(1994) 12 AHC CK 0054

In the Allahabad High Court

Case No : First Appeal No. 1904 of 1990

State of U.P. and Ors. APPELLANT

Vs

Shau Singh & Ors.etc,etc. RESPONDENT

Date of Decision : 20-12-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4, 50

Citation : (1994) 12 AHC CK 0054

Hon'ble Judges : D.K.Trivedi, J and S.C.Mohapatra, J

Final Decision : Dismissed

Judgement

S.C.Mohapatra, J.—An area of 414 acres of land in village Mukkarmpur Palehra within Meerut District by the side of Delhi Mussoori National Highway was acquired for Meerut Development Authority (hereinafter referred to as MDA) for Pallav Puram Housing Colony Scheme on basis of notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act'') published on 1271980. Acquired area belonged to various land owners. Land Acquisition Collector treating the acquired land to have potentials of Abadi (homestead) classified the same to two categories. Land adjacent to the National Highway covering about 2 kilometres in length upto 100 metres wide was valued at Rs. 30 pet square yard and rest land interior to it beyond 100 metres was valued at Rs. 11.25 paise per sq. yd. land owners were claiming that entire area of 414 acres acquired is of the same category for which they are entitled to compensation at the rate of Rs. 125 per sq. yd. Since compensation was offered at low rate, they requested the Land Acquisition Collector for reference under Section 18 of the Act and on that basis references were made to Civil Court.

2. All these references were heard in five sets. Learned Additional District Judge who heard three sets of references made awares under Section 26 of the Act on the same day. He held that acquired area involved in those two sets having potentials of homestead are to be divided into two belts and confirmed classification made by Land Acquisition Collector, Rate of land was, however,

enhanced. Rate of Rs. 30 was enhanced to Rs. 70 per sq. yd. and rate of Rs. 11.25 paise was enhanced to Rs. 37.50 paise per sq. yard. In the fourth set decided by him on 5990 the same rate was adopted. Another learned Judge who decided the last set on 13121991, land involved in the reference were treated to be of one category and market value was determined at Rs. 70 per sq. yard.

3. State of Uttar Pradesh and Meerut Development Authority have jointly assailed awards made in all the references in various appeals. Some land owners have assailed the awards by filing independent appeals. Some have filed cross objections under Order 41, Rule 22, C.P.C. Out of the cross objections filed, some are free from defects, some are barred by limitation and in some, required court fees have not been paid on memorandum of cross objection. Out of them in some cross objections applications to amend valuation have been filed to reduce the claim amount on the ground that those respondents have not been able to pay the entire court fee. Some land owners have not yet taken steps for preferring cross objection though learned counsel stated that there is such intention. In case we wait for all the cross objections to be filed or to be made free from defects for hearing of the appeals, it will take a long time to make the appeals ready for hearing. In spite of the fact Order 41, Rule 33, C.P.C. or Section 28A of the Act are not directly applicable, following the jurisprudence behind them, we allowed all the land owners to press their claims in support of higher compensation assailing awards under Section 26 of the Act, subject to condition that in cases where court fees on cross objections have not been paid or partly paid or where no cross objection or appeal has been filed, required court fees shall be recovered from the land owners out of the additional amount payable to them as per this decision. As some cross objections have been filed beyond period of limitation, by few days, we have condoned the same so that they also get the same advantage as those who have not preferred any appeal or cross objection. In some appeals land owners have died. Their legal representatives have prayed for being substituted. Since there is substantial representation, we have allowed substitution in all cases.

4. With consent of all parties, appeals by MDA appeals and cross objections by land owners heard together allowing different sets of learned counsel to advance their submissions and treating evidence in one reference as evidence in other references also. It is made clear that in case any land owner has no opportunity to support or assail the award in his favour, he is at liberty to move this court to recall the judgment in respect of appeal in which he is a party, if he feels aggrieved and he will get opportunity of being heard after which that appeal will be decided afresh.

