(1972) 05 GAU CK 0013

In the Gauhati High Court

Case No : F. A. No''s. 97. 98 and 99 of 1965

The Collector of Kamrup — APPELLANT

Vs

Mrs. Parbati Phukan and others — RESPONDENT

Date of Decision : 02-05-1972

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 23(1), 23(2), 4

Citation : AIR 1973 Guw 114

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Advocate : D. Pathak, appearing as Govt. Advocate, S. C. Bordoloi and Sulaiman for Refinery, Amjad Ali in F.A. N. 97 of 1965; S.K. Sen in F.A. No. 98 of 1965 and J.N. Sarma in F.A. No. 99 of 1965, for the Respondent

Judgement

Baharul Islam, J.—These three are connected appeals from a common judgment of the Subordinate Judge No. 2, Gauhati, and arise out of three references made under the Land Acquisition Act and the reference cases were numbered as (1) Misc. Case No. 2/64. (2) Misc. Case No. 3/64, and (3) Misc. Case No. 4/64.

F. A. No. 97/65 arises out of Misc. Case No. 2/64 and it relates to the acquisition of 1 bigha of land covered by Dags Nos. 7 and 9 of K. P. Patta No. 2 of village No. 2 Madgharia, Mouza Beltola, District Kamrup, the claimant being Mrs. Parbati Phukan.

F. A. No. 98/65 arises out of Misc. Case No. 3/64 and relates to the acquisition of half a bigha of land covered by Dags Nos. 48 and 50 of the said village, the claimant being Shrimati Sarbeswari Debi.

F. A. No. 99/65 arises out of Misc. Case No. 4/64 and it relates to the acquisition of half a bigha of land covered by Dags Nos. 48 and 50 of the said village, the claimant being Dharmeswar Sarma.

The said lands were acquired by Notification No. RLA. 98/59/27 dated 8-5-59 u/s 4 (1) of the Land Acquisition Act for project No. 1 of the Oil Refinery at

Noonmati. Gauhati and the declaration No. RLA 98/59/29 u/s 6 of the Land Acquisition Act was made on 18-5-59.

2. The Collector gave an award at the rate of Rs. 1500/- per bigha on 5-12-60. (The Collector''s award in this case has not been proved; but both the parties agree before me that the award was at the rate of Rs. 1500/- per bigha).

3. The claimants not being satisfied with the award of the Collector, made applications before the Collector for reference u/s 18 of the Land Acquisition Act and thus the above-mentioned three reference cases were registered in the Court of the Sub-Judge and the three matters were taken up as analogous. The claimants examined two witnesses, namely, P. W. 1. Dhirendradhar Barua, and P. W. 2. Dharmeswar Sarma. and two witnesses were examined on behalf of the Collector. They were D. W. 1 Baikuntha Nath Barua, who was a Supervising Kanango of the Land Acquisition Branch, Gauhati and D. W. 2 Keshab Chandra Das, who was an Office Assistant in the office of the Land Acquisition Officer, Gauhati. The learned Sub-Judge gave an award at the rate of Rs. 7000.00 per bigha.

4. The Collector being dissatisfied with the award of the Sub-Judge preferred the instant appeals. In F. A. No. 99/65, Dharmeswar Sarma also preferred a cross-objection claiming compensation at the rate of Rs. 10,000.00 per bigha.

5. It is submitted on behalf of the appellant that the award of Rs. 7000.00 per bigha has not been based on any legal evidence on record and that the award given by the Collector was the proper award.

6. Section 23 of the Land Acquisition Act of 1894 provides, inter alia, as follows:-

"23 (1) In determining the amount of compensation to be awarded for lands acquired under this Act, the Court shall take into consideration-

firstly, the market value of the land at the date of the publication of the notification u/s 4. sub-section (1). ** ** **

(2) In addition to the market value of the land, as above provided the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition."

The question therefore is whether the learned Sub-Judge has determined the market value of the land acquired in accordance with the provisions of Section 23 of the Land Acquisition Act

7. In a recent case Collector of Kamrup v. Kusum Kumari Barua: F. A. No. 12 of 1965. it has been held by this Court:-

"The best method of determination of market price of the plots of lands under acquisition is to rely on instances of sale of the same land or portion thereof near about the date of notification u/s 4 (1) of the Act. The next best method is to take into consideration the instances of sale of similar lands adjacent to or near about the acquired lands shortly before or after the notification."

The Supreme Court in The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, has laid down the following guidelines for determining the market value of lands acquired:-

"The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under 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 purchasing similar advantages and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired."

