(2009) 06 J&K CK 0015

In the Jammu And Kashmir High Court

Parlhad Singh and Others — APPELLANT

Vs

Collector Assistant Commissioner and Another — RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 18

Citation : (2009) 2 JKJ 603

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Hali, J.—The land measuring 165 kanals situated at Chak Manga Rakwal, Samba owned by the appellants was acquired by

respondent-1 for respondent-2. Compensation at the rate of Rs. 26,000/- per kanal with 15% solatium was awarded by the Collector. Feeling

dissatisfied with the aforesaid rate of compensation, reference u/s 18 of the Land Acquisition Act was made to the District Judge, Jammu for

determining the market value of the land in question. The reference was rejected by the District Judge. This Court allowed the appeal of the

appellants and remanded the case for fresh determination to the District Judge, Jammu. The District Judge had after hearing the parties, determined

the compensation at the rate of Rs. 26,000/- per kanal together with 15% solatium. On fresh enquiry, the District Judge has awarded the

compensation after determining the market value of the land as Rs. 50,000/- per kanal. He has made deduction @ 40% as development charges

of the area and thereby compensation @ Rs. 30,000/- per kanal has been assessed, which is payable to the appellants. Feeling dissatisfied with the award, the appellants have filed the present appeal.

2. The controversy in the present case relates to the compensation which is payable to the appellants. The principle for determining the

compensation under the Land Acquisition Act has to be done on the basis of market value of the land. What is fair and reasonable market value is

always a question of fact depending upon the nature of the evidence, circumstances and probabilities in each case. The guiding factor would be the

conduct of a hypothetical, willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a

prudent man in normal market conditions as On the date of notification. The relevant features to determine the market value, would be the nature of

the land, the quality of land, the market conditions prevailing as on the date of acquisition, potential value of the land as on date of its acquisition.

3. The court is required to consider while analyzing the aforementioned exigencies as to what is true market value of the land. Some of the

important methods for determination of market value of the land are as under:

a) Comparable sale rates of the area where the land is situated.

b) The average sale rates in the area as also its potential market value to which the land can be used; and

c) The location of the land and the comparable sale rates on the date of notification.

4. The appellants had stated that price of the land in the area was Rs. 60,000/- per kanal but in view of the fact that the acquisition was for large

portion of land, Rs. 40,000/- per kanal was payable to them. This amount was claimed by the appellants on the basis that the land in question was

situated near Bus Stand and Railways Station at Samba, which has great potential for commercial exploitation. The appellants have placed on

record the judgment of the District Judge dated 18.12.2002 wherein he had awarded Rs. 50,000/- per kanal as compensation for the land

acquired in the vicinity of the land in question. The District Judge has relied upon this as comparable sale to determine the compensation. He has

held that the appellants would be entitled to compensation at the rate of Rs. 50,000/- per kanal and after holding the same, he has made deduction

of 40% as development charges. While doing so, the District Judge has placed reliance upon the Judgment of the Supreme Court reported as The

Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and

Others, . In essence, this is the controversy, which is required to be determined by this Court.

5. Learned Counsel for the appellants has placed reliance upon a Division Bench Judgment of the Apex Court titled Kasturi and Others Vs. State

of Haryana, . In the said judgment, the Apex Court has held that cut of 20% on rate of compensation towards development charges would be

proper. The judgment relied upon by the appellants is later in point of time. Deduction of 20% would be proper instead of 40% as done by the

District Judge. The other aspect is that right to property still continues to be the fundamental right in the State of Jammu and Kashmir and the

persons are entitled to protection under Articles 19 and 31 of the Constitution of India. The globalisation has induced massive hike in real estate

price which includes the land also. Cities and towns are saturated and people are moving towards rural areas. There is reluctance shown by the

owners for selling their lands to the State and Union Governments In such circumstances, it would not be proper to make deduction of 40%.

6. I, therefore, set aside the award to the extent that the appellants would be entitled to the compensation at the rate of Rs. 50,000/- per kanal, as

the market value determined by the District Judge and cut of 20% of rate of compensation towards the development charges.

7. The respondents also filed a cross appeal in this Court. Their grievance in the appeal is that while awarding compensation, no sale deed was

relied upon by the trial court. It is noted that while determining the compensation, sale instances of small tracks of land cannot always form

acceptable basis for determining the compensation. However, instances of acquisition by the State Government within a distance of 500 yards

from land in dispute for sale purpose can be considered. In the present case, the Learned District Judge has relied upon decision of this Court

where compensation was given at the rate of Rs. 50,000/- per kanal for the land adjacent to the land of the appellants. The Apex Court in the

Division Bench Judgment titled Hans Raj Sharma v. Collector Land Acquisition, Doda reported as AIR 2005 SC 1136, held that:

Land Acquisition Act (1 of 1894), Section 23- Compensation - Determination of market value - Comparable instances of sale - Land acquired for purpose of setting up sheep breeding farm - Sale instances of small tracks of land though cannot always form acceptable basis for determining

compensation - However, instance of acquisition by State Government within a distance of 500 yards from land in dispute for same purpose could

be considered Order of the High Court taking it as reasonable comparable instance of sale and fixing market value of acquired land based

thereupon - Is proper.

8. In view of this, there is no infirmity committed by the District Judge in awarding the compensation to the appellants after taking into consideration

the instance of acquisition by the State Government within a distance of 500 yards from the land in dispute for the same purpose.

9. I find no force in this appeal, which is dismissed. Respondents are, directed to pay compensation to the appellants at the rate of Rs. 50,000/-

per kanal after making deduction at the rate of 20% as development charges. The balance amount shall be paid to the respondents within a period

of four months from today along with interest.