

(2013) 09 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : C.I.A. Nos. 203-A, 206, 211 Of 2009, Cross Appeal No. 64/2011, C.I.A. No. 10/2010, Cross Appeal No. 59/2010, C.I.A. No. 32/2010, C.I.A. No. 11/2010, Cross Appeal No. 58/2010, C.I.A. No. 12/2010, Cross Appeal No. 13, 147/2010 and Cross Appeal No. 49/2010

State of J. and K.

APPELLANT

Vs

Altaf Hussain

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2014) 1 JKJ 125

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Since common question of fact and law is involved in all these Civil 1st Appeals/Cross Appeals, I deem it proper

to dispose of all the appeals by this common judgment. CIA No. 203-A/2009.

Collector, LAWDA passed the award in favour of claimants-land owners on 19.03.2002. Claimants while disputing the adequacy of

compensation laid a motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a

reference to the Principal District Judge, Srinagar, was diarized as Reference No. 3/2002. Learned District Judge after examining/scanning the

evidence and other documents enhanced the compensation from Rs. 2.30 lacs to Rs. 4.00 lacs per kanal and also awarded compensation under

the head wooden poles and warbed wires vide judgment dated 14.10.2008. State feeling aggrieved has filed the instant appeal questioning the

same. Claimants have not questioned the judgment of reference court by the

medium of any cross appeal.

2. CIA No. 206/2009

Collector, LAWDA passed the award in favour of claimants-land owners on 12.11.2001. Claimants while disputing the adequacy of

compensation laid a motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a

reference to the Principal District Judge, Srinagar, was diarized as Reference No. 10-A/2002. Learned District Judge after examining/scanning the

evidence and other documents enhanced the compensation from Rs. 2.30 lacs to Rs. 4.00 lacs per kanal and also awarded compensation to the

tune of Rs. 10,000/- under the head wood poles and warbed wires vide judgment dated 14.10.2008. State feeling aggrieved has filed the instant

appeal questioning the same. Claimants have not questioned the judgment of reference court by the medium of any cross appeal.

3. CIA No. 211/2009

Collector, LAWDA passed the award in favour of claimants-land owners on 01.06.1999. Claimants while disputing the adequacy of

compensation laid a motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a

reference to the Principal District Judge, Srinagar, was diarized as Reference No. 15/2002. Learned District Judge after examining/scanning the

evidence and other documents enhanced the compensation from Rs. 1.40 lacs to Rs. 2.50 lacs per kanal and also awarded compensation to the

tune of Rs. 10,000/- under the head fencing vide judgment dated 31.10.2008. State feeling aggrieved has filed the instant appeal questioning the

same. Claimants have also filed Cross Appeal, bearing No. 64/2011 seeking enhancement of compensation.

4. CIA No. 10/2010

Collector, LAWDA passed the award in favour of claimants-land owners on 01.06.1999. Claimants while disputing the adequacy of

compensation laid a motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a

reference to the Principal District Judge, Srinagar, was diarized as Reference No. 6/2002. Learned District Judge after examining/scanning the

evidence and other documents enhanced the compensation to Rs. 4.00 lacs per

kanal vide judgment dated 03.11.2009. State feeling aggrieved

has filed the instant appeal questioning the same. Claimants-respondents 3 to 12 have also filed Cross Appeal, bearing No. 59/2010 seeking

enhancement of compensation. Claimants-respondents 1 & 2 have filed CIA No. 32/2010 seeking enhancement of compensation. Virtually the

CIA filed by claimants-respondents 1 & 2 is a cross appeal.

5. CIA No. 11/2010

Collector, LAWDA passed the award in favour of claimants on 01.06.1999. Claimants while disputing the adequacy of compensation laid a

motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a reference to the

Principal District Judge, Srinagar, was diarized as Reference No. 1/2003. Learned District Judge after examining/scanning the evidence and other

documents enhanced the compensation to Rs. 4.00 lacs per kanal vide judgment dated 03.11.2009. State feeling aggrieved has filed the instant

appeal questioning the same. Claimants have also filed Cross Appeal, bearing No. 58/2010 seeking enhancement of compensation.

