

(1999) 07 AHC CK 0049

In the Allahabad High Court

Case No : First Appeal No. 78 of 1994 with 47 other First Appeals

National Capital Power Project/National Thermal Power
Corporation Ltd., Ghaziabad

APPELLANT

Vs

Abhay Ram and others

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 18, 23, 4(1), 51A
Registration Act, 1908 — Section 57

Citation : (1999) 3 AWC 2687 : (2000) 2 UPLBEC 1049

Hon'ble Judges : R.R.K. Trivedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : Dinesh Dwivedi, for the Appellant; Ravi Kant, Pankaj Mittal and S.N. Singh, for the Respondent

Judgement

R.R.K. Trivedi, J.—This bunch of appeals is from the judgment and awards dated 22.10.1993, given by learned find Additional District Judge, Ghazlabad. As the questions of law and fact involved are similar in all the appeals, they can be decided by a common judgment against which learned counsel for the parties have no objection. First Appeal No. 78 of 1994 shall be the leading case.

2. Facts giving rise to these appeals are that State of Uttar Pradesh initiated and acquisition proceedings by Issuing Notification u/s 4(1) of Land Acquisition Act (hereinafter referred to as the Act), dated 6.9.1984, published on 8.9.1984. for acquiring 105 Bigha 2 Biswa 16 Biswansl land. situated in two villages, namely, Murad Nagar and Sama Murad Nagar. The purpose of acquisition of land was for establishing National Thermal Power Plant by National Thermal Power Corporation Ltd. (hereinafter referred to as the Corporation). Declaration u/s 6 of the Act was issued by Notification dated 16.9.1984. The urgency provisions u/s 17(1) of the Act were also invoked, and enquiry u/s 5A of the Act was dispensed with. Consequently. possession of the entire area was taken by the State and transferred to the Corporation on 16.11.1984. The Special Land Acquisition Officer (hereinafter referred to as S.L.A.O) gave his award on 24.9.1986 and

determined compensation on the basis of the quality of land and the circle rate prescribed for the same as per revenue records. For the land consisting of Dakar Doyam Khaki soil with circle rate of Rs. 3.19 p, compensation determined was Rs. 60,189.72 p. per Bigha and for the land consisting of Dakar Doyam with circle rate Rs. 4.37 p.. the compensation determined was Rs. 82,454.26 p. per Bigha. On the basis of the aforesaid calculation, the total compensation proposed to be paid to the land owners was Rs. 64,59,429.63 p. So far as the improvements like tube-well, boring and other constructions were concerned, he determined compensation to the extent of Rs. 21,005 on the basis of the reports of the experts. He also awarded solatium at the rate of 30% which came to Rs. 19,44,130.39 p. He also awarded interest at the rate of 12% from the date of the Notification u/s 4(1), i.e., 8.9.1984 up to the date of taking possession, namely, 16.11.1984, which came to be Rs. 1,45,531.69 p. He also determined the cost of acquisition at the rate of 10% of the total compensation which came to be Rs. 8,42,456.50 p. which was to be paid by the Corporation. He also directed to pay 40 times of the land revenue by the Corporation as land revenue registration cost which came to be Rs. 22,640. He also awarded interest at the rate of 9% for the period of one year from the date the land owners became entitled for the compensation and at the rate of 15% after expiry of the period of one year. This amount was calculated to be Rs. 4,10,740.06 P.

3. Land owners felt dissatisfied with the compensation awarded by the S.L.A.O. Consequently, 49 references were made u/s 18 of the Act. These References were heard by Shri H. L. Kureel, learned IInd Additional District Judge, Ghaziabad, in two bunches. The first bunch consisted of 26 cases, the leading case of which was Kanti and others v. State and others. Land Acquisition Reference No. 271 of 1987. In second bunch, there were 23 cases, the leading case being Boljit and others v. State and others. Land Acquisition Reference No. 273 of 1987. Both bunches were decided by separate judgments and awards, however, on the same date, namely, 22.10.1993. learned Additional District Judge, after hearing parties, determined compensation in respect of the bunch of 26 References at the rate of Rs. 155 per square yard with other consequential benefits. However, in respect of the second bunch of 23 References, he determined compensation at the rate of Rs. 115 per square yard with other benefits. Aggrieved by the Judgments and awards dated 22.10.1993. the Corporation has preferred these 49 appeals.

