

(2024) 04 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 528 Of 2014

Paras Ram And Others

APPELLANT

Vs

Collector And Others

RESPONDENT

Date of Decision : 02-04-2024

Acts Referred:

Jammu And Kashmir Land Acquisition Act, 1934 — Section 4(1), 6, 18, 23, 24

Citation : (2024) 04 J&K CK 0006

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : G.S.Thakur, Monika Kohli, Inderjeet Gupta

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

1. This appeal by the appellants is directed against the judgment/award dated 27th August, 2014 passed by the learned District Judge, Jammu ["the Reference Court"] in file No.18/LA Act titled Paras Ram and others v. Collector Land Acquisition (ACR, Jammu) and another, whereby the market rate of the acquired land in village Satwari has been enhanced from Rs.1,45,000/- per kanal to Rs.2,07,500/- per kanal.

2. The impugned award is assailed by the appellant primarily on the ground that that the Reference Court has not appreciated the factors to be taken into account in terms of Section 23 of the Jammu & Kashmir Land Acquisition Act, Svt. 1990 ["the Act"] for working out the true market value of the acquired land at the time of issuance of notification under Section 6 of the Act. It is submitted that in the absence of any rebuttal to the oral as well as documentary evidence produced by the appellants, the Reference Court should have given due weightage to the evidence of the appellants in respect of market value of the land. It is stated that the Reference Court ignored the ample evidence brought on record, oral as well as documentary, to demonstrate that the market value of the land of the

appellants acquired by respondent No.2 was not less than Rs.5.00 lakh per kanal. The Reference Court did not take into consideration the commercial potential of the land acquired and fixed the market value on mere conjectures and guesswork.

3. Per contra, Mr. Inderjeet Gupta, learned counsel for respondent No.2 and Ms. Monika Kohli, Sr. AAG for respondent No.1 support the award passed by the Reference Court. It is submitted that the oral evidence brought on record by the appellants was self contradictory and in any case was not good enough to prove the market value of the acquired land as claimed by the appellants. The documentary evidence in the shape of sale deeds placed on record was not in reference to the date of Section 6 notification issued by the Collector and, therefore, was rightly not given much importance by the Reference Court. Learned counsel support the view taken by the Reference Court that in the absence of comparable sale deeds executed during the relevant period, the best way to arrive at market value of the acquired land was to give it 10% annual increase having regard to the market value of the similar land last determined in the year 1986.

4. Having heard learned counsel for the parties and perused the material on record, the facts are not in dispute. With a view to expanding its airport at Jammu, the Airport Authority of India placed indent for acquisition of land measuring 115 kanals 2 marlas 7 sarsai in twin villages of Satwari and Gadigarh. Accordingly, a notification under Section 4(1) of the Act was issued by respondent No.1, which was followed by a declaration made by the government and issuance of formal notification under Section 6 of the Act on 09.01.1996. The process of acquisition undertaken by respondent No.1 ultimately concluded in passing of an award dated 31.01.1999 wherein the Collector awarded a payment of Rs.1,45,000/- per kanal as compensation insofar as the land situated in village Satwari was concerned.

5. Feeling dissatisfied and aggrieved, the appellants moved an application before the Collector Land Acquisition for making reference under Section 18 of the Act. The application was accepted and, accordingly, the matter for determination of true market value of the acquired land was referred to the Reference Court. The only issue that was framed by the Reference Court was with respect to the correct market value of the acquired land. Since Section 6 notification was issued on 09.01.1996, as such, in terms of Section 23 of the Act, market value of the land was to be determined in reference to the date of publication of declaration under Section 6 of the Act i.e. 09.01.1996 in the instant case.

6. The appellants with a view to substantiate their claim that the market value of the acquired land was not less than five lakh produced PW-Harbans Lal (appellant No.4), PW-2 Jung Bahadur Singh, PW-3 Amrik Singh, PW-4 Inderjeet Singh. In rebuttal, the respondents have produced only one witness, namely, Mohinder Kumar.

7. From a reading of the testimonies of the witnesses of the appellants, following can be said to have been proved:-

a) That the acquired land is now in the vicinity of a commercial hub. What was its position in the year 1996, however, is not indicated by any of the witnesses. The three sale deeds produced by PW-2 Jung Bahadur Singh pertain to small chunks of land of few marlas or kanal at the most and, therefore, do not represent exactly the market value of a big chunk of land which is involved in the instant case.

b) That none of the sale deeds produced by the appellants by way of evidence are proximate in time to the issuance of Section 6 notification.

c) There is oral evidence on record in which the witnesses have claimed the market value of the land as 6.00 lakh per kanal at the time of acquisition and 14 to 20 lakh at the time of recording of the evidence.

