(2002) 05 DEL CK 0155

In the Delhi High Court

Case No : L.P.A. No''s. 156, 165, 182 and 220 of 1980 and R.F.A. No''s. 31/80, 220/81 and 210/83

Shri Hari Shankar (deceased) through L.Rs. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:
Land Acquisition Act, 1894 — Section 17(4), 4, 6

Citation : (2002) 05 DEL CK 0155

Hon'ble Judges : Vikramajit Sen, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Sandeep Sethi, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—These appeals are being taken up for decision together since questions arising for determination are the same and similar. Appeals are by the claimants, whose land was acquired for public purpose at public expense by virtue of notifications issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). All of them are seeming further enhancement in the amount of compensation.

2. By virtue of notification issued u/s 4 of the Act on 23.4.1962, land situate within two revenue estates of Patti Jahannuma and Sadhora Khurd was acquired for public purpose at public expense. The Collector Land Acquisition made his award No. 1479 on 7.3.1963 relating to the land situate in revenue estate of Patti Jahannuma and award No. 1477 relating to revenue estate of Sadhora-Khurd, offering compensation at the same rate of Rs. 7,000/- per bigha. Feeling dissatisfied, the claimants sought references, which were answered by separate awards by the Reference Courts. Four reference petitioners as regards determination of compensation with respect of the land situate in the revenue estate of Patti Jahannuma were answered on 14.7.1969 by Shri G.R. Luthra, Additional District Judge, as he then was, holding the fair market value of the

land at Rs. 25,000/- per bigha. Further appeal was preferred to this Court by Shri Hari Shanker (RFA.107/70). By judgment delivered on 9.4.1980 the appeal was decided by learned Single Judge holding that the market value, as determined by the reference court, at Rs. 25,000/- per bigha was just and fair. Against this decision of learned Single Judge, the claimants have filed L.P.A. No. 156/80 seeking further enhancement in the amount of compensation.

3. In revenue estate of Sadhora Khurd, land measuring 153 bighas 14 bids was was acquired by the same notification dated 23.4.1962. Claimants sought reference against the award of the Collector. Shri G.R. Luthra, Additional District Judge, Delhi in L.A.C. No. 195/68 answered the reference on 7.3.1970 holding the fair market value of land situate in Sadhora Khurd at Rs. 26,000/- per bigha. This reference was preferred by Shri S.M. Yahaya and the subject matter of reference was 27 bighas 5 bids was of land. Feeling dissatisfied RFA No. 457/70 was filed for further enhancement, which was decided on 8.4.1980 holding Rs. 26,000/- per bigha to be the fair market value. Still feeling dissatisfied with the decision of learned Single Judge, L.P.A. 165/80 has been filed for further enhancement in the amount of compensation.

4. Reference sought for by Chatter Singh and others and Sheel Chandra and others were answered separately. In the case of Chatter Singh (LAC No. 389/678) fair market value was fixed at Rs. 9,200/- per bigha whereas in the case of Sheel Chandra, the reference court answered the reference on 15.4.1969 holding the fair market value at Rs. 9,500/- per bigha of the entire land including the trees. Appeals were filed by Chatter Singh and Sheel Chandra and others. In the case of Sheel Chandra, the amount of compensation was enhanced holding the fair market value at Rs. 12,000/- per bigha whereas in the case of Chatter Singh in RFA 484/69 decided on 9.4.1980 the market value was fixed at Rs. 15,000/- per bigha. Claimants have filed LPA. Nos. 220 and 182 of 1980 respectively seeking further enhancement in the amount of compensation.

5. More land was acquired subsequently, after the aforementioned acquisition. On 21.2.1966 notification u/s 4 of the Act was issued invoking emergency provisions of Section 17(4) of the Act. 44 bighas 4 bids was land, situate in revenue estate of Sadhora-Khurd was acquired for which the Collector Land Acquisition made his award No. 1967 offering compensation at the rate of Rs. 4,725/- per bigha. Feeling dissatisfied claimants sought reference. The reference court answered the reference on 23.2.1981 holding the fair market value at Rs. 17,000/- per bigha. Appeal (RFA. 220/80) has been filed seeking further enhancement in the amount of compensation.

