

(2011) 01 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 1373, 1229, 1230 and 1231 of 2001
and Civil Cross Objection No. 8 of 2005

Rajasthan State Industrial Development and Investment
Corporation Ltd.

APPELLANT

Vs

Vijendra Singh and Others

RESPONDENT

Date of Decision : 01-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Land Acquisition Act, 1894 — Section 11, 18, 20, 23, 24

Citation : (2011) 4 RLW 2862

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Advocate : Ajeet Bhandari for RIICO, for the Appellant; S.C. Gupta, for the
Respondent

Final Decision : Dismissed

Judgement

M.C. Sharma, J.—Since all these misc. appeals and the cross-objection relate to common judgment of District Judge, Jhunjhunu dated 31.5.2001 passed in Reference Applications Cases Nos. 253/1998, 246/1998, 239/1998 and 251/1998 whereby the DJ enhanced the compensation, they are being disposed by this common judgment. The facts have been set out in the impugned judgment and hence I am not repeating the same here except wherever necessary.

2. The facts in brief are that a Notification u/s 4(1) of the Land Acquisition Act, 1894 was issued on 18.7.95 for acquiring various lands in khasra Nos. 264/1, 264/2 and 264/3 measuring 30 Bighas in village Khidarsir, Tehsil and District Jhunjhunu. In the declaration u/s 6 only 7 bighas of khasra No. 264/3 was ultimately acquired. The Land Acquisition Officer passed an award dated 16.9.97 after considering all the aspects of the matter. The land was valued at Rs. 28600 per bighas. The Land Acquisition Officer in its preliminary award dated 16.9.97 has awarded he compensation for 7 bighas of land as under:

3. The preliminary award was approved by the State Government and the Land Acquisition Officer passed the final award on 11.3.98. The land owners submitted reference to the Land Acquisition Officer which was referred to the District Judge, Jhunjhunu, who consolidated the same with other references and after recording the evidence by a common order dated 31.5.2001 decided all the references and it was held that the Land Acquisition Officer has not correctly valued the land and he fixed the market price of the land at Rs. 100 per sq. yards and on that basis awarded compensation to the appellants by he land acquisition officer was Rs. 2,72,415/- but the same was increased to Rs. 16,64,694/- by the DJ.

4. Mr. S.C. Gupta, learned counsel appearing for the claimants Vijendra Singh and others, filed cross-objection for modifying the order of the DJ dated 31.5.2001 to the extent of award of interest and further holding that the awardees respondents are entitled to interest on whole of the amount of compensation of Rs. 16,64,694/- from 22.12.95 @ 9% and thereafter from 22.12.96 till the date of payment of compensation to the awardees @ 15% as per provisions of Section 34 of the Act.

5. Against the said order of the DJ, these appeals and cross-objection have been filed.

6. Mr. Ajeet Bhandari, appearing for the RIICO has specifically pointed out that the determination of the compensation on square yard basis by the DJ is wrong and it should be on the basis of per bigha. The DJ has granted the compensation on the basis of per sq yards basis while the Land Acquisition Officer has calculated the compensation on the basis of per bigha. The learned counsel has submitted that the disputed land is an agriculture land having a large area which cannot be converted into abadi nor any roads have been demarcated. The market value of large chunk of land cannot be calculated on the basis of the valuation of small piece of land. The DJ had relied upon Ex. 8 and Ex. 15. Ex. 8 and Ex. 15 relate to plots of land measuring 299.78 sq. yards each and the valuation made by the Sub-Registrar on these sale deeds can not be taken for compensation of disputed land which is a very large chunk. Mr. Bhandari has stated that the land will be used by the RIICO for industrial purposes and the same has been acquired for industrial area purposes, thus the order passed by the DJ determining the amount on the basis of per sq. yard, which is a residential purposes cannot be made the basis for a large chunk land to be used by the RIICO for industrial purposes. Reliance has been placed on State of U.P. and another Vs. Rajendra Singh, and Land Acquisition Officer, Hyderabad and Others Vs. Male Pullamma and Others, and The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, .

7. Mr. Bhandari in these circumstances requested that the matter may be remanded back to the District Judge for deciding as a fresh in the light of the judgments of the Apex Court.

8. Mr. S.C. Gupta, learned counsel appearing for the respondents argued that the

order of the DJ is just and proper but he has filed cross-objection stated that the respondents are entitled to interest as per Section 34 of the Land Acquisition Officer and to that extent the respondents are entitled to claim the interest. Mr. Gupta has argued that he has also filed applications in SBCMA Nos. 1231/2001 and 1373/2001 for award of land in lieu of compensation as per Govt. Notification dated 13.12.2001, 27.10.2005 and 20.6.2007.

9. I have considered the submissions of the learned counsel for the parties.

10. In *The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others*, in paras 6, 7 and 8 held as under:

6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to a few decisions of this Court in *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another*, and *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*.

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may be in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

8. In the case of *Suresh Kumar Vs. Town Improvement Trust, Bhopal*, in a case under the Madhya Pradesh town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of AIR 1939 98 (Privy Council) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification u/s 4(1). Similarly, Section 24 of the Act

enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector u/s 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality.

