

(1986) 05 AHC CK 0008

In the Allahabad High Court

Case No : First Appeal No's. 112 and 115 of 1979

Rehabber Naraia

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-05-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 55, 6

Citation : (1986) 05 AHC CK 0008

Hon'ble Judges : K.P. Singh, J;B.N. Sapru, J

Bench : Division Bench

Advocate : Radha Krishna, Parkas Krishna, Lalvijai Singh and G.N. Sharma, for the Appellant;

Judgement

K.P. Singh, J

1. These two appeals have been directed against the judgment of Shri V.S. Kulshreshtha, 2nd Additional District Judge, Bulandshahr, dated 15.9.1978. Appeal No. 112 of 1979 Rehabber Narain v. State of U.P. arises out of Land Acquisition Reference No. 74 of 1977 which was partly allowed through the impugned judgment. Appeal No. 113 of 1979 Harish Narayan v. State of U.P. arises out of Land Acquisition Reference No 76 of 1977 which was dismissed by the Tribunal as is evident from the impugned judgment dated 15.9.1978.

2. The Appellants' land was acquired compulsorily for construction of Manti Samiti. A notification u/s 4 of the Land Acquisition Act regarding the disputed land was published on 28.6.1976 and the notice u/s 6 of the aforesaid Act was published on 12.08.1976. Possession from the Appellants was obtained on 18.08.1976. On 10.05.1977 Sri B.S. Srivastava, Special Land Acquisition Officer determined the compensation payable to the Appellants Aggrieved by his determination, the Appellants had preferred objections u/s 18 of the Land Acquisition Act which gave rise to the references mentioned above Against the decision of the Tribunal the Appellants have approached this Court through the above-mentioned appeals which are being dealt with together as the Tribunal had

decided the Appellants' references through the impugned common judgment

3. In the above noted appeals the Appellants claim higher amount of compensation than the amount awarded to them by the Tribunal on the ground that the Tribunal has acted illegally in fixing the rate of compensation. Therefore, the determination of the Appellants' compensation by the Tribunal should be modified by this Court.

4. The learned Counsel for the Appellants has emphasized that the Tribunal fixed the compensation at the rate of Rs. 10/- per sq yard area whereas the Appellants had claimed compensation at the rate of Rs. 25/- or Rs. 30/- per sq. yard and the Tribunal accepted the sale deed as in exemplar wherein for the purpose of stamp duty the valuation of the land, subject matter of that sale deed, was determined by the Collector at the rate of Rs. 10/- According to the learned Counsel for the Appellants, it is a matter of common experience that lower valuation is put for the purpose of stamp duty. It has also been stressed that there are exemplars in the form of sale deeds indicating that similar land had been sold at the rate to Rs. 25/- to Rs. 50/- per sq. yard.

5. Second contention raised on behalf of the Appellants is that the Tribunal has patently erred in determining the compensation regarding the trees It has wrongly excluded the area beneath the trees and it has made arithmetical mistake in calculating the area which should have been excluded.

6. Third contention made on behalf of the Appellants is that the land of the Appellant Harish Narayan in First Appeal No. 113 of 1979 was also of the same quality which was involved in appeal No. 112 mentored above yet the compensation awarded to the Appellant Harish Narayan is much below in the circumstances of the present case. It has also been stressed that in view of the recent amendment the Appellants are entitled to higher amount of solarium and higher rate of interest.

7. The learned Counsel for the Respondents has tried to refute the contentions raised on behalf of the Appellants. He has tried to justify the conclusions arrived at by the Tribunal.

8. After hearing the learned Counsel for the parties we agree that the first contention raised on behalf of the Appellants has some force. It is a matter of common experience that the valuation determined for the purpose of stamp duty cannot be sure guide for determination of the compensation for acquisition of land compulsorily u/s 4 of the Land Acquisition Act. The Tribunal has discussed the evidence and law relating to determination of compensation of the Appellants' land and has made the following observations in paragraph 32 of the impugned judgment:

In the case in hand there was large area of acquired land and the rate could not be decided at per sq. foot or per sq. yard. I, therefore, hold that learned S.L.A O. had given the rate at per puce bight according to quality of the land. From the

point of view of situation of plot numbers 230, 231, 233, 229 I find that these five plots were adjoining to the road running between Bulandshahr and Anaphor and area acquired of these plots should be assessed at the rate of Rs 10/- sq. yard which was charged in the report of the stamp duty case of the sale deed of Rae Bareilly Flour Mill. The State could not blow hot and cold simultaneously and would not be reasonably permitted to claim stamp duty at the rate of Rs. 10/- per sq yard for the same land and given compensation at the rate of Rs 7.50 per sq. yard, the reason being that both these lands were of equal status, character and situation. I, therefore, hold that the objectors who owned plots Nos. 229, 230, 231 and 233 would get the rate of compensation at Rs. 10/- per sq. yard. One puce bighead contains 3025 sq. yards and its value would come at the rate of Rs. 30,250 per puce bight. The rest rate of land was correctly assessed at tree rate of Rs. 23,333.33.

