

(2006) 05 DEL CK 0173

In the Delhi High Court

Case No : L.A. Application No's. 303-311 of 2006

Sh. Risal Singh and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151
Land Acquisition Act, 1894 — Section 18, 23(1A), 4, 6

Citation : (2006) 89 DRJ 527

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : B.S. Maan, in L.A. appl. Nos. 177-81, 199-207 and 303-311/2006, Vikram Nandrajog, in L.A. appl. Nos. 313-314 and 315-18/2006 and Sanjay Rathi, in L.A. appl. Nos. 351-53/200, for the Appellant; Sanjay Poddar and Sachin Nawani for the LAC and Sampada Narang and Avishek Baidya, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—A land ad-measuring 248 bigha 5 bids was in the revenue estate of Village Bamnauli, Delhi, was acquired by the government for a public purpose namely "Construction of 400 K.V. Sub Station for DESU." In this regard, notification No. F-7(1)/84-L and B dated 9.1.1987 was issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") in furtherance to which a declaration u/s 6 of the Act was issued on 18.9.1987. After having followed the prescribed procedure, the Land Acquisition Collector made his award bearing No. 15/1989-90 on 12.9.1989 and awarded compensation at a uniform rate of Rs. 12,000/- per bigha for the entire acquired lands in addition to other statutory benefits. Dissatisfied with the fair market price of the land as determined by the Land Acquisition Collector, the claimants filed references u/s 18 of the Act, which in turn were referred to the court of the learned Additional District Judge. Vide separate judgment dated 18.2.2002 (in LAA 303-311/2006), the learned Additional District Judge, Delhi rejected the reference and declined to

give any enhancement in the awarded compensation to the claimants for acquisition of their lands. This judgment was challenged before the High Court in RFA No. 341/2002. During the pendency of this appeal, an application being CM No. 3370/2004 was filed by the claimants under Order 41 Rule 27 read with Section 151 of the CPC (for short "CPC") for allowing the appellants to produce additional evidence in support of their claims. This application was allowed and vide judgment and order dated 11.3.2004 the judgment of the Reference Court was set aside and the matter was remanded by the High Court to that court again for its trial in accordance with the law, and keeping in view the facts of the case the claimants were permitted to lead additional evidence.

2. After permitting the claimants to lead additional evidence, the Reference Court again vide its judgment and order dated 18.3.2006 rejected the reference petitions for enhancement and held that the claimants were not entitled to any enhancement of compensation. The correctness and legality of the judgment dated 18.3.2006 has been questioned by the claimants in the above mentioned appeals. It may be mentioned that all these appeals are against the judgments of the Reference Court, though dated different, but all denying the claim of the claimants for enhancement of the awarded compensation. As the judgments of the Reference Court are based upon common reasoning, we would also dispose of all the above mentioned appeals by a common judgment.

3. The learned Reference Court while primarily rejecting the evidence led by the claimants held that out of sale deeds produced by the claimants, two sale deeds related to the villages other than Bamnauli, while the third sale deed related to a small piece of land in the revenue estate of the village Bamnauli, and as such declined to consider the sale deeds produced by the claimants as relevant piece of evidence for determining the fair market value of the land. The Court also declined to give 12% increase as claimed by the claimants. Besides finding that the sale deeds could not be considered by the court, it also held that the land for which the sale deeds were produced had a better location and potential than the acquired lands. For this reason, the entire claim of the claimants was rejected.

4. These are first Land Acquisition Appeals wherein the court would be concerned with error of fact and law, or both. Application of law in its abstract, without reference to the facts of the precedence sought to be applied, would not achieve the ends of justice. It is the duty of the court to apply the judgment of the higher court while keeping in view the settled principles of ratio decidendi. General principles of law enunciated would operate as a good precedence only when there is somewhat similarity on factual matrix of the case. Every case has to be decided with reference to its own facts. The evidence led by the parties in support of their respective claims would always be the basis for determination of the controversies. Cogent, relevant and admissible evidence produced on record would normally fall in the zone of consideration by the court concerned for determining the main issues. In the cases of the present kind they would normally relate to determination of fair market value of the land. The evidence

led by the parties is the foundation of final adjudication by the court. Let us examine the evidence led by the parties. The claimants had produced and proved on record sale instances Ex. PW1/1, PW1/2 and PW2/1, the details of which are as under:

