(2003) 02 DEL CK 0009

In the Delhi High Court

Case No : Regular First Appeal No''s. 202 of 1986 and 167 of 1991

Om Parkash and Others — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Citation : (2003) 7 AD 251 : (2003) 104 DLT 1024

Hon'ble Judges : Devinder Gupta, Acting C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Om Parkash, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, A.C.J.

1. On 26.3.1983 notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued seeking to acquire considerable land situate within revenue estates of villages Shahibabad Daulatpur, Khera Kalan, Siraspur and Samepur. Provisions of Sub-section (1) of Section 17 of the Act were also made applicable thereby dispensing with the requirement of filing objections u/s 5A of the Act. On the same day i.e. 26.3.1983 declaration u/s 6 of the Act was also made. Interested persons preferred their claims. Collector, Land Acquisitions proceeded to pass separate awards offering compensation to the claimants for their lands situate in four different revenue estates as under :

Name of the village Award Amount of compensation

Shahibabad Daulatpur 26/83-84 A. Block - Rs. 13,000.00

Dated 1.8.1983 B. Block - Rs. 6,000.00

Khera Kalan 39/83-84 A. Block - Rs. 10,000.00

Dated 29.8.1983 B. Block - Rs. 7,000.00

Siraspur 58/83-84 A. Block - Rs. 10,000.00

Dated 20.9.1983 A. Block - Rs. 7,000.00

Samepur 63/83-84 Rs. 13,000.00

Dated 30.9.1983

2. Feeling dissatisfied references were sought by the claimants seeking determination of the amount of compensation. Reference Courts by separate impugned awards determined the amount of compensation, which are under challenge in these appeals. Reference Court determined the amount of the acquired land as follows:

Village Samepur--Category A land @ Rs. 17,500.00 per bigha

Category B land @ Rs. 14,500.00 per bigha

Village Shahibabad Daulatpur--Market value was determined @ Rs. 17,500.00 per bigha both for the lands falling in categories A and B except for the land which was found to be abutting road for which market value was determined @ Rs. 18,000.00 per bigha;

Village Khera Kalan--Rs. 17,500.00 per bigha was assessed as market value for A and B categories of land.

Village Samepur--Rs. 18,000.00 per bigha.

3. For the purpose of determining the amount of compensation and in order to avoid discussion of the same type of evidence as also similar argument addressed on both sides, these appeals filed u/s 54 of the Act are being decided by a common judgment.

4. Before proceeding further and discussing evidence, it will be necessary to note down the topography of the acquired land, which was acquired for public purpose i.e. Engineering College. The acquired land of the four revenue estates was located towards the North of Delhi Bhawana Auchandi Road, which in turn connects Narela Industrial Town. From Badli Railway Station the acquired land was located at a distance of 1 km. Western Jamuna Canal runs towards North East side of the acquired land. Rohini Residential Colony is located towards South of the acquired land to the other side of Delhi Bhawana Auchandi Road. Obviously, the entire acquired land was to be utilised and has in fact been utilised for the purpose of Engineering College. Though situate in four different revenue estates it formed a compact block of land, which led to the Reference Court proceeding to determine almost similar market value except for small portions, which were found to be adjacent to the road or were categorized in Block B because of the classification made in the revenue records.

5. Number of sale deeds were produced in evidence both by the claimants as also by the respondents before the Reference Court in order to have the amount of compensation determined. Reliance was also placed upon various awards. We

need not discuss all those sale instances referred to or relied upon by the parties but would make reference to the fact that the Reference Court found average sale price to be in the vicinity of Rs. 27,000.00 per bigha. Being sale instances of a smaller plots of land the Reference Court proceeded to make deduction of about 1/3rd and observed that Rs. 18,000.00 per bigha would be fair market value. These reasonings were recorded by the Reference Court in L.A.C. No. 412/83, Shri Dev Raj v. Union of India, being a case for determination of the amount of compensation of land situate in village Shahibabad Daulatpur. This market value was made the basis for determining compensation for the lands of adjacent villages also where slight reduction, as noticed above was made because of nature of land. Patches of land falling by the side of road was assessed at Rs. 18,000.00 per bigha whereas land not falling on road side was assessed at Rs. 17,500.00 per bigha. The land classified in revenue records as Johar in village Siraspur was assessed at Rs. 14,500.00 per bigha. 6. Touching the boundary of village Shahibabad Daulatpur, which in fact is located in almost middle of this compact area land towards its east revenue estate of village Samepur.

