
(2007) 08 AHC CK 0030
In the Allahabad High Court

National Thermal Power Corporation

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Evidence Act, 1872 — Section 74(2), 76, 77
Land Acquisition Act, 1894 — Section 51A

Citation : (2008) 1 AWC 434

Hon'ble Judges : Pankaj Mithal, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Under challenge is the judgment, order and award dated 18.5.1993 passed by the First Addl. District Judge, Ghaziabad in a batch of 34 land acquisition references and the consequential decrees thereof.

2. All these 34 appeals were listed and heard by us together with First appeal No. 357 of 1993 NTPC v. State of U.P. and Anr. and connected appeals as probably in all appeals land so acquired was for the benefit for NTPC. However, on closure scrutiny we found that in the above 34 appeals the notification for acquisition, award made by the SLAO as also the judgment, order and award of the reference court are all different. Therefore even though the arguments of the parties were on common line in both the set of appeals, we considered it proper to segregate these appeals and to decide them by a separate judgment.

3. A preliminary notification was issued u/s 4(1) of the L.A. Act (hereinafter referred to as Act) on 5.8.1986 for acquiring an area 19 Bigha, 6 Biswa and 12 Biswansi in village Siddhipur, paragana Dasana, Tehsil-Hapur, District Ghaziabad for the purposes of setting up a power plant by the National Thermal Power Corporation (hereinafter referred to as NTPC). It was followed by declaration u/s 6 of the Act which was published on 21.10.1986. The possession of the acquired land was taken on 28.2.1987. The Special Land Acquisition Officer (hereinafter referred to as SLAO) awarded compensation at the rate ranging from Rs. 8,614/-

to 15,614/-per bigha by classifying the land on the basis of its soil quality and agricultural utility. Not satisfied by the compensation so offered, the claimants preferred references u/s 18 of the Act upon which these 34 references were registered and LAR No. 126/89 was made leading case. The reference court vide impugned judgment and order has enhanced the compensation at flat rate of Rs. 19,000/- per pakka bigha along with statutory benefits.

4. This enhancement of compensation by the reference court has been assailed in these appeals by the NTPC.

We have heard Sri K.N. Misra for the appellant and Sri M.K. Tripathi for the claimants. Sri S.K. Mehrotra appeared for the state of U.P.

5. Learned Counsel for the NTPC has first contended that the burden to prove inadequacy of compensation is upon the claimants and they have to prove the bona fide of the sale transaction relied upon by them by producing vendor and vendee in the reference court. In support he relied upon Kiran Tandon Vs. Allahabad Development Authority and Another, The above authority only reiterates the settled legal position that an award u/s 11 of the Act is like an offer, the reference court has to treat the reference like a plaint in original proceedings and has to determine the market value afresh on the basis of material produced before it. The burden to prove that the compensation offered by SLAO is inadequate is upon the claimant. From the record we find that the claimants have filed certified copy of large number of sale deeds to prove the market value of the acquired land. The reference court after considering them discarded most of them on the ground that they either pertain to a very small piece of land or that they are in respect of the land of adjoining villages. Ultimately the reference court placed reliance upon the exemplar sale deed dated 27.1.1986 which was in respect of the land of the same village. Under the aforesaid sale deed an area of 6 nigha 13 biswa 10 biswansi was transferred by Smt. Ketiki through her power of attorney holder in favour of Jagdish Prasad for a total sale consideration of Rs. 1,20,000/-. On the basis of the said sale deed the court below determined the market value to be not less than Rs. 19,000/- per bigha. The aforesaid sale deed is most proximate in time and pertains to an area of over 6 bigha of land which is quite large in comparison to the total areas of 19 bigha 6 biswa 12 biswansi which was acquired. Accordingly no illegality was committed by the court below in selecting the said sale deed to be the best exemplar for determining the market value of the acquired land. The bona fides by the said sale deed can nor be doubted as no land of village Siddhipur had earlier been acquired for the NTPC. The acquisition of some land in adjoining villages can not be taken as a sure indication that the land of village Siddhipur was also going to be acquired. Even the establishment of a camp by NTPC in the adjoining village does not necessarily mean that the villagers of Siddhipur had acquired knowledge of acquisition and therefore the above sale had been executed at an inflated rate.