6. CIA No. 12/2010

Collector, LAWDA passed the award in favour of claimants on 01.06.1999. Claimants while disputing the adequacy of compensation laid a

motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a reference to the

Principal District Judge, Srinagar, was diarized as Reference No. 5/2002. Learned District Judge after examining/scanning the evidence and other

documents enhanced the compensation to Rs. 4.00 lacs per kanal vide judgment dated 03.11.2009. State feeling aggrieved has filed the instant

appeal questioning the same. Claimants have also filed the Cross Appeal, bearing No. 147/2010 seeking enhancement of compensation.

7. CIA No. 13/2010

Collector, LAWDA passed the award in favour of claimants on 14.07.1999. Claimants while disputing the adequacy of compensation laid a

motion before the Collector for making reference to the concerned District Judge. Collector, LAWDA, accordingly, made a reference to the

Principal District Judge, Srinagar, was diarized as Reference No. 7/2002. Learned District Judge after examining/scanning the evidence and other

documents enhanced the compensation to Rs. 4.00 lacs per kanal vide judgment dated 03.11.2009. State feeling aggrieved has filed the instant

appeal questioning the same. Claimants have also filed the Cross Appeal, bearing No. 49/2010 seeking enhancement of compensation.

8. Collector while examining the cases of claimants passed different awards on different dates, the mention of which is made hereinabove. It

appears the Collector while keeping in view the location and potential value of the land acquired as also the rates prevailing in the area had passed

different awards. Claimants-land owners being not satisfied with the adequacy of compensation laid motions in all the cases seeking enhancement

of compensation. Collector, accordingly, made separate references in all these cases to the Principal District Judge, Srinagar. Non-applicants in the

said references filed objections, thereafter issues were framed and the parties were directed to lead evidence. After hearing learned counsel

appearing for the parties and scanning evidence, the reference court - Principal District Judge, Srinagar came to the conclusion that the

compensation awarded by the Collector was inadequate. The reference Court was of the view that the Collector while awarding compensation did

not take into consideration the rates which were prevalent in the locality at the relevant point of time nor the reports made by the revenue agency to

the Collector for assessing the compensation. The reports submitted by the revenue department in all the cases, except in Reference No. 15/2002

(subject matter of CIA No. 211/2009), have been proved by the claimants and are exhibited as Ex. PW 1 in Reference Nos. 3/2002, 10-A/2002,

6/2002, 1/2003, 5/2002 and 7/2002.

9. In all the said reference the revenue officials and Tehsildar concerned who appeared as witnesses had deposed, rather admitted that as per the

revenue department the prevalent rates at the relevant point of time in the areas where the land-in-question is situated was not less than Rs. 4.00

lacs per kanal, which was not rebutted by the State. Accordingly, the reference Court - Principal District Judge while keeping in view the report of

revenue agency came to the conclusion that the claimants-land owners were entitled to compensation @ Rs. 4.00 lacs per kanal. No doubt the

claimants had also led oral evidence in order to claim higher compensation than the one awarded by the reference Court, but the reference Court

rightly came to the conclusion that the prevalent rate at the relevant point of time was Rs. 4.00 lacs per kanal.

10. The Apex Court in *State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others*, has held that the report ""Ausat Rate Sa Sala"" of

revenue agency indicating what was the approximate prevalent rate at the time of acquisition is a guiding factor for grant of compensation. It would

be relevant to reproduce paragraph 10 herein.

