned Counsel strenuously urged that before relying on its earlier decision, the High Court also failed to ascertain whether there was any similarity between the land, subject matter of A.S. 2336 of 1998 and the present suit lands. Learned Senior Counsel appearing on behalf of the respondent, on the other hand, supported the view taken by the High Court.

8. Before we enter into the merits of the case, we may note a few broad principles to be kept in view while determining the amount of compensation payable on acquisition of land for a public purpose.

9. Section 15 of the Act mandates that in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24 of the Act.

Section 23 contains the list of positive factors and Section 24 has a list of negatives, vis-a-vis the land under acquisition, to be taken into consideration while determining the amount of compensation, the first step being the determination of the market value of the land on the date of publication of Notification under Sub-section (1) of Section 4 of the Act. One of the principles

for determination of the market value of the acquired land would be the price an interested buyer would be willing to pay if it is sold in the open market at the time of issue of Notification u/s 4 of the Act. But finding a direct evidence in this behalf is not an easy exercise and, therefore, the Court has to take recourse to other known methods for arriving at the market value of the land acquired. One of the preferred and well accepted methods adopted for working out the market value of the land in acquisition cases is the comparable sales method. The comparable sales i.e. the lands sought to be compared must be similar in nature and potentiality. Again, in the absence of sale deeds, the judgments and awards passed in respect of acquisition of lands, made in the same village and/or neighbouring villages can be accepted as valid piece of evidence and provide a sound basis to determine the market value of the land after suitable adjustments with regard to positive and negative factors enumerated in Sections 23 and 24 of the Act. Undoubtedly, an element of some guess work is involved in the entire exercise.

10. In *Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others*, this Court had observed as under:

While fixing the market value of the acquired land, Comparable Sales Method of valuation is preferred than other methods of valuation of land such as Capitalisation of Net Income Method or Expert Opinion Method. Comparable Sales Method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land, (sic) which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of Notification u/s 5 of the Act. However, Comparable Sales Method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate of the date of issue of Notification u/s 4 of the Act, that (3) the land covered by the sale must be in the vicinity of the acquired land, that (4) the land covered by the sales must be similar to the acquired land and that (5) the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

11. Yet again in *Viluben Jhalejar Contractor (D) by LRs. Vs. State of Gujarat*, , making reference to a number of cases on the point, it was observed as follows:

18. One of the principles for determination of the amount of compensation for

acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of Notification u/s 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

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| (i) smallness of size | (i) largeness of area |
| (ii) proximity to a road | (ii) situation in the interior at a distance from the road |
| (iii) frontage on a road | (iii) narrow strip of land with very small frontage compared to depth |
| (iv) nearness to developed | (v) lower level requiring area portion the depressed to be filled up |
| (v) regular shape | (v) remoteness from developed locality |
| (vi) level vis-a-vis land under | (vi) some special acquisition disadvantageous factors which would deter a purchaser |
| | (vii) special value for an owner of an adjoining property to whom it may have some very special advantage. |

12. Thus, comparable sale instances of similar lands in the neighbourhood at or about the date of Notification u/s 4(1) of the Act are the best guide for determination of the market value of the land to arrive at a fair estimate of the amount of compensation payable to a land owner. Nevertheless, while ascertaining compensation, it is the duty of the Court to see that the compensation so determined is just and fair not merely to the individual whose property has been acquired but also to the public which is to pay for it.

13. The next question is as to the scope of interference by this Court in an award granting compensation. The scope of interference by this Court was delineated

by the decision in *Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar*, wherein this Court held that there was an element of guesswork inherent in most cases involving determination of the market value of the acquired land. If the judgment of the High Court revealed that it had taken into consideration the relevant factors prescribed by the Act, in appeal under Article 133 of the Constitution of India, assessment of market value thus made should not be disturbed by this Court.

14. The following observations of this Court in *Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another*, are quite apposite:

This Court as the last Court of appeal, will ordinarily not interfere in an award granting compensation unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Besides, generally speaking, the appellate court interferes not when the judgment under appeal is not right but only when it is shown to be wrong. See in this connection, *The Dollar Company, Madras Vs. Collector of Madras*, . Added thereto are other rules of prudence that the courts do not treat at par land situated on the frontage having special advantage and the land situated in the interior undeveloped area, or to compare smaller plots fetching better price with large tracts of land. See in this connection *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, .

15. Therefore, the scope of interference in such matters is very limited and it is only in cases where it is found that the authorities below have either applied wrong principles or have omitted to take into consideration some important point affecting valuation, that this Court can interfere.

16. Bearing these principles in mind, we may now advert to the facts of the present case.

17. In the instant case before the Reference Court, the appellant had examined 4 witnesses including himself as PW-1. In support of his claim, he brought on record Ex. A.1 to A.8. However, presently we are required to consider Ex. A.6, the judgment of Subordinate Judge, Medak in O.P. No. 112 of 1987 dated 25th April, 1991, fixing the rate of compensation for the land, stated to be contiguous to the land of the appellant, at Rs. 18/- per square yard. Ex. A.7 is the certified copy of the decree in the said original petition. As is clear from its afore-extracted order, the High Court relied on its decision in A.S. No. 2336 of 1998 on the ground that the land in question in the said suit was acquired vide Notification u/s 4 of the Act dated 4th January, 1987; the area of the land was 3 acres 9 guntas; the land was situated in the same village and was acquired for the same very public purpose of construction of Singnoor project as in the present case. The High Court noted that the Notification u/s 4 of the Act in the

case of the appellant having been published within 6 months of the date of Notification in the afore-mentioned suit i.e. 15th July, 1987, it was not possible and permissible to take a different view other than the one taken in the said suit. While discarding Exs. A.6 and A.7, the Court has noted that the lands, subject matter of that acquisition, were not situated in the same village.

18. Therefore, the question for consideration is whether in the light of the said finding of the High Court, it could be said that the High Court has applied a wrong principle of law or has taken into consideration irrelevant material, warranting interference by this Court. Having gone through the evidence on record, we find it difficult to accept the stand of the appellant that the High Court should have relied on Ex. A.6 instead of its earlier decision in A.S. No. 2336 of 1998. It may be true that in the absence of the instance relied upon by the High Court, Ex. A.6 could be taken into consideration as one of the comparable sale instances but at the same time reliance on its earlier judgment in respect of a land situated in the same village, acquired only six months ago, could not be said to be an irrelevant factor affecting the determination of market value/compensation in respect of the land of the appellant. As observed in Pal Singh's case (*supra*), said judgment is a valid instance from which the market value of the subject land could be deduced. Merely because a different conclusion could be possible on two sets of sale/acquisition instances, in our judgment, is no ground to interfere with the award of the High Court when it has taken into consideration an instance which is more closer to appellant's land in respect of the date of acquisition; happened to be in the same village and acquired for the same purpose.

19. In the light of above discussion, we do not find any ground to interfere with the decision of the High Court. There is no merit in the appeal, which is dismissed accordingly. We make no order as to costs.