

(1981) 09 MP CK 0018
In the Madhya Pradesh High Court
Case No : First Appeal No. 28 of 1971

State of Madhya Pradesh

APPELLANT

Vs

Nagar Palika, Mandsaur

RESPONDENT

Date of Decision : 04-09-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 24, 9

Citation : AIR 1981 MP 263 : (1983) 28 MPLJ 372

Hon'ble Judges : R.K. Vijayvargiya, J;H.G. Mishra, J

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; S.D. Sunghi, for the Respondent

Final Decision : Dismissed

Judgement

Mishra, J.

This is an appeal preferred by the State of Madhya Pradesh against the order dated 24-12-1970, passed on reference u/s 18 of the Land Acquisition Act, 1894, by the Addl. District Judge. Mandsaur, whereby the compensation awarded by the Land Acquisition Officer has been enhanced.

Facts essential for decision of this appeal are as under : Proceedings were started under the Land Acquisition Act, 1894 (for short, the Act) at the instance of the Madhya Pradesh Housing Board, Sub-Division, Ujjain, for acquisition of the land for constructing its hospital and staff quarters. In these acquisition proceedings besides other land the land measuring 1.12 bighas, out of the land comprised in survey No. 394/1, situated at Mandsaur and 13 bighas out of the land comprised in survey Nos. 96 to 106, situated in village Kityani, belonging to the Nagar Palika, Mandsaur (respondent-herein) were proposed to be acquired. Notifications u/s 4(1) and Section 17 of the Act were accordingly issued on 23-11-1962. Declaration u/s 6 of the Act was issued on 26-1-1963. Thereafter notices u/s 9 of the Act calling upon the persons interested in the lands proposed to be acquired were issued requiring them to submit their claims. The possession

of the lands in question was duly handed over to the Housing Board on 2-5-1963 by the Land Acquisition Officer, by award dated 31-3-1965, whereby (a) by way of compensation in respect of the land in area 1.12 bighas, situated at Mandsaur, Rs. 55.15 as its market value together with Rs. 8.27 being 15 per cent to be paid on this market value in consideration of compulsory nature of the acquisition in all Rs. 63.42 were awarded; and (b) in respect of the land situated at village Kityani Rupees 5250.60 were awarded by way of compensation as its market value and Rs. 787.59 to be paid on this market value by way of statutory addition -- in all Rs. 6038.19. In respect of the land situated in village Kityani it has been stated in the award that the same is adjacent to the land situated in Mandsaur. In order to seek enhancement of the compensation so awarded, an application u/s 18 of the Act was made to the Collector by the respondent Nagar Palika requiring that the matter be referred by him for determination by the Court. In this application an amount of Rs. 6,57,000/- was claimed at the rate of Rs. 2/- per square feet.

On reference to the Court, the appellant-State opposed the claim for enhancement of compensation on the grounds that the respondent-claimant has failed to submit their claim after service of notice u/s 9 of the Act on them. Accordingly, they cannot claim enhancement of the compensation awarded and that the compensation awarded is just and proper.

After recording evidence the learned Addl. District Judge has by the impugned order enhanced the compensation in respect of the land situated in village Kityani to Rs. 91406.25 and has awarded Rs. 13710.60 in addition by way of 15% on this market value to be paid by way of statutory addition -- in all Rs. 105116.85; and in respect of the land situated at Mandsaur to Rupees 23850 and by way of statutory addition Rs. 3577.50 -- in all Rs. 27427.50 paise. Out of the amount so determined, the amount of Rs. 5305.75 paise, paid already under the award to the respondent, has been ordered to be deducted. Thus, the remaining amount ordered to be paid to the respondent comes to Rs. 127235.60 paise, besides interest at the rate of 6% per annum from 2-5-1963, the date on which the possession was taken, up to the date of realisation. This appeal is directed against the impugned order passed by the Court.

In this appeal it was contended by Shri S. R. Joshi, learned Government Advocate, for the appellant-State that (i) the market value of the land acquired could not be enhanced by the Court because the respondent-claimant did not submit any claim after service of notice u/s 9 of the Act on them; (ii) that the Court has overlooked the proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold. Accordingly determination of compensation on the basis of value of small plots of land is illegal; (iii) that the compensation awarded is excessive; (iv) that the Court has acted against the prohibition enacted by clause fifthly of Section 24 of the Act; and (v) that the sale-deeds. Exs. D/1 to D/13 have been erroneously ignored by the Court while determining the market value of the lands Shri S. D. Sanghi, learned counsel for

the respondent-claimant argued in support of the impugned order. Having heard the learned counsel for the parties, we have come to the conclusion that this appeal deserves to be dismissed.