(10) Coming to the challenge as regards the enhanced compensation for the land we find that the sale instances relied upon by the claimants can

hardly be treated as comparable instances. The sale instances relate to small parcels of lands not more than 3 to 4 marlas each. Only one sale

instance was sought to be proved by the claimants through the evidence of Mohd. Shaban, who had stated that three marlas of land in the close

vicinity of the acquired land was sold to a cooperative society @ Rs. 33,000/- per kanal. Other sale instances although produced on record but

the same were not proved by the claimants either by examining the vendor or the vendee. As stated earlier these sale instances are of a very

smaller area and, therefore, they cannot be said to be comparable sale instances to determine the market price of such a big chunk of acquired

land. The other evidence adduced by the claimants is consisted of the oral testimonies of lumbardars and local zamindars. Their oral evidence

could hardly be accepted as a guide for determining the market price of the acquired land because they were not experts. The net result, therefore,

is that the evidence of the claimants as regards the sale instances cannot be accepted as a measure to determine the market price of the acquired

land. The only evidence which would have a bearing upon determination of the market price of the land is the report of local Tehsildar. It is not

disputed that D.C. of Distt. Pulwama had asked the local tehsildar to inspect the acquired land and make a thorough enquiry as regards the price

prevailing in the locality where acquired land is situated. Accordingly he submitted his report dated 14.5.1987 which is Annexure 5 annexed with

Transfer Case (C) No. 43/96. This report was relied upon by the land acquisition Collector and at the trial it is taken on record without being

objected to by the State of Jammu and Kashmir and Union of India. No challenge to the said report was made by either of the appellants before

the District Court as well as before the High Court. The Tehsildar in his capacity as a Government official in discharge of his duties submitted the report and in his report he had stated that the market price of the acquired land would be Rs. 30,000/- per kanal. No serious arguments were advanced before us on behalf of the Union of India or State of Jammu and Kashmir which could persuade us to reject the said report. In these circumstances we are of the considered view that the report dated 14.5.1987 furnished by the Tehsildar was rightly relied upon by the courts below for determining the market price of the acquired land. The District Judge and the High Court while enhancing the compensation to Rs. 45,000/- per kanal for the acquired land mainly relied upon the sale instances which we have discarded as not being comparable. The other evidence which found favour with the District Judge and the High Court was the oral evidence of local Lambardars, zamindars and one of the claimants. Their evidence in our considered view would not furnish any basis for determining the market value. The courts below in our considered view have committed a serious error of law in relying upon the sale instances which were found by us not comparable while enhancing the market value of acquired land. In view of this factual position, we are of the view that the respondents/claimants would not be entitled for compensation in respect of their lands for more than Rs. 30,000/- per kanal.

11. This Court also in a batch of Civil 1st Appeals, lead case being CIA No. 14/2001, titled as Power Grid Corporation of India Vs. Lassi and Others, has laid down the same law.

12. In CIA No. 211/2009 the land-in-question is situated in a different village, i.e., Village Chandpora, Tehsil Srinagar. The said land is not falling in the villages where the land, are subject matter of other CIAs, is situated. The claimants-respondents in CIA No. 211/2009 led evidence and the reference Court after scanning the entire material on record and taking into consideration the report of revenue agency and other witnesses came to the conclusion that the prevalent rate at the relevant point of time was Rs. 2.50 lacs per kanal. Claimants have filed the cross appeal. Their learned counsel argued that since in all these cases the land has been acquired for one purpose, therefore, the amount enhanced by the reference Court regarding the land falling in other villages be also made applicable to the instant

case, because the said land is also part and parcel of same public purpose.

13. The claimants-respondents in other appeals, except respondent in CIA No. 32/2010, have also argued and prayed that the reference Court

has granted minimum compensation, while as there is sufficient proof in each file that the compensation was to be granted at higher side.

14. It was the duty of the claimants to prove that they are entitled to higher compensation. The onus was on them to prove that the compensation

awarded was on meager side. The Apex Court in *Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc.,* laid

down the same law. It would be appropriate to reproduce paragraph 7 herein.

Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence,

and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a

willing purchaser in normal human conduct would be willing to buy as a prudent man in normal human conduct would be willing to buy as a prudent

man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the

notification u/s 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought

about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an

answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court

proposed to fix for the acquired lands in the available market conditions. The court is therefore, enjoined with the bounden duty of public function

and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition.

15. While going through the said judgment, it is beaten law of the land that the acid test is what a willing buyer in a normal human conduct would be

willing to pay to a willing seller.

16. The Apex Court as also this Court in a series of judgments have held that it is the duty of the Collector and the reference Court/other Courts to

see that adequate compensation is awarded while keeping in view all the guiding

factors applicable.

17. Applying the test to the instant case, the reference Court after examining the material on each file came to the conclusion that the claimants

were entitled to enhanced compensation at the rates discussed hereinabove. The claimants have failed to prove that they were entitled to

compensation more than what awarded by the reference Court. Even they have failed to lead documentary evidence which could have been made

basis for holding that what a willing buyer would have paid to the willing seller at the relevant point of time.

18. The Apex Court in *Union of India v. Ram Phool*, (2003) 10 SCC 167 has held that the sale price in respect of a small piece of land cannot be

made a basis for determination of market value of vast stretch of land and the onus lies on the claimants to prove the market value of the land by

leading evidence. It would be appropriate to reproduce paragraph 6 herein.

On behalf of the Union of India it is contended that Exhibit A-1, which is a sale transaction in respect of a small bit of land measuring one bigha,

could not be the basis for determination of the market value of a vast stretch of land measuring 5484 bighas and if that is taken out of

consideration, then there is no residue of evidence on which the determination made by the High Court could be sustained.

Mr. Dinesh Dwivedi, learned Senior Counsel appearing for the respondents on the other hand contended that though the Reference Court and the

High court have rejected several sale transactions on the ground that the sale transactions do not inspire any confidence but have not indicated any

reasons. He further contended that in respect of the same village there has been an award which had culminated in the judgment of the High Court

awarding higher compensation and that should be looked into for the purpose of disposal of these appeals. That award had not been produced

before the High Court in the case in hand nor was it before the Reference Court also; though an application for taking that as additional evidence

has been filed in this Court. Contemporaneous award no doubt is a useful guide for every court to determine the market value but that award must

be taken into evidence in accordance with law by giving an opportunity to the other side for rebutting the same and that had not been done in the

case in hand. It is not possible to look into the additional evidence for coming to

any conclusion as to whether the market value as determined by the High Court is sustainable or not. Leaving aside the so-called award, if we examine the impugned judgment of the High Court, we have no other evidence other than Exhibit A-1 which was a sale transaction of 10.09.1981 in respect of one bigha of land and the price therein was Rs. 30,000 per bigha. It has been held in a catena of decisions of this Court that the sale price in respect of a small bit of transaction would not be the determinative factor for deciding the market value of a vast stretch of land. As has been stated earlier, the extent of land acquired in the case in hand i.e. 5484 bighas. In that view of the matter, we have no hesitation to come to the conclusion that the High Court has wholly erred in relying upon Exhibit A-1 in determining the market value of the acquired land extending to 5484 bighas. Since the onus is on the claimant to lead evidence on the determination of market value and if Exhibit A-1 is taken out of consideration, then there is no residue of evidence on which the determination made by the High Court enhancing the compensation awarded by the Reference Court could be sustained. We, therefore, set aside the impugned judgment of the High Court and affirm the market value as determined by the Reference Court. These appeals are allowed. Cross appeals filed by the claimants are dismissed.

19. As discussed hereinabove, the reference Court has discussed the evidence in each case. Virtually, there were no sale instances but only oral evidence was led. The reference Court has granted the compensation on the basis of admission made by the revenue officials while recording evidence and the documents prepared by the revenue agency in discharging the official duty which are available on the file. The appellants have failed to indicate and marshal out how the reference Court has fallen in error in enhancing the compensation, rather they have failed to prove that the compensation awarded by the Collector in terms of the final award in each case was adequate. The Apex Court had laid down the same principle in Mahesh Dattatray Thirthkar Vs. State of Maharashtra, . It would be appropriate to reproduce paragraphs 27 & 28 herein.

