
(1991) 11 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 100, 101 and 102 of 1985

Rajasthan State Industrial Development Corporation

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-11-1991

Acts Referred:

Rajasthan Land Acquisition Act, 1953 — Section 4, 6

Citation : (1991) 2 RLW 511 : (1991) 2 WLN 279

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Judgement

B.R. Arora, J.—These three appeals relate to the determination of the amount of compensation with respect to the lands of the claimants situated in the municipal limits of the town of Doongarpur, which were acquired by the State of Rajasthan for the Rajasthan State Industrial Development and Investment Corporation, Jaipur. As the controversy in these appeals centered on the question of the valuation of the lands under acquisition, which are of same quality and nature and, therefore, all the appeals can be decided by common judgment.

2. The State of Rajasthan acquired for the Rajasthan State Industrial Development Corporation (RIICO) three Bighas of land belonging to Devi Lal and Gordhan Lal, 5 Bighas 16 Biswas of land belonging to Shiv Lal and 36 Bighas 18 Biswas of land belonging to Bhadra Bahu, situated within the municipal limits of Doongarpur. The Notification u/s 4 of the Act was issued by the State of Rajasthan, which was published in the Rajasthan Gazette on June 18, 1977. As there was some error regarding the description and situation of the property and therefore, the amended Notification was issued on February 22, 1978. After the issuance of the Notification under Sections 4 and 6 of the Act, the possession over the land was taken by the State of Rajasthan from the claimants on May 19, 1978. Thereafter notices u/s 9 of the Act were issued to the persons interested in the land for the determination of the compensation payable u/s 11 with respect to the land acquired. The claimants filed their claims before the Collector (Land

Acquisition Officer), Doongarpur, and the learned Land Acquisition Officer, by three separate awards, determined the compensation on the basis of the categories of the land entered in the revenue record. In case of claimant Devi Lal and Gordhan Lal (Claimants in S.B.Civil Misc. Appeal No. 100 of 1985) the learned Land Acquisition Officer awarded an amount of Rs. 7941/- and in the case of claimant Shiv Lal (Claimant in S.B.Civil Misc. Appeal No. 101 of 1985) Rs. 12,550/- were awarded. In the case of Bhadrabahu. (Claimant in S.B. Civil Misc. Appeal No. 102 of 1985), Rs. 58146/- were awarded as compensation. The claimants were not satisfied with the amount of compensation awarded by the Land Acquisition Officer and, therefore, they requested the Land Acquisition Officer to make a reference to the Civil Court for the determination of the correct amount of compensation. The learned Land Acquisition Officer made three different references to the learned Civil Judge u/s 18 of the Act for the determination of the compensation. The learned Civil Judge, vide three separate judgments, determined the compensation of the land acquired and fixed the compensation amounting to Rs. 37,500/- in the case of Devi Lal and Gordhan Lal (claimants in S.B. Civil Misc. Appeal No. 100 of 1985), Rs. 73,372/- in the case of claimant Shiv Lal (claimant in S.B.Civil Misc. Appeal No. 101 of 1985) and Rs. 4,66,785/- in the case of Bhadrabahu (claimant in S.B. Civil Misc. Appeal No. 102 of 1985). Aggrieved with the enhancement of the compensation awarded to the claimants, the Rajasthan State Industrial Development and Investment Corporation, Jaipur (RIICO) filed these three appeals challenging the judgment of the learned Civil Judge cum Chief Judicial Magistrate, Doongarpur.

3. Heard learned Counsel for the appellant and the learned Counsel for the claimant-respondents and the learned Deputy Government Advocate for the State.

