(2002) 07 DEL CK 0075

In the Delhi High Court

Case No : Regular First Appeal s 382, 598, 650 and 927/87, 524, 529, 581 and 582/88, 155 and 176/89, 102, 300, 305 and 660/90, 295/91, 448/92, 335, 648 and 737/94, 110 and 447/95, 70 and 71/97, 417 and 679/98, 5, 95, 155, 156, 161, 359, 478 and 657/99 and 387 of 20

Sobha Ram — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 26-07-2002

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

Citation : (2002) 07 DEL CK 0075

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : D.V. Khatri, for the Appellant; S.S. Dalal, for the Respondent

Judgement

Devinder Gupta, J.—Some of the appeals filed by the claimants are for further enhancement in the amount of compensation for the land acquired in revenue estate of Beharipur and Karawal Nagar. Other appeals are by Union of India seeking reduction in the amount of compensation and in some of the appeals of Union of India cross objections have been filed by the claimants. All are being decided by a common judgment since questions of law and fact are same and similar.

2. By notification issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act) on 26.8.1967 land situate in village Beharipur was notified for being acquired at public expense for public purpose, namely, Planned Development of Delhi. It was followed by declaration u/s 6 of the Act on 28.5.1968. The Collector Land Acquisition made his award No. 15/83-84 on 30.6.1983 offering compensation @ Rs. 3,500/- and Rs. 3,230/- per bigha respectively for category A and B lands. Feeling dis-satisfied the claimants sought references. The reference court by the impugned awards held them entitled to compensation @ Rs. 5,280/- and Rs. 5010/- per bigha respectively for

category A and B lands. Still feeling dis-satisfied these appeals have been filed u/s 54 of the Act seeking further enhancement in the amount of compensation.

3. By notification dated 16.9.1968 issued u/s 4 of the Act land situate in village Karawal Nagar, Delhi was sought to be acquired for Planned Development of Delhi. It was followed by declaration u/s 6 on 13.9.1971 and the Collector on 30.6.1983 made his award No. 16/83-84 offering compensation @ Rs. 3,500/- and Rs. 1,500/- per bigha respectively for category A and B lands. Feeling dis-satisfied references were sought. The reference court by the impugned awards held the claimants entitled to compensation @ Rs. 5,640/- per bigha. Still feeling dis-satisfied further enhancement has been sought in the appeals filed u/s 54 of the Act.

4. We heard learned counsel for the parties and were taken through the record. Learned counsel for the appellants placed reliance on documents Ex.P-X1, P.W. 3/1, P.W.3/2 and P.W. 3/3 and on the oral statement of P.W.6, the evidence led in Land Acquisition Case No. 78/85, which has given rise to RFA 387/2000 and urged that sole basis for assessing the market value only on relying a few sale instances is bad in law since there was other cogent and reliable evidence on which fair market value of land could be arrived at. It was a fit case in which compensation ought to have been determined either by capitalisation method by taking the net income derived by the claimants multiplied by a reasonable number of years purchase or in any case by relying upon the land rates as were notified by the Government from time to time.

5. Shri Sobha Ram, P.W.6, a claimant in RFA 387/2000 in his deposition stated that he had been growing three crops in a year and his income from one bigha land was between Rs. 5,000-00 to Rs. 10,000-00 per annum depending upon crop to crop. He stated that he had been sowing sugarcane, rice as well as wheat. Per bigha yield of wheat and rice was stated to be in the range of 12 to 15 monads (one mond = 37 Kg. approximately). Wheat according to him was selling @ 60 paise per kg. in 1966 and rice @ 80 paise per kg. He also stated that he also used to grow occasionally vegetables on the acquired land and income from vegetables was more than wheat and rice. He had installed a tube-well and the entire land was level and fertile. Expenses for raising crops were between Rs. 500-00 to 600-00 per bigha in 1966. P.W.6 stated that the nature of crops sown on the acquired land were duly reflected in Khasra Girdawari. Ex. P.W.1/17 is the khasra Girdawari. In addition to P.W. there is no other supporting evidence adduced by the claimants about the income which was being derived from the land as on the date of acquisition or was capable of being derived. Copies of the entries in Khasra Girdawari produced on record are for the period from 1981 to 1984 and not the relevant period i.e. the date of acquisition or prior thereto. During the period for which copies of Khasra Girdawari have been produced it can be seen that only two crops are shown to have been grown and not the third one.