4. We have heard Shri Dinesh Dwivedi, learned counsel appearing for appellants and Shri Ravi Kant, in respect of 23 cases and Shri Pankaj Mittal in respect of 26 cases. Shri S. N. Singh also appeared with Shri Pankaj Mittal for respondents in First Appeal No. 98 of 1994.

5. Learned counsel for the appellants, for challenging the impugned Judgments and award, has made following submissions :

(1) It has been submitted that S.L.A.O. awarded compensation on the basis of the sale deed dated 2.6.1983 which has not been considered by the Court at all.

Rather, he has awarded compensation on the basis of the sale deeds filed before him which were not even proved in accordance with law and which were in respect of very small areas and could not be safe guide for determining compensation in respect of a large area of 105 Bighas.

(2) Learned counsel has also submitted that as comparable sale method was adopted by the Court, the potential value of the land for building or other purposes could not be legally taken into account. In this connection, it has also been submitted that the land was being used for agricultural purposes on the " date of Notification and possession was taken as agricultural land. The land owners will get the value of the property in its actual condition with all its advantages and disadvantages and potentiality has no relevance.

(3) It has also been submitted that compensation could not be awarded more than claimed by the land owners.

(4) Lastly, it has been submitted that the compensation could not be legally awarded for the entire land at a flat rate.

6. In support of his submissions, learned counsel for the appellants placed reliance on certain judgments of Hon"ble Supreme Court and this Court which shall be discussed at relevant places.

7. Learned counsel for respondents, on the other hand, submitted that the land falls in two revenue villages, namely Murad Nagar, which is a town with municipality, and Sarna Murad Nagar, village with Gaon Sabha. Learned counsel has placed before us the statements of Indrajit, P.W. 1 and Bhopat Singh. D.W. 1. who Is supervisor of the Corporation. On the basis of the aforesaid statement it has been submitted that by the evidence it was fully established that at a little distance from the land in dispute, there were buildings, industrial units, colleges etc. The land in dispute is situate at a short distance from the town Murad Nagar. In view of the aforesaid surroundings and the facts and circumstances of the case, the Court below was fully justified in taking into account the potential use of the land In dispute for building purposes in future which was a relevant consideration for determining compensation. Learned counsel has submitted that the findings of the Court below are based on material on record and do not suffer from any illegality. Learned counsel has further submitted that the respondents filed four certified copies of the sale deeds dated 13.1.1983 (paper No. 29C). 5.1.1984 (30C), 31.5.1983 (31C) and 4.1.1984 (32C). The amount of compensation has been determined by the Court below on the basis of the aforesaid sale deeds. For awarding compensation there was thus a reasonable basis. The sale deeds filed did not require any further proof in view of the provisions contained in Section 51A of the Act. Learned counsel has also submitted that the circle rate could not be made basis for awarding different compensation to different land holders and the award of the S.L.A.O. suffered from a serious illegality.

8. Shri PankaJ Mittal, learned counsel appearing for the respondents in another

bunch of cases, submitted that it is not correct to say that the land holders claimed compensation at the rate of Rs. 90 per square yard. Placing reliance on the reference applications filed by respondents, he submitted that the compensation was claimed at the rate of Rs. 200 per square yard. It has been further submitted that the amount claimed by the claimants who are simple village people was not very material and it was open to Court to determine correct compensation in accordance with the provisions of the Act. Learned counsel has also questioned the maintainability of the appeals on the ground that the appeals have been filed without obtaining leave of the Court for the purpose which was legally necessary. It has been submitted that the amount awarded by the Court is justified in the facts and circumstances of the case and does not suffer from any illegality and no interference is required from this Court.

