

(1984) 05 DEL CK 0079

In the Delhi High Court

Case No : Regular First Appeal No. 301 of 1970

Risal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-05-1984

Acts Referred:

Citation : (1984) ILR Delhi 830

Hon'ble Judges : Gian Chand Jain, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : B.D.Verma and R.K. Mehra, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) Rsuant to a notification dated 24-10-61 issued u/s 4 of the Land Acquisition Act, 1894 (the Act) the Union of India, respondent compulsorily acquired the land in village Hashtsal. Notification u/s 6 of the Act was issued on 16-4-66. In due course the Land Acquisition Collector made the award (Award No. 1959). He offered compensation to the appellant, the owner of the land, at certain rates, according to the situation and quality of the land which he divided into 4 Blocks - A, B, C and D. The appellant did not accept his award. He asked for a reference. On reference u/s 18 of the Act the learned additional district judge enhanced the compensation. From the following table will appear at a glance the prices fixed by the Collector and the leaned judge:

_____ Blocks Price offered by the L.A.C. Price fixed by the additional district judge. _____

_____ "A" Rs. 2500.00 per bigha Rs. 6000.00 per bigha
"B" Rs. 2000.00 " Rs. 4800.00 " "C" Rs. 1200.00 " Rs. 2880.00 " "D" Rs. 800.00
" Rs. 1920.00 "

(2) Being dissatisfied with the conclusion of the court below the appellant appeals to this court. He seeks further enhancement in this appeal. He claims Rs.

8.50 per sq. yard for all his land.

(3) The appellant's land is situated in Blocks A, B and D. The dispute is over compensation. The real question is, what is the market value of the land on the valuation date i.e. 24-10-61.

(4) The learned judge accepted the classification of the land in Blocks A, B, C and D. He, however, recast the blocks by transferring certain Kilas of land which the Collector had put in Blocks B and C to Block A.

(5) On the question of this regrouping of certain lands of Blocks B and C in Block A we are not prepared to differ from "the learned judge because any belting of land, howsoever rational, is bound to be, in greater or lesser degree, arbitrary. We hold that his recasting was right.

(6) On the question of the market value the learned judge was of the opinion that there was an appreciation in land prices generally. He found as a fact that the land in dispute had a potential value. He said: "The land in dispute has great potentialities for building sites, but there was the Land Reforms Act standing in the way."

(7) This is not disputed that the Land Reforms Act applied to the acquired land. This means that the land could be used only for agricultural purposes and purposes connected therewith and not for building purposes, "this statutory restriction the judge described as an "infirmity" in the land in the hands of the landowner.

(8) For determining the market value of the land the learned judge accepted the judgment (A/9) of Shri M. R. Sikka, additional district judge, in Raghbir Singh Vs. Union of India as his guide. He did not follow Raghbir's case slavishly. He went by a shrewd guess, of his own. It will be more accurate to say that he used Raghbir's case as a mariners compass to guide, his steps in a region where the signposts were few.

(9) RAGHBIR'S case related to the adjoining village of Possangipur. Raghbir Singh was a coloniser. He had set up a colony where he was selling plots of land for houses and shops at prices ranging between Rs. 17 and Rs. 21 per sq. yard. In Raghbir's case the judge evaluated the land in Possangipur as follows:

Land of Block A Rs. 8500 per bigha.

Land of Block B Rs. 6600 per bigha.

This judgment of Shri Sikka was accepted by Shri F. S. Gill, additional district judge, in the present case as of pivotal importance. He found as a fact that Raghbir's land touches a part of the land in dispute on the eastern side. He Therefore fixed the market value of Block A at Rs. 6000 per bigha, keeping in mind that Hashtsal land was subject to the Reforms Act while the Possangipur land was free from any such restrictions. In the light of the price fixed for Block A he refixed the prices for the remaining blocks of B, C and D as shown in the table

above.

(10) In Raghbir's case there was a further development. Raghbir Singh appealed to this court from the order of Shri M. R. Sikka. On appeal one of us (Avadh Behari, J.) enhanced the compensation of the land in Possangipur as follows:

(1) Land falling in Block A Rs. 9000 per bigha

(2) Land falling in Block B Rs. 8500 per bigha

(11) The present appellant now bases his claim solely on the decision of this court in Raghbir Singh. He says that as his land in Hashlsal touches Block B land of Raghbir in Possangipur, he ought to be awarded Rs. 8500 per bigha. This is the central argument. He submits that there is no difference between his land and Raghbir's land because the notification in both cases is of the same date, i.e. 24-10-61. In other words, the case is that the decision in Raghbir is a comparable yardstick which should be adopted and applied as a measure of compensation in the present case also.

