
(1996) 01 DEL CK 0101

In the Delhi High Court

Case No : Regular First Appeal No. 13 of 1970

Mohammad Saddiq

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (1996) 61 DLT 444

Hon'ble Judges : Dr. M.K. Sharma, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Sumeet Bansal and S.S. Sabharwal, for the Appellant;

Judgement

Devinder Gupta, J.

(1) This appeal u/s 54 of the Land Acquisition Act, 1894, hereinafter referred to as "the Act", is against the judgment of Shri G.R. Luthra, the then Additional District Judge, Delhi in land acquisition case No. 11368 answering a reference u/s 18 of the Act on the question of determination of the amount of compensation and the extent of area act. required Plots No. 63 to 67, situated within the Revenue Estate of Bhargarh, by the side of Roshnara Road, Delhi were acquired for public purpose, namely, for children's park through notification issued u/s 4 of the Act on 25th January, 1955. Collector, Land Acquisition in his award No.1171 dated 25th July, 1961 offered the amount of compensation at the rate of Rs. 20.00 per sq.yard as against Rs. 150.00 per sq.yard, claimed by the appellant. Award also clarified the area of plots 62 to 72, belonging to the appellant, to be 1024.6 sq.yards as against 1100 sq.yards claimed by the appellant. Feeling dissatisfied a reference was sought by the appellant. The Reference Court through the impugned award held the area of the acquired property belonging to the appellant to be the same, as determined by the Collector, Land Acquisition, namely, 1024.6 sq. yards but enhanced the amount of compensation holding the appellant be entitled to market value at the rate of Rs. 40.00 per sq.yard. The appeal is for further enhancement of compensation

and also on the area of the acquired plots.

(2) Learned Counsel for the appellant vehemently contended that there was considerable evidence on record to justify a conclusion that the area of land acquired belonging to the appellant, was 1100 sq. yards and not 1024.6 sq.yards. On the question of quantum of compensation much stress was laid by learned Counsel on the decision of this Court in RFA.No.14-D/58, decided on 21st February, 1967, titled as Shiekh Mohd. Siddiq v. Union of India, (copy Ext.A.14) and sale deed Ext. A. 10 dated 14th December, 1955. It was contended that the Reference Court though made Ext.A.14 to be the basis in determining the amount of compensation, reversed in reducing the amount on irrelevant considerations. Learned Counsel for the respondent has tried to support the award contending that there is no scope for interfering in the well reasoned award of the Reference Court, which is based on evidence on record.

(3) We have been taken through the entire material on record. We may not refer to the either evidence which was produced on record by the appellant on the question of determination of the amount of compensation except for making reference to the two instances on which reliance was placed during the course of arguments. Though in Reference Court considerable evidence was adduced by producing numerous instances of transactions of different localities but we are satisfied that the Reference Court was justified in ignoring the same on the ground that sufficient evidence was not on record as regards comparison of the acquired land with the properties which were the subject matter of the instance which had been given.

(4) EXT.A.14 is the decision of this Court. Appellant therein was also the appellant herein. 209-1/2 sq.yards of land situated within the same Revenue Estate but located by the side of Roshnara Road was acquired for public purpose, namely, for construction of Vaccination Centre through notification dated 8th June, 1954 issued u/s 4 of the Act. Award No. 752 was made by the Collector, Land Acquisition offering the amount of compensation at the rate of Rs. 30.00 per sq. yard. Copy of the award has been proved on record as Ex. A 15. Appellant claimed further enhancement in the amount of compensation by seeking reference. The Reference Court did not make any enhancement. Appeal which was carried to this Court was allowed. This Court in RFA. No. 14-D/58 (Ext. A.14) enhanced the amount of compensation and held the appellant to be entitled to compensation of Rs. 16,800.00 for 209-1/2 sq. yards of land. The rate thus awarded works out to Rs. 80.00 per sq. yard. This determination of the amount of compensation was by capitalising the rental value at which, the Court found the land was leased out or the land was cable of being leased out. In the instant case, the Reference Court by discarding the other evidence on record made Ex. A.14 to be the basis in determination of the amount of compensation. The Court did not award the same amount of compensation. Though on other grounds it was held to be a comparable instance, but keeping in view the location of the land which was subject matter of Ext. A, and the fact that appellant's land

had been trespassed by about 22 persons by raising small structures and the fact that it was a large area, as compared to the land which was subject matter of Ext. A.14, the Reference Court held Rs. 40.00 per sq. yard instead of Rs. 80.00 per sq. yard to be the fair market value. Having considered the reasonings, we are of the view that, keeping in view the facts and circumstances of the case, no reduction was justified, for number of reasons.

