(2001) 07 DEL CK 0039

In the Delhi High Court

Case No : Regular First Appeal No. 157 of 1989

Shri Ram Sarvariva and Sons APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:
Land Acquisition Act, 1894 — Section 17, 4, 54, 6

Citation : (2002) 62 DRJ 311

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. O.N. Vohra and Mr. Ajay, for the Appellant; Mr. S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—This appeal u/s 54 of the Land Acquisition Act. 1894 (hereinafter referred to as "the Act") is against the award of learned Additional District Jude, Delhi in Land Acquisition Case No. 216/85 dated 1.1.1988 answering reference u/s 18 of the Act and thereby determining the amount of compensation payable to the claimants/appellants. The claim in appeal is for further enhancement in the amount of compensation.

2. A plot of land situate in village Chandrawali alias Shahdara measuring 19 bids was owned by the appellant was notified on 7.2.1984 u/s 4 of the Act for being acquired for public purpose, namely, park site in Siri Ram Nagar Colony. Urgency clause was invoked and notification under Sections 6 and 17 of the Act were also published on the same day i.e. 7.2.1984. Collector Land Acquisition proceeded to make his award No. 30/80-85 on 24.1.1985 offering compensation for land at the rate of Rs. 80,000/- per bigha. Feeling dissatisfied with the amount of compensation, the claimants/appellants sought reference. The Reference Court by the impugned award held claimants/appellants entitled to compensation at the rate of Rs. 1,10,000/- per bigha. In this appeal the claim of the appellants is for further enhancement of compensation at the rate of Rs. 1,000/- per sq. yard,

which has been their claim throughout.

3. We have heard learned counsel for the parties and gone through the entire record.

4. The Collector Land Acquisition noticed that the location of the acquired land was a small piece of land located with the residential colony known as Sri Ram Nagar, which had already been regularised by the Municipal Corporation of Delhi prior to its acquisition and it was situated on the right side of Grand Trunk Road (from Delhi to Ghaziabad). The Collector Land Acquisition while assessing the amount of compensation took into consideration sale transactions, which had taken place between 21.2.1980 to 30.9.1982 with respect to certain plots of land located in the same revenue estate and observed that the sale transactions are pertaining to an area quite near to or within close vicinity of the acquired land. Sale transactions were with respect to land with constructions standing thereon and the consideration shown therein included the cost of land and building. He observed that since quality of the structures was not of good grade, Therefore, it can safely be presumed that 50% to 60% amount will have to be deducted from the sale considerations in order to arrive at fair market value of land in the vicinity. After deducting approximate cost of structures, the Collector observed that average market value reflected in the sale transactions comes between Rs. 100/- to Rs. 125/- per sq. yard. Therefore, he proceeded to hold that Rs.80/- per sq. yard would be quite fair and reasonable rate at which compensation deserves to be awarded to the claimant/appellants.

5. Before the Reference court, the claimant/appellants placed reliance on numerous documents including copies of perpetual lease deeds, awards made by Reference Court and some plans. As regards perpetual lease deeds as instance for arriving at the market value of the acquired land, the Reference court held that the plots had been given for industrial use. The said instances were discarded observing that necessarily the market value would be much higher in case of industrial plots as compared to residential plots, Therefore, it would not be safe to rely upon those instances. Ex.A.13 is a copy of the award of Reference court in Land Acquisition Case No. 14/87 (Ram Lal v. Union of India) decided on 22.8.1987 pertaining to determination of amount of compensation situate in village Chokri Mubarkabad (New Rohtak Road) was relied upon. It was held as not relevant piece of evidence in determining the amount of compensation since it pertain to a plot of land, which located at a distance of 10 to 15 KM away from the acquired land. Copy of award Ex. A. 12 of Additional District Judge in LAC No. 96/85 (S. Avtar Singh v. Union of India) decided on 15.10.1987 with respect to determination of amount of compensation for a plot of land situate at village Jhilmil Tahirpur was relied upon by the Reference Court in determining the market value. Ex. A.12 was held to be a relevant piece of evidence since the land, which was subject matter of Ex. A. 12 was situate in the vicinity of the main road. It was situated at 6.10 mile stone from Delhi towards Ghaziabad whereas the land, which was subject matter in the instant case, was located at

