

(1980) 02 GAU CK 0004
In the Gauhati High Court
Case No : First Appeal No's. 7 and 10 of 1972

P.G. D'Ombraim and Others etc.

APPELLANT

Vs

Collector of Kamrup Gauhati and Another, etc.

RESPONDENT

Date of Decision : 26-02-1980

Acts Referred:

Evidence Act, 1872 — Section 64

Land Acquisition Act, 1894 — Section 23(1), 4(1)

Citation : AIR 1980 Guw 68

Hon'ble Judges : N. Ibotombi Singh, J; Baharul Islam, J

Bench : Division Bench

Advocate : S.K. Goswami and K.R. Pathak, in F.A. No. 7 of 1972 and M.K. Sharma, Govt., in F.A. No. 10 of 1972, for the Appellant; Jr. Govt. Advocate, (in F.A. No. 7 of 1972) and K.R. Pathak, (in F.A. No. 10 of 1972), for the Respondent

Final Decision : Dismissed

Judgement

N. Ibotombi Singh, J.—These two appeals are directed against the common Award, dated July 29, 1971 of the Assistant District Judge No. 2 at Gauhati in Misc. L. A. Cases 17 and 18 of 1969, being references u/s 18 of the Land Acquisition Act, 1894 (hereinafter called "the Act"). Both the appeals, one by the claimant and another by the Collector, are heard together and disposed of by this common judgment.

2. The facts giving rise to these appeals are : agricultural land of 18 bighas 4 kathas covered by dag Nos. 146, 136. 131 and 130, 129 of K. P. Kha No. 2 of village Madgharia No. 2 in Beltola Mouza in the name of late P. G. D."Ombrain, predecessor-in-interest of appellants in F. A. No. 7 of 1972 and another plot of agricultural land measuring 2 bighas 3 kathas 7 lechas covered by Dag No. 147 of K. P. Patta No. 1 of the same village and mouza, in the name of the respondent in F. A. No. 10 of 1972, were acquired by the Government of Assam for the India Carbon under the Act. Notification dated, March 25, 1967, u/s 4(1) of the Act for acquisition of the aforesaid plots of land was issued and published

in the Government Gazette. This was followed on August 8, 1967, by a notification u/s 6 of the Act. The Collector by his award made on 2-3-1968, gave compensation at the rate of Rs. 2,000/-per bigha. The claimant in Misc. L. A. Case No. 17 of 1969 claimed compensation @ Rs. 15,000/- per bigha, and the respondent in Misc. L. A. Case No. 18 of 1969 claimed @ Rs. 10,000/-per bigha. Both the claimants received payment under protest. Dissatisfied with the award, the erstwhile owners approached the Collector for reference to the Court u/s 18 of the Act. The two reference cases above u/s 18 of the Act were heard together by the Assistant District Judge No. 2, Gauhati, who by his award, dated July 29, 1971, enhanced the quantum of the compensation at the rate of Rs. 4,000/- per bigha. He also awarded solatium at the rate of 15% on the compensation amount. The Collector was allowed two months" time from July 29, 1971 to pay the excess amount, failing which the claimants would be entitled to get interest @ Rs. 6 per cent per annum from that date till realisation. Aggrieved by the enhanced award of the Assistant District Judge No. 2, Gauhati, both the parties, the claimants in Misc. L. A. Case No. 17 of 1969 and the Collector have come up in appeal to this Court.

3. It is well settled that the measure of compensation to be awarded to the owners of Immovable property u/s 23(1) of the Act is designed to award just and fair compensation for the acquisition. Compensation is to be awarded on the basis of the market value prevalent on the date of the publication of the Notification u/s 4(1) of the Act. The meaning of the expression "market value" was explained by the Supreme Court in *Khajen Fijuddin v. State of Andhra Pradesh* (Civil Appeal Case No. 176 of 1962 decided on April 10, 1963 (SC)) and it was affirmed by the Supreme Court in the later case, *Padma Uppal and Others Vs. State of Punjab and Others*, It was laid down as follows:--

