(2007) 07 DEL CK 0209

In the Delhi High Court

Case No : L.A. App. 417-420 of 2006

Raj Devi and Others — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Citation : (2007) 145 DLT 438 : (2007) 3 ILR Delhi 195

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Sunita Jain and J.N.S. Tyagi, for the Appellant; Sanjay Poddar, for LAC and Charul Sarin, for DDA, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—This batch of Appeals assails the Award No. 245/1986-87 in respect of Village Poothkalan passed by the Additional District Judge, Delhi. The learned Additional District Judge has implemented the decision of the Supreme Court of India in Union of India v. Ram Phool : (2003)10SCC167 and has awarded compensation at the same rate i.e. Rs. 18,500/- per bigha. Ram Phool''s case was in respect of Notification dated 11.12.1981 whereas the Notification in question before us is dated 13.2.1981. In other words for a later Notification, the compensation has already been determined by the Apex Court and would, Therefore, prima facie apply to earlier Notifications also.

2. Mr. Khosla, learned Counsel appearing for the Appellants has raised two contentions in an attempt to persuade us to charter of course different to that in Ram Phool''s case. Firstly, he relies on a transaction of sale by which a parcel of land was sold by the DDA to the Union of India for construction of a Police Station, in which the compensation was substantially higher. It is his contention that since the land is situated in the same village, and since this transaction had not been disclosed in the previous proceedings which have been decided by the Supreme Court, this was sufficient reason for us to grant enhanced compensation.

3. So far as this contention is concerned, what is relevant is that the Notification is dated 20th August, 1976 in respect of the land which was sold by the DDA to the UOI for construction of a Police Station. There is, Therefore, no identity or similarity in the two lands since the Appellants'' land is agricultural in nature and the land transferred by the DDA was developed land. The price/value of the latter is bound to be much higher than the former.

4. The second contention is that the compensation determined for the Village Rithala should also be awarded in the present case. It is not controverter that Rithala and Poothkalan are contiguous to each other. Learned Counsel for the Appellants, however, submits that the Notification for both villages is the same in all respects including the purpose for which the acquisition has gone through i.e. "for construction of a supplementary drain".

5. We are of the view that the purpose of acquisition is not at all relevant for determining the quantum of compensation. On the question of contiguity of the two villages, there is a plethora of precedents on both sides of the watershed. Our attention has been drawn to Division Bench judgments in Union of India Vs. Nand Kishore and Others, , Shri Bharat Singh and Others Vs. Union of India (UOI), and the decision of the Supreme Court in Kanwar Singh and Others Vs. Union of India, , paragraph 9 of which states that mere fact that two villages are contiguous to each other, would not be sufficient reason for granting the same compensation to owners of lands in these two villages.

6. Learned Counsel for the Appellants also relies on Nand Ram v. The State of Haryana, Civil Appeal Nos. 3147 of 1988, in which while disposing of the SLP by the Orders dated 6th September, 1988, it has been observed that the "State cannot refuse to pay in respect of lands acquired under the same notification compensation at the reasonable market value reflected in the compensation awarded to the land owners whose similarly-situated lands had been acquired under the same notification for the same purpose by the Notification of the same date." However, these very observations would militate against the Appellants inasmuch as they are not seeking parity with the compensation paid to persons in their own village, already finally calculated by the Apex Court, but in a village adjoining thereto.

7. The law relating to fixation of compensation has been dealt with in detail in Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, in which it has been opined "that one of the modes of computing the market value may be based on a judgment or award in respect of acquisition of similar land, subject of course to such increase or decrease thereupon as may be applicable having regard to the accepted principles laid down Therefore and as may be found applicable."

8. In Ranvir Singh and Another Vs. Union of India (UOI), , the same propositions of law have been enunciated. In paragraph 33, however, it has been noted "the burden of proof that the acquired land and the land covered by sale transaction

bear similar or some potentialities or advantageous features is also on the claimant." Mr. Khosla has taken us through the evidence that has been recorded in these matters, consequent on their remand. None of the witnesses, in our view, have given any cogent reasons why the land price in Poothkalan must be identical to that in the adjoining village of Rithala. The burden of proving this point rested on the Appellants and in our considered view, they have not adequately discharged it. On the contrary, one of the Petitioners'' witnesses has deposed that factories were in existence in Rithala. Mr. Poddar has taken pains to draw our attention to the fact that the price of land in Village Rithala has always been higher than the prices determined for Village Poothkalan. However, Mr. Khosla submits that so far as the fixation of compensation by the Land Acquisition Collector is concerned, the price initially fixed for Village Poothkalan was higher than that of Village Rithala. Be that as it may, these rates were increased in appellate proceedings. In any event, in view of the determination of the price of the land for the purposes of compensation for its acquisition fixed by the Hon''ble Supreme Court, the burden of proving that the Appellants'' lands should fetch a higher price than that of its erstwhile neighbours within the same village, lay heavily on the Appellants and they have not discharged it sufficiently.

9. Mr. Khosla submits that even assuming that the land transfer conveyed by the DDA for the purposes of construction of a Police Station was on fully developed land, the proper procedure to be followed was to fix the price of the lands of the Petitioners at the rate applicable to the Police Station land and, thereafter, make deductions, as has been laid down in Rameshwar Solanki Vs. Union of India, .

10. The complete answer to this argument is available in paragraph 26 of Ranvir Singh''s case (supra) where it has been opined "the High Court committed manifest errors. The market value of a fully developed land cannot be compared with a wholly underdeveloped land although they may be adjoining or situated at a little distance. For determining the market value, it is trite, the nature of the land plays an important role."

11. In our considered opinion, the Appeals must be decided at the same rate as was granted in Ram Phool''s case (supra).

12. The Appeals and all the pending applications are dismissed. The parties shall bear their respective costs.