6. I Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah,

Supreme Court while interpreting the provisions of Section 51A of the Land Acquisition Act has held that after the introduction of the aforesaid provision certified copies of the exemplar sale deeds can be considered as piece of evidence to determine compensation without examining the persons connected with the transaction mentioned therein. The aforesaid view has been followed by the Supreme Court in State of Haryana Vs. Ram Singh, and it has been laid down that it is not the law that a certified copy of a registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it as it would be contrary to Section 77, 74(2) and 76 of the Evidence Act and more specifically Section 51A of the Land Acquisition Act.

7. Therefore we do not find that the exemplar sale deed relied upon by the court below was liable to be discarded as no vendor or vendee thereof were examined to prove the same.

8. The next submission of the learned Counsel for the NTPC is that that the reference court has not considered the sale deeds adduced in evidence on behalf of the NTPC. It is not a correct factual situation. The court below had considered all the materials i.e., the sale deeds of the NTPC. The NTPC had filed three sale deeds of the village Siddhipur but they were not relied upon as they were transactions pertaining to Scheduled Castes persons which are apparently executed at the lower rate. Therefore, the reference court had expressed its doubt about the bona-fides of the said sale transactions. In view of the doubts so expressed and the exemplar sale deed dated 27.1.1986 produced by the claimants, the court below rightly ignored the sale deeds produced by the NTPC and committed no mistake in awarding compensation on the basis of the exemplar sale deed of the claimants.

9. The next submission advanced on behalf of the NTPC is to the effect that the reference court was not justified in avoiding the belting system. The SLAO has classified the land on the basis of its agricultural quality which is not legally proper. The quality of soil or land may not be a safe criteria for determining the market value of land when it is not being put to agricultural purpose. There may be instances where the land of lower classification for revenue purposes may fetch a higher price in the market. Therefore, classification for revenue purposes may not be the true and sure guide for determination of market value of the land. Such a classification is sometimes imaginary and unreal. Accordingly the principle of classifying land for valuation had not been generally viewed with favour. It may be noteworthy that in respect of acquisition of land of adjoining villages NTPC was directed to make payment at the flat rate of 75,000/- and 1,20,000/- per pakka bigha. Therefore, there is no reason to adopt a different standard in this case. The Supreme Court in 1989 SC 1 Nand Ram v. State of Haryana observed that land owners whose land is acquired under the same notification for the same public purpose are entitled to same compensation. Hence, all the claimants are entitled to get same rate.

10. The last submission of the learned Counsel for the appellant is that the

reference court erred in law in not making any deduction from the market value so determined. In this regard, it may be relevant to repeat that the acquisition of the land was made for establishing a thermal power plant of the NTPC. The land has not been acquired for any commercial or residential purpose which may require development and providing of civic amenities. Normally where the land is acquired for such purposes, the courts have laid down that deduction from the market value should be made for the purposes of development while awarding the compensation. No evidence has been adduced by the NTPC to establish the extent of development needed or with regard to expenditure likely to be incurred on such development. Therefore, the said rule would not be applicable in the present case and it would not be prudent to make any deduction on this ground. The extent of acquisition of land is also not very large and is confined to only about 19 bigha and 6 biswa 12 biswansi of land. The exemplar relied upon by the reference court is of an area of 6 bigha 12 biswa 10 biswansi which is comparatively quite large. Accordingly, no deduction on account of largeness in area is also justified.

11. No other point has been raised and pressed before us. The appeals are accordingly dismissed. The judgment and order dated 18.5.1993 passed by the reference court is upheld and confirmed.

No order is passed as to costs.