6. 9 bighas 18 bids was land situate within the revenue estate of Sadhora-Khurd owned by Ramjas Foundation was acquired through notification dated 2.12.1967 u/s 4 of the Act for planned Development of Delhi, Declaration u/s 6 of the Act was made on 15.5.1968 for which the Collector Land Acquisition made his award No. 72/71 on 25.2.1971 offering compensation at the rate of Rs. 7500/- per bigha. Feeling dissatisfied Ramjas Foundation sought reference as regards

determination of the amount of compensation payable to them as price of the land. The reference court answered the reference on 31.1.1983 assessing the market value at Rs. 9,600/- per bigha. Feeling dissatisfied RFA 210/83 has been filed seeking further enhancement in the amount of compensation.

9. A smaller portion of land measuring 5 biswas, situate within the revenue estate of Sadhora Khurd was acquired by the Delhi Administration on the basis of notification issued u/s 4 of the act on 24.4.1966, which was followed by declaration u/s 6 of the Act on 19.8.1968. Purpose of acquisition being Planned Development of Delhi. Collector Land Acquisition on 14.9.1971 made his award No. 19/71-72 and offered compensation at the rate of Rs. 7500/- per bigha. Claimants sought reference. Reference court on 23.7.1979 answered the reference assessing the market value at Rs. 12,400/- per bigha. Further appeal had been filed being RFA No. 31/80 seeking further enhancement in the amount of compensation.

8. Learned counsel for the parties were heard at length, who made their respective submission. In all the appeals other than LPA Nos. 165/80 and 156/80, learned counsel for the appellants submitted that there was no justification in having made any discrimination in the matter of payment of compensation, when the land was acquired by the State for the same public purpose, situate within the same revenue estate. Land was acquired for Planned Development of Delhi. It was situated in close proximity to the developed and developing areas and quite adjacent to the main roads. In a casual manner market value was assessed failing to take into consideration the potential of the acquired land. It was taken for granted as if the land was capable only for being used as on the date of notification u/s 4 of the Act. It was necessary, while determining the amount of compensation to have taken note of the potential value of the land to which it could at best be utilised. There was absolutely no difference in situation, quality, location and nature of the land vis-a-vis the land, which was subject matter of L.P.As No. 165 and 156 of 80. It was further contended on behalf of the claimants that they were entitled for equal treatment in the matter of payment of compensation vis-a-vis the other claimants, whose lands were also acquired for same public purpose.

9. In almost all cases, it was found as a matter of fact that the market values of the lands in and around Delhi, more particularly in the area in question have rapidly been increasing. Otherwise also in various decisions of this Court it has also held that after partition of the country development activities started in and around Delhi in about 1954-55. After the first major acquisition of vast tract of land, the general through notification issued u/s 4 of the Act on 13.11.1959 in almost all parts of Delhi market value of land had been increasing. There has been no decrease in the market value of lands thereafter. Therefore, there was no justification in having deprived the claimants, whose property was acquired subsequently, of the fair amount of compensation. In the two cases compensation had been assessed at Rs. 26,000/- and Rs. 25,000/- per bigha. All

claimants should have been held entitled to compensation at the same rate, which will ultimately be held payable in those two cases as well.

10. Submission on behalf of the claimants in the two appeals (L.P.A.156/80 and LPA. 165/80) was that the courts has declined to take into consideration the sale instances and other instances produced by them in order to prove the fair market value, these instances were ignored on erroneous consideration that the sale instances are of smaller developed plots. The same could not altogether have been ignored from consideration in order to determine fair amount of compensation. Entire land, which had been acquired, was capable of being utilised either for raising residential constructions or commercial constructions, which fact was altogether ignored. They prayed that fair amount of compensation be determined on the basis of the material as has been proved on record.

11. On behalf of the respondents, it was contended that the fair market value had rightly been determined by the impugned awards, considering the nature of the land acquired. There is no scope for further increase since all relevant factors were duty taken into consideration by the reference courts.