(5) The fact that there were some squatters or trespassers on the appellant's land alone will not have the effect of reducing the market value, in the absence of any material that the trespassers had perfected their title to the property by holding it adversely to the appellant. In the absence of this the appellant would continue to be the owner of the property entitled to recover possession and also entitled to recover damages for use and occupation, which the Court might grant in case suit for possession was brought by the appellant. Such an amount of damages, in any case would not be less than the amount at which the property could be leased out. For appellant's property, which was the subject matter of Ext.A. 14, the Court found that the same had been let out at Rs. 70.00 per month. It was an area of about 210 sq. yards. There was a person to whom the land had been let out. On the land in question in this appeal, there were about 22 trespassers. In this all of them are taken to be the lessees, there is no manner of doubt that appellant would also be entitled to recover lease money from them resulting in same consequences namely determination of compensation on capitalisation method. Since they were trespassers, naturally they were liable to pay damages by way of use and occupation, which amount definitely would be more than the amount at which the plot could be leased out and definitely more than the lease money for the plot which was subject matter of Ext.A.14 had been let out. On this score, the Trial Court was not justified in coming to the conclusion that reduction was required to be made on the ground that the area had been trespassed upon by some trespassers. Even the other ground taken, namely, the area acquired was a large plot and the instance relied upon was of a small plot is not such which would justify any deduction. Instance was of a plot of land measuring approximately 210 sq. yards whereas the area acquired was a compact piece of more than 1000 sq. yards, which admittedly had been occupied by 22 persons. Subject matter of Ext. A. 14 was occupied by only one person and was located by the side of main Roshnara Road. The acquired area was also by the side of main lane leading to the Roshnara Road and located at a distance of about 160 to 170 sq. yards, It was in a well developed locality. Its features have been stated by Shri Om Prakash Goel, AW.3, that it was behind Palace Cinema in a comparatively good locality. The lane leading to the property was wide enough for cars. According to the appellant also it was located in commercial locality and near about there were located banks, office of Burma Shell Agency, Bata Shoes Co. Finance Construction etc. The acquired land thus was not such a large piece of plot on which any reduction, was justified when the instant was of a plot of land of about 210 sq. yard and valuation was being made on capitalisation method. The land which was the subject matter of Ex.A. 14 was acquired by

virtue of notification issued seven months prior to the notification issued for acquiring the land in question. Instead of allowing certain deductions, it was necessary for the Reference Court to have considered the question of appreciation due to the difference in time.

(6) The other instance for which reliance was placed by learned Counsel for the appellant, namely, Ext.A.10 cannot be taken to be a safer guide for determining the amount of compensation in the absence of relevant evidence about genuineness of transaction and enough material of comparison. Other instances were of areas from different localities. Accordingly, only Ext. A.14 is the only instance which is to be made the basis for determining the amount of compensation payable to the appellant.

(7) It is a matter of settled principle that where the value of acquired property is not ascertainable with reference to the price at which a willing purchaser would buy, for an estimate of market value, an objective standard is to be made. An enquiry relating to valuation of immovable property is not an exact science but it abounds in uncertainties where there is more than ordinary guess work and where it would be very unfair to require an exact exposition of reasons for the conclusions arrived at. The question of fair compensation is not an algebraic problem which can be solved by an exact formula. While determining the amount of compensation, use to which the land is reasonable capable of being put in future is to be taken into consideration. The value of the acquired property in its actual condition at the time of acquisition with all its then existing advantages including the realised possibilities has to be first estimated and to it should be added the possible enhancement of its value in future due to future possibility of its use taking into consideration its peculiar location. Being located in a Commercial Zone, may be behind at a distance of 150-160 yards from Main Roshnara Road, the fact remains that the acquired plot was behind a cinema with banks and other commercial properties adjacent thereto. Possibility of its being let out at such rates at which land, which was subject matter of Ext.A.14 cannot be ruled out. Even if some reduction was required to be made because of its location, namely, by the side of main lane and not by the side of main road, the same would not be such which would not require to be rounded off, because of the time gap between the two notifications, namely, one issued for acquiring the property which was subject matter of Ext. A.14 and for the property in question. The other evidence, which has been adduced in this case, namely, Ext. A.5 to Ex. A.9, the copy of plaint, copy of award, and other relating documents in support of appellant's claim for fixing the market value at Rs. 150.00 deserves to be discarded for the reasons which were duly considered in the decision in RFA. 14-D/58 that the Arbitrator's award was procured by the appellant with a view to get enhancement in the amount of compensation. Discarding the other evidence on record and taking Ex. A.14 an instance which, for the reasons aforementioned is to be fully used in appellant's favour, the appellant is held entitled to same market value, namely, @ Rs. 80.00 per sq.yard, which we consider to be the fair market value of the acquired land as on the date of preliminary notification.

(8) Learned Counsel for the appellant referred to the statements of the claimant and also to the statement of AW.3 in support of the contention as regards the extent of area but we are not satisfied with these two statements. Conclusions of learned Additional District Judge that these two statements unsupported with any documentary evidence cannot be relied upon to hold that the area was more than that which was determined, with reference to the documentary evidence by the Collector, Land Acquisition/namely, 1024.6 sq. yards. No interference is called for on this point.

(9) In view of the above, the appeal is partly allowed, The claimant/appellant is held entitled to compensation for the acquired land measuring 1024.6 sq. yards at the market rate of Rs. 80.00 per sq. yard. Over and above the amount of compensation, the appellant will be entitled to solarium at 15% and interest at the rate of 6% p.a. from the date of taking over of possession till payment with proportionate costs.