(2009) 10 AHC CK 0153

In the Allahabad High Court

Case No : First Appeal No. 145 of 1994

State of U.P.& Anr. APPELLANT

Vs

Laxmi Shanker Gaur (dead) & Ors. RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 23

Citation : (2009) 10 AHC CK 0153

Hon'ble Judges : V.K.Shukla, J and Rajiv Sharma, J

Final Decision : Partly Allowed

Judgement

1. Heard learned counsel for the parties.

2. State of U. P. through Collector, Hardoi and Director, UP, Servekshan Avam Bhu Lekh Prashikshan Sansthan, Hardoi, have filed these two First Appeals under Section 54 of the Land Acquisition Act, 1894 [hereinafter referred to as the ''Act'' for the sake of brevity] against the judgment and decree dated 12.02.1993 passed by the IV Additional District Judge, Hardoi in Misc. Case No. 82 of 1988 Laxmi Shankar Gauri v. State of U.P. and others] and Misc. Case No. 39 of 1990 [Smt. Jageshwari Devi v. State of U.P. and others], respectively, in reference made under Section 18 of the Land Acquisition Act.

3. Brief facts of the case are that a Notification under Section 4 of the Act was issued on 28.2.1987 for acquiring land of plot Nos. 523, 524, 524/1, 525/1, 525/2, 526 and 542 etc. situated in village Nanakganj Grant, Pargana Gopamau, Tehsil and District Hardoi, for the purposes of constructing Superwiser Kanongo Training School. Thereafter, in the month of September, 1987, another notification was issued under Section 6 of the Land Acquisition Act, whereby possession of the land was taken over. The Special Land Acquisition Officer, on 13.01.1988, awarded compensation at the rate of 3.75 per square feet. After the said award in question was passed, a request was made under Section 18 of the Land Acquisition Act by Sri Lakshmi Shanker Gaur to the Collector for making reference and it was contended therein that the amount which was awarded by

way of compensation was inadequate. To the said request for making reference, objections were filed by the State. Ultimately, the reference was made to the District Judge, Hardoi. The IV Additional District Judge, Hardoi accepted the reference on 12.2.1993 by awarding compensation at the rate of Rs.6/ per square feet. Hence the present First Appeal was filed by the State.

4. Sri Pramod Kumar, learned Standing Counsel, representing the appellants, contended with vehemence that in the present case, Reference Court has totally misdirected itself in, accepting the reference by ignoring the important aspect of the matter insofar as that the market value of the land in question on the basis of sale proceed of small portion of land could not have been relied in the present case and further the said exemplar in question which had been relied upon, could not have been relied upon, as onus of proof that the said sale transaction was genuine transaction, had not been discharged, as such in this background, the judgment and decree passed by Reference Court, is liable to be set aside.

5. Countering the said submissions, learned counsel for the respondents contended that in the present case, the part of the award, which is subject matter of challenge is not at all liable to be interfered with, as there is no infirmity in the same for the simple reason that in the absence of there being a direct exemplar, exemplars of small plots with care and caution could have been made foundation and basis and further genuineness of the said transaction was never an issue, and coupled with this, though cross objection and cross appeal has not been filed, this is a fit case wherein authority under order 41, Rule 22 read with Rule 33, C P C is liable to be exercised, for the simple reason that totally iniquitous action has been taken by making double deduction, and further taking recourse to Government Order, which was not at all applicable and in lieu of trees etc. no compensation has been awarded and rate has been wrongly mentioned at Rs.15.00/ per square feet. In this background, the appeal be dismissed and the injustice, which has been meted to the defendant, be cured by according total relief, as claimed in reference.

6. The first question to be considered by us is, as to whether the exemplar of a small portion of land can be relied on or not, in the facts of the present case. In this regard, the view point of the Apex Court as well as of this Court is to be looked into. The Apex Court in the case of Land Acquisition Officer, Karmapalli, District A. P. v. Nookala Raja Mallu and others, 2003 (12) SCC 334: (AIR 2004 SC 1031) has taken the view that where larger area is acquired, rate at which small plots are sold cannot be useful guide, but said proposition cannot be used as absolute proposition when there is no other material available, such instance may be taken into consideration for determining the value of the land with reasonable deductions/adjustments. Paragraphs 6,11 and 13 of the aforesaid judgment are being quoted below:

"6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to a few decisions of this Court in The Collector of Lakhimpur v. Bhuban

Chandra Dutta (AIR 1971 SC 2015 (Prithvi Raj Taneja (dead) by LRs. v. The State of Madhya Pradesh and Anr. (AIR 1977 SC 1560) and Smt. KausalyaDevi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr. (AIR 1984 SC 892)

7. It cannot, however, be laid down as an absolute proposition that the rate fixed for the small plots cannot be the basis for fixation of the rate. For example where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages..