S. No. Village Bigha and Khasra Total Sale Value per Nos. Consideration bigha (in Rs.) (in Rs.) 1. Dhool Siras, Delhi 1 Bigha in khasra 48,000/- 48000/- No. 59/2/1 (Ex.PW1/1) 2. Bamnauli, Delhi 3 Bighas 15 Biswas forming part of khasra No. 269 min. (Ex.PW1/2) 1,75,000/- 46666/- 3. Berthal, New Delhi 2 Bigha 2 bids was form- ing part of khasra No. 352 (Ex.PW2/1) 370300/- 6333/-

5. Besides filing the above sale deeds, the claimants had examined Mr. S.K. Verma, PW1, LDC from the Sub-Registrar Office to prove these sale instances. PW2 was also produced for the same purpose i.e. for proving PW2/1. PW3, Jai Bhagwan, was the Patwari from Tehsil Vasant Vihar, D.C.'s Office, Kapasera, Delhi. He proved on record the extract of Aksh Shijra PW3/1. PW4 Amarjit Singh, was examined to prove the sale instances.

6. The respondents did not lead any oral evidence but merely tendered in evidence Ex.R1, the award and the sale instances Ex.R2 to R5 wherein the land falling in the revenue estate of Village Bamnauli were produced on record.

S. No. Village Bigha and Khasra Total Sale Value per Nos. Consideration bigha (in Rs.) (in Rs.) 1. Bamnauli, Delhi 4 Bigha 16 bids was form- ing part of khasra No. 288 (Ex.R-2) 37,000/- 7708/- 2. Bamnauli, Delhi 4 Bigha 16 bids was form- ing part of khasra No. 259 (0-4) and 260(4-12) {Ex.R3} 39,000/- 8125/- 3. Bamnauli, Delhi 4 Bigha 14 bids was form- ing part of khasra No. 571 {Ex.R-4} 35,000/- 7447/- 4. Bamnauli, Delhi 4 Bigha 16 bids was form- ing part of khasra No. 635 {Ex.R-5} 26,250/- 5469/-

7. Mark "A", Ex.P4, was a circular issued by the government in relation to fixation of a minimum price payable for acquisition of the agricultural lands in the Union Territory of Delhi, irrespective of its location or agricultural quality. Brochure, Mark "C" was also produced on record showing that Dwarka was a developed residential project at the time of acquisition of the lands for the purpose of supplying electricity to the developed areas and as such the land had a great potential.

8. The claimants also produced on record the copy of the order/judgment of the Reference Court dated 6.4.1993 wherein the court had awarded compensation @ Rs. 36,400/- per bigha as on 27.1.1984 when the notification u/s 4 of the Act had been issued for acquiring the land in the Village Amberhai. Ex. Mark "D" was also produced on record which was a Division Bench judgment of this Court in RFA No. 481/1999 and other connected matters, titled as Ramanand (since Decd.) through LRs. v. Union of India and Anr. 2002(65) DRJ 1 decided on 31.5.2002 and RFA No. 565/1999 Shriram v. Union of India in relation to acquisition of lands in the revenue estate of Village Bharthal and Bindapur and court granted the compensation @ Rs. 47,865/- for acquisition of the land vide

notification dated 27.1.1984. The claimants claim enhancement in payment of compensation for the reason that the sale deeds Ex.PW1/1 to Ex. PW2/1 have been erroneously ignored by the learned Reference Court and on the basis of these sale instances which relate to the revenue estate of Village Bamnoli as well as the adjacent villages, the claimants, as prayed, were entitled to higher compensation @ Rs. 70,000/- per bigha. Further, they rely upon the case of Ramanand (supra) to claim higher compensation by adding an increase @ 12% per annum as that notification was issued in the year 1994 while in the present case notification was issued in the year 1989.

