

(2000) 10 DEL CK 0053

In the Delhi High Court

Case No : Regular First Appeal No. 286 of 1985 and C.M. 445/97

Saraswati Devi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 54

Citation : (2001) 4 RCR(Civil) 511

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : N.S. Vashist, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—This appeal has been preferred u/s 54 of the Land Acquisition Act, 1894 (for short "the Act") against the judgment of learned Additional District Judge, Delhi dated 8.2.1985 in Land Acquisition Case No. 172/82 seeking further enhancement in the amount of compensation.

2. For Planned Development of Delhi, land situate in village Mamoorpur-Narela was notified for being acquired through notification dated 14.3.1980 issued u/s 4 of the invoking emergency clause u/s 17(4) the Act. Thus simultaneously declaration u/s 6 was made and notification u/s 17(4) of the Act was issued on the same day, Collector, Land Acquisition made his award No. 108/80-81 and offered compensation to the claimants at the rate of Rs. 2,400/- per bigha. Feeling dissatisfied the claimants sought reference. The reference court by the impugned award assessed the fair market value of land at Rs. 8,600/- per bigha, whereas the claimants while seeking reference had demanded compensation at the rate of Rs. 1,00,000/- per bigha, Still feeling dissatisfied this appeal has been filed. At the time of filing of appeal the claimants-appellants had restricted their claim to Rs. 20,000/- per bigha.

3. The appellants now by an application (C.M.445/97) have sought leave to

amend the Memorandum of Appeal and pray that they be permitted to make good the deficiency in court fee. Arguments on this application were heard along with the main appeal.

4. The appellants claim that initially they had prayed for compensation for their property before the Reference Court at the rate of Rs. 1,00,000/- per bigha but while filing appeal the claim had to be restricted to Rs. 20,000/- per bigha because of financial constraints. They are now seeking leave to amend the Memorandum of Appeal praying that they be permitted to restrict their claim to compensation at the rate of Rs. 40,000/- per bigha. We have considered respective submissions.

5. The very fact that the claimants did not intentionally give up their right to claim compensation at the higher rate as initially claimed by them alone is sufficient to allow the prayer as made in the application, more particularly in view of the ratio of the decisions of the Supreme Court in *Harcharan Vs. State of Haryana*, *Bhag Singh and Others Vs. Union Territory of Chandigarh* through the land acquisition collector, Chandigarh, *The Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others*, , *Chand Kaur and others v. Union of India*, (1994) 4 SCC 663 and *Buta Singh (Dead) by L. Rs. Vs. Union of India*, .

6. Accordingly, the prayer made in the application is allowed. Four weeks time is allowed to the appellant to make good the deficiency in the court fee.

7. Prior to acquisition in question considerable land measuring 2180 bighas 15 bids was situate in village Memoorpur Narela had been acquired for Planned Development of Delhi through notification issued u/s 4 of the Act oh 30.10.1963. Collector, Land Acquisition in that case had offered compensation at the rate of Rs. 6,650/-per bigha. Feeling dissatisfied the land owners had sought references. The Reference Court assessed the fair market-value as on 30.10.1963 at Rs. 16,750/- per bigha. Still feeling dissatisfied, appeals were filed and this Court in appeals enhanced the compensation to Rs. 22,000/- per bigha. Feeling aggrieved Union of India carried the matter further by filing appeals to the Supreme Court. On 6.8.1987 the Supreme Court in Civil Appeal No. 4405/97 (*Union of India v. Dharambir and Ors.*) reversed the judgment of this Court and allowed the appeals of the Union of India holding that the Reference Court had rightly assessed the fair market value of the acquired land at Rs. 16,750/- per bigha as on 30.10.1963.

8. Learned counsel for the appellants contended that in the absence of any other material to the contrary, it must be inferred that there has been a reasonable increase in market values of the property in the vicinity around the acquired land more especially after the lands were acquired in 1963. Prices in and around Delhi have been increasing by leaps and bounds and, Therefore in view of various decisions of this Court taking the fair market value at Rs. 16,750/- per bigha as on 30.10.1963. Proportionate increase deserves to be allowed in order to

determine the amount of compensation payable to the claimants/appellants whose properties were acquired 16-1/2 years latter and for that reason alone the claimants had initially demanded compensation at the rate of Rs. 1,00,000/- per bigha, but have restricted their claim to Rs. 40,000 per bigha.

9. We have considered the submissions and gone through the record. In *Tindey and Others Vs. Union of India (UOI)* and Another, a Division Bench of this Court held that in the absence of any other material it must be presumed that prices in and around Delhi must have increased at a normal pace, Therefore, it would not be unreasonable to allow an increase at the rate of 12% p.a. in order to arrive at a fair market value of the land in case there has been determination earlier at any given point of time. In *Tindey's case (supra)* earlier decision of this Court in *Prakash Chand Kashyap v. Union of India*, AIR 1988 Del 316 was noticed where escalation of 12% p.a. was considered as reasonable instead of the earlier and past practice of this Court in allowing escalation at the rate of Rs. 1,000/- per bigha per annum. Decision in *Prakash Chand's case (supra)* was also relied upon in *Rameshwar Solanki Vs. Union of India*, wherein escalation at the rate of 12% p.a. was allowed to arrive at fair market value. There is no denial of the fact that vast land was acquired in village Memoorpur Narela through notification issued on 30.10.1963. After acquisition, there has been tremendous development, Therefore, it will not be unreasonable to infer that prices must have increased, if not at a higher pace but at least at a normal pace. Therefore, the appellants would definitely be entitled to enhanced amount of compensation by taking Rs. 16,750/- per bigha to be the fair market value as on 30.10.1963. In case escalation at the rate of 12% p.a. per bigha is allowed, the rate of increase would be Rs. 2,010/- p.a. whereas the past practice of this Court has been to allow escalation only at the rate of Rs. 1,000/- p.a. per bigha. There is a difference of 16-1/2 years, in *Rameshwar Solanki's case (supra)* amendments, which were carried out in 1984 to Land Acquisition Act, by virtue of Land Acquisition (Amendment) Act, 1984 was taken note of where additional compensation becomes payable u/s 231-A of the act at the rate of 12% p.a. for the delay. As in the instant case question of escalation is being considered for the period prior to the Amendment Act, 1984, Therefore, it will not be unreasonable for us to follow the earlier practice of allowing an increase at the rate of Rs. 1000/- per bigha, per annum instead of at the rate of 12% p.a. over and above the amount of fair market value assessed as on 30.10.1963 for the period from 30.10.1963 to 14.3.1980. We are of the view that escalation of Rs. 16,750/- per bigha would be reasonable one. We are thus of the view that the fair market value as on 14.3.1980 the date of notification u/s 4 of the Act for the land situate at village Memoorpur Narela would be at the rate of Rs. 33,000/- per bigha.

10. Consequently, the appeal is allowed with proportionate costs holding the claimants to be entitled to compensation at the rate of Rs. 33,000/- per bigha. Over and above the amount, of compensation the claimants will be paid compulsory acquisition charges and interest as per the award of the Reference Court.