(12) We cannot accept this argument. The outstanding fact is that Raghbir's land was not subject to the Reforms Act. He was a coloniser. He had obtained permission from the Government of India to set up a colony. He had parceled out his land into small plots for residential and commercial purposes. He was selling them to purchasers. It has to be remembered that he had incurred further expenditure and trouble to make the land acquire the status and value of developed land. He had leveled the land which was low lying. On this he must have spent money. But in the present case all land in village Hashtsal is subject to the Land Reforms Act. It is true that with the permission of the authorities named in the Act the purpose of the land can be changed from agricultural to other purposes. This permission may be given. It may as well be refused. therefore. the basic principle is this:

"ALL restrictions on user and enjoyment must be taken into account." (Cripps Compulsory Acquisition land, 11th Edition, page 674, 683).

In *Come Vs. MacDermodtt* (1914) AC 1056(1), the Privy Council in their judgment said:

"IT seems quite plain that although, as above said, restrictions must be kept in view, the chance of such restrictions being discharged must also be kept in view."

(13) We have Therefore to remember that the restriction affects the value of the land. It is true that the restriction does not reduce the value to nil. It cannot be said that the land is worth nothing. The owner being restricted, the value cannot be measured by the value of unrestricted land. "*Corrie* (supra). The user being restricted the value of the land cannot be the same as the value of the unrestricted land. The possibility that the authorities under the Reforms Act would have given permission to build on the land has also to be taken into

account, A leading authority puts the principle of potential use thus:

"ALL advantages which the land possesses, present or future, in the hands of the owner may be taken into consideration, and the owner is entitled to have the price assessed in reference to the advantages which will give the land the greatest value. The value of an owner's interest is not properly compensated by assessing the amount of" pecuniary benefits obtained by past user In disregard of possible benefits in the future. The probability of a more profitable use is one such advantage which may be taken into consideration. Thus the land which may probably be used for building purposes must not be valued on the same basis as purely agricultural land."

(GRIPS on Compulsory Acquisition, page 680)

(14) The possibility of removal of the restrictions by the grant of a permission to develop must be taken into account by the assessing tribunal while determining the market value of the land.

(15) We are, Therefore, of opinion that Raghbir's land was superior in some ways because it was not subject to the Reforms Act. He "was entitled to sell it as developed land. The present case is of undeveloped land. But it has potentiality as was found by the learned judge. The potentiality is the possibility or the probability or the prospect of a more profitable use of this land -in future. We will not be right in valuing the land as purely agricultural land because, in our opinion, it has the probability of being put to a building use in future.

(16) Counsel for the Union of India invited our attention to two sales in this very village produced by the appellant of 1960 and 1961 which show that the value was ranging between Rs. 2,536 and Rs. 3,448 per bigha in these two years immediately preceding this public acquisition. With much persistence he urged upon us that we should fix the market value at Rs. 4000 per bigha or thereabout on the basis of the appellant's own evidence and that Raghbir's case was of no assistance in evaluating the present land.

(17) Counsel for the Union of India next called our attention to another judgment of Possangipur in the case of Mange Ram where the market value of the land acquired by a notification of the same date was fixed at Rs. 3550 per bigha. This judgment was affirmed on appeal by this court. Counsel submitted that the land in dispute should not be rated higher than Rs. 3550 because in the adjoining village that was found to be the value of the agricultural land and the present land should also be valued as purely, agricultural land.

(18) As we have said above, this argument cannot be accepted because the land in dispute has a potential. This was the view of the learned judge and in this we agree with him. Near the land in dispute there was an approved colony of Shanker Garden on the eastern side. On the southern side, there was Uttam Nagar Colony. That colony was partly approved and partly unapproved. The unapproved part was acquired by the government. There is one main road, Delhi-

Najafgarh Road, on the southern side and pacca road besides a Bandhobast road leading to village abadi in the acquired land.

(19) On the case of Mange Ram we do not think it proper to comment since that decision is under appeal at the moment before the letters patent bench. But we have no doubt that Raghbir's case is an apt illustration for making value contrasts between the land of that case and the land of this case. In our opinion, Raghbir does not entirely govern this case but it is a guide to the value of the land of an unrestricted owner in this area.

(20) The intrinsic quality of the land and every intrinsic circumstance must be taken into consideration. It is the duty of the valuer

"TO take into consideration every intrinsic quality and every intrinsic circumstance which tends to push thevalue either up or down just because it is relevant to the valuation and ought Therefore to be cast into the scales of balance before he looks to see the resultant figure on the dial at which the pointer finally rests."

[Robinson Bros (Brewers) Ltd. v. Houghton and Chesterland assessment Committee (1937) 2 Kb 445(2) at p. 469 per Scott. LJ.].

(21) So we must take the potentiality into account. The owner of land is entitled to its value to him; this comprises "all the advantages, present and future, which the land possesses. (Halsbury ; Laws of England 4th ed. Vol. 8 p 181 Para 258).

