
(2002) 03 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : CIMA No. 59 of 1996 and Cross Appeal (C) No. 79 of 1996

State		APPELLANT
	Vs	
Probodh Chander and Others		RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 12(2), 18, 23

Citation : (2003) 2 JKJ 554

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : B.S. Manhas, AAG, for the Appellant; Sindhu Sharma and H.L. Bhagotra, for the Respondent

Judgement

S.K. Gupta, J.—This appeal is directed against the decree dated 31.1.1995 passed by District Judge, Rajouri on a reference 'under Section

18 of the Land Acquisition Act.

2. Setting in facts of the case, land aggregating three kanals one marla contained in Khasra Nos. 417/min and 474/min located in Rajouri was

acquired for a public purpose (construction of road) and the Collector, Land Acquisition assessed the market rate of the land at Rs. 21,500 per

kanal and jabrana at the rate of 15% as per his two awards one dated 9.2.1985, whereby owner's land measuring two kanals six marlas under

Khasra No. 474/min and other award dated 16.11.1985, whereby owner's land measuring 15 marlas under Khasra No. 417/min, were acquired.

The land owners, after receiving the compensation awarded by the Collector under protest on 17.3.1987, approached the Collector with an

application u/s 18 of the Land Acquisition Act, who made reference to the District Judge, Rajouri for determining the amount of compensation.

The District Judge, Rajouri by impugned judgment enhanced the amount of compensation from Rs. 21,500 to Rs. 1,00,000 per kanal alongwith

jabrana at the rate of 15% and interest at the rate of 4% per annum from the date of notification u/s 15 of the Notification Act till payment.

3. Challenge to the decree passed by learned District Judge, Rajouri has been made by the appellant on twin grounds. Firstly, that the application

initiated by the land owners before the Collector, Land Acquisition, for a reference u/s 18 of the Land Acquisition was hopelessly time-barred and

secondly, that the District Judge has not appreciated evidence in its proper perspective and has arbitrarily enhanced the market rate when there

was no evidence to justify the same.

4. Whereas, on the other hand, respondents-land owners by filing Cross Appeal No. 79/1996 have prayed for modification of the award and

grant of interest on the awarded amount with 15% jabrana at the rate of 10% per annum instead of 4% per annum from 16.11.1985, when the

possession of land was taken as provided u/s 35 of the Land Acquisition Act and as amended by Act No. XX of 1988.

5. I have heard Mr. B.S. Mannas, senior learned Additional Advocate General appearing for the appellant, and Mrs. Sindhu Sharma learned

counsel for the respondents in extenso and also perused the record meticulously.

6. As regards the first ground taken by the appellant that the owners' application for reference is time-barred, award, as is borne out from record,

in respect of land under Khasra No. 474 min, was made on 9.2.1985 and in respect of Khasra No. 417 min on 6.11.1985, in this case. An

application for reference came to be filed by the owners before the Collector on 17.3.1987. On going through both the aforesaid awards, it is

clearly gatherable that the same were issued not in the presence of the land owners. The sole question that arises for determination is as to what

could be the date of award for the purpose of reference u/s 18 of the Land Acquisition Act under such circumstances. The date of the award

cannot be determined solely by reference to the time when the award is signed/ passed. The date of the award of the Collector would be the date

when the notice of the same is served on the owners of the property as contemplated by Section 12(2). In the case of a person, who had no notice

of the award, the period of six months for making application for reference would

commence from the actual or constructive, knowledge of the making of the award. Mere knowledge of pendency of acquisition proceedings or of notifications u/s 4 or 6 or any public notice with regard to acquisition would not constitute either actual or constructive notice of the making of the award.

