
(2001) 10 DEL CK 0112

In the Delhi High Court

Case No : Regular First Appeal No. 70 of 1993

R.S. Bhatia

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-10-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4

Citation : (2002) 100 DLT 746

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Vijay Laxmi, for the Appellant; S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—An area of 713 bighas 2 bids was situate in village Malikpur Kohi @ Rangpuri was acquired by the Government at public expense for public purpose namely, "Rehabilitation of the Persons Displaced or Airport". Notification u/s 4 of the Land Acquisition Act, 1894 (for short the Act) was issued on 23.12.1986. It was followed by declaration of the next date i.e., 24.12.1986 by invoking emergency provisions contained in Section 17(4) of the Act. Collector, Land Acquisition made his award No. 28/87-88 on 23.12.1987. He proceeded to classify the entire land in two blocks and offered compensation @ Rs. 26,000/- and Rs. 22,000/- per bigha for block "A" and block "B" respectively. Entire land was included in Block "A". Only 9 bigha land comprising Khasra No. 1946/2(I-00), 1947/ 1(0-16), 1947/2(4-00) and 1948/1(3-04) was included in block "B", The difference in the market value of the two categories of land was because of existence of pits to the extent of 3ft to 4ft deep in an area of 9 bighas for which compensation was offered @ Rs. 22,000/- per bigha.

2. Feeling dissatisfied the claimants sought references. The reference Court by various awards maintained the distinction and assessed fair market value at Rs. 33,600/- per bigha for "the entire land except for 9 bighas for which market value was determined at Rs. 30,000/- per bigha.

3. Still feeling dissatisfied the claimants have filed appeals in this Court. The claim in the appeals is to enhance the amount of compensation and determine market value. Enhancement has been sought at different rates varying from Rs. 48,000/- per bigha to Rs. 2 lacs per bigha. Most of the claimants have in fact sought compensation @ Rs. 60,000/- per bigha barring a few who have sought compensation @ Rs. 50,000/- per bigha.

4. We have heard learned Counsel for the parties and have been taken through the record.

5. The Collector, Land Acquisition proceeded to determine market value by placing reliance upon sale instances for the year 1986. In all 44 sale deeds were reported to have been executed within this revenue estate during the year 1986. The sale considerations reflected therein varied from Rs. 5,000/- per bigha to Rs. 48,000/- per bigha. According to the Collector overall average consideration reflected in the sale deeds was Rs. 20,221.59 per bigha. He made reference to the two sale transactions i.e., Exhibit A-1 and A-2 dated 24.3.1986 wherein for one bigha land each sale consideration shown is Rs. 48,000/- per bigha. He discarded these two sale deeds observing that it was not probable that prices would fluctuate to such an extent within a short span of time, Therefore, such transactions cannot be made basis to determine the market value. The Collector also took notice of the fact that some portions of land within the same revenue estate had earlier been acquired during 1965 to 1982 for which compensation had been offered to claimants. However, awards made in those cases were discarded by him observing that prices had increased manifold whereas market value in those awards relate to the period between 1965 to 1982, Therefore, these awards could not form the basis in determining the fair market value of the land. Thus according to the Collector by discarding two sale transactions it would be worthwhile to consider the remaining sale transactions to reach at a reasonable market value. He opined that the kind, quality and situation of land was almost similar in all cases. All sale deeds were duly registered before Sub-Registrar. Average price in the remaining sale deeds of which he took notice worked out to Rs. 25,874.12 per bigha. Therefore, in his opinion Rs. 26,000/- per bigha was the fair market value, which could be allowed for the entire land except for 9 bighas for which he held Rs. 22,000/- to be the fair market value.