6. Ex.P.W.3/1 to Ex.P.W.3/3 are copies of three separate communications from

the Land and Building Department, Delhi Administration addressed to the ADM (Land Acquisition) and Secretary (Revenue), Government of NCT of Delhi on the subject of fixing of minimum price of agricultural land in the Union Territory of Delhi. The first letter is dated 3.5.1990. The two subsequent letters are dated 25.7.1997 and 29.9.1998. Subject matter of the three letters being the same stating that the Land Acquisition Collectors while determining the rates of compensation being acquired under the Act primarily rely on the basis of average sale consideration as reflected in the sale deeds duly registered. There is a serious problem of undervaluing the land for the purpose of registration of sale deeds. Therefore, the compensation received by the farmers is much below the market price. Farmers also put much resistance while land is sought to acquire. As a result the DDA is unable to get land for the Planned Development. The letters thus conveyed the position to the Government advising it to fix minimum price for agricultural land in the Union Territory of Delhi as follows:-

Rs. 1.5 lakhs per acre for lands situate in river beds between forward bunds and Rs. 4.65 lakhs per acre for all other agricultural lands.

7. These prices were stated to be effective from 27.4.1980 in the first letter, which in the subsequent notifications were increased.

8. The reference court while determining the amount of compensation placed reliance upon the award given earlier in Land Acquisition case No. 509/84 Harpal Singh and Ors. v. Union of India. In Harpal Singh''s case land had been acquired in revenue estate of Karawal Nagar through notification issued u/s 4 of the Act on 16.9.1968. Only one sale instance was relied upon, namely, sale deed dated 4.8.1969 which was for one bigha of land sold for a consideration of Rs. 6,000/-. Other evidence was discarded. Taking the sale consideration of Rs. 6,000/- for one bigha as in 1969 the market price was worked out at Rs. 5,640/- per bigha, a year prior to the date of sale and was made basis in fixing the market value for the acquired land situate in Beharipur also.

9. The location of the land situate in village Beharipur, acquired through notification dated 26.8.1967 was noticed by the Collector stating that it was a big chunk of land surrounded in the east by left marginal bund and land of village Karawal Nagar; in the west by the land of Village Sadatpur; in the north by the remaining land of village under acquisition and land of village Sabhapur-Gujran and in the South by land Khazuri Khas. He also noticed that the acquired land was situate in between the left forward bund and left marginal bund raised to protect the nearby residential colonies from Yamuna river. This belt was a part of the left embankment on river Yamuna. He also noticed that during his inspection in the year 1978 the entire area under acquisition was found to be submerged under 6 to 10 feet deep water and observed that being within the ambit of flood, the productivity of the land under acquisition was quite good having two to three crops in a year. Besides this the land under acquisitions was quite nearer to the city and could be of great potentiality.

10. Similarly for Karawal Nagar land also location was recorded by the Collector in his award stating that:-

"The land under acquisitions is a big chunk of land surrounded in the East by left Marginal Bund and land of village Karawal Nagar, in the West by the land of village Beharipur, in the North by the remaining land of village under acquisition and in the South by the land of this village. As a fact, this big chunk of land is situated in between left forward Bund and left marginal bund raised to protect he nearby residential colonies from Yamuna River.

In fact, this belt of land was a part of the left embankment of River Jamuna. Even in the year 1978, the entire area under acquisition was submerged under six to ten feet deep. On account of this reason, the land under acquisition cannot have potentiality of building activities except of agriculture. But being within ambit of flood, the productivity of the land under acquisition is quite good, having two to three crops in a year. Besides this, the land under acquisition is quite nearer to the city and could be of great potentiality if the flood feature could be avoided."