4. The question which requires consideration in the present appeals is: what should be the fair and just compensation for the lands acquired and whether the market value of the lands fixed by the learned Civil Judge reflects the correct market value? The claimants have a legal and legitimate right to get a reasonable and fair market value of the land they are deprived of and they have to be recompensated for rehabilitation or to purchase similar land elsewhere. It is settled law reflected from the catena of decisions including those cases on which reliance has been placed by the learned Counsel for the parties, is that the market value of the land is to be determined with reference to its condition at the time of declaration made u/s 4 of the Act and, also after taking into consideration the potential value of the land acquired. In determining the market value, the price, which a willing seller may get in the open from a willing buyers, would form the basis to fix the market value. While determining the market value, the price fetched for similar land with similar advantages and potentialities under bonafide transaction of sale in the proximity of time and the type and quality of the land at the time of issuance of the Notification u/s 4 of the Act, etc. are the usual and best evidence for the fixation of the market value. The Authorities while assessing the compensation, are, also, required to take into account

several other factors, namely, the situation and the nature of the land, its utilization, potentiality, the use to which the neighbouring lands have been put, ascertainable trend of the development of the town in the direction of the acquired land, any active building-activities in the nearby area, the use to which the land is likely to be put, suitability of the land for building purposes, existing amenities like water, electricity and drainage over and adjacent to the land to be acquired and its proximity to the residential, commercial and industrial area as well as to the educational, cultural and medical institutions. In the above perspective, I would first like to consider the evidence produced by both the parties. The claimants in these cases produced similar and identical evidence before the learned Civil Judge in the proceedings u/s 18 of the Act. Except the statement of the claimants themselves, in the three cases, the statements of the remaining witnesses are identical and the same. Even the documentary evidence produced by the claimants in their respective cases is the same. The Corporation, i.e., the RIICO, also, produced the identical evidence in all these three appeals. The claimants produced themselves as NAW 1 and also, examined NAW 2 Kari Lal, NAW 3 Gordhan Lal, NAW 4 Laxman, NAW 5 Noor Mohammed, NAW 6 Bhanji, NAW 7 Keshri Mal and NAW 8 Rameshwar. The claimants in all these three appeals produced same nine documents. NAW 1 Devi Lal (Claimant in S.B.Civil Misc. Appeal No. 100/1985) has stated that his land is situated near the Doongarpur Sagwara Road and is within the Municipal limits of Doongarpur. Near the land in question, the Government Hostel, Triba Hostels, godown of Kraya Vikraya Sahkari Samiti, godown of forest department, S.T.C. and college buildings, are situated and the price of the land is approximately Rs. 18,000/- per Bigha, which is the sale price of the agricultural land in the area. He has, also, proved the sale-deed Ex. A. 1 to Ex. A. 8. He has, also, proved the lease deed Ex. A. 9, which was made in favour of Sohan Lal Sharma for a consideration of Rs. 23,958/-. He has admitted in the cross-examination that some of the sale-deeds, which have been produced by them, relate to the land which is situated in village Kunali, Vikasnagar and Odwadiya, which are situated at a distance between 10 to 15 kilometers from Doongarpur.

5. NAW 1 Shiv Lal (claimant in S.B.Civil Miscellaneous Appeal No. 101 of 1985) has stated that his land, which has been acquired by the State Government, is situated near the Revenue Circle within the municipal limits of Doongarpur city and near the land in question, two tribal hostels, are constructed. There are, also, roadways depot as well as the college and S.T.C. training centre. The land is situated near Doongarpur Sagwara Road. He has stated that the price of the compensation awarded by the Land Acquisition Officer is much on the lower side while the actual market price of the land acquired is Rs. 30,000/- per Bigha. Similar sales have already taken place of the agricultural land for a consideration of Rs. 30,000/-per Bigha. He has further stated that Odwadiya has the population of 1000 persons while Kunali is having the population of 2000. He has further stated that Nawadera area is within the municipal limits of Doongarpur. He has, also, stated that the land, which has been given to Shri Sohan Lal

Sharma on lease, is situated near the acquired land and only a road passes in between these two lands. He has, also, proved Ex. 1 to Ex. 9. He has, also, stated that about 50 trees are standing on the land in question and the land is surrounded by the fencing of about 3 feet height and 11/2" width. He has estimated the price of the trees etc. at Rs. 5000/-. He has further stated that though the price of the land is more than Rs. 30,000/- per Bigha but he has demanded in the claim petition an amount of Rs. 18,000/-per Bigha.