5. MDA has preferred appeals jointly with State Government. There can be no dispute that their interest being the same both are competent to prefer appeals independently as well as jointly. However, when appeals are filed jointly, both of them are to be represented by one set of counsel engaged by both. There is no scope for two sets of counsel appearing independently, one for MDA and the

other for State Government in the same appeal. Learned counsel for MDA has to get authority from State Government for representing it and learned Law Officer for State Government has to get authority from MDA to represent it as Government pleaders have no authority to represent statutory bodies under the Code of Civil Procedure unless specially engaged. If all these requirements are satisfied both counsel can appear for both parties. However, Law Officer of the State has right of preaudience and there would not be scope to hear both sets of lawyers for joint appellants separately. Thus joint appeal is incompetent, where learned counsel do not appear jointly for both the appellants. To avoid this infirmity, opportunity is to be given to appellants to choose one of them to be appellant to continue the appeal, If no step is taken to transpose one of the appellants as a respondent, appeal has to be dismissed against it and the appellant continuing the appeal has to bear the effect of the same.

6. In these appeals filed jointly by MAD and State Government no objection has been raised by registry to the maintainability of the appeals by both the appellants together, through two sets of counsel independently. It has come to our notice that this irregularity has been found in many other appeals also pending in this Court. In such circumstances, without dismissing the appeal against State Government in absence of step to transpose it as respondent as it is agreed that MDA would continue the appeal, we direct that State Government shall be treated to be a respondent.

7 Market value of land acquired is to be determined as on the date of publication of notification under Section 4 (1) of the Act. Market value is the price what a seller expects and a bona fide purchaser is willing to pay. In absence of direct evidence of the land acquired being purchased or agreed to be purchased, court has to find out the prevailing market value on the date of publication of notification under Section 4(1) of the Act from contemporaneous transactions of land situated in the vicinity having similar advantages. Where such transactions are not available, court can adopt capitalisation method and also rely on opinion of experts. There being many imponderable in determination of market value, reasonable guess work is permissible. Court can consider the question by taking assistances of all the three methods together or some of them for which materials are available on record so that a land owner gets his legitimate compensation and does not enrich himself by compulsory acquisition.

8. For determining market value of the land acquired, Courts have evolved principles at different times which act as precedents. Mr. Sudhir Chandra, Senior Advocate assisted by Mr. B. Dayal, Advocate, learned counsel for MDA relied upon AIR 1988 SC 943; Administrator General of West Bengal v. Collector, Varanasi; AIR 1992 SC 666; Special Tehsildar Land v. Smt. A. Mangla Gowri, to submit that market value determined by Civil Courts is high. Mr. Sudhir Chandra has submitted that market value determined by Land Acquisition Collector is also on the higher side. Mr. V. B. Upadhya, Senior Advocate assisted by Mr. Pankaj Mittal, Advocate for some land owners, Mr. Murlidhar, Senior Advocate assisted

by another counsel for some land owners, Mr. R. P. Goel, Advocate for some land owners and Mr. V.B. Singh, Advocate. Learned counsel for some land owners who advanced main arguments for land owners relied upon AIR 1976 SC 651; State of Madras v. M. M. Nanjan and another; AIR 1979 SC 472. In re the Special Courts Bill, 1978, AIR 1979 SC 869; Krishna Yachendra Bahadur Vari v. Special Land Acquisition Officer, City Improvement, Trust Board and others, Banglore; AIR 1984 SC 1767; Chand Bansi Singh and others v. State of Bihar and others; AIR 1987 SC 720; Mahabir Prasad Santuka and others v. Collector, Cuttak and others, AIR 1988 SC 1652; Chimanlal Hargovinda v. Special Land Acquisition Officer, Poona and another, AIR 1989 SC 1222; Suresh Kumar v. Town Improvement Trust, Bhopal; AIR 1989 SC 2051; Mehta Ravindra Rai Ajitrai (deceased) by L.R& and others v. State of Gujrat, AIR 1990 SC 2192; Periyar Pareekarmi v. State of Kerala; AIR 1992 SC 150; Gokal v. State of Haryana; AIR 1992 SC 1406; Food Corporation of India Faridkot Punjab v. Makhan Singh and another; AIR 1922 SC 2298; Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer, Vishakapatnama. Municipality, JT 1993(3) SC 653; Inder Singh and others etc. v. Union of India and etc. JT 1993 (4) SC 360; Hansraj H. Jain v. State of Maharashtra and others; JT 1993 (5) SC 465; Ram Chand and others v. Union of India and others; 1994 (4) SCC 595; Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad A. P. and others, and AIR 1994 SC 169; Gauri Shankar Gaur and others v. State of U. P. and another, in support of enhancement of compensation further or at least to maintain the market value as determined in the references. Some decisions of other courts and one decision of thib court have also been relied upon.