7. In other words, the knowledge of the award did not mean mere Knowledge of the fact that award had been made. It must mean knowledge of

the essential contents of the award. The appellant has not placed any material on record in discharge of onus to prove that notice of making of the

award as envisaged by Section 12(2) was served upon the claimants or that either the owners or their representatives were present at the time

when award was made. It is not disputed that the owners had received the compensation under protest in respect of the land acquired by the

Collector on 17.3.1987. An application for reference was filed by the claimants on that date. This clearly shows that in the absence of any

evidence oral or documentary placed on record by the appellant to the contrary, the knowledge about the two awards for all intents and purposes

of the Act shall be attributed to the owners only on 17.3.1987, On facts, it is established that the application for making a reference was definitely

made within six months from the date of the knowledge of the award and the reference made by the Collector, Land Acquisition, cannot be held to

be barred by time u/s 18 of the Act, as vouched strenuously by appellants, counsel, Mr. B.S. Manhas, in his debate during arguments.

8. Equally it is salutary to note that the claimants have legal legitimate right to a fair and reasonable compensation to the land they are deprived of

by legal process. The claimants have to be recompensated for rehabilitation or to purchase similar lands elsewhere. In case of comparable sales, it

may be possible to adduce evidence of sale, transactions of the neighbouring lands possessed of same or similar quality. So adducing of precise or

scientific evidence would cause advantage to the claimants in getting the reasonable and proper market value prevailing on the date of notification

u/s 6 of the Act. Therefore, it is the paramount duty of the Land Acquisition Authority to keep before him always the even scales to adopt

pragmatic approach without indulging in facts of imagination and assess the market value, which is reasonably capable to fetch reasonable market

value. What, is fair and reasonable market value is always a question of fact depending upon the nature of the evidence, circumstances and

probability in each case. The guiding star would be the conduct of the hypothetical willing vendor would offer the lands and a willing purchase in

normal human conduct would be willing to buy as a prudent man in normal market conditions as on the date of notification u/s 6.

9. Coming to the knowledge as regards the enhanced compensation for the land, it is not disputed that the land owners claimed Rs. 15,000 per

marla besides jabrana compensation at the rate of Rs. 15% and interest at the rate of 4% for the acquired land. The District Judge, while enhancing

the compensation to Rs. 5,000 per marla, i.e. Rs. one lac per kanal, for the, acquired land, mainly relied upon the comparable sales instances of

the neighbouring, land, a portion of the acquired land, besides the evidence provided by Mohd. Yunus, Patwari, other witnesses and certified copy

of the sale deeds of the land, executed by different persons, located at Notified Area Committee, Rajouri.

10. According to the Collector, notifications in respect of land contained in Khasra Nos. 474/min and 417/min u/s 6 of the Act were issued on

3.12.1984 and 6.12.1984 respectively, Therefore, the basis for determining the market value of the land acquired would be market value of the

land prevailing at the time when notifications u/s 6 of the Act were issued in both the cases.

11. The main evidence, which could have a bearing upon the determination of the market value of the land is of Mohd. Yunus, Patwari Halqa

Rajouri. He stated that a portion of the land had earlier been sold by the petitioners out of Survey No. 417 at the rate of 4,500 per marla on

28.7.1983. According to him, the entire land of the owners is on the road side and situated in Gujjar Market. He further narrated the fact

that the price of the land in this area is much higher than that of other lands because of commercial activities in Gujjar market. It is also in his

evidence that the market value and commercial value of the claimants land is higher than the lands acquired for Door Darshan in the year 1984 and

assessed the compensation at the rate of Rs. 5,000 per marla. The Patwari further affirmed that the land owners had already sold land in Notified

Area Committee, Rajouri on 28.7.1983 out of Survey No. 417 at the rate of 4,500 per marla and Mutation No. 796 also stood attested, Even the

Appellant, Shah Latif, Collector, Land Acquisition, Rajouri, unambiguously stated that the price of the land is increasing every day. The price of

land depends upon its location. The land in commercial area fetches higher price than other Lands. The acquired land, according to him, is situated

in Gujjar market, and Id Gah is near to this land. Whereas the land acquired at the Police Lines, Food Stores and Irrigation are about 400 metres

away from the claimants, land at Gujjar market. It is also admitted by the Collector in his statement that commercial value of the claimants' land is

much higher than that of these three parcels/pieces of land. So is evidenced from the oral evidence of the other witnesses that the claimants' land is

part of Gujjar Mandi and its value is far greater than the other lands.