6. NAW 1 Bhadrabahu (claimant in S.B.Civil Misc. Appeal No. 102 of 1985) has stated that his land is situated on Doongarpur-Sagwara road and is within the municipal limits of Doongarpur and nearby this land, two tribal hostels are constructed. In the nearby area there are roadways depot as well as the college and S.T.C. training centres. He has further stated that the amount of compensation awarded by the Land Acquisition Officer is most inadequate while the price of the land in the area, at the relevant time, was Rs. 18,000/-per Bigha. He has, also, proved the various documents Ex. A 1 to EX.A. 9. He has, also, stated that the value of the fencing around the land and the price of the trees standing on the land is about Rs. 5000/-. He has further stated that the just and fair compensation with respect to the land, which should be awarded, must not be less than Rs. 6,27,000/-.

7. The evidence of NAW 2 to NAW 8 in all the three claim cases is identical and same. NAW 2 Kari Lal has proved the sale deed Ex. A. 6. He has stated that on September 22, 1977, he purchased agricultural land from Alam Khan for a consideration of Rs. 14,000/-. He has further stated that this is the price of the land and so far as the "Kaccha" room which was constructed on this land, is concerned, that costs only about Rs. 500/- and the price which he paid, was the price of the land only.

8. NAW 3 Gordhan Lal has stated that he purchased 4 Bighas of agricultural land in Khasra No. 3077 for a consideration of Rs. 6000/- in village Kunali, which is situated at distance of 22 kilometers from Doongarpur.

9. NAW 4 Laxman has stated that he purchased 1/2 Bigha of land from Maina Bai for a consideration of Rs. 2500/- vide Annexure. A. 1. He further stated that the land of the claimants comes within the municipal limits of Doongarpur, but he does not know about the situation of Kunali, whether it falls within the municipal limits of Doongarpur or not?

10. NAW 5 Noor Mohammed has stated that he sold 19 Biswas of land situated in village Nawadera to Karim Bux vide Annexure. A. 7 for a consideration of Rs. 6000/-.

11. NAW 6 Bhanji has stated that he purchased two Biswa of land situated in Khasra No. 970 of village Odwadiya for a consideration of Rs. 1500/- from Narendra Singh, Tej Singh and Ranjeet Singh. Odwadiya is situated at a distance of 20 kilometers from Doongarpur.

12. NAW 7 Keshari Mal has stated that he purchased four Biswas of land situated in Khasra No. 3086 in village Kunali for a consideration of Rs. 2900/-. He has further stated that the price of the land in the town of Doongarpur is much more than the price of land situated in village Kunali. He has proved Ex. A. 5-the sale-deed by which he purchased the land.

13. NAW 8 Rameshwar has stated that vide Ex. A. 2 he purchased 4 Biswas of land in Khasra No. 2681 in village Vikasnagar for a consideration of Rs. 3350/-. He has further stated that Vikasnagar is situated at a distance of 15 kilometers from Doongarpur. He has, also, stated that the land situated in the town of Doongarpur can fetch more price than that of the land situated in village Vikasnagar.