11. In *Land Acquisition Officer, Hyderabad and Others Vs. Male Pullamma and Others*, , the Apex Court held as under:

When Ex. A/4 is excluded from consideration, the only question that arises is: whether the lands could be determined as possessing building value in hypothetical layout, as contended by Shri Venugopal Reddy. In *P. Ram Reddy* case the lands were abutting the developed area in which the building plots were sold for those purposes, as was admitted by the Land Acquisition Officer which was noted in the judgment. In view of that development, this Court had laid down the criterion in determining the market value. The ratio thereof has no application to the facts in this case. The question of deduction would arise only when the lands are found to have potential value and there is evidence of development in the neighbourhood. Facts, as found by the Reference Court and also the Land Acquisition Officer, clearly indicate that there was no development in the area or in the neighbourhood as on the date of the notification. Under those circumstances, the High Court was wholly wrong in determining the market value treating the acquired lands as possessing potential value. The next question is: what would be the just and adequate compensation which the lands are capable of fetching? In view of the findings of the Reference Court that the lands are agricultural lands, we think that just and proper compensation would be Rs. 40,000 per acre. With regard to the value of the structures, the remand order is maintained. The Court will determine the same according to law.

12. In *P. Rajan and Another Vs. Kerala State Electricity Board and Another*, , the Apex Court held as under:

It is a well-settled legal position that when a large extent of land is acquired, determination of compensation on the foot of a cent, square yard or square foot is a wrong principle. This Court repeatedly emphasized that the principle of fixation on acreage basis would be the correct principle. The other principle is that if the land acquired is situated in a developed area and is converted into buildings in a colony after obtaining sanction from the competent authority or is situated in a well-developed area like in the heart of a commercial center, determination of the compensation could be on square yard basis after giving due deduction according to law. Determination on square foot basis would be confined only to highly developed commercial land or land situated at a place in the heart of a city like Nariman Point in Bombay or Connaught Place in Delhi. This principle of determination of compensation on square foot basis would be

justified.

13. In State of U.P. and another Vs. Rajendra Singh, , the Apex Court held as under:

3. It is settled law that in reference u/s 18 claimant being dissatisfied with the award of the Land Acquisition Officer, when the proceedings are taken u/s 20 of the Act, burden is always on the claimant like plaintiff to adduce reliable and acceptable evidence to prove proper, just and adequate compensation to the acquired land. If such an evidence was adduced, burden shifts on to the State to disprove it. It is further settled law that the sales transactions filed either in the narration of award or documents, without examination of either the vendee or the vendor is not evidence. It is the duty of the Court to carefully assess the evidence on the touchstone of human conduct and prudent purchaser. Admittedly, in this case, though reference to four sales transactions has been made by the reference Court, neither the vendee nor the vendor was examined nor was it established that the sale consideration which passed thereunder is true and the prices for which the sales came to be executed were real ones between willing vendor and willing vendee. Equally, burden is on the claimant to establish that the lands relating to the sales transactions and the lands under acquisition are possessed of same value, nature of the lands are same and capable of fetching the same price, and so also other situations as comparable features. Unfortunately, neither the reference Court nor the High Court has looked into this legal aspect of the matter and proceeded on the terms of those sales deeds. It is equally settled Jaw that the Courts should avoid feats of imagination to fix fanciful price, and sit in the armchair of willing vendee to see whether a prudent purchaser acting in normal market conditions would be willing to offer the price which are mentioned in the sale instances. The Court should clearly and carefully evaluate the evidence and determine market value avoiding needles burden on the exchequer and accord adequate and just compensation to the acquired land. The very approach adopted by the Courts below is beset with illegalities and, therefore, we do not find any legal basis to consider the evidence on record to determine proper and adequate compensation in respect of the acquired land.

4. Under these circumstances, we are left with no option but to set aside the decree and award of the reference Court as well as of the High Court and remit the matter to the reference Court to give an opportunity to the claimant as well as the Land Acquisition Officer to adduce evidence in the case and then to determine the compensation according to law.

For these reasons, in the light of the judgments of the Apex Court quoted above, I set aside the order of the DJ dated 31.5.2001 in Reference Cases Nos. 253/1998, 246/1998, 239/1998 and 251/1998 and I remit the matter to the reference Court i.e. DJ Jhunjhunu to decide the matter as a fresh within a period of six months from the date of appearance. Both the parties are directed to appear before the District Judge Jhunjhunu on 26.8.2011, who shall decide the

matter as a fresh in the light of the judgments of the Apex Court quoted above as early as possible. The cross-objection filed by the respondent shall also be considered by the DJ. The Misc. appeals stand disposed of accordingly. The applicants filed applications in SBCMA Nos. 1231/2001 and 1373/2001 for award of land in lieu of compensation as per Govt. Notification dated 13.12.2001, 27.10.2005 and 20.6.2007. The applicants in these two misc. appeals shall be at liberty to file fresh applications before the DJ, if permissible under the law. The appellants in these appeals have also filed application under Order 41 Rule 27 CPC for taking documents on record. The appellants shall also be at liberty to file applications under Order 41 Rule 27 CPC before the DJ, if permissible under law. The parties are directed to bear their own costs.