9. Learned counsel for the respondents, in support of their submissions, have placed reliance on certain judgments of this Court and Hon''ble Supreme Court which shall be discussed at the relevant places.

10. We have thoroughly considered the rival submissions made by learned counsel for the parties. It is not disputed that appellant Corporation was already a party in Reference proceedings before the Court below and it has been shown as opposite party No. 2 in the decree prepared in pursuance of the award. In the circumstances, in our opinion, leave of the Court for filing present appeals was not required. The submission of the learned counsel for the respondents in this regard cannot be accepted.

11. In these appeals, learned counsel for the appellants has raised serious objection that the four sale deeds filed by respondents as paper Nos. 29C, 30C, 31C and 32C could not be legally read in evidence as they were not proved in accordance with law.

12. Learned counsel for the respondents, on the other hand, submitted that the certified copies of the sale deeds were filed and they could be legally read in evidence u/s 51A of the Act. However, it is not disputed by the learned counsel for respondents that the certified copies were filed but no further evidence was adduced to prove them. In the circumstances, it has to be seen whether the sale deeds filed could be legally relied on for recording findings while determining the compensation. For this purpose, it is necessary to consider the provisions contained in Section 51A of the Act which is being reproduced below :

"51A. Acceptance of certified copy as evidence.--In any proceedings under this Act. a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), Including copy given u/s 57 of that Act. may be accepted as evidence of" the transaction recorded in such document."

Section 51A of the Act was considered by Hon''ble Supreme Court in case of Special Deputy Collector and another etc. v. Kurra Sambasiva Rao and others etc., JT 1997 (5) SC 580. In para 8 of the judgment, Hon''ble Supreme Court has held that Section 51A of the Act only dispenses with the production of original

sale deed and directs to receive the certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality. Para 8 of the Judgment is being reproduced below :

"The best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party ; the time at which the property comes to be sold ; the purpose for which it is sold ; nature of the consideration ; and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired land. In that case, the features required to be present are : it must be within a reasonable time of the date of the notification ; it must be a bona fide transaction. It should be a sale of land similar to the land acquired or land adjacent to the land acquired ; and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired land as on the date of the notification published u/s 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51A of the Act only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-a-vis this land. The marking of the certified copy is per se not admissible in evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. This principle has been repeated in a catena of subsequent decisions of this Court."

13. In view of the legal position pronounced by Hon"ble Supreme Court in respect of Section 51A of the Act. the four sale deeds filed by respondents could not be legally read in evidence as the vendor or the vendees were not examined to prove the transaction. The submission of the learned counsel for the appellants has force and determination of compensation on the basis of the aforesaid sale deeds cannot be sustained.

14. There is yet another reason which shows that the sale deeds relied on by the Court below could not provide a safe guideline for determining compensation. In sale deed dated 13.1.1983 (paper No. 29C). 120 sq. yards of land has been sold for Rs. 10,500. The rate comes to be Rs. 85 per sq. yard but in the body of the sale deed, it has been mentioned that the amount of compensation shown in the sale deed is correct as the nearby lands are being sold at the rate of Rs. 40 per sq. yard. Similarly, in the sale deed dated 4.1.1984 (paper No. 32C) though the land sold was 190-1/2 sq. yards for a consideration of Rs. 19,000 and the rate comes to Rs. 100 per sq. yards, but in the body of the sale deed it is mentioned

that the land of this kind is being sold at the rate of Rs. 90 per sq. yards. Thus, in our opinion, the sale deeds relied on by the learned Court below could not be otherwise also used as safe guide for determining the compensation. In another bunch of cases connected with Land Acquisition Reference No. 271 of 1987, the sale deed relied on was dated 3.5.1984 in respect of 50 sq. yards. The sale consideration mentioned was Rs. 10,325. The subject-matter of sale was a very small area and a high price could have been paid for any special reason. There is also nothing to show that the sale deed was proved in accordance with law. In the circumstances, the determination of compensation by the Court below on the basis of the sale deeds cannot be sustained.