14. The claimants in all the three appeals, produced same nine documents before the learned Civil Judge. Ex. A. 1 is the registered sale deed made by Maina Bai, by which she sold 1/2 Bigha of land, situated in Khasra No. 275 for a consideration of Rs. 2500/-. EX.A. 2 is the sale-deed dated September 23, 1976, by which Heera Lal sold 4 Biswas of his land situated in Vikasnagar for a consideration of Rs. 3350/- to Rameshwar. EX.A. 3 is the sale-deed dated September 28, 1976, by which Gordhan Lal purchased 4 Biswas of land for a consideration of Rs. 6000/- from Hemraj and others. Ex. A. 4 is the sale-deed dated March 11, 1977 by which Bhanji purchased 2 Biswas of land situated in village Odwadiya from Narendra Singh, Tej Singh and Ranjeet Singh for a consideration of Rs. 1500/-. EX.A. 5 is the sale-deed dated July 13, 1977, by which Keshari Mal purchased 4 Biswas of land situated in village Kunali for a consideration of Rs. 2900/-, from Kewalji, Dalla and others, EX.A. 6 is the sale-deed dated September 2, 1977, by which Kari Lal purchased 13 Biswas of land from Alam Khan for a consideration of Rs. 14,000/-. EX.A. 7 is the sale-deed dated February 28, 1978, by which Karim Bux purchased 19 Biswas of land situated in village Odwadiya from Noor Mohammed for a consideration of Rs. 6000/-. EX.A. 8 is the Girdawari of a cote (Bara) by which the land situated in Nawadera, covered by this Girdawari, was treated as the residential land and the Land Acquisition Officer awarded the compensation of this land treating it as the residential land. EX.A. 9 is the order of the Collector dated August 5/6, 1980, by which 5 Biswas of land was given on lease to Sohan Lal Sharma on June 11, 1980, for a lease-amount of Rs. 23,958/-for establishing a weigh-bridge.

15. The Corporation, in support of its case, examined Amar Singh (AW 1)-an employee of the Corporation. This witness has been examined in all the aforesaid three matters and his testimony in all these three cases is similar and identical. He has stated that on November 9, 1977, Anami Lal was working as the Tehsildar, Doongarpur, who sent the reply EX. 2, which bears the signatures of Anami Lal, marked A to B. In this letter, the method for determination of the compensation for the land acquired, was given, according to which the market value of the land was to be determined by multiplying 1000 to the amount of the land revenue paid by the Khatedar. This system of assessment was prevalent

upto 1981. Alongwith this letter, Jamabandi EX. 3 was, also, enclosed, which contains the details of the land revenue paid. This certified copy was verified by the Patwari, Doongarpur, and bears the signatures of Patwari A to B. EX. 5 are, also, the Jamabandies, bearing the details of the land revenue paid. He has further stated that EX. 6 was issued by the Registration Officer, Doongarpur, namely, Shri Puran Prakash, which bears the signatures of Shri Puran Prakash, marked as A to B. Alongwith EX. 6, the document EX. 7 was, also, enclosed, which bears the details of various documents of sales and contains the signatures A to B of the Registrar. By the letter dated February 28, 1980, EX. 8A, containing the details of various documents registered, was also, sent, which is EX. 9, which, also, bears the signatures of the Sub-Registrar. He has, further stated that there are two modes for the determination of the sale price-one is by multiplying by the figure of 1000 the land revenue of the land in question and the another is on the basis of various sales made in the adjoining areas of the lands similarly situated. If the sale deed contains the price less than 1000 times of the land revenue, then the registration of the sale-deed is made on the basis of the price arrived-at by multiplying the land revenue by the figure of 1000. In the cross-examination, he has stated that the reply has been filed on the basis of the record and he has not seen the various documents, mentioned in the list. He has, also, admitted that he did not prepare the list EX. 7 from the documents. He has stated that the details of the documents given in EX. 7 was sent on the request of the Land Acquisition Officer. He has admitted that he is not in a position to state what was the actual price in the various sale-deeds.

16. This is all the evidence produced by the respective parties, which is on record, on the basis of which correctness of the order passed by the learned Civil Judge is to be considered. The market value of the land can be determined by applying the "Instance Method", or on the basis of opinion of the Experts or on the basis of multiplying the land revenue by a figure of 1000. It is the Instance Method for the determination of the market value, which is being generally applied and has been approved by the Apex Court, also. In applying the Instance Method, instances comparable in time and quality have to be taken into consideration and the Court has to co-relate the market value reflecting in most instances comparable in time and quality which provide the index of material market value. In such cases, sometimes, the instances are rigged-up in order to inflate the price of the land and, therefore, only a genuine instance has to be taken into consideration and for that purpose, the sale price reflected in the instances of sales, which are in proximity with the time and situation, coupled with the genuineness of the same, can provide an index for the market-value, and can be taken as a norm for determination of the market value by making certain adjustments. Price can be ascertained taking into consideration the sale of the adjacent and nearby plots of land with similar advantages and the estimated market value should be the price which the willing seller may get in the open market from the willing purchaser. In the light of this proposition of law, if we consider the evidence produced by both the parties, then it is clear that the