11. The evidence of record shows that the acquired lands were agricultural lands. Obviously, their valuation would differ to a considerable extent from the land used for house sites. In such a case, necessary deductions for the extent of land acquired for the formation of roads and other civic amenities, expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realization of the price, the profits on the venture etc. are to be made. (See Administrator General of West Bengal v. Collector, Varanasi (1988 (2) SCC 150): (AIR 1988 SC 943). In Brig. Sahib Singh Kalha and Ors. v. Amritsar Improvement Trust and Ors. (1982 (1) SCC 419): (AIR 1982 SC 940) the deduction for such development was taken as 53%."

7. A Division Bench of this Court in the case of Moradabad Development Authority v. Chhida and others, 2004 All IJ 3700, has taken a view that exemplar of small plot cannot be relied upon when land acquired is larger chunk of area. In the said case, the Division Bench found that the Special Land Acquisition Officer has granted compensation over and above Rs.100/ per square meter, whereas as per agreement the rate at which parties had agreed was only Rs.100/. Paragraphs 9, 10, 11 and 12 of the aforesaid judgment being relevant is being quoted below:

"9. In this connection a Division Bench decision of this Court in a very recent decision in First Appeal No.522 of 1993 (Krishi Utpadan Mandi Samiti v. Khusi

Ram) decided on 26.02.2004 (reported in 2004 (2) All WC 1305: 2004 All LJ 3342) has held that exemplars of small plot cannot be relied upon when land acquired is larger chunk of area. In this Division Bench decision reference has been given to many of the relevant Supreme Court decisions and we need not repeat the same. The latest Supreme Court decision in Union of India v. Zila Singh, 2003 (10) SCC 166 has also been cited in their aforesaid decision of this Court.

10. In view of the above decisions we are of the opinion that the enhancement of the rate from Rs.80/ to Rs.270 per sq. mt. in respect of the land in question was patently illegal and arbitrary and the impugned judgment is hereby set aside.

11.We may mention that along with solatium under Section 23 (2) an additional compensation under Section 23 (1 A) and with interest the rate of Rs.80/ per sq. mt. will really come to about Rs.130/ per sq. mt.

12. In the agreement which the parties executed for 17.32 acres land only Rs.100 per sq. mt. had been agreed to be paid to the claimants. Thus, what the S.L.A.O. has granted is in fact even above Rs.100 per sq. mt. and we see no reason why the Reference Court should have interfered with this writ."

8. The Apex Court, as of late, has further clarified the law on the subject in respect of placing reliance on sale deed of small area. In the case of Lucknow Development Authority v. Krishna Gopal Lohari, AIR 2008 SC 399: (2008 (1) ALJ 223), a view has been taken that where larger area is subject matter of acquisition, exemplars of small plots be not relied. It cannot, however, be laid down as an absolute proposition that in such cases rates fixed for small plots cannot be the basis for fixation of rate, and in appropriate cases where there is no material for making comparison of the prices paid for small plots of land, the same can be taken into account. However, in such cases necessary deductions/ adjustments have to be made while determining the prices. Paragraphs 15 and 16 of the aforesaid judgment being relevant are quoted below:

"15. where larger area is subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in the Collector of Lakhimpur v. Bhuban Chandra Dutta (AIR 1971 SC 2015) Prithvi Raj Taneja (dead) by LRs. v. The State of Madhya Pradesh and Anr. (AIR 1977 SC 1560) and Smt. Kaushalya Devi Bogra and Ors. v. Land Acquisition Officer, Aurangabad and Anr. (AIR 1984 SC 892)

16. It cannot, however, be laid down as an absolute proposition that in such cases rates fixed for small plots cannot be the basis for fixation of the rate. For example, where there is no material it may be in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."

9. In the case of Atma Singh v. State of Haryana, AIR 2008 SC 709, a view has been taken that where large tract of land is acquired, determination of market value on exemplars of sale of small plots, therein percentage of cut has to be applied and deduction from prices exhibited deductions are permissible. Paragraphs 13, 14 and 15 of the aforesaid judgment being relevant are quoted below:

"13. The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracks of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward, depending upon the facts of each case, is made.

14. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by product in the same process. One of the byproducts is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another byproduct bag ass is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no'' scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the

reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration.

15. Having regard to the entire facts and circumstances of the case, we are of the opinion that a deduction of 10% from the market value of the land, which has been arrived at by the High Court would meet the ends of justice. Therefore, the market value of the acquired land for the purpose of payment of compensation to the land owners has to be assessed at Rs. 1,08,000/ per acre."

