

(2016) 04 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal Nos. 2972-2973 of 2012

Punjaji Gopalji & Ors.

APPELLANT

Vs

Spl. Laq Officer & Ors.

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2016) 4 Scale 17 : (2016) 13 SCC 84

Hon'ble Judges : Ranjan Gogoi;Prafulla C. Pant, JJ.

Bench : Division Bench

Advocate : Pritesh Kapur, Ms. Jesal Wahi, Kabir Hathi, (For Ms. Hemantika Wahi), Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. Civil Appeal Nos. 2972-2973 of 2012 have been filed by the landowners - claimants seeking interference with the reduction of land acquisition compensation as made by the High Court by its judgment and order dated 25th July, 2011 under challenge. Civil Appeal Nos. 2974-2975 of 2012 have been filed by the Special Land Acquisition Officer aggrieved by the part of the order of the High Court awarding rent compensation in favour of the landowners for unjust deprivation of the possession and use of the land in question prior to the acquisition thereof by notification dated 18th April, 2002 under Section 4 of the Land Acquisition Act, 1894 (for short "the L.A. Act").

2. The appellants - landowners and/or their predecessor-in-interest were the owners of the agricultural land located in village Dholakuva. In the year 1958, the Bombay Inferior Village Watan Abolition Act, 1958 was enacted by which occupants of the land were required to pay occupancy price and on such payment the land was to be re-granted to the occupants. The appellants - landowners and/or their predecessor-in-interest apparently paid the occupancy price though the land was neither re-granted nor physical possession of the same was handed over. In the year 1966, the jurisdictional Collector directed the land

to be transferred to the State P.W.D. by correction of the land records and since then i.e. 1966 the land had remained in the possession of the State Government.

3. In the year 1999, the landowners moved the High court by way of writ petition and the High Court ordered the matter to be referred to a Committee to be constituted to examine the matter. Thereafter a Committee known as the Jasol Committee was constituted which submitted a report dated 22nd June, 2001 to the effect that the handing over of possession of land to the State P.W.D. in the year 1966 was illegal and unauthorized. However, as in the meantime i.e. 29th November, 1999 the land in question along with other lands measuring 192.5 acres, in all, was transferred to Infocity, the Jasol Committee directed that an acquisition proceeding should be initiated for acquisition of the land of the appellants/landowners which measured about 20,000 square meters (roughly about 5 acres). Pursuant thereto the Notifications under Section 4 and Section 6 of the L.A. Act were issued on 18th April, 2002 and 28th June, 2002, respectively. The award came to be passed on 30th October, 2003 granting compensation at the rate of RS. 115/- per square meter. The Reference Court enhanced the compensation to RS. 3,500/- per square meter and in appeal by the Special Land Acquisition Officer the High Court, as already noticed, by the impugned order dated 25th July, 2011 had scaled down the compensation to RS. 770/- per square meter. For unauthorized occupation of the land from the year 1966 the High Court by the impugned judgment directed payment of rent in favour of the landowners by the State on the basis of the principles of calculation specifically enumerated in the order of the High Court. Aggrieved by the reduction of compensation the landowners are in appeal i.e. Civil appeal Nos.2972-2973 of 2012 whereas aggrieved by the award of rent compensation the Special Land Acquisition Officer has filed the connected appeal i.e. Civil Appeal Nos. 2974-2975 of 2012.

4. We have heard Shri Jaideep Gupta, learned Senior Counsel appearing for the landowners and Shri Pritesh Kapur, learned counsel for the Special Land Acquisition Officer.

5. Issue with regard to rate of compensation:

A reading of the order of the High Court indicates that after discarding the exemplars relied upon by the landowners and also the report of the Chief Architect and Town Planner, Roads and Buildings Department, dated 11th September, 2002 and the subsequent letter of the said Authority dated 16th November, 2002 (Exhibits 26 and 32 respectively), which were relied upon by the Reference Court, the High Court thought it proper to average the three rates at which the land was allotted to the Infocity. The said rates are as follows:

77 acres

-

Rs. 101 per acre

39 acres

-

Rs.600 per sq. mtr.

34 acres

-

Rs.1,485 per sq. mtr.

On the said basis the High Court came to the finding that the average of the allotment price is RS. 492.61 per square meter which was rounded off to RS. 500/- per square meter. Addition of 20% on account of size of the land (small area) and another one-third (1/3rd) of the market price on account of the fact that the rates of allotment of the Infocity land were concessional, was allowed thereby taking the value of the land to RS. 800/- per square meter. The High Court then thought it proper to deduct 30% from the said amount of RS. 800/- per square meter on account of the fact that the land was agricultural land. The figure arrived at on the said basis is RS. 560/- per square meter. Thereafter, the High Court thought it proper to add appreciation at 12.5% per annum for three years (i.e. 37.5%) as the allotment of land for the Infocity was in the year 1999 whereas the Section 4 notification in the present case is of the year 2002. Accordingly, the High Court arrived at the figure of RS. 770/- per square meter as the entitlement of the landowners for compensation.

6. Out of the several exemplars relied upon on behalf of the landowners in the course of the elaborate arguments made by the learned Senior Counsel, we find three such documents to be of relevance to the present case. The first is a Government Resolution dated 16th March, 2001 (Exhibit 72/74) by which the lands bearing Survey Nos. 104, 107, 109 and 110 situated at Indroda village, Gandhi Nagar District were sought to be acquired at the rate of RS. 4,880/- per square meter. The date of the acquisition i.e. 16th March, 2001 is in close proximity with the date of Section 4 Notification in the present case and so is the Indroda village, Gandhi Nagar District as demonstrated by the maps in question which formed a part of the record of the appeals before us.