about 2 Kms. towards Delhi on the same road as compared to the land situate at village Jhilmil Tahirpur. In the opinion of the Reference Court value of the acquired land in the instant case would be more in any case as against the land, which was subject matter of Ex. A.12. The Reference Court then proceeded to take into consideration the sale instances relied upon by the Collector Land Acquisition in his award since the respondents had failed to lead any separate or independent evidence before him except by placing reliance on the award of the Collector Land Acquisition, which itself was subject matter before reference. The Reference Court then placing reliance upon the observations made by the Collector Land Acquisition that the market value was between Rs. 100/- to Rs. 125/- per sq. yard as on the date of notification u/s 4 of the Act and that the value of the land, which was about 6.10 K.M. away from Delhi had been assessed at Rs. 70,000/- or bigha in Ex. A. 12 and since plot of land was freed hold land located within residential locality, fair market value was held to be Rs. 1,10,000/- per bigha. Compensation was directed to be paid at that rate. Anything stated in the award of the Land Acquisition Collector must not have been made the basis in determination of the amount of compensation since no evidence was led on behalf of the respondent as to the genuineness of the sale transactions reflected in the award of the Collector Land Acquisition. Since neither vendors nor vendees were produced and it was not shown on record that the sale consideration reflected in those sale transactions were or not bonafide fixed or that whether the same actually reflected the market value as on the date the sale transactions took place. Vendors and vendees were also not produced for the purposes of cross examination.

6. We have duly considered the submissions made at the bar. The Reference Court in determining the amount of compensation has misread document Ex. A. 12, which is an Award of another Reference Court in LAC No. 96/85. Subject matter of land therein was a plot of land situate at village Jhilmil Tahirpur, which had been acquired for public purpose through notification issued u/s 4 of the Act on 27.7.1981. The Collector Land Acquisition in that case had offered compensation at the rate of Rs. 70,000/- per bigha. Claimants feeling dissatisfied had sought reference and the Reference Court enhanced the amount of compensation holding the fair market value as on 27.7.1981 to be at the rate of Rs. 625/- sq. yard. This award of the Reference Court was challenged by Union of India in appeal preferred to this Court being RFA No. 365/89 (Union of India v. S. Avtar Singh). The appeal was dismissed by a Division Bench on 14.8.1989. We are informed that no further appeal was preferred to Supreme Court and this fact has also been judicially noticed by a Division Bench of this Court of which one of us (Devinder Gupta, J.) was a member in RFA No. 601/92 (Anil Kumar Sharma v. Union of India) decided of 21.7.2000.

7. The Reference Court had on the basis of the material on record concluded that the market value of the appellant''s land would be more as compared to the market value of the land, which was determined in Ex. A. 12. He, however, erroneously took Rs. 70,000/- per bigha to be the market value determined in

Ex. A. 12 and thus erroneously held the appellants to be entitled to compensation at Rs. 1,10,000/- per bigha. Rs. 70,000.00 per bigha was not assessed the market value in Ex. A. 12. The reference court in Ex. A.12 had Rs. 625/- per bigha to be the market value. Ex. A.12 was held to be a relevant piece of evidence. It has not been disputed before that Ex. A. 12 cannot be formed the basis for arriving at correct market value in the instance case. As the reference court erroneously took market value at the rate of R. 70,000/- per bigha in place of Rs. 625/- per sq. yard, we are of the view that the claimant / appellants would be entitled to compensation, if not more, at least at the same rate at which it was allowed in Ex. A. 12.

8. Consequently, the appeal is allowed with proportionate costs holding the claimants to be entitled to compensation at the rate of Rs. 625/- per sq. yard. In addition to the amount of compensation the claimant/appellant will be entitled to solarium and interest as per the award of the Reference Court. In case interest is held payable on solarium by the Supreme Court in the reference, which has been made in Kapur Chand Jain (Dead) and Others Vs. State Govt. of H.P. and Others, , the claimants will also be paid such interest.