12. Evidence in almost all the cases has been the same. Therefore, it is not necessary to discuss evidence individually in all cases. The acquired land in the two revenue estates was in close proximity to each other. There was hardly any difference as regards its location, situation and quality. The only distinction, which was made in the two cases, which are subject matter of L.P.A.No. 156/80 and L.P.A.No. 165/80 in awarding compensation was a difference of Rs. 1,000/- per sq. yard only. In L.P.A. 156/80 it was observed that there was slight difference in the level of land, Therefore, the market value was assessed at Rs. 25,000/- per bigha as on 23.4.1962 whereas in the other appeal, namely, L.P.A. 165/80 since the level of the land was higher, market value was assessed at Rs. 26,000/- per bigha.

13. The claimants had in fact relied upon four type of evidence in order to prove the fair market value of the land. First was the offers received from the customers. This type of evidence was discarded by the Courts and in fact, learned counsel for the appellants during course of arguments did not place reliance upon the said instance. It was also not pressed even during the pendency of the appeal before learned Single Judge. Second type of evidence, which was led, was about the capitalisation of profits. This method was also rejected by learned Single Judge as well as by reference court, the Appellants have been urging that the market value ought to have been determined by taking into consideration the potential value of the acquired land that it was absolutely fit to be utilised for raising constructions without any further development. Both the revenue estates adjoins each other and the land abuts the main road on both the sides. There has been development in and around the locality. Adjacent property being Rama Bagh. Developed plots were being sold during the period 1959 to 1961 ranging from Rs. 45/- per sq. yard to Rs. 87/- per sq. yard. This evidence was also discarded by the reference court as well as

by learned Single Judge on the ground that there was no satisfactory evidence on record that any plans were submitted to the Municipal Corporation of Delhi for development of the acquire land .The acquired land being large enough, instance of small plots were not relevant, in order to determine the market value. The fourth type of evidence, which was led on behalf of the appellants was the sale instances. Plots of land were auctioned by Rehabilitation Department. A plot of land admeasuring 1 bigha 8 bids was was sold in public auction on 20.11.1958 and the highest bid offered was Rs. 71,600/- i.e. Rs. 51,421/- per bigha. similarly, another plot of land comprising Khasra No. 419 measuring 1 bigha 11 bids was situate in revenue estate of Patti Jahannuma was sold in public auction held on 5.1.1959. The market rate thus reflected is Rs. 27,740/- per bigha. Out of same khasra number another plot measuring 1 bigha 9 bids was was auctioned on the same date, namely, 5.1.1959 for a total consideration of Rs. 46,500/- i.e. at the rate of Rs. 32,690/- per bigha. Since the plots of land were adjacent located in the vicinity of Patti Jahannuma and were abutting on two sides of the road, reliance was also placed in the case of Shri Hari Shankar, which is subject matter of L.P.A. No. 156/80 on the decision of this Court in RFA No. 172/68 (Samrat Ashok Co-operative House Building Society v. Union of India) decided on 9.4.1980.

14. In Samrat Ashok''s case(supra) market value was determined at Rs. 25,000/- per bigha. While assessing compensation in Samrat Ashok''s case (supra) the same transaction by which the society had purchased a compact piece of land measuring 5 bigha 2 bids was in January, 1959 for a consideration of Rs. 1,05,000/- was made the basis. The notification u/s 4 of the Land Acquisition Act in that case was issued on 23.4.1962. Considering the rising trend of prices in the market during the year 1959 to 1961, an increase at the rate of 25% was allowed on the market value as reflected in the sale deed of the society from the date of purchase till acquisition and it accordingly was held in Samrat Ashok''s case (supra) that the fair market value of the land as on 23.4.1962 would be Rs. 25,000/- per bigha. The said judgment in Samrat Ashok''s case (supra) was made the basis in the case of Hari Shanker and was in terms relied upon in S.M. Yahaya''s case also discarding the remaining evidence led by the appellants.