7. The other two relevant document are the report of the Chief Architect and Town Planner, Roads and Buildings Department dated 11th September, 2002 which was submitted to the Special Land Acquisition Officer in response to the latter authority's query made by letter dated 22nd July, 2002 (Exhibit 26). In the said report, the Chief Architect and Town Planner had mentioned that the minimum market value of the land in question would be RS. 2,000/- per square meter. On being asked to justify the assessment of the value of the land made by him at RS. 2,000/- per square meter, a letter dated 16th November, 2002 (Exhibit 32) was issued giving reasons i.e. the location of the land; the facilities available; the potentiality of the lands; and also the fact that for adjacent areas covered by Sector 1 and 2 of Infocity the land price fixed for allotment for

residential purpose was between RS. 3,060/- and RS. 3,340/- per square meter. Though the learned counsel for the appellants - landowners has sought to rely on another Resolution of the State Authority for allotment of about 100 acres of land near River Sabarmati to the Indian Air Force at the rate of RS. 7,200/- per square meter, we do not consider it proper to take into account the said document as the same was not a part of the proceedings before the Reference Court and the prayer before the High Court to take the same on record had remained unanswered. That apart, the said Resolution being dated 3rd October, 2003 is subsequent to the Section 4 Notification in the present case.

8. Even going by the Government Resolution dated 16th March, 2001; the report of the Chief Architect and Town Planner dated 11th September, 2002 and subsequent letter dated 16th November, 2002 we do not see how the Reference Court can be faulted in relying on the said documents in determining the value of the land at RS. 3,500/- per square meter. The aforesaid rate i.e. RS. 3,500/- per square meter is, in fact, substantially borne out from the letter of the Chief Architect and Town Planner dated 16th November, 2002 (Exhibit 32) insofar as the reference in the said letter to the rate of allotment for land in Sector 1 and 2 of Infocity is concerned. The price of acquisition mentioned in Exhibits 72/74 also lends credence to the above quantification. The above apart, what cannot be ignored is that from the evidence of witness No.2 examined on behalf of the Land Acquisition Officer it is clear and evident that the rates of allotment of the 192.5 acres of land to the Infocity, which formed the basis of the order of the High Court, were concessional rates. This is a fact that has also been acknowledged by the High Court in the impugned order. In fact, the High Court had thought it proper to grant enhancement at the rate of one-third (1/3rd) of the market price on the said account.

9. We do not see how the High Court, on the reasons assigned, could have refused to consider the aforesaid vital evidence on record and instead rely on the rates of allotment of land in the Infocity. The rates of allotment mentioned earlier are strikingly disproportionate to the market value thereof at a mere glance, irrespective of the evidence forthcoming on this score, details of which have also been noticed. The aforesaid being the sole basis of the High Court's order and the other evidence on record being what has been noticed above, we are of the view that the basis on which the High Court had come to the conclusion that the value of the land should be RS. 770/- per square meter is plainly unacceptable. Going by the materials on record as stated above and the opinion of the Chief Architect and Town Planner and also the fact that the rates of allotment of Infocity land are concessional rates we are of the view that the High Court was not justified in reversing the compensation determined by the Reference Court. Accordingly, insofar as the compensation is concerned, we deem it proper to set aside the order of the High Court and restore the compensation awarded by the learned Reference Court. We must, however, add herein that the valiant attempt on the part of the learned counsel for the Special Land Acquisition Officer to salvage the order of the High Court, even it be partially, by seeking the "standard

deduction" of one-third (1/3rd) from the price of RS. 2,000/- per square meter mentioned in the report of the Chief Architect and Town Planner dated 11th September, 2002 cannot have our approval and the determination of the rate of compensation above is not as per any specific exemplar but has been found to be reasonable on a cumulative consideration of the materials on record. Viewed thus, the reliance placed by the learned counsel on the decision of this Court in *Radha Mudaliyar v. Special Tahsildar (Land Acquisition)*, Tamil Nadu Housing Board [(2010) 13 SCC 384] is not appropriate.

10. Issue with regard to rent.

Learned counsel for the Special Land Acquisition Officer may be correct in his assertion that in an appeal against the award of the Reference Court, the High Court was exercising jurisdiction under the L.A. Act and, therefore, ought not to have determined the entitlement of the landowners to rent for the period of unauthorized occupation. The High Court, according to the learned counsel, ought to have left the landowners with such other remedies as may be open to them in law to claim compensation on account of the unauthorized occupation.

11. The factum of unauthorized occupation and the period thereof is not in dispute. If that be so, the entitlement of the landowners to rent/compensation for such unauthorized occupation will not be in serious doubt though the quantum thereof may occasion a debate and raise issues. Taking into account the long period of time that has elapsed; the period of unauthorized occupation and also the fact that the learned counsel for the appellants in Civil Appeal No.2974-2975 of 2012 (i.e. Special Land Acquisition Officer) has not been able to apprise the Court the precise quantum of rent/compensation awarded by the High Court so as to enable the Court to arrive at a conclusion as to the extent of prejudice, if any, that has been caused to the appellants (Special Land Acquisition Officer), we do not consider the facts of the present case to be appropriate for interference with the compensation awarded on account of rent and thereby relegate the landowners to another round of litigation. We, therefore, close the issue with regard to compensation on account of rent on the terms on which the rent has been awarded by the High Court making it clear that the enhanced compensation of RS. 3,500/- per square meter as awarded by us would not require any re-determination of the amount of rent/compensation, the quantum of which will be worked out strictly in accordance with the order of the High Court.

12. Consequently and in the light of the above, while allowing the Civil Appeal Nos. 2972-2973 of 2012 filed by the landowners we dismiss the Civil Appeal Nos. 2974-2975 of 2012 filed by the Special Land Acquisition Officer.