

(1979) 07 DEL CK 0018

In the Delhi High Court

Case No : Regular First Appeal No. 130 of 1974

R.N. Tikka

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-07-1979

Acts Referred:

Citation : (1979) 16 DLT 198 : (1979) RLR 578

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Judgement

Avadh Behari, J.

(1) This is an owner's appeal against the order of the additional District Judge dated December 12, 1978.

(2) The owner's land consisting of 3 bighas comprised in khasra No. 1230/327/1 in the estate of village Kolhapur was acquired by the Government pursuant to a notification under s. 4 of the Land Acquisition Act 1894(the Act) dated November 13, 1959. In due course the Land Acquisition Collector made the award(Award No. 2059 dated January 24, 1968). He divided the entire acquired land into three blocks. Land near the Okhla Railway Station was placed by him in block "A". For this he awarded Rs. 6415.00 per bigha. Land Resli and Banjar qadim he placed in block "B". For this he awarded Rs. 2500/. Gair mumkin Pahar was categorised in block "C" and for this he awarded Rs. 2000.00 per bigha. The owner's land was placed in block "B" and he was Therefore, awarded Rs. 2500.00 per bigha,

(3) Displeased with the award the owner asked for a reference under. S. 18 of the Act. The learned Additional District Judge who heard the reference formed the view that the categorisation of the owner's land in block "B" is arbitrary. Considering the situation of the land and the evidence brought before him the learned judge raised the compensation from Rs. 2500.00 to Rs. 6200.00 per bigha. The owner now appeals to this court for further enhancement. He claims Rs. 19.00 per square yard as compensation for his acquired land.

(4) Counsel for the owner in the forefront of his arguments has referred me to the evidence of Mr. S.H.A. Jafri (A.W. HI) who made an offer to the owner for purchasing his land on behalf of the Boys Scouts Association of which he was the General Secretary at a rate of Rs. 25.00 per square yard. The witness : in his statement has said that he approached the owner and offered Rs. 35.00 per square yard but the owner refused to sell the land to him on the ground that he needed it for building his own house. On this testimony it is urged that the learned judge ought to have relied upon this statement and ought to have held that the market value of the land was Rs. 25.00 per square yard.

(5) The learned judge considered this evidence. He rejected it. For rejecting this evidence he gave two reasons. Firstly, he said that it was an oral offer and did not Therefore amount to much. Secondly, he thought that as the owner: himself had not spoken a word about the offer made to him when he came into the witness box he was not prepared to rely on the bare word of mouth of the witness.

(6) A great deal of stress was laid on the testimony of Mr. Jafri. It was said that as he had not been cross-examined by the Union of India his testimony ought to have been accepted. I am not impressed by this argument. The- fact remains that Mr. Jafri made an offer which was an oral offer. There is nothing in writing to show that the Association had decided to purchase land and they had empowered him to make an offer to the owner. documentary that there was an oral offer as is alleged it has not much evidentiary value because it did not even mature into an agreement to sell. Beyond the stage of a verbal offer it did not go.

(7) I was referred to Raghubans Narain vs. Government of U.P. Air 1967 S.C. 465 in support of the contention that an offer was a relevant piece of evidence and ought to be taken into account if it is genuine and bonafide. If a person who made an offer himself gives evidence it is, at most, a species of indirect evidence of the person making such offer as to the value of the land. He may have so slight a knowledge of the subject as to render his opinion of no value. Oral and not binding offers are so easily made and refused in a more posing conversation, and under circumstances involving no responsibility on either side, as to cast no light upon the question of value, and they are unsatisfactory, easy of fabrication and even dangerous. (Nichols on Eminent Domain, Third Edition, page 55).

(8) If evidence of offers were to be received it would be necessary to know if the offer was made in good faith, by a man of good judgment, acquainted with the value of the property, of sufficient ability to pay, whether the offer was for cash, for credit, in exchange, and whether made with reference to the market value of the property or merely to supply a particular need or to gratify a particular fancy. All these elements would have to be considered if such offers to purchase or sell were admitted in evidence to support market value. (Alfred D. Jahr-Eminent Domain, Valuation and Procedure, page 221).

(9) If the offer is wild, extravagant or fanciful no court can safely rely on it. If it

is absurdity incongruous with the prevailing prices of the land in a particular locality at a particular time as mirrored in the sale transaction the courts have uniformly rejected such offers : See Ramadhar vs. Union of India, ILR 1979 (1) Del 545 .

(10) The best method of determination of the market price of the land under acquisition is to rely on instances of sale of properties in the neighborhood. This is the first and the primary method. Its fastness has never been questioned. The evidence of offers is an inferior kind of evidence. As has been said : "It is generally a class of evidence which it is much safer to reject than to receive." (Alfred D. Johr-page 22!).

(11) In Raghubans Narain v. Government of U.P., (supra) the Supreme Court was careful to add that the evidence of an offer "cannot be equated in importance with the evidence of proper specimen sales of the properties in the neighborhood."

(12) In the present case the learned judge has considered the evidence of sales and judgments adduced before him. He preferred to rely on judgments rather than the oral testimony of an oral offer. a judgment is certainly a better piece of evidence, no one can deny, because it has the merit of an objective assessment. The sale transactions are a true index of the ruling market price of the land to ascertain the market value.