(22) Permission is problematical ,it is true. So is future uncertain. Past regrets and future fears. This is all what life is. "Desires and fears and rages", as the poet says about life, Future is full of fears and hopes. But hopes for the future are not completely irrelevant. English judges have called potentiality in certain circumstances as "hope value". Purchasers are in fact often prepared to hazard money on the possibility that permission might actually be granted sooner or later even if it has not been granted yet. If so land for sale will be valued as having "hope value" on top of existing use value. (Keith Davis Law of Compulsory Purchase and Compensation 3rd ed. p. 163).

The Privy Council has said

"FOR it has been established by numerous authorities that the land is not to be valued merely in reference to the use to which it is being put at the time at which its value has to be determined that time under the Indian Act being the date of the notification under S.4(I) but also by reference to the uses which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one."

(VYRICHERLAN arayana Gajapatiraju V. Revenue Divisional Officer Vizagpatam Air 1939 Pc 98(3) at p. 102).

(23) The essential inquiry must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied,

but also with reference to the uses to which it may be devoted in future. The value to the owner is what it is worth to him. Potentiality will, Therefore, include probabilities, possibilities, prospects. So many and varied are the circumstances to be taken into account in determining the value of the property acquired for public purposes. that it is perhaps impossible to formulate a rule to govern appraisalment in all cases.

(24) "THE art of valuation in any case involves making assumptions, because value is to a large extent governed by future prospects which must in turn be largely, though not entirely, governed by assumptions" (Keith Davis -Law of Compulsory Purchase, p. 175). But this does not mean that the valuer can fix a fanciful price having no relation to the market value.

"THE truth of the matter is that the value of the potentiality must be ascertained by the arbitrator on such materials as are available to him and without indulging in feats of the imagination."

(VYRICHERIAN aryana Gajapatiraju, (supra) at p. 103).

(25) In determining the market value consideration may be given to the highest and best available use although the property is not so used at the time of the taking.

(26) Applying these principles to the facts of this case we are of opinion that Raghbir's case is a highly relevant piece of evidence for the determination of compensation in this case. It is plain that in assessing value for the purpose of compensation a tribunal is not required to close its mind to the value of the land in the neighborhood or in adjoining areas for they may well be relevant, or of assistance to a greater or lesser degree. In agreement with the learned judge we hold that we must take the award in Raghbir's case into account in our process of evaluation. It is a highly relevant piece of evidence. But it is not a comparable instance in the sense that the same value as determined in Raghbir cannot be fixed here. The reason is this.

"THE value which has to be assessed is the value to the old owner who parts with the property, not the value to the new owner who takes it over. If, Therefore, the old owner holds the property subject to restrictions, ft is a necessary point of inquiry how far these restrictions affect the value"

[CORRIEV. MacDermodit (1914) Ac 105611062 per Lord Dunedin].

(27) So we take the restriction into account. The possibility of removal of the restriction by the grant of permission to develop must also be taken into account.

(28) Potential is an element of value to be taken into consideration. It is a true element of market value. It is a matter no doubt contingent ,but still it is a matter which cannot be ignored. It is probable. It is; not visionary. The probability will enhance the value of the land.

(29) We ought to value the possibility and not the realised possibility. Proximity

of the appellant's land to Raghbi's land raises the hope that an urgent need of houses, or the growing appreciation of local needs, coupled with the fact that there is a change in the neighborhood and removal of similar restrictions in the immediate vicinity, will enable the appellant to obtain permission "for a more profitable use of his land in future. The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities. [Fraser V. Fraser (City of) (1917) AC 187 (4) per Lord Buckmaster].

(30) But we cannot accept the appellant's claim to an enhanced price of Rs. 8.50 per sq. yard on the basis of Raghbir's case. The reason is that the appellant's land is not, neither in quality nor in price, equal to Raghbir's land. The essential difference is that Raghbir's case is a case of "realised possibility" and the appellant's case is a case of "contingent possibility", to use the terms of Lord Romer in Gajapatiraju's case (supra at p. 107). The two are not identical for purposes of valuation.

(31) That the taker of the land will use it for building purposes has to be entirely disregarded. [See S. 24(5) of the Act]. You are only to give that which represents its worth to the seller and that you are to disregard all questions of its worth to the buyer. This is the fundamental principle of compensation law in public acquisition of land. The taker can exploit the advantages of the land and adapt it to the best use. He is armed with parliamentary powers. The landowner is unable to exploit it. He has only a hope.

(32) We would not have thought it necessary to deal with the question of potentiality at such length, were it not for the fact that counsel for Union of India in the arguments before us endeavored to show that the appellant's land should be estimated as no more than a tract of agricultural land.