average price, which can be deduced from the aforesaid seven sale-deeds, produced by the claimants, comes to about Rs. 11,000/-per Bigha. The learned lower Court determined the same value of Rs. 11,000/- per Bigha, which is the average price deduced from the seven sale-deeds produced on record by the claimants. It is, no doubt, true that certain sale-deeds relate to some lands situated at some distance, which are in village Kunali, Vikasnagar and Odwadiya, which are at a distance of 10 to 15 kilometers, yet the sales made under these sale-deeds can provide some guideline for the determination of the market value of the land acquired. The land situated within the municipal limits can fetch more price than that of the land situated at some distance. The land, which have been acquired in these three appeals, are situated in the out-skirts of the town of Doongarpur, and fall within the municipal limits. It is on the edge of the inhabited locality of the town where government hostels, tribal hostels, S.T.C. and college buildings, godowns of Kraya Vikraya Sahkari Samiti, godown of Forest Department, roadways depot etc. are situated. The land adjoins the developed area and the adjoining lands have all the required facilities like the electricity, water and drainage systems. It is not in dispute that the land in question fall within the municipal limits of the Doongarpur and adjoins the inhabited area of Doongarpur. The lands in question have been acquired for the purpose of industrial development of the town. There is an active building activities in the nearby area and the development of the town is, also, fast-proceeding ahead in the direction of the acquired land and the suitability of the land for building and industrial area has been considered by the State Government at the time of acquisition of the land. Looking to all the facts and circumstances of the case, the proximity of the road to the land, nearness to the developed area, the use for which the land is put and its proximity to residential, commercial and industrial area etc. and the existence and availability of the other amenities like water, electricity and drainage system and the use for which the land was put-up after acquisition evidently makes it clear that the acquired land was primarily of an urban character though shown in the Revenue Record as an agricultural land. In determining the compensation, the Court has to look into the potential value of the land and the best use to which the willing purchaser has put it for use and not the existing value of the land. As the lands have been acquired by the State for the establishment of the industrial area as planned by the RIICO, therefore, in these circumstances if the learned lower Court has evaluated the market value of the land treating it as the building site or treating the land as the residential land, then in my view, no illegality has been committed by the learned Civil Judge. I am further of the opinion that the learned lower Court has not committed any illegality in awarding the compensation @ Rs. 11,000/-per Bigha with respect to acquired land. In this view of the matter, the contention, raised by the learned Counsel for the appellant, that the amount of compensation, awarded by the learned Civil Judge is excessive, has no legs to stand and deserves to be ignored.

17. The next contention, raised by the learned Counsel for the appellant is that

the sale-deeds produced by the claimants, on which the reliance has been placed, related to smaller plots of land and, therefore, these sale-deeds cannot be a safe guide for assessing the market value of the land covering a larger area. It is not the universal or absolute proposition that larger area of land cannot fetch a price at the same rate at which smaller plots are sold because if the land is nearer to the road and lies within the already developed land then even a larger area of land can fetch the same price which the smaller plots have fetched. In the present case, so far as the lands acquired in S.B. Civil Miscellaneous Appeals No. 100 of 1985 and 101 of 1985, i.e., in the case of the claimants Devi Lal-Gordhan Lal and Shiv Lal, is concerned, the area acquired is not of larger size. In the case of Devi Lal, 2 Bighas 6 Biswas of land of Khasra No. 881 and 14 Biswas of land of Khasra No. 883-total 3 Bighas of land, has been acquired, while in the case of Shiv Lal, 2 Bighas 10 Biswas of land of Khasra No. 882, 2 Bighas 8 Biswas land of Khasra No. 884 and 18 Biswas of land situated in Khasra No. 885-total 5 Bighas 16 Biswas land has been acquired. These plots of lands, situated in different Khasra Numbers, cannot be said to be a larger chunk of land. These are smaller parts of land and as they are situated within the municipal limits of the town of Doongarpur, and in the adjoining area, all the amenities like water, electricity and drainage system are available and the active building activities are going on in the nearby area and number government buildings are situated there and the proximity to the road and nearness to the developed area of the land acquired in these two cases, do not require any deduction to be made. The land of the claimants Devi Lal, Gordhan Lal and Shiv Lal do not require any deduction in view of the judgment of the Apex Court in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, .