(13) In agreement with the learned judge in the court below I would reject the evidence of offer in the present case on the question of value on two grounds-(1) that the evidence is speculative and unreliable, (2) such evidence injects collateral inquiries tending to confuse the main issue and prolong the trial. It is, for example, necessary to know that the offer was made by a man of good judgment acquainted with the value of the property, of sufficient ability to pay etc.

(14) A number of judgments were cited in evidence. Two sales were also offered in proof. The learned judge on the basis of the judgment in Baij Nath Bhaskar v. Union of India delivered by another Additional District Judge came to the conclusion that the compensation in the present case ought to be fixed at Rs. 6203.00 . In Bhaskar's case the khasra number was 1416/2-9. The notification was of the same date as here, namely, November 13, 1 59. Bhasker was awarded compensation at the rate of Rs. 7000.00 per bighas From this decision he did not appeal. But the Union of India came in appeal before me against that decision. I dismissed the appeal of the Union of India. (See Union of India v. Baij Nath Bhaskar R. F. A. 28 of 1968, decided on July, 9, 1979). It appears that the learned Judge was influenced by this decision and he accepted it as a guide to his conclusion. But he was not prepared to award the owner as much as had been given to Bhaskar because of the difference in the situation of the owner's land and Bhaskar's land. He was of the opinion that Bhaskar's case constituted the most "valuable instance to guide" in this case.

(15) Counsel for the owner says that Bhaskar's case ought not to have been relied upon because Bhaskar's plot No. 1416/299 was landlocked while the owner's plot has been found having access by means of a kucha path way, a corner of which touches the owner's land. The learned judge found that "the land in dispute had the advantage of this kucha path way to some distance and it cannot be said that it was completely landlocked". But in the opinion of the learned judge the situation of Bhaskar's land was certainly "superior" and this is why he was not inclined to award more than Rs. 6200.00 per bigha in the present case.

(16) Counsel for the owner then referred me to a sale of land made in 1959 on the main Mathura Road. Glaxo Laboratories purchased the land vide two sale deeds (AWI/I and AWI/2) dated 3.8.1959 and 14.5.1959 at the rate of Rs. 19.00 per square yard. This transaction which I call for brief as Glaxo purchase is not of much assistance in determining the market price of the land in question because the Glaxo land was situated on the main Mathura Road and it is not disputed that the owner's land is not so advantageously situated. The Glaxo purchase was unique because it had an exceptionally wide frontage on the main Mathura Road. The owner's land is far away from Mathura Road.

(17) Then counsel referred to another sale dated April 10, 1957. A copy of the conveyance deed has been filed in this court with an application for permission to lead additional evidence. As the document is a registered one I see no reason why this evidence ought not to be allowed. It will not prejudice the other side in any manner.

(18) On April 10, 1957 a parcel of land bearing khasra No. 1530/345 was sold by one co-owner to another at the rate of Rs. 6-75 per square yard. In terms of per bighas it works out to Rs. 6800.00 per bigha. The transaction of April 10, 1957 is a bonafide sale. I held it to be a genuine transaction in the case of Delhi Simla Catholic Archdiocese v. Union of India (R. F. A. 363 of 1968 decided on April 24, 1979). But this sale is of a plot of land which is situated on the main Kalkaji Chirag Delhi Road. It has to be remembered that the sale was made on April 10, 1957. The owner's land was acquired under a notification dated November 13, 1957. This was after more than two and a half years. It is a matter of common knowledge that there was an upward trend of prices in the locality. In the vicinity a vast industrial complex known as Okhla Industrial Estate had come into existence as early as 1955.

(19) This sale was referred to in arguments before the learned judge. He rejected it. He did not accept it as a guide for the reason that it enjoyed "situational advantage", abutting as it was on the main Chirag Delhi Kalkaji Road. In my opinion this sale ought not to have been rejected. That the land enjoyed this advantage cannot be contested but what should not be forgotten is that land in the neighborhood in 1957 was being sold at the rate of Re. 6-75 per square yard. To award the owner Rs. 6209.00 per bigha in the year 1959, in my opinion, will not be fair and reasonable.

(20) Judgment in Bhaskar's case was accepted by the Judge as the "best material" and "a proper basis for the determination of the market value of the land in dispute". Bhaskar's land enjoyed certain advantages. It was near the Okhla Railway Station but there is no direct access to his plot, surrounded as it is on all sides by the land of other owners. The owner's land, if it is not right on the Railway Station, has another compensating advantage. There is a kucha path way and the kucha path way links Okhla Railway Station to the main Chirag Delhi Kalkaji Road. This is admitted by the judge. And that the owner's land was not landlocked has also been found as a fact.

(21) Taking all the factors into account fair and reasonable compensation in this case ought to be fixed at rupees 7000.00 per bigha.

(22) For these reasons the appellant is allowed an enhancement of Rs. 800.00 per bigha together with 15% solarium and 6% per annum interest on the enhanced compensation from the date of dispossession till the date of payment.

(23) As there is a difference of more than three years between the notification u/s 4 (13.11.59) and declaration u/s 6 (22.11.62) of the Act the appellant will be entitled to interest at the rate of 6% p. a. on the market value of the land under S. 4(3) of the Land Acquisition (Amendment & Validation) Act 1967 with this proviso that there shall be no overlapping in the payment of interest u/s 28 of the Act and section 4(3) of the Amendment Act.

(24) The appellant will have proportionate costs of the appeal.