12. The net result, therefore, is that, the evidence of claimants as regards the sale instances provide a guide for determining the market price of the

land acquired and merits acceptance. In these circumstances, I am of considered view that the Reference Court has rightly relied upon the

comparable sales instances of the land in the neighbourhood, a portion of the land acquired, the location and commercial value of the land acquired

situated in the Gujjar market within Notified Area Committee, Rajouri, the statements of Mohd. Yunos Patwari, and even Collector, Shah Latif,

appellant, that the acquired land is situated in Gujjar Mandi, has commercial value greater than the land acquired for Police Line, Food Stores and

irrigation at a distance of 400 metres from the claimants' land, and enhanced the compensation to Rs. one lac per kanal (Rs. 5,000 per marla) for

the acquired land.

13. Reference Court has taken notice of the location of the land acquired before enhancing the market value of the acquired land. In view of this

factual position, I do not find any justification to interfere with the order passed by, the Reference Court, being in favour of the respondents-land

owners.

14. Another limb of argument advanced by Mr. B.S. Manhas, learned senior Additional Advocate General, is the sale instance as relied on with

regard to the land relates to a small parcel of land, and that cannot be said to be comparable sale instance, Market price of the acquired land,

according to him, therefore, cannot be based on it. Undoubtedly, while fixing the price of the land at scale assessed of the acquired land on the

basis' of comparable instances of the small pieces of land, some allowance has to be made and for doing so, there is no hard and fast rule and mathematical accuracy can hardly be achieved. That may be so but in the facts of this case, one gets the impression that the District Judge has given a higher allowance rightly and that was warranted. Be that as it may Reference Court, on appreciation of facts, both oral and documentary, and, taking into consideration all facts and circumstance before it, has reached a conclusion that the reasonable market price of the land acquired would be Rs. one lac per kanal and I do not wish to interfere with the same.

15. Appellants of Cross-Appeal, the respondents, claimed interest on the entire awarded compensation at the rate of 10% per annum instead of 4% allowed by the Reference Court, in invoking the provisions of Section 35 of the Land Acquisition. In resisting the claim of the respondents, Appellant's counsel, Mr. B.S. Manhas, contended that there is no justification for the land owners to claim enhanced interest at this stage in the appeal. It is pertinent to point out that there is an inherent evidence in the wording of Section 35 to show that the framer of the Act intended to assure the payment of cost to the persons whose land was acquired and it was not the intention to set the said payment to procedural hazards. The rules of procedure are hand maiden of justice. The procedural hassles cannot come in the way of substantive rights of the citizens under the Act. Where the interest is payable under the Act, it can be claimed at any stage of the proceedings under the Act. Therefore, it would not even be necessary for the claimants to have filed a separate Cross-Appeal for the purpose of claiming interest u/s 34 of the Act. They could even claim interest in the said appeal.

16. For the aforesaid reasons, appeal (CIMA No. 59/1996) filed by the Appellant-State through Collector, Land Acquisition, Rajouri being without merit is dismissed; at the same time, Cross-Appeal No. 79/1996 filed by the respondents is allowed to the extent that respondents are held entitled to interest at the rate of 6% per annum on the whole compensation awarded for a period of one year from the date on which possession is taken and in the event, such compensation or any part thereof is not paid within a period of one year, interest at the rate of 10% shall be payable from the date of expiry of the said period of one year on the amount in

contemplation of the provisions of Section 35 of the Act. Cross Appeal No. 79/1996 is allowed in the above terms with no orders as to costs.