"Under Section 23(1) of the Act in determining the amount of compensation, the court shall take into consideration the market value of the land at the date of publication of the notification u/s 4(1) thereof. Decided cases have laid down that the said market rate must be determined by reference to the price which a willing vendor might reasonably accept to obtain from a willing purchaser. For ascertaining the market rate the court can rely upon such transactions which would afford a guide to fix the price. Price paid for a land acquired within a reasonable time from the date of acquisition of the land in question would certainly be the best piece of evidence. Price paid for a land possessing advantage similar to those of the land acquired in or about the time of notification will also supply the data for assessment of compensation."

(Underlining supplied).

4. Keeping in view the above principle, we proceed to examine the question as to whether the approach of the reference Court has been correctly made in raising the quantum of the compensation @ Rs. 4,000/- per bigha, modifying that of the Collector.

5. Before the reference Court, the claimants, in support of their claim, examined 5 witnesses and produced two sets of documents viz (i) certified copies of 6 sale deeds. and (ii) sales statements, Ext. 9, in previous L. A. Case No. 36 of 1965-66 for acquisition of lands in Madhgharia No. 1 of the 6 sale deeds, two deeds, Ext. 1 dated 3-8-1962, for sale of one bigha of land at Rs. 7,500/-, and Ext. 8 dated 2-7-1962, for sale of one katha of land at Rs. 2,000/-, are of the village Madhgharia No. 1, and the rest of the sale deeds relate to lands in the village Madhgharia No. 2. Ext. 2, dated 25-9-1962, certified copy of the sale deed for purchase of 7 bighas 2 kathas 10 lechas situate in Noonmati by the India Carbon at Rs. 26,250/- @ Rs. 3,500/- per bigha was also produced and relied on by the claimants. The reference Court held the compensation awarded by the Collector too low. In regard to the claim of the claimants, the reference Court came to the finding that the sale transactions referred to and the sales statement Ext. 9, in L. A. Case No. 36/65-66 for acquisition of 5 bighas 2 kathas 11 lechas under order, dated 19-4-1968, could not afford a safe guide for determination of the market value of the acquired lands. It held that the lands in Exts. 1 and 2 are of two different villages, Madhgharia No. 1 and Noonmati; there was no evidence to show that the lands were of the same quality having same potentiality with the acquired land in Madhgharia No. 2. It also held that there was no evidence to show that the lands under Ext. 3, Ext. 6 and the acquired lands are comparable in quality. By Ext. 7 dated 29-11-1963, one katha of land was shown to have been sold at Rs. 2,000/-, and by Ext. 8 dated 2-7-1962. one katha of land was also sold at Rs. 2,000/- that is, at the rate of Rs. 10,000/- per bigha. The Court refused to accept these two sale deeds, Ext. 7 and Ext. 8, as a good guide for reasons inter alia, viz (a) the sale of a comparatively small area cannot be basis for market value of a large area; 1980 Gauhati/4 (2) & 5 (1), XI G--21-22 (b) none of the parties to the deeds or attesting witnesses was examined to show that they were bona fide transactions; (c) evidence in regard to the situation and locality of the lands in Ext. 7 and Ext. 8 was not before the Court. The Court also did not take into consideration sales-statement, Ext. 9. as furnishing comparable data to determine the market value of the acquired lands, in the view that (i) the lands in L. A. Case No. 36/65-66 were acquired for a different project, (ii) they are situated in another village Madhgharia village No. 1; (iii) some of the lands were basti lands; and (iv) there was no evidence to show that those lands and the present lands are of same quality having same potentiality.