8. From the aforesaid evidence, it is, thus, evident that the appellants have failed to bring on record any cogent evidence, which would demonstrate and prove that the market value of the acquired land at the time of issuance of Section 6 notification was 5/6 lakh per kanal, as is claimed by the appellants. The Reference Court has rightly ignored the oral evidence which was not supported by any material on record. The documentary evidence in the shape of certified copies of the sale deeds produced by PW-Jung Bahadur Singh were also not taken into account by the Reference Court for the reason that these sale deeds were neither proximate in time to the publication of notification under Section 6 of the Act nor were these pertaining to a big chunk of land.

9. With a view to arriving at a correct market value of the acquired land with reference to the date of publication of Section 6 notification, Reference Court relied upon *Special Land Acquisition Officer, BTDA, Bagalkote v. Mohd. Hanief Sahib Bawa Sahib*, AIR 2002 SC 1558 wherein, under similar set of circumstances, the Apex Court worked out the market value of the acquired land by taking into consideration the price fixed under an old comparable sale transaction as the base value and after granting appreciation at the rate of 10% per annum on every subsequent year. By applying the methodology laid down by the Hon'ble Supreme Court in the aforementioned case, the value of the acquired land situate in Satwari was enhanced to Rs.2,07,500/- per kanal. The Reference Court took the market value of similar land fixed @ Rs.80,000/- per kanal by the Additional District Judge, Jammu in a reference under Section 18 of the Act in respect of a Section 6 notification issued in the year 1986.

10. While no exception can be found to the view taken by the Reference Court, however, I am still inclined to reasonably enhance market value of the acquired land being persuaded by the observations of Hon'ble Supreme Court made in a later case of *Oil and Natural Gas Corporation Ltd. v. Rashmeshbhai Jivanbhai Patel and another*, (2008) 14 SCC 745.

11. True it is that in determining the amount of compensation to be awarded for the land acquired under the Act, Court is required to take into consideration the factors indicated in Section 23 of the Act and must ignore the factors indicated in Section 24 thereof. However, the factors or the considerations those must weigh with the Court as are enumerated in Section 23, are not exhaustive in nature. Four factors, that is, situation/location of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area are equally important to be kept in mind by the Court. And, in the absence of any concrete evidence on record, in particular, availability of comparable sale deeds of the land in the area executed during the relevant period when Section 6 notification was issued, the safest course to be adopted by the Court is to take the proved market value of the nearby land in previous years as the base value and then give it annual incremental increase of 10% to arrive at the correct market value of the acquired land at the time of issuance of Section 6 notification.

12. Without delving much into the issue, I deem it appropriate to set out paragraph Nos. 13 to 16 of the judgment in Rameshbhai Jivanbhai Patel (supra).

13. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisition), where there is

no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on-sale transactions/acquisitions precedes the subject acquisition by only a few years, that is upto four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the 'rate' of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.

(Emphasis supplied)

17. Indisputably, there is no evidence of any comparable sale transaction of the relevant time of the land available in the neighborhood. In that situation we have to look for any proved market value of the nearby land. It is on record that with a view to acquire nearby land in the year 1986, a notification under Section 6(1) was issued in the same year, which culminated into passing of an award. The market value fixed by the Collector was assailed in reference before the Additional District Judge, Jammu, who vide award dated 29.10.2005 passed in file No.3/LA Act titled Ved Parkash and others v. Collector and another, enhanced and fixed the market value of the acquired land at Rs.80,000/- per kanal. It is the only previous sale deed of the land in the Satwari area available on record.

18. It is thus, evident that the proved market value of the nearby land pertains to the year 1986 whereas the notification under Section 6 in the instant case was issued in the year 1996. There is, thus, a gap of almost ten years. In view of the observations made by the Supreme Court in paragraph No.15 of the Ramesh Bhai Jivianbhai Patel (supra), the mode of determining the market value on the basis of annual increase from 10 to 15% with cumulative effect would be applicable in a case where the proved market rate relied on precedes the subject acquisition by only a few years i.e. upto 4 to 5 years and beyond that it may not be safe even if the proved market value is in relation to a nearby land.

19. The issue was again considered by the Hon'ble Supreme Court in its recent judgment rendered in the case of Central Warehousing Corporation Ltd. v. Thakur Dwara Kalan-ul-Maruf Baraglan Wala (Dead) and others, decided on 19th October, 2023, wherein the Hon'ble Supreme Court yet again surveyed the entire law on the question of determination of market value of the acquired land by reference to previous proved market rate/sale transaction of nearby land and in paragraph Nos. 15 to 23 held that with a view to determine just and fair compensation in cases where comparable sales of the nearby land are not available, it would be safe to provide increase at market value of the acquired land @ 10 to 15 % and that, too, with cumulative effect. Once again strong reliance was placed on the observations of Hon'ble Supreme Court in paragraph No.15 of the Rameshbhai Jivan Bhai Patel (supra). Paragraph No.15 to 23 of the Central Warehousing Corporation (supra) are relevant and are reproduced hereunder:-

15. The law on the point of annual increase whether on cumulative basis or non-cumulative basis and the rate of annual increase to be applied are thus to be considered. Based upon the same a balance and equitable compensation needs to be determined in the present case.