18. The next contention raised by the learned Counsel for the appellant is that the learned Civil Judge, while determining the compensation allowable to the claimants did not consider the evidence produced on behalf of the appellant and determined the market value of the land on the basis of the evidence produced by the claimants only. On behalf of the Corporation, Amar Singh (NAW 1) was produced, who had no knowledge so far as the market price of the land, at the relevant time, is concerned, He, also, did not state in his statement what was the market price of the land similar to those of the lands acquired in or about the time of Notification. He has, also, no knowledge regarding any transaction nor he had any knowledge regarding the price of the land on the relevant date, i.e., when the Notification u/s 4 of the Act was issued. He, in his statement, even did not state what is the market price of the land which was acquired. His evidence is, thus, of no evidentiary value. The transactions of comparable sales can be proved by tendering in evidence original and certified copy of the transaction and by examining vendor and the purchaser and if they are not available then by examining the attesting witness, who had the personal knowledge of the transaction. The evidence must, also, show that the transactions, on which reliance has been placed, are genuine and bonafide transactions. As no evidence

on behalf of the Corporation to this effect has been produced and, therefore, the learned lower Court was justified in not placing reliance over the documents produced on behalf of the Corporation. So far as the evidence of Amar Singh is concerned, that is of no avail because he has not stated in his statement what was the market value of the land in question as depicted in the comparable sale with respect to same quality of land. On behalf of the Corporation, documents have been produced in order to show the method of determination of the market value prior to 1981. Certain Jamabandis, showing the land as agricultural land and the land revenue chargeable on these lands, have been produced. The Corporation has, also, placed on record the list of various sales registered by the Sub-Registrar, but neither the Sub-Registrar was produce to prove the list nor any certified copy of the list has been produced. No witness, who has the personal knowledge or information regarding the transaction/sales has been produced. Neither the vendor nor the purchaser nor any person conversant with the sales was examined. Even the certified copies of the sale-deeds were not produced, and as such, the learned lower Court was justified in not placing reliance over the documents produced on behalf of the Corporation.

19. In S.B. Civil Miscellaneous Appeal No. 102 of 1985, the land acquired is 36 Bighas 18 Biswas, which certainly a large chunk of land and for developing the land, some land has to be covered-out for roads and some open place has to be left. It is, no doubt, true that smaller land can attract more purchasers while larger plot of land has to be developed by preparing the lay-out, carving out the roads etc. When a larger plot/block of land is acquired then appropriate deduction has to be made for setting-aside the land for carving-out roads and converting the same in smaller plots suitable for construction of the building etc. and in such cases, for determining the market value of the land, a discount has to be made for providing these facilities. In the present case (S.B. Civil Miscellaneous Appeal No. 102 of 1985) as the land is situated within the municipal limits and is within the proximity of the developed area and as it has been acquired for the establishment of the commercial area by the appellant (RIICO), in my view, 20% (twenty per cent) deduction in the market value of the land will be an adequate discount.

20. In the result, I do not find any merit in S.B. Civil Miscellaneous Appeals No. 100 of 1985 and 101 of 1985 and the same are hereby dismissed. But so far as S.B.Civil Miscellaneous Appeal No. 102 of 1985 is concerned, I partly allow this appeal and determine the market value of the land in question, acquired from Bhadrabahu, after making a discount @ 20% and fix the compensation at Rs. 8800/- per Bigha.