

(2001) 02 DEL CK 0102

In the Delhi High Court

Case No : LPA 8, 15, 6, 9, 10, 11, 12, 13, 14/81

Shri Mehr Singh and anothers

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Citation : (2001) 4 AD 237 : (2001) 91 DLT 414

Hon'ble Judges : M.S.A. Siddiqui, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. N.S. Vashisht and Mr. K.L. Budhiraja, for the Appellant; Ms. Pinki Anand and Ms. Burnali Basak, for the Respondent

Judgement

Khan, J.—All these LPAs arise out of a common judgment of First appellate Court dated 16.1.1979 awarding compensation of Rs.15 sq. per yard for appellants land in Village Tihar, and being identical on facts and law are disposed off by this common judgment.

2. Appellants land was acquired in Village Tihar pursuant to Section 4 Notification dated 23.2.1964. Collector classified their land in Block `A" and determined its compensation at Rs.5,000/- p.b. Appellants sought reference and Reference Court awarded them Rs.10,000/- p.b. Two sets of appeals were filed against the award of ADJ-one by respondent-Union wanting reduction in awarded compensation and the other by appellants asking for higher compensation. Appeals filed by Union were dismissed and that of appellants allowed and the compensation in their case was enhanced to Rs.15,000/- p.b. They still felt dissatisfied and have filed these LPAs praying for still higher compensation.

3. Appellants have relied upon two DB Judgments of this Court in the cases of Rajgopal and Shayamgopal (RFAs 398/68 and 35/70) awarding compensation of Rs.10,000/- p.b. for the land acquired in Tihar Village in reference to an earlier Section 4 Notification dated 13.11.1959. They have also produced some sale instances in evidence of the surrounding sanctioned colonies including that of

Hari Nagar, Fateh Nagar and Rajouri Garden etc. Showing the market value per square yard of land ranging from Rs.31.75/- to Rs.69.00/-. They also relied upon a Government communication allegedly addressed to two land owners of this Village/Shyamgopal and Rajgopal dated 19.11.1962 containing a Government offer to them to sell its land covered by Khasara No. 1612 in Tihar Village measuring 2089 S.Y. at Rs.41.25 p.sy. (AW 3/1).

4. In rebuttal respondent-Union seems to have relied upon a registered sale agreement dated 7.1.1964 between one Dharmvir Bali and the seller agreeing to sell land measuring 4 bighas 6 bids was in Khasra No.1339 at Rs.10 p.s.y. It was pointed out that the sale was to be completed by 30.4.1964 but could not fructify because of issuance of Section 4 Notification for acquisition of land in Tihar Village.

5. First Appellate Court considered and appreciated all the evidence before it and dealt with it meticulously. It gave due regard to the two judgments of this Court in Rajgopal and Shyamgopal cases awarding Rs.10,000/- p.b. in Tihar Village. It then took the sale instances of surrounding developed colonies like Rajouri Garden etc. in regard and also the Government communication dated 19.11.1962 but concluded that both these represented the rising trend of the prices. It finally took in account sale agreement dated 7.1.1964 cited by the Union-respondent showing price of Rs.10 p.s.y. but did not adopt it because of being a single instances. The court then referred to the principles for determining of the market value by referring to various judgments and concluded that Rs.15 p.b. would be the just compensation for their acquired land in Block 'A' and Rs.13.50 p.s.y. in Block 'B' vide impugned judgment.

6. Appellants assail this on the ground that First Appellate Court had disregarded the market value of the land in the surrounding developed colonies as reflected in the sale instances (A 11 to A 22) and also the Government Communication dated 19.11.1962 to sell its land at Rs.41.25 p.s.y. to two respondents of Tihar Village. It is submitted by their counsel that the Court was duty bound to go this evidence in the face of the admitted position that the acquired land was surrounded by the developed colonies covered by the sale instances and that the Government offer in the communication aforesaid represented its own admission. It is submitted that the court should followed the dictum of the judgment in D.L.F. Housing and Construction (P) Ltd. Vs. Union of India (UOI), to predicate the potentiality of the land and should have applied hypothetical building scheme formula for the purpose of determining the true and correct market value of the acquired land.