15. Now, the real question is how the correct compensation could be determined on the basis of the material on record. We have perused the record thoroughly but we do not find any other evidence on which basis compensation may be determined. The S.L.A.O. after excluding other sale deeds for cogent reasons and, in our opinion, rightly, placed reliance on the sale deed dated 2.6.1983. This sale deed was in respect of plot Nos. 1054 and 1064 consisting of area 1 Biswa 19 Biswansi 15 Kachhwansis and the sale consideration was Rs. 13,500. The notification u/s 4(1) of the Act was published on 8.9.1984. Thus this sale deed was executed only a little more than a year before which was nearest to the date of Notification u/s 4(1) of the Act. The land sold was situate outside the limits of the Municipal Board as the present land in dispute. On the basis of this sale deed, the value of the land in terms of square yard comes to Rs. 58.11 p.

16. On behalf of respondents, two objections were raised before the Court against the award of compensation by the S.L.A.O. The first objection was that the compensation could not be awarded on the basis of the circle rate and the second objection was that the sale deed was more than a year old and could not provide a safe guide. The Court below has accepted the Increase of 10% per year against which no criticism has been made by learned counsel for the parties. If this 10% increase is added to the rate at "which the land was sold under sale deed dated 2.6.1983, the net rate shall be Rs. 63.92 per sq. yard, i.e., Rs. 64 per sq. yard (in round figure). The Court below has also dealt with the question of categorisation of the land for awarding compensation. Learned Court below after discussing the material on record and the legal position recorded finding that there Is no evidence adduced by the State or the Corporation that some land could be used as commercial complex and belting system should have been adopted" for awarding compensation. Hon"ble Supreme Court in case of Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others, , disapproved the use of basic value register to determine the market value of the land. Relying on the judgment in case of The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, , their Lordships held that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land and at the date of Notification u/s 4(1) of the Act. The methods of valuation may be (1) opinion of experts, (2) the price paid within a reasonable time in bona fide transactions of purchase of lands

acquired or the lands adjacent to the lands acquired and possessing similar advantages and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. After referring other judgments of Hon"ble Supreme Court on this point, their Lordships held that it is settled law that in determining the market value, the Court has to take Into account either one or the other of the three methods to determine market value of the lands appropriate on the facts of a given case to determine the market value.

17. If the present case is considered in the light of the legal position explained by Hon"ble Supreme Court, it is clear that the S.L.A.O. was not justified in reducing the compensation on the basis of the quality of soil and the circle rate. The objection of the respondents was rightly accepted that there could not be any categorisation.

18. Learned counsel for the appellants has also submitted that when compensation is determined on the basis of the comparable sales, the potentiality of the land for or likelihood of its being used for building purposes in future, cannot be taken into account and it loses significance. Hon"ble Supreme Court, in case of Rao Narain Singh (dead) by L.R.s. Vs. Union of India, , held that where the method of valuation to be resorted to by a Court for determining on the basis of the comparable sales. the building potentiality of the land at the time of acquisition has no significance. Para 8 of the judgment is being quoted below :

"Building potentiality of the acquired land, claimed to be possessed by the acquired land can assume no significance in the instant case as the comparable sales method of valuation of land is resorted to as the acquired land was found to be comparable in its essential features with the lands respecting which evidence of certain sale deeds was produced. Hence the contention of the learned counsel for the appellant raised to establish that the acquired land has building potential at the time of acquisition need not engage our consideration."

19. In the present case also, much stress was laid on the building potential of the acquired land. However, as the method of determining the valuation of the land was based on comparable sales method, the alleged building potential could not be a valid consideration. The view taken by the Court below in this regard thus cannot be sustained.

20. For the reasons stated above, the appeals are partly allowed. The impugned awards given by the Court below in both the bunches is modified to the extent that the claimants will be entitled for compensation at the rate of Rs. 64 per sq. yard as the market value of the acquired land. The remaining reliefs granted shall remain unaltered but shall be subject to recalculation at the rate of Rs. 64 per sq. yard compensation awarded by our order. Considering the facts and circumstances of the case, however, there will be no order as to costs.