To take up first the contention No. (i) above, no doubt after service of notice envisaged by Section 9(1), all persons interested have to submit their claims before the Land Acquisition Officer. Sub-section (2) of Section 25 of the Act provides for the consequences of omission or refusal to make such claim. Section 25(2) of the Act reads thus:

"25. Rules as to amount of compensation:

(1)

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector."

In order to bring into play the stringent provision placed in Section 25(2), it was necessary for the appellant-State to have led evidence to show that the respondent-herein had made no claim to compensation after a valid notice u/s 9 had been served on them. The burden of proof in the matter lay on the State-appellant, as held in *State of Bihar Vs. Anant Singh and Others*, and *Special L. A. Officer v. Chikkaboranna* (AIR 1968 Mys 319). However the plea taken by the appellant-State on the point has remained unsubstantiated. That apart, on the point of fact, it has been held by the learned Addl. District Judge that the respondent had, in their objections submitted on 3-4-1963 claimed compensation at the rate of Rs. 2/- per square feet. In this view of the matter, the contention advanced on the point is devoid of any substance.

This brings us to the further contention to the effect that the Court has overlooked the proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold. The contention on the point appears to have been advanced in view of certain observations made in *Uttar Pradesh Government Vs. H.S. Gupta*, and *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta*, . We are afraid the aforesaid contention too does not merit acceptance as the aforesaid proposition does not appear to be an absolute proposition. This is apparent from the observations made in the aforesaid cases. In the case of *H. S. Gupta* (supra), what has been observed on the point is as, under (at p. 206 of AIR 1957) :

"The application of the principle that if the land had to be sold in one block consisting of a large area, the rate per square foot likely to be fetched would be smaller than if an equal extent of land was parcelled out into smaller bits and sold to different purchasers, could not reasonably be applied to the circumstances in the present case. The High Court should have concentrated its attention on the price fetched for smaller extent of land similarly situated with

the same kind of advantages and drawbacks and then applied that test to the facts in the present case."

From the aforesaid observations, themselves the principle, which appears to be deducible and the method which appears to be permissible while determining the value of large area of land is to take into consideration the price fetched for the smaller extent of lands similarly situated with the same kind of advantages and drawbacks and then apply that test to the facts of the case. Now, the following observations made in para 4 of the case of *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta*, also go to show that while determining the market value of large area of land acquired and the compensation awardable in respect thereof, average sales of smaller areas of land can constitute good evidence for fixing the market value and compensation to be awarded :

"Para 4 in *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta*, runs thus (*Bakhshish Singh Vs. State of Punjab* , :--

"In our opinion the High Court overlooked the fact that the plots which were the subject-matter of the sale deeds Exhs. 1 to 4 were comparatively of small areas and it is well known that when a large area like the one which was the subject-matter of acquisition has to be sold it cannot possibly fetch a price at the same rate at which small plots can be sold. It is significant that the respondent himself had originally claimed, before the Collector, compensation at the rate of Rs. 10,000/- per bigha. We see no reason for the High Court awarding compensation at a rate higher than Rs. 10,000/- which would also be consistent with the evidence furnished by the four sale deeds. Although the average price of these sales came to Rs. 15,000/- per bigha, but when it is considered, as has already been observed that they were of comparatively much smaller area, they would constitute good evidence for fixing the rate at a figure which was originally claimed by the respondent, namely, Rs. 10,000/- per bigha. In other words, if the plots covered by the sale had been sold in larger parcels, the price likely to be fetched would not have exceeded Rs. 10,000/-per bigha."

It is true that in the case of *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta* , it has been observed by the Supreme Court that "it is well known that when a large area like the one which was the subject-matter of acquisition has to be sold, it cannot possibly fetch a price at the same rate at which small plots can be sold". However, if this statement were to be made as an absolute proposition of law of universal applicability, their Lordships of the Supreme Court would have not proceeded further in the same paragraph to have made the observations which follow. From the aforesaid observations" made in the aforesaid cases, it cannot be concluded that the proposition sought to be propounded by Shri Joshi is an absolute proposition of universal application and that the Court cannot take into consideration the average price of smaller areas of land and treat the same as good evidence for fixing the rate of compensation payable. This is what was. in essence, ruled by Macleod. C. J., speaking for the Court, in *The Collector Vs. Ramchandra Harischandra* , , relevant ratio of which runs thus :

"In a case of acquisition of land where a large area has to be valued it is impossible to fix the value of various portions of it at different rates on anything like approaching an accurate basis. The only way in which the market value can be arrived at is to judge from other sales what the whole land would have been likely to realise in the market. It is not possible to divide the whole into separate pieces and give one value to so much of front land, and divide again the interior land into separate portions and value them again at different rates. If a few of the frontage plots are sold for building purposes, that is no evidence that the remainder of the land can be sold for building purposes. The real test by which the market value can be arrived at is to gather from other sales what the whole land would have been likely to realise, in the market about the time of acquisition. It is altogether wrong to assume that every square yard of land has a potential value, the present value of which is more than nominal."