9. The claimant Mr. Amarjeet Singh had led his evidence by way of an affidavit. In his affidavit, he had claimed that besides all the facilities like electricity, transport and communication, the railway station and airport were one km. and four kms. away respectively from the Village Bamnoli and the said village was urbanized in the year 1994. He further claimed that various farm houses had been developed around the village Bamnoli and a big unit of BSF and a tourist place were also developed by the Govt. of NCT of Delhi near the said village. He claimed that villages Bharthal, Dhulsiras and Bijwasan were adjoining to the village Bamnoli. He further stated that boundaries of the revenue estate of villages Bharthal, Dhulsiras and Bamnoli were adjacent to each other and potentially of the land of his village was far better than the surrounding land of village Bharthal, Dhulsiras, Bijwasan and Chhawla etc. He further claimed that a certified copy of AKS sizra of village Bamnoli, Tehsil Vasant Vihar issued by the revenue department on 28.5.2004 had been placed on record and marked as Ex.PW3/1 which clearly showed that the boundary walls of village Bamnoli, Dhulsiras, Bharthal and Bijwasan were adjacent to each other. He further claimed that the High Court vide its judgment dated 31.5.2005 in RFA 481/99 had awarded compensation @ 47,224/- per bigha for the land acquired vide notification dated 27.1.84 from the revenue estate of village Bharthal and further vide judgment dated 4.5.2004 in RFA 780/2000 had awarded Rs. 50,000/- per bigha for the land acquired vide notification dated 20.6.86 from the revenue estate of village Bharthal. In his affidavit, he has specifically stated that the land measuring about 3 bighas 15 bids was forming part of khasra No. 269 min. situated in the village Bamnoli was sold for a sum of Rs. 1,75,000/- by a registered sale deed dated 25.7.86 which would give the rate of Rs. 46,666/- per bigha. This was exhibited as Ex.PW1/2. Another sale instance given was Ex.PW2/1 where the land measuring about 2 bighas 2 bids was in the village Bharthal, New Delhi was sold for a sum of Rs. 3,70,300/- vide sale deed dated 18.8.96 giving a rate of Rs. 1,76,333/- per bigha. This witness was cross-examined at great length. He admitted the fact that the village Bamnoli was urbanized in the year 1994 and also stated that the State Bank of Patiala was in existence in that area w.e.f. 9.1.1987. He also admitted the fact that there was no much development on the land. According to this witness, village Bijwasan is situated at the distance of one kilometer from the acquired land while the airport is at the distance of 7 kms. According to him, Village Bharthal is adjoining to

Village Bamnoli while village Dhul Siras is about half km. away from village Bamnoli.

10. Another relevant statement is that of PW3, Jai Bhagwan, Patwari. He proved and confirmed Ex.PW3/1, the extract of aks shijra of village Bamnoli. In his examination in chief he stated the quality of land of village Bamnoli and village Bharthal is almost similar. Nothing material could come in his cross- examination which would destroy the effect of the statement made by him in his examination in chief.

11. Referring to the potential and nature of the land at the time of acquisition, it cannot be disputed that the land even as per the statement of the claimants was being put to agricultural use but it certainly had some building potential and was quite close to developed areas. In terms of notification issued u/s 4 of the Act, the land was sought to be acquired for construction of 400 K.V. Substation for Desu which itself indicates that the area had a building potential and furthermore even the brochure placed on record though only marked by the trial court clearly shows that the Dwarka was a developed area and as disclosed in the brochure itself, the Desu was to install two sub-stations of 200 KV and one substation of 400 K.V. Thus, it can safely be said that the land had a potential and it was located adjacent to village Bharthal.

12. Ex. PW1/2 is a sale deed relating to sale of 3 bighas 15 bids was of land part of khasra No. 269 min. from the revenue estate of Village Bamnoli, Tehsil Mehrauli, New Delhi for a sum of Rs. 1,75,000/-. This would give the value of the land @ Rs. 46,666/- per bigha. The sale transaction is nearly 6 months prior to the date of issuance of the notification u/s which was 9.1.1987. Thus, it is a sale instance which is relevant and comparable piece of evidence placed by the claimants on record. The sale is prior to the date of issuance of the notification and it relates to the sale of the land from the revenue estate of the same village and certainly cannot be termed as a small piece of land. The total land acquired under the notification was 248 bighas and 5 biswas. It was certainly not a case of acquisition of thousands and thousands of bighas of land by one and the same notification. The learned reference court has fallen in error in holding that the sale instance of Ex.PW1/2 was liable to be rejected for the reason that it was a small piece of land in comparison to the land acquired by the notification. Even in the case of The Collector of Lakhimpur Vs. Bhuvan Chandra Dutta, relied upon by the reference court, the Supreme Court had used the expression that the value fetched for small plot of land cannot be applied to lands covering a very large extent. The large area of land cannot possibly fetch a price at the same rate of a small plot. This principle would hardly be applicable to the facts of the present case as the area of 3 bighas and 15 bids was cannot be said to be a small plot of land which cannot be comparable to the acquired agricultural land. In any case, reference can also be made to the judgment of the Supreme Court in the case of Ravinder Narain and Another Vs. Union of India (UOI), .