15. We have gone through the entire material placed on record. Since in the case of Samrat Ashok''s (supra) it was sale transaction by which society itself had purchased the land, the said sale transaction was made basis for determining the amount of compensation by allowing 25% increase for the intervening period from the date of sale to date of notification u/s 4 of the Act, but in our view, the market value as determined in Samrat Ashok''s case (supra) could not have been made the basis since one factor and in our view and important factor was absolutely ignored from consideration that the sale in favor of the society was by its founder member and in such a sale the founder member of the society to the society numerous factors would have come the way. May be that in this anxiety to establish, the Society deliberately sale consideration was kept low or may be that some other factors might have prompted him to show less market value.

The said evidence was in fact relied upon by the respondent Union of India as Ex. U.6. The appellant had placed reliance on the three sale instances of small plots as Ex. AW.3/1, Ex.AW.6/1. and Ex.AW.6/2. In case the said three other sale transactions taken note of, which were discarded simply on the ground that these were Rehabilitation sales, it would not be unreasonable to infer that though the fair market value of undeveloped plots during the relevant period of the sale transactions was from Rs. 27,740/- per bigha to Rs. 51,421/- per bigha, the market value of entire land on the revenue estate on an average was at least Rs. 25,000/- per bigha in the month of January, 1959 for an undeveloped plot of land. This would be the minimum rate, which we consider was the market rate, if not more as in January, 1959. The reference court as a matter of fact had equated the acquired land with the sale instance reflected in Ex. AW.1/3 but gave its own reasons not to determine the market value on that basis. The following is the extract from the award of reference in Samrat Ashok''s case:-

"Tek Chand PW6 a clerk in the office of the Regional Settlement Commissioner brought the original sales certificates copies of which are Ex.AW3/1, Ex.AW6/1 and Ex.AW6/2. Shri Pheru Mal Jain AW5 gave the particulars of the sales as embodied in sale deeds Ex. AW6/1 and Ex.AW6/2, According to sale certificate Ex.AW3/1 land measuring 1 bigha and 8 bids was comprised in field No. 456 and 457 situate in Patti Jahannuma had been sold by auction on 20.11.1958 for Rs. 71600/- the rate works out to Rs. 51,421/- per bigha. Vide Ex.AW6/1 land measuring 1 bigha and 11 bids was out of field No. 419 situate in Patti Jahannuma had been sold for Rs. 43,000/- in an auction held on 5.1.1959. The rate works out to Rs. 27,740/- per bigha. Vide Ex.AW6/2 land measuring 1 bigha 9 bids was out of field No. 419 aforesaid had been sold for Rs. 46,500/- in an auction held on 5.1.1969. The rate works out to Rs. 32,690/- per bigha.

Ex. U6 is the copy of the judgment of Shri J.V. Verma in respect of the market value of the land represented by field No. 456 and 457/3 measuring 5 bighas and 3 bids was situate in the revenue estate of Patti Jahannuma which had been acquired vide this very award No. 1429. The market value of that land had been fixed at Rs. 29,650/-. The rate works out to Rs. 25,421/- per bigha.

Ex.U7 is a copy of the field map placed on record by the Union of India which shows relative situation of the lands subject matter of different instance mentioned above. It appears from the said filed map that the land subject matter of the judgment Ex.U6 and Ex.AW3/1 adjoins the land in question and they abut on the same road. The land subject matter of the remaining instances is comparatively farther off. So the best piece of evidence consist of the instances Ex.U6 and Ex.AW3/1. But Ex.U6 is preferable as against Ex.AW3/1 in as much as the former related to a bigger piece of land than to which the latter related and in the present case the piece of land has been even bigger than the land subject matter of Ex.U6. Hence it is on that instance that the reliance should be placed. It is a matter of common knowledge that bigger pieces of land are sold at cheaper rates because only wealthy few can have the capacity to purchase that its rate is with consequence that its rate is decreased. On account of the fact that the land in question was bigger in area it market value must be slightly less than what had been fixed vide judgment Ex.U6. Hence on that basis I fix the market value of the land in question at a round figure of Rs. 25,000/- per bigha."

16. The question to be decided by us is that on bulk land being acquired, taking all relevant factors into consideration what should be the market value of the land on the date of notification.