6. P. W. 3, Brahmananda Chou-dhury, who was the power of attorney holder stated that the claimant D'Ombrain, had sold in 1960 to 1963 many lands in that area at prices ranging from Rs. 800/- to Rs. 1,000/- per bigha. On the basis of his statement, the reference Court held that when land was sold in 1963 even at the rate of Rs. 800/- per bigha, the price could not suddenly rise up to Rs. 12,000/-per bigha in 1967 for similar paddy lands. On behalf of the Collector, two witnesses were examined. But their evidence has no relevancy to the valuation of the acquired lands. Considering, however, the nature, situation of the acquired lands, their advantages and disadvantages and also taking into account the

general trend of rise of price of lands, the market value of the acquired lands was assessed at the rate of Rs. 4,000/- per bigha modifying thereby the award of the Collector.

7. We do not find materials on the record to disturb the findings of the reference Court. In a comparable sale transaction with reference to which the market value may be determined, there are certain factors which are to be considered. The underlying principle of fixing the market value with reference to comparable sales is to reduce the element of speculation. In a comparable sale, the features are : (i) it must be within a reasonable time of the date of notification u/s 4(1) of the Act. (ii) it should be a bona fide transaction; (iii) it should be a sale of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. Before such instances of sales can be considered, there must be material evidence either by the production of the sale deeds or by examining the parties to the deeds or persons having knowledge of the sales, to prove that the transactions are genuine. See the observation of the Supreme Court in *Collector, The Collector, Raigarh Vs. Harisingh Thakur and Another*,

8. We have perused the evidence, and we are in agreement with the reference Court that the sale transactions relied on by the claimants cannot be regarded as a safe guide for determination of the market value of the acquired lands. As pointed out by the reference Court, the factors on which the basis of a sale transaction could merit consideration as a comparable sale are lacking in the case. Except the evidence of P. W. 3, there is also no other evidence worth mentioning in the case.

9. That apart, except Ext. 1, the other documents exhibited in the case have not been proved according to law. It is a settled law that mere marking of an exhibit does not dispense with the proof of document. See *Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Sattayya and Others*, Admittedly in the instant case, no witness was examined for proof of the document relied on by the claimants. The certified copies of the sale deeds were simply produced and exhibited without proof, These documents are not admissible in evidence. So also the sales-statement, Ext. 9. In many cases, it appears to be a practice of the Land Acquisition Officer to rely on such sales-statements prepared by an official without examining either the vendors or the vendees or the persons attesting the sale deeds mentioned in the sale statement, or persons having knowledge of the sales. Such a sales-statement by itself is not admissible in evidence and cannot be relied on without examining any of the above persons. The Collector is to prove the transactions to show the price of comparable sites in the determination of the market value of the acquired land under the Act. See the observation of the Supreme Court in *Collector, Raigarh (supra)*.

10. In the instant case, the reference Court in enhancing the quantum of compensation has taken into consideration the potential value of the lands acquired. The fact that lands in question have potential value as building sites is evident from the testimony of P. W. 3. According to his evidence, the acquired

lands He to the south of Gauhati-Sonarpur diversion new road which was constructed in 1960-61. There is Railway Marshalling Yard to the north of the acquired lands, and to the north of that there is Refinery, To the east and north of the acquired land, there lies the India Carbon's main project which was started in 1962-63. The new Gauhati Railway Station lies near the acquired lands. On the west of the acquired land there is the Railway Marshalling Yard Staff Quarters constructed in 1959-60. In this respect, we have looked at the cadastral map of village Madhgharia No. 2, Ext. 4 and also the sketch map Ext. C of the acquired land from the record of the reference Court, though it is not included in the paper book in the interest of justice.

11. After consideration of the evidence of P. W. 3 that lands in that area were sold in 1960 to 1963 at prices from Rs. 800/- to Rs. 1,000/-per bigha, and taking into account the several factors as to its condition and situation the user to which it is put or is reasonably capable of being put, its suitability for building purpose, its proximity to industrial area, we confirm the enhanced award made by the reference Court to be just and reasonable. We, however, direct that the Collector shall pay interest on the excess amount at the rate of 6 per cent per annum from the date on which he took possession of the land to the date of payment in the Court.

12. In the result, we do not find any merit in both the appeals. With the above modification, both the appeals are dismissed. The parties are left to bear their own costs.

Baharul Islam, C.J.

13. I agree.