13. The other reason given by the reference court for rejecting this sale instance

was that it does not relate to the similar land. This reason is also factually incorrect. There is nothing on record to show that Ex.PW1/2 is not similar to the acquired land particularly when it relates to the revenue estate of the same village. Furthermore, the statement of PW3 clearly stated that even the acquired land was adjacent to the land falling in the revenue estate of village Bharthal. It was the contention of the claimants that the price indicated in Ex.PW1/2 would have to be considered by addition of the value of the stamp paper which was to the extent of Rs. 14,000/-. Thus, the entire sale consideration for the sale of 3 bighas and 15 bids would be Rs. 1,75,000/- +Rs. 14,000/- i.e. Rs. 1,89,000/- giving an average of Rs. 50,400/- per bigha.

14. As far as Ex.PW1/1 and Ex.PW2/1 (Ex.PW1/3) are concerned, they relate to sale of land in village DhoolSiras and Bharthal respectively. As far as village DhoolSiras is concerned, it has been even admitted by the claimants themselves in their evidence that it is nearly half km. away from the acquired land. This sale instance, thus, is neither comparable nor a relevant piece of evidence. Ex.PW1/3(Ex.PW2/1) relates to the sale of 2 bighas and 2 bids was of land at village Bharthal where the land was sold for a sum of Rs. 3,70,300/- thus giving the value of the land at Rs. 76,333/- per bigha. Of course, as per the statement of PW4 and even as per Ex.PW3/1, the boundaries of village Bharthal and Bamnoli are adjacent but still there is evidence on record to show that Bharthal is a developed area. Thus it would not be necessary for this Court to rely upon Ex.PW2/1 particularly when sale instances of the acquired land and/or of the revenue estate of the same village are available i.e. Ex.PW1/2. Both these evidences have been rightly rejected by the reference court and we find no error in the view taken in this behalf by the reference court.

15. As far as the policy of the Government is concerned, it is irrelevant for all intents and purposes as the policy was issued in the year 1990 while the notification u/s 4 was issued on 9.1.87. The values of the land prevailing more than three years subsequent to the notification cannot provide any reasonable guide in determining the fair market value of the land. As such, that evidence is also of no consequence and help to the claimants.

16. Learned counsel appearing for the respondents claims that Ex.PW1/2 was not the true index of the market value of the land at the time of issuance of the notification. According to him, the court should rely upon Ex.R2 to R5 and there is no justification for interfering with the judgment of the reference court. In support of this contention he relied upon Ex.R1, the Award of the Collector in relation to the acquired land wherein a sale instance was referred to at item No. 22 of Ex.R1 wherein the vendor had sold 3.15 bighas of land for a sale consideration of Rs. 1,70,000/- on 29th July, 1986 by a registered sale deed. Reference was also made to the other sale instances recorded in the reference. It was further urged on behalf of the respondents that deduction, if not 1/3rd, at least of 20 per cent should be made towards development charges before determining the amount of compensation payable to the claimants. In this regard

he relied upon the judgments of the Supreme Court in the case of Kasturi and Others Vs. State of Haryana, and Chiman Lal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr. (1988) 2 SCC 751. As far as Ex.R2 to R5 are concerned they cannot be looked into by this Court as the value per bigha indicated under those sale deeds though relating to the same village are even much below than the award made by the collector. Vide Ex.R2, the land measuring amount 4 bighas 16 bids was from the revenue estate of village Bamnoli was sold for a sum of Rs. 37,000/- thus giving a value of less than Rs. 9,000/- per bigha. To this extent, the submission of the respondents cannot be accepted.

17. The claimants have heavily relied upon the judgments of this Court in RFA 565/99 and 481/99 wherein the court had granted compensation to the claimants for acquisition of agricultural land @ Rs. 47,224/- per bigha. In those cases, the notification u/s 4 was issued on 27.1.84 nearly three years prior to the issuance to the notification in the present case. According to the claimants, this should be treated as the base value and they should be given 12 per cent increase compounding per annum and should be given at least Rs. 70,000/- per bigha. They also relied upon another judgment of this Court in the case of Smt. Rishalo (Deceased) Vs. Union of India (UOI) and Another, for acquisition of the land from the revenue estate of village Bharthal by notification dated 20.6.86 wherein the court had awarded the compensation @ Rs. 50,000/- per bigha. Learned counsel appearing for the claimants further while relying upon the judgment of the Supreme Court in the case of Chiman Lal Hargovinddas (supra) contended that the material relied upon by the Acquisition Officer in his award cannot be relied upon unless the same is produced and proved in accordance with law before the reference court. Further while relying upon the judgments of this Court in the cases of Rama Nand (since deceased) though LRs. v. UOI and Anr. 2002 (65) DRJ 1 and Chajju Vs. Union of India, they also argued that situation, potentiality and quality of lands of two villages are substantially similar so the compensation awarded to one would be a fair guide for the other and also that similar compensation should be paid. Where by a notification, lands of various villages are acquired and the boundaries of such villages are adjacent to each other, then their potentiality would be somewhat similar and compensation awarded in one would be a fair guide for awarding compensation in the others.