In *The State of Maharashtra (Public Works Department) Vs. Bapurao Dnyanoba Chiddarwar and Others*, , the law laid down on the point is thus (at p. AIR 1973 Bom 240) :

"The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not an absolute proposition and in given circumstances, it would be permissible to take into account the price fetched by small plots of lands, especially in a case where compensation for land with building potentiality is to be determined and the land is to be valued."

The view of this Court in *State of Madhya Pradesh Vs. Man Mohan Swaroop*, is in line with that taken in the cases of *Uttar Pradesh Government Vs. H.S. Gupta*, and *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta*, . The ratio on the case of *Man Mohan Swaroop* (supra), relevant to the situation, is as under (at p. AIR 1966 MP 271) :

"It is also true that ordinarily it is wrong to value large areas on the basis of small area sales and vice versa. All the same, there may be cases when such a basis may be required to be adopted looking to the entire circumstances of the case."

(Emphasis supplied.)

The use of the word "ordinarily" concedes power to the Court having regard to the entire circumstances of the case to value large areas on the basis of small area sales. So also in a latter case, reported in *Collector, Jabalpur and Another Vs. Nawab Ahmad Yar Jahagir Khan*, , what has been stated on the point is thus AIR 1971 MP 39) :

"No general proposition can be laid down that in no case the value of an entire plot can be fixed on consideration of the value of front, middle or back belts of the land. In case of acquisition of a large area of land, an attempt must always be made to judge from other sales what the whole land would have been likely to realise in the market. It is generally undesirable to divide the whole into separate

pieces and give different value to front land and divide again the land in the interior into separate portions but where there is no evidence to show on the basis of which the value of the large area to be acquired can be worked out, help has to be taken from such material as may be available.

When determining the value of frontage land, the depth is the question of supreme importance. What is a suitable depth must primarily depend on the character of the buildings in the locality. It has to be best settled by assuming that the owner of the property will make best possible use of it and that the actual lay out of the property at the time of acquisition was in all the circumstances of the case the most advantageous and lucrative. Govt. of Bombay v. Karim Tar Mohd. ILR (1909) Bom 325; Secy. of State Vs. Bhupati Nath Deb, ; Alaul Huq v. Secy. of State for India ((1909) 11 Cal LJ 393) and Pirbhu Diyal v. Secy. of State (AIR 1931 Lah 364), Ref."

For the sake of convenience we take up contentions (iii), (iv) and (v) together :

The amount of compensation to be awarded is to be determined in accordance with the provisions placed in Sections 23, 24 and 25 of the Act. Now, market value can be determined in three modes as held permissible in The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, thus (at p. 432 of AIR) :

"It is not disputed that the function of the Court in awarding compensation under the Act is to ascertain in the market value of the land at the date of notification u/s 4(1) and the methods of valuation may be: (1) opinion of experts; (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired."

In this case, there is no expert opinion on record. The method appears to have been adopted is falling under method No. (2) above. It will not be out of place to state here that the expression "market value" contained in Section 23(1), clause firstly, has not been defined in the Act. One of the reasons assigned for omission of definition clause originally contained in the Bill of the Act inter alia, as stated by the Select Committee's Report dated 23rd March, 1893, is :

"We have again considered the question of definition of the term "market value" but we adhere to the opinion of our Preliminary Report that it is preferable to leave the terms undefined. No material difficulty has arisen in the interpretation of it; the decisions of several High Courts are at one in giving it the reasonable meaning of the price of willing buyer would give to a willing seller; but the introduction of a specific definition would sow the field for a fresh harvest of decisions; and no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained."

Accordingly, the ultimate basis for determining the market value on the basis of

which compensation is payable u/s 23 of the Act means "the price 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 out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. As observed in *South Eastern Rail Co. v. London County Council* (1915) 2 Ch 252:

"The value to be ascertained is the price to be paid for the land with all its potentialities, and with all the use made of it by the vendor."

Dealing with the doctrine of potential value the Supreme Court in *N. B. Jeejeebhoy v. District Collector, Thana*, Civil Appeals Nos. 313 to 315 of 1963 dated 30-8-1965 (SC), observed as follows :

"A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value, but the objective factor, namely, whether the said potentiality can be turned to account within a reasonably near future The question, therefore, turns upon the facts of each case."

In *The Collector, Raigarh Vs. Harisingh Thakur and Another*, , the law laid down (as per majority) is thus (at p. 473 of AIR) :

"The question whether a land has a potential value as a building site or not is primarily one of the facts depending upon several factors as its condition and situation, the use to which it is put or is reasonably capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, whether the nearby town is a developing town, with prospects of development schemes and the presence or absence of building activity towards the land acquired or in the neighbourhood thereof."