9. A perusal of paragraph 24 of the impugned judgment indicates that similar land to the land of the Appellants has been sold at the rate of Rs, 30/- per sq. yard in a developed area In All. 1981 SC 1632, Vijay I Kumar Mod Lai v. State of Maharashtra, their Lordships of the Supreme Court have indicated as below:

Thus taking the case at the lowest even if Rs. 15/- per sq. yard is held to be the correct sale value of the land and deducting 1/3rd as the area was not fully developed, the minimum compensation that could be awarded to the Appellant would be at the rate of Rs. 10/- per sq. yard. This Court in the case of Naraindas Vs. Vallabhdas and Others, has observed that where an area is not fully developed, deduction of 1/3rd can be made. In this connection this Court observed as follows:

In order to develop that area at least the value of 1/3rd of the land will have to be deducted for roads, drainage and other amenities.

10. In the present case we think that the Tribunal has patently erred in fixing the rate of compensation at Rs. 10/- per sq yard It has wrongly accepted the rate determined by the Collector for the purpose of stamp duty as a correct guide. The test to determine the market value is the price which a willing purchaser will pay to a willing seller for the actual transaction freely entered into by the seller and the purchaser. In our opinion even if the land of the Appellants was situate in undeveloped area, the rate of compensation should have been fixed at Rs. 15/- per sq. yard. It would be proper for the Tribunal to reassess the compensation at the rate of Rs. 15/- per sq. yard in place of Rs. 10/- per sq. yard determined by it.

11. As regards second contention we find that the Notification No. 11091-291/10LAA 8:3/A-72, dated October 4, 1973, issued by the Secretary, Board of Revenue, U.P. Lucknow is neither unconstitutional nor invalid in law. Section 55 of the Land Acquisition Act empowers the appropriate Government to make rules consistent with the Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the

rules so made. Chapter 15 of the U.P. Revenue Manual (Vol 1) contains instructions relating to the award and apportionment of compensation. Para 482 of the U.P. Revenue Manual indicates the method for determining the market value of the trees standing on the land acquired. The notification mentioned above and relied upon by the Tribunal is also an instruction for determining the compensation regarding the trees standing on the land acquired under the provisions of Land Acquisition Act. Therefore, we do not find that the notification can be characterized as unconstitutional or invalid in law. No doubt the Tribunal has made a mistake in calculating compensation regarding the trees standing on the land of the Appellants acquired. In para 40 of the impugned judgment the Tribunal has made the following observation:

...When it would be converted into sq. yards, it would come to 9053 sq. yards out of which the land covered by the trees would come to 3065 sq. yards and after deducting this area of the grove it would come to an area of 5988 -sq. yards. Thus, the compensation would be enhanced in the case of Rehabber Narayan and Babu Khan accordingly. The issue arc decided accordingly.

In para 2 of the above mentioned notification dated October 4, 1973, it has been indicated as below:

...Kai mammon kop Daphne key bead yah mishmash Nicola hay kid kalmia aim tithe use parka key eke bade pad se lag hag 0-01 acre bum prohibit hot hay tithe am rood, Jerboa aid eke chute pad se lag hag 0-005 acre bum prohibit hot hay. Yadkin asp chosen to is visa par expert opinion phi le skate chain parent yah avatar hay kid yeti peon kid warship away kop capitalize karee partaker nirdharit kayak gay hay to us se prohibit bum ka partaker an diva jai.

12. In our opinion the Tribunal has not calculated the compensation " regarding trees paying due regard to the instructions mentioned above in ; Hindi. Therefore, we feel that the Tribunal has acted illegally in determining i the compensation regarding trees, standing on the land acquired. The ends , of justice demand that the case should be sent back to the Tribunal for i re-determining the compensation regarding trees after paying due regard i to the instructions contained in para 2 of the Notification, cited October 4, 1973.

13. As regards the third contention looking to the situation of the land of the Appellant Harish Narayan in First Appeal No. 113 of 1979, we think that the contention of the learned Counsel for the Appellants that the land of Harish Narayan is similarly situated as that of Rehabber Narayan Appellant in First Appeal No. 112 of 1979 is not correct. Since the land of Appellant Rehabber Narayan is to be calculated at the rate of Rs. 15/- per sq. yard instead of Rs. 10/- per sq. yard determined by the Tribunal, we think that the ends of justice will be met in the case of Harish Narayan by fixing the rate of compensation at Rs. 10/- in place of Rs. 5.34 per sq. yard. To this extent the judgment of the Tribunal confirming the determination of the compensation by the Special Land Acquisition Officer requires modification.

14. In view of the recent amendment the Appellants are entitled to solarium at the rate of 30 per cent and interest at the rate of 9 per cent. The Tribunal shall calculate the amount on these scores in view of the recent amendment and decision of their Lordships of the Supreme Court reported in AIR 1985 SC 1527.

15. For the foregoing discussions, the insult is that both the appeals deserve to be allowed and they are hereby allowed and the judgment of the Tribunal is hereby set aside and the tribunal is directed to re-determine the compensation payable to the Appellants in the light of the observations made above. When the Appellants are entitled to higher amount, they will be awarded the requisite amounts subject to payment of court fee. The tribunal shall make requisite direction in this regard also. Parties shall bear their own costs of these appeals in this Court.