7. On the basis of the notification issued u/s 4 of the Act on 27.7.1984 an area measuring 2123 bighas 5 bids was land situate in revenue estate of Siraspur was acquired for Planned Development of Delhi, in particular for setting up of an Industrial Estate. Collector, Land Acquisition in that case had by his award offered compensation @ Rs. 17,000.00 per bigha for land classified in category "A" whereas for land classified in category "B" being such land from where earth had been removed for preparation of bricks or where there were brick kilns, market value offered was Rs. 13,000.00 per bigha. The Reference Court in its turn proceeded to enhance the amount of compensation. For land falling in category "A" market value was assessed at Rs. 25,000.00 per bigha and for the land falling in category "B" market value was assessed at Rs. 21,000/- and Rs. 22,000/- per bigha. Feeling dissatisfied the claimants had filed appeals, which were decided by a common judgment delivered by a Division Bench of this Court in RFA No. 810/88, Balbir Singh v. Union of India, decided on 30.10.1991.The judgments reported as Balbir Singh Vs. Union of India, . As On 27.7.1984 market value was determined in Balbir Singh''s case (supra), at Rs. 50,000/- per bigha for leveled land and at Rs. 45,000/- per bigha for land in depression. It may be noticed at this stage that in Balbir Singh''s case (supra), the Court observed that normally it would have discussed all the sale instances relied upon by claimants but their claim was restricted only to Rs. 50,000.00 per bigha, therefore, it proceeded to fix the same market value, which was considered by the Court to be reasonable, though the sale instances did reflect slightly higher market value. The Court in the said case also noticed that the average sale price reflected by various sale deeds for the period from 18.1.1982 to 22.7.1983 was in the range of Rs. 25,000.00 to Rs. 96,000.00 per bigha and for the land situate in adjacent revenue estate of Badli acquired by Notification dated 24.10.1961, the market value had been fixed by this Court at Rs. 7,000.00 per bigha and for land

acquired by subsequent Notification dated 4.3.1963 in the said revenue estate, market value was fixed at Rs. 8,000.00 per bigha. In another revenue estate of village Peepal Thala, the Reference Court had assessed the market value at Rs. 34,000.00 per bigha for vast tract of land acquired for Planned Development of Delhi by Notification dated 13.6.1980. In this background Rs. 50,000.00 per bigha being the maximum claim made by the claimants was fixed as the market value for land situate in village Samepur as on 27.7.1984.

8. Learned Counsel for the claimants also placed reliance upon decision of this Court in RFA No. 251/94, Jasrath v. Union of India, decided on 4.9.2001 by which market value of land situate in village Rithala was determined wherein land was acquired by Notification dated 13.2.1981 for Planned Development of Delhi but ultimate purpose of acquisition being setting up of residential colony at Rohini. By the said decision in jasrath''s case (supra), as was modified later on the market value was determined at Rs. 67/- per sq. yard and Rs. 73/- per yard, which were acquired by Notification dated 13.2.1981 and 20.2.1981 and 31.12.1981 respectively. It was contended that the four revenue estates in question being located in close proximity of the developed colony of Rithala it would not be unreasonable to determine fair market value at the same rate considering the potentiality of the land of these four revenue estates as on the date of notifications. Development activities had already started at great pace and there can be no doubt about potential value of four revenue estates because of pressure on the adjoining lands of developed colonies.