6. The Reference Court in Land Acquisition Case No. 399/89; Ashwini Kumar Chawla v. Union of India, examined those sale deeds which were relied upon by the claimants along with the other material which was placed on record in evidence while seeking further enhancement in the amount of compensation. The Reference Court also dealt with the sale deeds which were relied upon by the Collector, Land Acquisition in order to maintain the award. In addition to sale deed Exhibit A-1 and A-2 executed on 4.3.1986 by one Karam Singh in favor of M/s. Jai Prakash Associates Private Limited for one bigha of land for a consideration of Rs. 48,000/- each, two other documents were relied upon by the claimants. One was Ex. A-3, a copy of award of the Reference Court in an earlier

reference for determination of amount of compensation payable for lands situate in village Masoodpur. The other document was Exhibit A-4, a copy of the office order/guidelines issued by Deputy Commissioner, Delhi notifying that w.e.f. 27.4.1990 all agricultural lands situate in Delhi be assessed at Rs. 4.65 lacs per acre for the purpose of realisation of stamp duty barring few other lands e.g. in river beds between the forward bunds to be assessed at Rs. 1.5 lacs per acre. Exhibit A-4 was discarded observing that this notification appears to have been issued in order to prevent evasion of stamp duty, evasion of capital gains tax and to insist Income Tax clearance and moreover in his opinion it was pertaining for a period subsequent to date of notification issued u/s 4 of the Act, Therefore, the same was not helpful in determining the fair amount of compensation. Placing reliance upon the decision of Supreme Court in "Rani of Vuyyur v. Collector of Madras 1969 1 Mad LJ (SC) 45, that while determining compensation on the basis of sale deeds of similar lands the sale deed representing the highest price should be relied upon, the Reference Court relied upon Exhibit A-1 and A-2 as representing true market value of agricultural land situate within the revenue estate of Malipur Kohi @ Rangpuri in the year 1986. Having found that Rs. 48,000/- per bigha was the true market value of agricultural land in the year 1986 in Malikpur Kohi @ Rangpuri during 1986, the Reference Court further observed that the same cannot be taken to be the exact market value of the land since the two sale transactions evidenced by document Ex. A-1 and Ex. A-2 were of small plots measuring 1 bigha each Therefore in his opinion deduction @ 30% deserved to be made in order to arrive at the exact market value of a larger tract of land. Thus by deducting 30% from Rs. 48,000/- the Reference Court held Rs. 33,600/- per bigha to be fair market value of the land and by making further deduction to Rs. 3,600/- he held Rs. 30,000/- per bigha to be fair market value for such of the land which had pits. In order to support the market value which was arrived at by him the Reference Court also observed that in case the award of village Masoodpur, where land had been acquired through notification of 24.10.1961 be made the basis and appreciation is allowed @ Rs. 1,000/- per bigha it would be reasonable to conclude that the fair market value in 1986 of lands in Masoodpur would be @ Rs. 37,000/- per bigha.

7. Before us learned Counsel for the appellant has vehemently relied upon the two sale transactions evidenced by documents. Ex. A-1 and Ex. A-2 urging that the sale consideration reflected therein represents fair market value for all categories of land situate in the revenue estate concerned. The said market value was as on 24.3.1986. Determination of the market value has to be made as on 23.12.1986, which is the date on which notification u/s 4 was issued. There was no question of making any deduction from out of the market value as arrived at by the Reference Court since potentiality of the land for commercial purpose for raising construction was not being considered or examined. Sales evidenced by document Exhibit A-1 and A-2 was of agricultural land for agricultural purpose. Acquisition of land was also for agricultural purposes. Therefore, there was no question of development being carried out. As such the principle of deduction

could not have been made applicable to the facts of instant case. No further development was necessary. The land was fit for cultivation. It was further urged that over and above the amount of consideration as shown in the sale deeds, the vendee had also paid stamp duty and registration dirges. Reference Court ought to have taken note of this fact and the fact that there was a gap of about 9 months from the date of the sale deeds to the date of notification. It was also submitted by learned Counsel for the appellant that there was no question of classifying the entire land in two categories for purpose of determination of compensation since the entire land in present state admittedly was fit for agriculture.

8. Learned Counsel for the respondent on the other hand, vehemently contended that the two sale deeds relied upon by the appellants were those in which the highest sale consideration is reflected whereas reliance had been placed by the respondent on sale deeds Exhibit R-1 to R-7 which reflected sale consideration of agricultural land ranging from Rs. 5,000/- per bigha to Rs. 22,500/- per bigha. He further urged that within one revenue estate each portion of land would not be similarly situate, Therefore, distinction has necessarily to be made which was rightly made by the Collector. For such of the land which was not fit for agriculture deduction was made @ Rs. 36,000/- per bigha being the rough estimate of the amount likely to be required to make it fit for agriculture. It was also contended that the sale deeds had not been proved in accordance with law, Therefore, the consideration reflected in Exhibit A-1 and A-2 cannot be said to be the fair market value as on the date of notification u/s 4 of the Act.