18. In so far as the rejection of sale deeds Ex.PW1/1 and Ex.PW2/1(Ex.PW1/3) by the learned Reference Court is concerned, we can hardly find any fault in the impugned judgment. But there could be no reason before the reference court for not relying upon Ex.PW1/2 which related to a sale transaction of village Bamnoli and was sale of a reasonably large piece of land measuring about 3 bighas 15 biswas. The reasoning given by the learned reference court for rejecting this evidence is not sustainable in law. The best method for computing the compensation payable to the claimants is the sale instances relating to the land in question. A willing buyer and a willing seller would offer what price of the land at the time of acquisition or immediately thereto would be a definite guide for

determining the fair market value of the land on the date of the notification. Once such an evidence is available on record, there is hardly any need for the court to advert itself to any other method of computation. This principle was clearly stated by the Supreme Court in case of ONGC Ltd. v. Sendhabhai Vastram Patel and Ors. (2005) 6 SCC 454. The Supreme Court in the case of Chiman Lal Hargovinddas (supra) also clearly stated that the court has to apply some kind of guess work in computing the compensation payable to the claimants for acquisition of their respective lands. It may not be always possible to grant compensation arithmetically correct to the decimals. The counsel appearing for the claimants referred to various judgments of this Court wherein for acquisition of land in village Bamnoli or other surrounding villages during the year 1982-86, compensation was awarded by the court for acquisition of the agricultural land @ Rs. 21,000/- per bigha to Rs. 47,000/- per bigha and even more and submitted that in the present case, they would be entitled to get compensation @ Rs. 70,000/- per bigha at least. They claim enhancement even on Ex.PW1/2 as it is stated to be a sale deed more than six months prior to the date of acquisition. We have already noticed that the reference court could not have outrightly rejected Ex.PW1/2 as it was a sale instance of a reasonably large piece of land and the sale transaction had been executed more than six months prior to the date of notification. There was no reason for the court and in fact no evidence had been led that the transaction Ex.PW1/2 was a sham transaction and its genuineness was doubted for any reason whatsoever. The judgments of this Court in RFA 565/99 and 481/99 are a merely guiding factor and cannot be taken as a determinative basis in regard to fixation of compensation payable to the claimants. These awards and judgments relate to different villages which may be adjacent but once the sale deed of the same village is available, we find that it would be unnecessary to travel into this controversy.

19. While relying upon Ex.PW1/2, we have to consider whether certain deduction would be permissible or not. It is a settled principle of law that wherever potential and location of the agricultural land is sought to be compared for determination of market value to the adjoining developed or better land, certain amount of deduction would be permissible. Ex.PW1/2 is a comparable and relevant piece of evidence which relates to a reasonably large size of the plot. Thus, a heavy deduction is not called for in the facts of the present case. In the case of Kasturi and others (supra), the Supreme Court had held that deduction of 20 per cent as against normal 1/3rd from the amount of compensation would be reasonable in such cases. It will be reasonable to apply the said principle to the facts of the present case. Furthermore, there are number of pronouncements of different courts where it has been held that it is reasonable and fair to apply principle of deduction in such cases. Reference in this regard can be made to a recent judgment of this Court in the case of Omwati v. UOI and Anr. LA App. 94/2006, decided on 27.4.2006.

20. The value of the land as reflected in Ex.PW1/2 comes to Rs. 46,666/- per bigha and after making deduction of 20% i.e. Rs. 9,333.20/-, the claimants

would be entitled to get compensation at the rate of Rs. 37,332.80/- per bigha rounded off to Rs. 37,000/- per bigha. We are of the considered view that the fair market value of the land would be Rs. 37,000/- per bigha and the claimants would be entitled to this market value in addition to the interest and statutory benefits u/s 23(1-A) of the Act. The claimants would also be entitled to proportionate costs in these appeals.