

(2004) 03 DEL CK 0034

In the Delhi High Court

Case No : Regular First Appeal No's. 366, 514, 859, 860 and 978 of 1995, 189,300 and 316/96 and 356 of 1997

Sh. Ram Kishan (Deceased) thru LRs.

APPELLANT

Vs

Union Of India (UOI)

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Citation : AIR 2004 Delhi 270 : (2004) 110 DLT 765 : (2004) 75 DRJ 86

Hon'ble Judges : Ramesh Chand Jain, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Deepak Khosla, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Allowed

Judgement

Dalveer Bhandari, J.—Agricultural land admeasuring 270 bighas 15 bids was of village Iradat Nagar, Delhi, was acquired by the Government pursuant to a notification dated 3rd June, 1987 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter to be referred to as the `Act".) Vide award No.2/88-89, the Land Acquisition Collector awarded compensation @ Rs.8,790/- per bigha besides the statutory benefits.

2. On reference being made u/s 18 of the Act, the Reference Court enhanced the compensation to Rs.27,000/- per bigha. The learned Additional District Judge while awarding enhanced compensation has largely relied upon the sale deed, Ex.P-2 dated 14th May, 1986 executed by Kehar Singh & others in favor of Hari Singh by which they sold their land measuring 1 bigha 10 bids was situated in village Iradat Nagar for a consideration of Rs.45,000/-. The vendee had incurred an extra expenditure of Rs.3,600/- towards the stamp duty and corporation tax and taking into account the total cost, the Court came to the conclusion that the market value of the land in village `Iradat Nagar" was Rs.32,400/- per bigha in May, 1986. However, placing reliance on the Supreme Court judgments in the cases of Administrator General of West Bengal Vs. Collector, Varanasi, and Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, , the

Reference Court discounted the said value by 20% on account of the development charges. The learned Additional District Judge, however, increased the said amount by Rs.1000/- per bigha per annum in view of the fact that the notification u/s 4 of the Act was issued on 3rd June, 1987, i.e. after 13 months of the execution of the above sale deed.

3. Mr. Deepak Khosla, learned counsel appearing for the appellants has assailed the impugned judgment mainly on the ground that the deduction of 20% made from the market value of the land established through sale deed was unwarranted and could not have been made particularly when the land which was transferred by means of sale deed dated 14th May, 1986, Ex.P-2 and the land acquired by the respondent-UOI were agricultural land in nature. On the other hand, Mr. Sanjay Poddar, learned counsel representing the Union of India has justified the deduction on account of the development charges.

4. We have gone through the Supreme Court decisions in the above referred case and in our opinion the reliance of the learned Additional District Judge on these judgments was wholly misplaced because in the case in hand, there is neither any plea nor it has been shown that the land which was transferred by means of the sale deed which formed the basis of the impugned judgment, was a developed piece of land or was in any other way in an advantageous position than the acquired land. In support of his contention that cut of 20% towards development charges is justified, Mr. Sanjay Poddar has heavily relied upon a recent decision of the Supreme Court in the case of Kasturi and Others Vs. State of Haryana, . On the facts and circumstances of that case, the Court held that in respect of the agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation is deducted out of the amount of compensation payable for the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. In that case, though the land of the claimants was undeveloped but it was specifically pleaded that the area adjoining his land was a developed area and claimed the price of his land at par with the developed land. It was in these facts and circumstances that the Court took the view that a cut of 20% as compared to the price of developed land was justified. In our view, this authority cannot govern the facts of the present case as here the appellants-claimants are not claiming price of their land at par with the developed land. Infact, their claim was restricted to the extent of same kind of land, i.e. agricultural land which was sold about a year before the notification u/s 4 of the Act was issued. Thus, in our considered view, the learned Reference Court fell into error by making a deduction of 20% from the average price of Rs.32,400/- per bigha as established from the sale deed. However, having regard to the fact that the area of acquired land is quite large as compared to the area of the land which was the subject matter of the sale deed dated 14th May, 1986, (Ex.P-2), we are prepared to allow a deduction of 10% from the average value of

Rs.32,400/- because a smaller chunk of land was bound to fetch higher price than a large chunk of land. Therefore, on consideration of the totality of the facts and circumstances of this case we hold that the average market price of similar type of land would come to Rs.29,160/- per bigha in the month of May, 1986.

5. In case the average market value of the land was Rs.29,160/- per bigha in May, 1986, then it should have been slightly more in June, 1987 when the land of the appellants was acquired. The Hon''ble Supreme Court has deprecated the practice of granting a general escalation @ Rs.1,000/- per bigha per annum for arriving at the value of the acquired land during the relevant period and instead has laid down that granting an escalation of 12% per annum would be more logical for arriving at the price of the acquired land. In this view, we are fortified by the decision of the Supreme Court in the case of Satpal and others, etc. Vs. Union of India, which has affirmed the decision of this Court in the case of Rameshwar Solanki Vs. Union of India, . The escalation in this case has to be for a period of about 13 months and keeping in view the above criteria, we think that 13% escalation over and above the price of Rs.29,160/- per bigha which was considered to be the average market value in May, 1986, would adequately meet the ends of justice. The market value of the land as on the date of acquired land in June, 1987 would, Therefore, come to Rs.32,951/- per bigha. The appellants are entitled to compensation at the aforesaid rate. Accordingly, all the appeals are allowed and the judgment of the learned Additional District Judge shall stand modified to the extent.

6. The appellants shall be entitled to compensation @ Rs.32,951/- per bigha besides the statutory benefits, i.e. additional amount u/s 23(1-A) of the Act @ 12% per annum from the date of notification u/s 4 of the Act till the date of dispossession or award whichever is earlier, solarium @ 30% in terms of Section 23(2) of the Act, interest u/s 28 of the Act @ 9% per annum for the first one year from the date of dispossession and then @ 15% per annum for the subsequent period. The appellants shall also be entitled to proportionate costs.

7. The appeal of the appellant is accordingly allowed and disposed of.