9. We have duly considered the submissions made at the bar. There is no dispute that even the land which was subject matter of Exhibits A-1 and A-2 was acquired through the same notification. There was no challenge made to the genuineness of these two sale transactions either before the Collector or before the Reference Court. In case the two owners had purchased the property through these two registered sale deeds and had duly paid the sale consideration through pay order before the Sub-Registrar as is recorded in the sale deeds there is no question of now raising a dispute about sale consideration and thereby trying to create a doubt that the sale consideration reflected therein did not reflect the fair market value as on the date of execution of the sale deeds. As per the recitals in the sale deeds for one bigha the sale consideration is Rs. 48,000/-. In addition the vendee paid Rs. 3,840/- towards the stamp duty and Rs. 110/- towards registration charges. Thus as on 24.3.1986 the vendees spent Rs. 51,950/- towards purchase of 1 bigha of land which amount has to be taken to be the sale consideration. This will be the amount of market value to the two vendees and would thus reflect the true market value per bigha as on 24.3.1986.

10. Though the award made by the Collector, Land Acquisition is neither under scrutiny before us nor was before the Reference Court. The Reference Court has to decide the reference on the basis of the material placed before it and not on the basis of material produced before the Collector. We cannot take note of the

copies of sale deeds which were produced before the Collector. Even the approach ,of the Collector in taking the average of the consideration as reflected by all sale deeds cannot be a relevant criteria in arriving at the fair market value. The Reference Court rightly placed reliance on the Supreme Court's decision in Rani Vuyyur's case (supra), that a land owner is entitled to the best price available as per the evidence on record of the Reference Court, which view has been followed by this Court in a number, of decisions for which reference may be made to the decision in Ramphool and Am. v. Union of India, RFA 387/91, decided on 22.7.1998. Reference Court having rightly taken the fair market value as in the month of March, 1986 at Rs. 48,000/- per bigha was not justified in making further deduction at 50%. This approach of applying the principle of deduction would be applicable in those cases where reliance is placed on sale transactions of smaller developed plots as against determining fair market value of undeveloped larger tract of land. The acquired land in the instant case admittedly had potential for being used for agricultural purpose for which purpose alone it was acquired. The fair market value of Rs. 48,000/- per bigha was of agricultural land and not of developed small plots for building purposes. In addition to the consideration of Rs. 48,000/- per bigha the Reference Court ought to have added thereto the amount of stamp duty paid for executing sale deed and registration charges as well which amount alone would reflect true price of the land which the vendor had to pay for purchase of the land to a landowner. This amount would, in our view, be the market price as on 24.3.1986. In order to arrive at a fair market value 9 months thereafter we will follow the principles as laid down in Bedi Ram Vs. Union of India and another, decided on 23.3.2001 would work out to Rs. 55,000/- per bigha. Thus in our view the fair market value of the entire acquired land as on 24.3.1986 the aforementioned notification u/s 4 of the Act is Rs. 55,000/- per bigha except for 8 bighas of land aforementioned which as per the award of the Collector, Land Acquisition was having pits for which the fair market value payable would be Rs. 50,000/- per bigha.

11. Consequently, the appeals of the claimants are allowed with proportionate costs. Claimants are held entitled to market value @ Rs. 55,000/- per bigha except for 9 bighas of land comprised in Khasra No. 1946/2(1-00), 1947/1(0-16), 1947/ 2(4-00) and 1948/1 (3-04) for which the claimants would be entitled to market value @ Rs. 50,000/- per bigha. On the excess market value the claimants will be paid solarium @ 30% and interest @ 9% per annum for a period of one year of the date of Collector taking possession and thereafter @ 15% per annum till payment. The claimants will also be paid additional amount @ 12% in accordance with provisions of Section 23(1-A) of the Act and interest on solarium and the additional amount as per the decision of Supreme Court in Sunder Vs. Union of India, Four weeks" time is allowed to the claimants to make good deficiency in the Court-fee, if any.