10. Land owners, who request for reference to court demanding higher compensation stand in position of plaintiffs in suit. Burden lies on them to prove that the compensation awarded under Section 11 of the Act by the Land Acquisition Collector and offered to them is inadequate as well as the compensation to which they are entitled to. In the references under consideration, in order to discharge the onus, claimants have adduced oral evidence, filed copies of exemplars and have also some awards in references in respect of some lands in other adjacent village under preliminary notification under Section 4(1} of the Act published near about the time of preliminary notification for the acquisition under consideration. They have also filed documents indicating circle rates fixed by Collector for collection of stamp duty for registration of documents of transfer in respect of lands in village Mukkarampur Palshra. Other documents like Town Planning map and sketch map of the acquired land prepared by architects have also been filed to show the situation of acquired land and the purpose for which it is earmarked. Land Acquisition Officer has also relied upon exemplars.

11. Considering the aforesaid materials, Civil Courts took into consideration of the situation of the acquired land and held that the same though used for agriculture has potentiality of being used as homestead. As ho has been stated earlier, in most of the reference acquired and was divided into two categories,

one category was roadside land for the entire length having width of 100 metres and the second categories was behind the rest. Market value of first category of land was determined at Rs. 70 per sq. yd. and second category of market value of lands was determined at Rs. 37.50 per sq. yd. This is grievance of all the parties.

12. Mr. Sudhir Chandra learned counsel for M. D. A, submitted that exemplars which related to other villages should have been discarded when exemplars relating transaction in the same village were available. Besides, the exemplars relied upon relates to abadi land of a village, which is at about a distance of 9 km from the acquired land and was adjacent to town area which later on became part of Meerut Municipal Corporation. If the exemplars of the village Mukarrampur Palehra filed by claimants are examined, the rate would work out to Rs. 11.25 per sq. yd Average rate would be Rs. 4 to 5 per sq. yd. circle rate prevailing on 1271980 ought to have been considered and later circle rate fixed has no relevance.

13. Mr. V. B. Upadhyaya, learned counsel for some of the land owners referring to the master plan and site plan prepared by the architect as well as copies of photographs filed submitted that the acquired land is situated at a place where on one side of Delhi Meerut road near Meerut town is situated industries like Modi Rubber Factory with its township and on the other side is situated the acquire land. Though some of the sale deeds after the preliminary notification were filed, they were distressed sales when land owners transferred the land to Modi company with hope of getting employment. Collector initiated proceeding for collection proper stamp duty. Other exemplars would indicate that prevailing market value was much above Rs. 125 if the year of the transactions are taken into consideration and applying the usual increase in rate, the market value is determined.

14. Mr. Murlidhar learned counsel for some of the appellants while adopting submission of Mr. Upadhya placed strong reliance on the awards in respect of lands acquired for adjacant villages as submitted that acquired lands are better than those lands.

15. Other learned counsel made submissions which are covered within these broad submissions.

16. Since Mr. Sudhir Chandra advanced a submission at one stage of the hearing that M. D. A. was a necessary party before the Civil Court which did not have opportunity to adduce evidence, without going into the question of interpretation of person interested, local authority, company and statutory body which is not covered under the meaning of local authority and without interpreting Sections 20 and 50(2) of the Act, while granting leave to M.D.A. to continue the appeals, we permitted all parties to bring additional evidence to record so that finality can be reached.

17. Though strong reliance is placed by all the parties on the circle rates fixed by

Collector for stamp duty at various times, we discarded the same since circle rates are not the price offered by a willing purchasers in bonafide transactions. It is a rate fixed for the purpose of collection of stamp duty only. Supreme Court has also held that such documents should not be relied upon for determination of market value in references under Section 18 of the Act. See JT 1994(4) SC 604, Jawajee Nagnatham v. The Revenue Divisional Officer.

18. Mr. Satish Chandra''s submission that transaction of other villages should not be considered where transactions in respect of land in the same village are available, has much force. Accordingly, awards, which related to land in other villages and also transactions in respect of other villages, are ignored by us from consideration.