Now, on merits, the compensation awarded in respect of the land situated in the village Kityani is at the rate of five annas per square foot. This rate appears to have been determined after taking into consideration the documentary as well as the oral evidence on record. The learned Additional District Judge in para 12 of the impugned order has observed that "Ex. D/1, the sale deed, dated 17-5-1962, Ex. D/2, sale deed, dated 19-5-1962, sale deed, dated 14-5-1962, Ex. D/3 and sale deed, dated 11-5-1962, Ex. D/4, show that building site at village Kityani were sold at the rate of eight annas per square feet for developed plots in 1962". The land acquired has potentiality of building site. On the basis of the statement of Dr. S. N. Shukla (A. W. 1) to the effect that development cost ranges between two annas to three annas and taking the development cost to be three annas per square feet, the learned Addl. District Judge has determined the market value of the acquired land, situated at village Kityani at the time of issuance of the

notification u/s 4 of the Act, i.e. 23-11-1962 to be five annas per square foot. While determining the market value of the land in question the learned Additional District Judge has excluded from consideration the price for which the land was sold, vide sale deeds. Ex. D/5 to Ex. D/8. This exclusion appears to be justified because the land sold thereby was agricultural land and which was sold for agricultural purpose only. Likewise the learned Addl. District Judge has excluded from consideration the sale deeds, Ex. D/11, dated 9-5-1960, Ex. D/10, dated 3-6-1961 and Ex. D/9, dated 14-6-1961 on the ground that they were too remote in point of time to furnish legal basis for determination of the compensation. In this respect it has to be noted that in para 12 of the impugned order the learned Addl. District Judge has stated "that the land under acquisition has been acquired for building purpose. Counting its potentiality, it would be compensated as building site". However, these observations do not indicate that the learned Addl. District Judge has acted contrary to clause fifthly of Section 24 of the Act, whereby the Court is prohibited from taking into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired. The land acquired is admittedly near the New Abadi Mandsaur, Scheme No. 1. Accordingly, it has certainly potentiality of building site. The contention of Shri Joshi on the point does not appear to be well founded. The appellant-State has not been able to show that the determination of the compensation was influenced by what is prohibited by clause fifthly of Section 24 of the Act. Accordingly, the compensation awarded by the learned Addl. District Judge in respect of the land situated at village Kityani, appears to be just and proper. The rate of interest awarded and the period for which it has been awarded is also proper and does not call for any interference.

So far as the land situated at Mandsaur is concerned, the compensation has been awarded on the basis that the market value prevailing at the time of the notification u/s 4 of the Act was thirteen annas per square foot. Dr. S. N. Shukla (A. W. 1) has stated that he had sold his land, situated at Mandsaur, in Nov., 1962, at the rate of Re. 1/- per square foot. He further deposes that development cost per square foot comes to two to three annas and the same was included in the price at which he had sold his land situated at Mandsaur. Thus, after making deduction for development costs at the rate of three annas per square foot, the market rate for the land situated at Mandsaur, having the potentiality of building site, has been determined by the learned Addl. District Judge as thirteen annas per square foot. Although Shankarlal (A. W. 2), Nathulal (A. W. 3), Kripashankar (A. W. 4) and Sundersingh (A. W. 5) have deposed that the market rate prevailing at the relevant time of similar land was Rs. 2/- per square foot, the learned Addl. District Judge, however, placing reliance on the testimony of Dr. Section N. Shukla (A. W. 1) determined the market value as stated above. In determination of the market value for the land situated at Mandsaur, the learned Addl. District Judge has ignored the price deducible from the sale deeds, Exs. D/1 to D/13 on the count that they relate to the land situated in village Kityani. As such, the appellant-State is not justified in making

a grievance about the exclusion of those sale deeds in determination of the market value of the land acquired at Mandsaur. As in the case of Kityani land so also in the case of Mandsaur land, the learned Addl, District Judge does not appear to have acted in breach of the provisions placed in clause fifthly of Section 24 of the Act and it is not shown by the appellant-State in what manner and to what extent the learned Additional District Judge has permitted himself to be influenced by the consideration or enhancement of the value for its intended use after acquisition. Thus, the impugned order passed by the Addl. District Judge on reference u/s 18 of the Act appears to be Unassailable.

Thus, the compensation enhanced by the impugned order is not shown to be in violation of any provision of law and appears to have been determined in accordance with the aforesaid principles governing the situation. Having regard to the potentialities of the land acquired as a building site, determination of the market value and award of compensation cannot be regarded to be excessive either. Thus, none of the grievances voiced in this appeal by the appellant-State appear to be correct. Accordingly, the order does not call for any interference.

In view of the discussion aforesaid, this appeal fails and is hereby dismissed. However, having regard to the circumstances of the case, we make no order as to costs so far as this Court is concerned.