9. On behalf of Union of India, Mr. Poddar submitted that the land in four revenue estates was subject matter of Delhi Land Reforms Act for which restrictions as contained under Sections 22 and 23 of the said Act were applicable. Land could only be used for purposes of agriculture, horticulture, animal husbandry etc. Therefore, it would not be fair to allow the land rates as were determined for village Rithala, which rate was determined on the basis of the land being urbanized, He further contended that during pendency of the proceedings before the Reference Court it has been the stand of the claimants that they may be paid market value of acquired land by allowing usual appreciation on the market value of Rs. 18,000.00 per bigha, which was, according to them, the market value in the year 1981. He placed reliance upon the decision of this Court in Inder Prasad Vs. Union of India, , in support of his submission that the market value of the acquired land has to be determined as it capable of being used for agriculture etc. only. Market value cannot be determined on the basis of the land rates fixed by Land and Development Officer as reflected either in Government circulars or its booklets and for that reason he contended that market value determined in Jasrath''s case (supra), cannot be applied. For same reasons, he contended that market value as determined in Balbir Singh''s case (supra), also cannot be made applicable. Primarily market value has to be determined on the basis of average sale price reflected in various sale instances, which have been produced.

10. We have duly considered the submission made at the Bar and been taken through the entire record.

11. When vast area is being acquired in close proximity of development or developing area, it may not be appropriate to maintain the classification as per the revenue records nor it is reasonable to resort to belting method. In order to meet the submission made by learned Counsel for the respondent with reference to the land use that it had to be evaluated as agricultural land and not possessing potentiality for being used for raising construction, reference may be made to the decision of Supreme Court in Municipal Committee, Bhatinda and Others Vs. Balwant Singh and Others, . In the said case as on the date of notification lands were agricultural lands. Sanction of plans for building purposes had not been obtained by owners. The question considered was that whether the lands were capable of being considered having potential value of being put to residential, commercial or industrial uses. Supreme Court held that though the lands were agricultural lands, but they were situated nearer to the built up areas within municipal limits and thus were having potential value for residential or commercial purposes. Thus the submission of learned Counsel for the respondent has no force.

12. Even if it is taken that the acquired land had potential for being used for development purposes for raising construction, we are still of the view that the land rates as applicable to Rithala cannot be made applicable in the instant case. Revenue estate of Rithala was located towards South as a compact colony and separated by a road. We have a better instance and basis to rely upon for determination of market value of similar lands situate within revenue estate of Samepur i.e. the decision in Balbir Singh''s case (supra). Samepur is one of the revenue estates for which land was also acquired for the same public purpose by same Notification and in order to assess the market value of land acquired through Notification dated 263.1983 principles laid down in the case of Bedi Ram Vs. Union of India and another, , can be applied.

13. For the land of Samepur market value as on 24.10.1961 was determined at Rs. 7,000.00 per bigha by this Court in RFA No. 253/77, Deep Chand v. Union of India, decided on 23.8.1993. Allowing the appreciation per annum on the same principles, which are laid down in Bedi Ram''s case (supra), for the period from 24.10.1961 to 26.3.1983 market value can be fixed at Rs. 58,835.00 per bigha. In case we take into consideration the market value as determined in Balbir Singh''s case (supra), @ Rs. 50,000.00 per bigha as on 24.7.1984 by deducting an amount at the rate of 12% p.a. for the period between 24.7.1984 to 26.3.1983 market value would work out to Rs. 42,000.00 per bigha. Being large chunk of land, we are inclined to take the lower figure and proceed to hold that as on 26.3.1983 fair market of all categories of land situate in villages Shahibabad Daulatpur, Khera Kalan, Siraspur and Samepur, acquired through Notification dated 26.3.1983 was Rs. 42,000.00 per bigha. There is another reason to prefer determination Balbir Singh''s case (supra), i.e. nearest to the

date of notification. In Balbir Singh''s case (supra), notification was issued sixteen months subsequently. All villages being a compact parcel of land have to be evaluated uniformally.

14. Consequently, the appeals are allowed with proportionate costs holding the claimants/appellants entitled to compensation at the rate of Rs. 42,000.00 per bigha. In addition to the market value, the claimants will be paid solarium at 30%, additional amount u/s 23(1-A) of the Act at the rate of 12% p.a. from the date of notification u/s 4(1) of the Act to the date of Collector taking possession or date of award whichever is earlier. Claimants will also be paid interest @ 9% p.a. for a period of one year from the date of taking over possession and thereafter @ 15% p.a. till payment. In view of decision of Supreme Court in Sunder Vs. Union of India, , the claimants will also be paid interest on solarium and additional amount.