11. As regards location there is no evidence except what is stated by the Collector in his award that towards western side of Beharipur are located Sadatpur Gujran, Sherpur and Baqrabad, to the east of Beharipur is Karawal Nagar and further east from Karawal Nagar are villages Dayalpur and Jeevanpur @ Johripur, to the southern side are villages Mustafabad and Khazuri Khas being outlying areas in Delhi.

12. The Collector in his award took Rs. 250-00 per bigha to be the gross income per crop. As the land was capable of yielding three crops the gross annual income was taken as Rs. 750/- per bigha. After deducting Rs. 400/- there from as outgoings towards cultivation charges, manure etc. he took the net annual income at Rs. 350/- per bigha.

13. No other evidence or material was brought on record except the one as has been noticed by us.

14. It is well known that compensation payable for land, acquired by the Government, cannot be ascertained with mathematical accuracy. The methods of value of acquired land under the Act have generally been classified under three heads: (1) the opinion of valuators or experts; (2) the price paid within a reasonable time in bonafide transaction of purchase of the acquired land or the lands adjacent to the acquired land and possessing similar advantages; and (3) a number of year''s purchase of the actual or immediate prospective profits from the acquired land. While making determination of the amount of compensation the reference court has to treat the reference as an original proceedings before it and arrive at its conclusions on the basis of the evidence adduced before it. The claimant is in a position of plaintiff, who has to establish that the price offered by the Collector is inadequate and must lead sufficient evidence in order to enable the court to arrive at a correct market value, as on the date of notification u/s 4

of the Act. The solitary sale instance of Karawal Nagar was post notification and thus not relevant. The three letters of the Govt. fixing minimum market rates to be given on acquisition are of a much later date and thus are not relevant. It is only the third method, which can at the most be made use of in fixing market value. Though the evidence is scanty but the same altogether cannot be ignored.

15. Having considered the evidence aforementioned and the submissions made by learned counsel for the parties, we are of the view that in the absence of any other corroborative evidence it may not be safe to solely rely on the statement of one of the claimants i.e. P.W.6. His version of the yield and income being highly speculative cannot be made the sole basis of assessing market value. Even the Collector in his award has not disclosed the basis for his fixing the market price. Without stating about the actual yield per bigha, per crop or the actual rates of the grains or vegetables, he took the gross annual income per crop, per bigha to be Rs. 250-00. In view of this scanty evidence we will have to apply the thumb rule of determining the fair market value and the estimated income can be worked out even with reference to the statement of P.W.6. He has given rough estimate of the yield per bigha of wheat and rice and also the rates of grains as in the year 1960 to which there is no rebuttal. Considering the observations of the Collector, as quoted above and the rough estimate of the yield and the rates we have to take the gross annual income per bigha approximately Rs. 1400-00. This we are assuming on taking a very conservative view of the estimated yield and income given by P.W.6. In case Rs. 1400-00 is taken to be the gross annual income and Rs. 900-00 (2 Rs. 300-00 per crop) are deducted towards outgoing and the balance of Rs. 500-00 is taken as the annual profit and applying a multiplier of 15, as per decision of the Supreme Court in Union of India and Another Vs. Shanti Devi and Others, . We are of the view that as on 26.8.1967 the fair market value of the land situate in village Beharipur ought to be taken Rs. 7,500/- per bigha and for land of village Karawal Nagar as on 16.9.1968 the fair market value will be Rs. 8,000/- per bigha.

16. Consequently the appeals filed by the claimants and cross objections filed by them in the appeals filed by Union of India are allowed with proportionate costs. Appeals filed by the Union of India are dismissed. Awards of the reference court are modified. Claimants are held entitled to compensation for the land situate in village Beharipur acquired through notification dated 26.8.1967 at Rs. 7,500/- per bigha and for the lands situate at Karawal Nagar acquired through notification dated 16.9.1968 at Rs. 8,000/- per bigha. Besides the solarium, interest and additional amount, as per the award of the reference court they will also be paid interest on solarium and additional amount, as per the decision of Supreme Court in Sunder Vs. Union of India, .