17. Reliance was placed by learned counsel for the respondents on the decisions in Administrator General of West Bengal Vs. Collector, Varanasi, ; P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, Hasanali Khanbhai and Sons and Others Vs. State of Gujarat, ; Smt. Basavva and others Vs. Special Land Acquisition Officer and others, as also the judgment of this Court inV Bhullan Singh Vs. Union of India, on the propositions that since the instances are of small lands and the acquired land being undeveloped and large, it will be necessary to make appropriate deduction in order to arrive at fair market value.

18. The claimants also placed reliance upon the decision of Supreme Court in The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, ; RFA No.83/87 (Union of India v. Rajiv Gupta) decided on 5.10.2001 and The Executive Director Vs. Sarat Chandra Bisoi and Another, We are not referring to the decisions relied upon in detail since the principles laid down are well known as regards the factors to be taken into consideration and the facts to be discarded while arriving at the fair market value. It was vehemently urged on behalf of the claimants that considering the potential of the land as capable of being utilised for construction purposes, in view of the special location of the land, it ought to have been evaluated by placing reliance upon instances of sale of plots in the adjoining colony, which was fast developing, namely, Rama Bagh where the prices of developed plots were between Rs. 44/- per sq. yard to Rs. 87/- per sq. yard from 1959 to 1961, as evidenced by documents Ex.A9; Ex.A5 and Ex.A4. Ex.A.10 is the sale instance of a plot of land reflecting market value as on 20.11.1958 at Rs. 50.78 per sq. yard. The other sale instances reflected by Ex.A9; Ex.A5 and Ex.A5 dated 21.3.1959; 8.1.1960 and 26.9.1961 reflect market rate of small plots at Rs. 44.00; Rs. 75.00 and Rs. 87.00 per sq. yard respectively. Now assuming that the developed plots were being sold at Rs. 87/- per sq. yard in 1961 or in other words at the rate of Rs. 90/- per sq. yard even a year later in 1962, the fair market value as assessed on 23.4.1962 can be taken at Rs. 31,250/- per bigha or Rs. 31.25 per sa. yard. It would rather be fair in case it had to be evaluated on the basis of sale instances of smaller plots of land since in Basavva (Smt.) and others case (supra), while evaluating larger tract of land market value of smaller plots was held to be relevant and required to be taken into consideration by making provision for developing large track into small plots. On allowing maximum deduction even at the rate of 50%, the price arrived

at by us would be fair and reasonable. In any case Rs. 25,000/- per bigha was the fair market value of all categories of land in the two revenue estates in the month of January, 1959, as was the case projected on behalf of the Collector. By allowing increase at the same rate, as was allowed by the Collector, the Reference Court and by learned Single Judge, on Rs. 25,000/- as per bigha i.e. increase of 25%; we are of the view that as on 23.4.1962 the fair market value of all categories of land in the two revenue estates would be Rs. 31,250/- per bigha.

19. The next notification was issued on 19.10.1962. It was followed by three other notification dated 21.2.1966, 21.12.1967 and 24.4.1968. Evidence was adduced on record that there was rising trend in the prices of lands in the vicinity because of tremendous development activities going on and which were in full swing in and around the locality. Relying upon the ratio of a number of judgment of this Court, more particularly in Bedi Ram Vs. Union of India and another, , we are of the view that allowing an increase at least at the rate of 6% p.a. it would be possible for us to arrive at the fair market value of various parcels of land, which were acquired subsequently and are subject matter of these appeals. Accordingly, we hold and assess the market value of the acquired land situated in the revenue estate of Pathi Jahannuma and Sadhora-Khurd as follows:-

Date of Notification Market value 23.10.1962 Rs. 31,250/- per bigha 19.10.1962 Rs. 32,000/- per bigha 21.02.1966 Rs. 40,000/- per bigha 02.12.1967 Rs. 42,000/- per bigha 24.04.1968 Rs. 42,800/- per bigha

20. We hold the claimants entitled to compensation on the aforementioned market rates and thus allow all the appeals with proportionate costs. Over and above the amount of enhanced market value, the claimants will be paid interest and solarium as per the impugned awards of the Reference Court. Interest will also be paid to the claimants on solarium in view of decision of Supreme Court in Sunder Vs. Union of India, .