19. Coming to transactions of land in village Mukkarampur Palehra, we find that they relate to either agricultural land or abadi land with constructions over it. Transactions, with Modi Rubbers Factory being subsequent to preliminary notification on 1271980 are to be kept out of consideration since on the own showing of the claimants, they are distressed sales with nope 01 getting employment and when Collector having doubted the consideration, has initiated proceeding for collection of Stamp duty. If all those exemplars are left out, only a few sale deeds remain for consideration. All these transactions relied upon by land owners are of 1974 and 1976. The sale deeds relied upon by Land Acquisition Officer are dated 2861978 and 15121980. Sale deed dated 15121980 is based on an agreement dated 2151974 and rate at Rs. 5 per sq. yard would relate to 1974. Sale deed dated 2861978 indicates a rate at Rs. 15 per sq. yard. Five sale deeds relied upon by claimant which are between 1974 and 1976 reflect a rate between Rs. 30 to Rs. 40 per sq. yard. One sale deed dated 9101974 executed by PW 3 Rati Ram works out to a rate of Rs. 112.50 per sq. yard. It is stated to be a small strip of road side land towards Meerut town.

20. In absence of sale transactions in respect of land in the vicinity having similar advantages near about the date of preliminary notification under Section 4(1) of the Act, these transactions become material for consideration of market value by making reasonable guess work. For this purpose, situation and area of the acquired land has to be kept in mind.

21. From the Master Plan prepared by M. D. A. and the plan prepared by Architect it will be seen that Meerut town is at a long distance from the acquired land. From oral evidence it is seen that the acquired land covered a length of two kilometres on the Grand Trunk Road side to a width of 1 km. in average. Begumpet bridge area which is within Meerut town is two to three km. from the acquired land. Modi Rubber Factory with township has developed in or about 1970 on the other side on the trunk road. Buildings had come up near the road side, on both side of the acquired land but the vast tract of acquired land even on road side remained without development in spite of it. Thus, the sale transactions related to developing area whereas the acquire land is developed. There is no clear evidence which have bean adduced by claimants about the

nature of gradual development between 1970 to 1974 or 1976 and from that period upto 12.71980. In absence of such evidence it can be assumed that neighbouring buildings etc. came up near about the time of establishment of Modi Rubber Factory and complex in or about 197076. Thereafter, there was no remarkable development. If a small strip of road side land towards Meerut Town near Grand Trunk Road fetched Rs. 11250 per sq. yard land further to it will not fetch that rate and the same also remained undeveloped. In absence of rate at which there was increase in price, the land which was sold in 1974 at Rs. 112.50 paise per sq. yard can be guessed to have increase of Rs. 2 per year which would bring the rate to Rs. 125 per sq. yard. Taking note of the fact that acquired land covers a length of about 2 km. on side of Grand Trunk Road still beyond Meerut Town, which remained undeveloped for six years, deduction of l/3rd from the rate of Rs. 125 for small piece of land nearing the Town area would be reasonable for similar area on the road side of undeveloped land having very small length and breadth. It brings the rate to about Rs. 85 per sq. yard. It is well known that a bonafide purchaser would not be willing to pay consideration at the same rate for a vast area of 414 acres as he would be willing to pay for a small piece of land. On account of large area being acquired, some deductions are to be made. Taking into consideration the fact that the road side land remained undeveloped and more distant from Meerut town although both area sold and acquired road side land and opposite to Modi Rubber Factory complex, we make a reasonable guess work and further reduce the rate to bring the rate of road side land which has been kept in 1st belt at Rs. 55 per sq. yard. Land owners of the 1st Belt are entitled to market value at that rate.

22. Coming to second Belt, it is seen that width of 900 metres remain. Division to 9 units as per belting will create hardship to land owners. If minimum rate of Rs. 20 per sq. yard is taken for 2nd belt land as fixed under the circle rate, in absence of materials on record as to the net annual profit from agriculture to determine market value by adopting capitalisation method and further adding something for potential value, we determine the rate per sq. yard at Rs. 30 at a flat rate for the second belt. Land owners are entitled to market value for their land in second belt at this rate.

23. It goes without saying that claimants are entitled to statutory benefits under Section 23 (1a) and (2) and interest under Section 20 of the Act as amended by Act (68 of 1984).

24. Valuable assistance rendered to us by Sarvasri B. Dayal and Pankaj Mittal, Advocates to supply us the details of facts in documents and oral evidence whenever requested during preparation of this judgment is acknowledged without hesitation, but for which it would have taken long time to render this judgment.

25. In result, appeals by M. D. A. are allowed in part. Cross objections filed by land owners are dismissed. There shall be no order as to costs in all the appeals.