27. We now turn to the issue of sufficiency of evidence adduced by the appellant to prove its claim of enhancement of compensation. It is a well-established proposition of law that the burden of proving the true market value

of acquired property is on the State that has acquired it for a particular purpose (See Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah,). It appears from the record that the State had only produced a valuers' report of a government engineer in order to substantiate its claim of market value, whereas the claimant has produced a valuation report and sale transaction from which it will appear that the claimant has successfully proved the market value of the acquired property as determined by the Reference Court. Therefore, it can be legitimately concluded that the burden of proving inadequacy of the amount which lay on the claimant was successfully discharged by him.

28. In The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc., it was held that a report of an

expert for establishing the market value can be acted upon by the Court if ""relevant factual data or material which constituted basis for the report is

also produced and the same is proved to be genuine and reliable and the method adopted by the expert is found to be recognized and correct."" In

this appeal, the report of the engineer engaged by the appellant to prove the market value of the acquired property is based on his personal visit to

the site of the acquired property, the map drawn by him after taking the measurements of the acquired property and the valuation report made by

him after deducting the cost of depreciation. The valuer of the appellant has also submitted a map as well as the cost of depreciation report and the

valuation report. He has also given details of the date of his visit to the said property in 1985. Further, it is not disputed that he has used the PWD

practice and standard engineering norms while deciding the value of the acquired property. All these factors seem to make the valuation of the

expert valuer worthy of credence, as per the ratio of the above-stated case.

20. Mr. Reshi appearing on behalf of respondents in CIA No. 211/2009 has argued that the reference Court had to enhance compensation to the

time of Rs. 4.00 lacs instead of Rs. 2.50 lacs. He further argued that different yardsticks have been applied while awarding compensation. He,

therefore, prayed that Rs. 4.00 lacs be also awarded in case of claimants in CIA No. 211/2009 as awarded by the reference Court in other cases.

21. The argument though is attractive but is devoid of any force. As discussed hereinabove, it was the duty of claimants to lead evidence and prove

that how they were entitled to Rs. 4.00 lacs per kanal. The revenue officials while citing different reports had deposed that the market value of the land-in-question in Village Chandpora at the relevant point of time was Rs. 2.50 lacs per kanal. Accordingly, the reference Court after scanning the evidence of revenue officials enhanced the compensation from Rs. 1.40 lacs to Rs. 2,50 lacs per kanal. There is no evidence other than the evidence led by the respondents or claimants which could have been made basis for enhancing compensation to the tune of Rs. 4.00 lacs per kanal, as has been done in other cases.

22. It would be relevant to mention here that the lands acquired by the Government, subject matter of other appeals, are situated at Shanpora, Village Habak Khushki, Baghi Chandpora and Pazalpora, Tehsil Srinagar; while as the land, subject matter of CIA No. 211/2009, is situated at Chandpora. This was the reason for taking a different view and was rightly taken. My view is fortified by the judgment of Apex Court in Union of India (UOI) Vs. Harpat Singh and Others, . It would be appropriate to reproduced paragraph 19 herein.

On legal principle, there cannot be any doubt or dispute that when the nature of land sought to be acquired is different, the amount of compensation would be different keeping in view several factors, namely, the date of notification, the class of land sought to be acquired whether fully irrigated, number of annual crops or as to whether it was a land where no cultivation or vegetation is done.

In view of the above discussion, I am of the considered view that all these cases the reference Court has rightly determined the compensation and enhanced the same. The impugned judgments are well reasoned therefore, need no interference. Accordingly, all the appeal as well as cross appeals are dismissed.