10. The judgments cited and quoted above, thus, clearly affirm the view that where larger area is subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria, but same cannot be relied upon as absolute proposition that in such cases rates fixed for small plots cannot be the basis for fixation of rate, if there is no other material in appropriate cases, the exemplars of small plots are not untouchable and it is open to the Adjudicating Court/Authority, to make comparison of the prices paid for small plots of land, however, in such cases necessary deductions/adjustments have to be made while determining the prices, keeping in view principle of fixation of market value qua comparable sales, namely;

"(i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages."

11. On the prescribed parameters, facts of the present case are being adverted to, as to whether the Reference Court has acted legally in awarding compensation, which is subject matter of challenge in the present appeal. The Special Land Acquisition Officer has awarded compensation at the rate of Rs.3.75 per square feet.

12. Reference Court has accepted this position that land in question was in close proximity with the developed area. Hon''ble Apex Court in the case of Lucknow Development Authority (supra) has clearly mentioned that merely because adjacent area is developed area, same will ipso facto make land suitable in the area to be developed. After making 40% deduction, further deduction of 25% has also been'' made, inasmuch as in the present case, the land in question was nearer to Highway and surrounded by English Medium School (St. Jemes School), C.W.C. Godown Colony, FCI, Godown and Power House. Exemplar of smaller plot can be taken into consideration subject to reasonable deductions/ adjustment, once there is no other exemplar available on record. Here the exemplar on which reliance has been placed, though it was in respect of small plot being situated in the same village, sale therein was within reasonable time, and as such, it was a relevant exemplar. Accordingly, in the present case, looking into the topography and status of the property in question and facts, it cannot be said that there has been arbitrary determination, as Reference Court has taken into account each and every aspect of the matter. Thus, a conscious decision for

deduction has been taken in the absence of there being any direct exemplar on the issue, market value of the land in question has been rightly assessed at the rate of Rs.6.00/ per square feet, as such the deduction made is not at all unjustifiable and the same is approved of.

13. The objection raised in the present case by learned Standing Counsel, is that while assessing the value of the land at the rate of Rs.6.00 per square feet, the reference Court has lost sight of the fact that the sale deed was not genuine insofar as the sale consideration therein was not true as the said sale deed was executed by interested persons. On acquiring the knowledge that acquisition proceeding has been started, it is only just before few months of the notification under Section 4 of the Act, sale deed was executed. In support of his submission, he has relied upon the judgment of the Apex Court in the case of State of U.P. v. Rajendra Singh, AIR 1996 SC 1564: (1996 All LJ 956), wherein "the Apex Court has taken the view that as it was not established that the said sales were real and considerations had passed, same could not have been relied upon. Paragraph 3 of the said judgment is being quoted below:

"3. It is settled law that in reference under Section 18 claimant being dissatisfied with the award of the Land Acquisition Officer, when the proceedings are taken under Section 20 of the Act, burden is always on the claimant like plaintiff to adduce reliable and acceptable evidence to prove proper, just and adequate compensation to the acquired land. If such an evidence was adduced, burden shifts on to the State to disprove it. It is further settled law that the sales transactions filed either in the narration of award or documents, without examination of either the vendee or by the vendor is not evidence. It is the duty of the Court to carefully assess the evidence on the touch stone of human conduct and prudent purchaser. Admittedly, in this case, though reference to four sales transactions had been made by the reference Court, neither the vendee nor the vendor was examined, nor was it established that the sale consideration which passed there under is true and the prices for which the sales came to be executed were real one between willing vendor and willing vendee. Equally, burden is on the claimant to establish that the lands relating to the sales transactions and the lands under acquisition are possessed of same value, nature of the lands are same and capable to fetch same price, and so also other situations as comparable features. Unfortunately, neither the reference Court nor the High Court has looked into this legal aspect of the matter and proceeded on the terms of these, sale deeds. It is equally settled law that the Courts should avoid feats of imaginations to fix fanciful price, and sit in the armchair of willing vendee to see whether a prudent purchaser acting in normal market condition would be willing to offer the price which are mentioned in the sale instances. The Court should clearly and carefully evaluate the evidence and determine market value avoiding needless burden on the exchequer and according adequate and just compensation to the acquired land."

14. Admittedly, in the instant case, exemplar, which has been taken into

consideration is that of the small piece of land, whereas the total land, which has been acquired is about ten bigha 12 biswa and as such, the reference Court has lost sight of the fact that exemplar is smaller piece of land and as such, having considered the entire facts and circumstances of the case, we are of the view that deduction of 20% of the market value of the land would meet the ends of justice.

15. Consequently, boththe appeals are partly allowed. The order of the reference Court dated 12.2.1990 is modified to the extent that instead of Rs.6.00 per squarefeet, Rs.4.80 per square feet shall be paid to the claimant within two months.

16. No order as to costs.

Appeals partly allowed.