(33) On the question of blocks, we think that there is no justification for making a distinction between Block A and Block B. The land of Block A and Block B as found by the Collector and the Court, is a compact block of land. The learned judge has himself observed: "The whole of the land is of the same nature and constitutes a compact block." We, therefore, abolish the distinction as to price between block A and block B. We ought to value them at the same rate. As regards Block C land it should be rated a lower figure than Block A and Block B lands. The reason is that it is situated at some distance from the main Delhi-Najafgarh Road, and is near the Najafgarh drain. Block D's land consists of roads, johar (ponds) and dug-up lands. Of all the lands this has to be classed as inferior.

(34) On a comprehensive survey of the scene we think that the appellant's land should be valued more highly than the price assessed by the learned judge.

(35) For blocks A and B lands in which there is hardly any difference or distinction the value should be fixed at Rs. 7,000 per bigha.

(36) Block C land should be valued at Rs. 6000 per bigha. The only difference is in the geographical position Of the land as compared to A and B lands. Use wise , quality wise ,potentiality wise, there is not much difference. The acquired land is a large tract which goes deep into the village. It covers the heartland and the agricultural terrain. To fix at less than Rs. 6000 per bigha would be to permit the acquiring authority to take the owner's property at less than the fair market value.

(37) Block D lands consist of dug up lands, johar (ponds) and roads. Roads have no market value because they are dedicated to the public use. Land which is dug up is reduced in value. Ponds also lessen the value of the land. On the whole it will be proper to value D lands at Rs. 4000 per bigha.

(38) On giving the matter our best consideration the above appears to us to be fast compensation. The owner compelled to sell has :

"THE right to be put, so far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains the right to receive a money payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater."

[HORN.V. Sunderland Corporation (1941) 2 Kb 26.

(39) In our opinion the learned judge in his judgment has proceeded on right principles. " We have differed from him on the quantum of compensation. What we have done is that we have grouped block A and B lands in one belt and given more compensation than what he estimated was the price of the land, keeping in mind that there was no rational basis for valuing block C lands at a much lower price. Similarly for Block D lands price had to be raised proportionately. In all this we have proceeded on the hypothesis that the land had a potential as was the view of the learned judge. He also premised his assessment on this one fact and rightly took note of the statutory restriction imposed by the Reforms Act which affected the value of the land.

(40) There is an element of guess work in the determination of the market value of the land taken for public acquisition. Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar, There is room for inferences and inclinations of opinions, conjectures and assumptions in this arithmetic of compensation [Secy. of State V. Charlesworth Pilling and Co. (1901) 2nd 26 Bm 1 (7)]. On the question of market value opinions will differ and no irrefragable reason can possibly be given for any particular conclusion. Award of fair compensation is not an algebraic problem which can be solved by an abstract formula. [Nowroji V. Govt. of Bombay 2nd 49 Born. 700(8) (PC) per Lord Sumner]. It has rightly been said that the "assessment of the value of land is an art to be acquired by experience." (Cripps on Compulsory Acquisition, p. 902).

(41) We sum up our conclusion with the following comparative chart which will show at a glance the value fixed by the Collector and how it was raised on

reference and how by us in this appeal:

_____ Value fixed by the Value determined by the Value fixed by us in
L.A.C. Additional Distt. Judge this appeal on reference _____

A. Rs.
2500.00 per bigha Rs. 6000.00 per bigha Rs. 7000.00 per bigha B. Rs. 2000.00 "
RS. 4800.00 " - C. Rs. 1200.00 " Rs. 2880.00 " Rs. 6000.00 " D. Rs. 800.00 " Rs.
1920.00 " Rs..4000.00 In short we fix the market value of the land as follows: ____

_____ Blocks A and B. Rs. 7000.00 per bigha Block C Rs.
6000.00 " Block D ..". Rs.4000.00 "

(42) We Therefore award compensation to the appellant at the aforesaid rates for his land situated in blocks. A, B and D". He has no land in Block C. But in other cases which we heard along with the present case, the owners have lands in Block C. Therefore we have fixed, after hearing arguments in all the cases together, the value of the entire land including land in Block C.

(43) Whatever has already been paid to the appellant will be deducted, in addition to compensation, the appellant will be entitled to solarium at the rate of 15 per cent and interest at the rate of 6 per cent per annum from the date of dispossession till payment and proportionate costs.

(44) As there is a difference of more than three years between the notification u/s 4 (24-10-61) of the Land Acquisition Act (the Act) and the declaration u/s 6 of the Act (16-4-66), the appellant will also be entitled to interest at the rate of 6 per cent per annum on the market value of the land u/s 4(3) of the Land Acquisition (Amendment and Validation) Act, 1967 provided there is no overlapping in the payment of interest u/s 28 of the Act and section 4(3) of the Amendment Act.

(45) At the conclusion of the hearing of the appeal we announced the order on 30th April, 1984. Now we have given our reasons