16. The following cases have been relied upon by the parties with respect to determining the just compensation.

i) General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jivanbhai Patel and Another (supra),

ii) Ashrafi and Others Vs. State of Haryana and Others,(2013) 5 SCC 527

iii) Narbadi Devi & Ors. Vs. State of Haryana,

iv) Ramrao Shankar Tapase vs. Maharashtra Industrial Development Corporation and Others,

v) State of Haryana and Another vs. Subhash Chander and Others (2023) 5 SCC 435

17. The case which was referred to by the High Court was Rameshbhai Jivanbhai Patel (supra). It no doubt referred to determining compensation on the basis of annual increase with cumulative effect, but at the same time it had put a caution that such annual increase can be taken only for 4-5 years as beyond that it would be unsafe to uniformly apply the same rate for increase and that too with cumulative effect. Paragraph 15 of the said judgment may be reproduced here which mentions the reasons where the gap is of several years, such standards may not be reliable rather the same maybe unsafe.

"15. Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land.

What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. Fore xample, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

18. In the said case, after laying down the caution, this Court awarded cumulative annual increase at the rate of 7.5% for a period of five years.

19. In the case of Ashrafi and others (supra), this Court amongst many issues, considered the issue of applying annual increase cumulatively for determining just compensation. It also considered the law laid down in the case of Rameshbhai Jivanbhai Patel (supra) and many other judgments on the said point. It applied formula of 12% annual increase cumulatively for a period of five years. The base rate being of the year 1987 whereas the acquisition in question being of 1993.

20. We will also refer to order dated 22.08.2014 in the case of Narbadi Devi &

others (supra) which relied upon the judgment in the case of Ashrafi & others (supra) and accepted the annual increase of 12% cumulatively. The High Court in the said case had although followed the dictum in the judgment of Ashrafi & others (supra), however, the annual increase of 12% was granted at a flat rate by the High Court and not cumulatively. This Court accordingly had modified the order of the High Court to the aforesaid extent that 12% annual increase would be cumulative.

21. Recently, in the year 2022, this Court in the case of Ramrao Shankar Tapase (supra) citing the judgment in the case of Rameshbhai Jivanbhai Patel (supra) and other similar matters, awarded annual increase cumulatively at the rate of 12% for a period of three years. The High Court in the said case had applied annual increase cumulatively at the rate of 10%.

22. The latest judgment is of 2023 in the case of Subhash Chander (supra). In this case, the Court held that rate of annual increase could vary from 8% to 15% per year. However, considering the facts of the said case, this Court had awarded 10% annual increase cumulatively for a period of two years only.

23. From the above, we notice that the consistent view taken by this Court for awarding annual increase to determine the just compensation varies from case to case and the period to be applied is a major factor to be considered. In the present case, the period is 11 years which is pretty large as compared to the time period considered in the cases referred to above."

20. In view of the aforesaid legal position clarified by the Supreme Court in the recent judgment of Central Warehousing Corporation (supra), it is now trite law that where gap between the subject acquisition and the transaction that proves market value is more than five years, it is not safe to award increase in the market value of the acquired land @15%, that too, with cumulative effect. It would, thus, depend on the facts and circumstances of the case and would be further reduced depending upon the length of gap between the two situations.

21. In the instant case, there is admittedly a gap of nine years and, therefore, having regard to the guidelines laid down in the aforesaid judgments and also the special factors existing in the instant case, this Court is of the opinion that enhancement to the market rate of acquired land @ 12% with cumulative effect would be just and fair compensation and would meet the ends of justice. The special factors which existed in this case and have weighed heavily with this Court are that the land was situated in an urban area and had high commercial potential. This Court also took judicial note of the fact that with the existence of airport in the vicinity, entire area had turned into a commercial hub. There has been a steep upward trend in the prices of the land in vicinity.

22. For the foregoing reasons, the award passed by the Reference Court is modified. The market value of the acquired land shall be fixed and taken as Rs.2,48,466/- per kanal. Rest of the award passed by the Reference Court shall, however, remain intact. The enhanced amount shall be payable along with

solatium @15% and interest @ 6% per annum, to be reckoned from the date of taking possession of the acquired land for a period of one year and @ 10% per annum till the enhanced amount is actually paid to the appellants. The respondents shall do well to complete the entire exercise and disburse the amount within a period of two months from today.

23. The appeal stands disposed of in the above terms.