7. All this was strongly repelled by Ms.Pinki Anand, L/S for respondent herein who submitted that First Appellate Court had considered all elements and made the best assessment in the facts and circumstances of the case. She submitted that the acquired land could not be compared with the land of the surrounding developed colonies by any stretch of imagination for the purposes of assessing its market value because it was admittedly found to be an undeveloped land and

there was no evidence produced by the owners that it had any potential for building sites or that they had taken any steps for exploiting its potential. She further submitted that communication dated 19.11.1962 said to have been issued on behalf of the Government could not be attached any credence because of the circumstances surrounding it which reflected on its genuineness. Moreover it represented only an offer, even if it was to be believed which may or may not have ultimately fructified and, Therefore, furnished no basis for assessing the market value of the land in the Village. According to her sale agreement dated 7.1.1964 between two private parties, being very proximate to Section 4 Notification dated 23.2.1964 represented the best evidence in the circumstances.

8. We have gone through the judgment impugned which provides an answer to every challenge thrown on it. It deals with all the contentions raised before us, be that of sale instances of surrounding/adjacent developed colonies or that matter alleged Government Communication dated 19.11.1962 or the sale agreement produced on behalf of the Union dated 7.1.1964. As notices earlier it gives due consideration to the sale instances (A-11 to A-32) of prices of land in the area. Obviously, these could not have been taken to be the final standard for fixing of the market value of the acquired land which was admittedly undeveloped and for which evidence was found wanting that it had requisite building potential to claim comparison with the land of adjacent developed colonies. These could at best furnish a guide and to that extent First Appellate Court had rightly taken these in regard and taken the view that these represented a trend of rising prices of land in the area.

9. It true that when there is a rise in the prices of the developed land it had the effect and impact on the prices of undeveloped land also which is in close proximity of that developed land and may also have a consequence of `triggering price rise of the undeveloped land also." But all that falls in the realm of guess work. It was for the claimant to show by evidence that even though his land was undeveloped yet the rising prices of the developed land had also its effect on this, and to further show that his land was similar in situation and quality. Where no such evidence was led and no proof placed on record, it could not be left to the court to embark on a roving enquiry and to declare the two lands similar for purposes of determination of the market value of the undeveloped land. It is a trite that question of fair compensation was neither the matter of algebraic problem nor a guess work. It is involved an exercise to determine the prices that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid down in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which property is compulsorily acquired *Raghubans Narain Singh Vs. U.P. Govt.* AIR 1967 SC 465.

10. At this stage we deem it appropriate to draw from Supreme Court Judgment in *Basant Kumar and Others Vs. Union of India (UOI) and Others*, to support the

position that potential for being used for building purposes only in future was not a relevant consideration in determination of market value of the acquired land and where there was absence of material and evidence to indicate that the nature and situation of the acquired land was similar to that of developed land, the question of attributing any upward price trend to such land did not arise. This also becomes clear from the Supreme Court Verdict. Kanwar Singh and others Vs. Union of India (1928 (8) SCC 136 observing as under:

"The contention that the claimants deserved to be awarded the same rate of compensation as was awarded to the claimants of the adjoining villages, in the present facts and circumstances of the case, is not tenable. Going by the compensation awarded to the claimants of the adjoining village, it would not lead to the correct assessment of market value of the land acquired in the appellants' village. For example village "A" adjoins village "B", village "B" adjoins village "C", village "C" adjoins village "D", so on and so forth and in that process, the entire Delhi would be covered. Generally there would be different situation and potentiality of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different village are the same. The High Court in the present case found that the situation and potentiality of the land in the adjoining villages was different. This finding of the High Court is based on correct appreciation of the evidence on record and does not call for interference."

11. Therefore, all told we feel that First Appellate Court had done its best in taking all facts and circumstances and evidence on record and the judgments of the other Courts in regard in its determination of market value of the appellants acquired land of Rs.15 p.s.y.(Rs.15,000/- p.b.), which to us represents the just and fair compensation of the acquired land in the facts and circumstances of the case. We accordingly affirm the First Appellate Court judgment to dismiss these Appeals.