8. In the instant cases, the learned Sub-Judge has based his award primarily on Exts. 1, 2, 4, 5. 3 and 6 (A).

Ext. 1 is the sale deed dated 24-11-58 by which claimant Parbati Phukan purchased 2K-18L of land of Dag No. 7 and 2K-2L of Dag No. 9 of K.P. Patta No.2 of village No. 2 Madgharia for Rs. 2000.00. These two are the acquired dags and are the subject-matter of F. A. No. 97/65, Ext. 1 is therefore the most important document on which the court must rely.

Ext 2 is a sale deed dated 11-9-62 under which one bigha of land of Fee Simple land of village Noonmati was sold for Rs. 24200.00.

Ext 4 is a sale deed dated 29-6-59 under which 1B-4K of land of village Noonmati has been sold for Rs. 18000.00.

These two exhibits 2 and 4 relate to lands of a different village, namely, Noonmati which of course is adjacent to the village in question, namely, No. 2 Madgharia; but intervened by a road.

Ext. 5 is a sale deed dated 11-5-59 under which one bigha of land was sold for Rs. 6000.00 of village No. 2 Madgharia.

Ext. 3 is a sale deed dated 6-12-55 under which 3K-16-1/3L of land of village No. 2 Madgharia was sold for Rs. 3000.00. The land of Ext. 5 is covered by Dag No. 100 and the land of Ext. 3 is covered by Dag No. 101 which are adjacent dags and both these dags are road-side lands.

Ext. 6 (A) is an award in connection with lands acquired for project 10A vide notification dated 6-12-61. The award was given in 1963 and the rate was Rs. 12000/- per bigha. The land of Ext; 6 (A) was acquired 2 1/2 years after the land had been acquired in the instant cases and is at a distance towards south west from the acquired dags, which are 7, 9,48 and 50 and is in a afferent village across the road. Further after the Refinery started at Noonmati in 1959, prices in the neighbouring areas must have rapidly risen. The valuation as under Ext 6A if taken into consideration, would give a distorted picture of the valuation in the instant cases of acquisition.

The genuineness of, and the bona fide of the transactions under. Exts. 2, 3, 4 and 6 have been challenged. Claimant, Dharmeswar Sarma. (witness No. 2 for the claimant) proves these documents. The claimants did not attempt to prove the genuineness of, and the bona fide of the transactions, under these documents. Neither the vendors, nor the vendees, nor any witness of these deeds were examined. Nor passing of consideration of any of these documents was sought to be proved. In cross-examination. Dharmeswar says that he did not enquire whether Ext. 5 was a genuine sale deed or created for the purpose of higher valuation. He does not know the parties to Exts. 2 and 3 nor the payment of considerations under these deeds.

No reliance can therefore be placed on these documents for the purpose of valuation.

9. Ext B is a sales statement for 1957 and it is dated 1-6-59. It contains 4 sale deeds; the first one is dated 3-7-57 covering Dag No. 98 and the price is Rs. 2000.00 for one bigha. The second one is dated 23-7-57 and relates to Dag No. 98, whereof 1 bigha was sold for Rs. 1500/-. The third is dated 2-12-57 and relates to Dag No. 80 whereof 1 bigha was sold for Rs. 2000.00. The 4th one is dated 16-11- 57 which relates to Dag is 126; 4-B-1K whereof was sold for Rs. 3000.00. The lands of all these sale deeds are of village No. 2 Madgharia. The average price of these lands comes to Rs. 1300/- per bigha. Ext. C is a sales statement for 1958 and it is dated 1-6-59, It refers to 4 sale deeds. The 1st one is dated 16-8-58 relating to Dag No. 178,1 bigha was sold for Rs. 1200/-. The second is dated 12-12-58 relating to Dags Nos. 7 and 9, 1 bigha was sold for Rs. 2000/-. These dags Nos, 7 and 9 are the dags involved in F. A. No. 97/65 and therefore most important document as stated earlier. The third is dated 12-9-58. relating to Dag No. 52: 1 bigha was sold for Rs. 1000/-, and the fourth one is dated 25- 4-58, relating to Dag No. 98: one bigha was sold for Rs. 4000/-.

No evidence has however been led as to why the price of 1 bigha of Dag No. 98 could be so high.

Ext. E is a sale deed dated 3-4-57 and relates to Dag No. 98: 1 bigha was sold for Rs. 2000/-.

Ext F is a sale deed dated 7-6-59 showing a sale of 3 bighas of land of Fee Simple Grant No. 1 of Chunchali for Rs. 6000/-. No evidence has been led to show the relative position of the village Chunchali and therefore no importance can be given to this sale deed. Ext. F.

The sale deeds Exts. 1. D. E. and the deeds as per Exts. B & C, are the documents relating to the sale of the lands of the village of the project in question and from the map Ext. A and other evidence, it appears that the land of these deeds are more or less similar in location to the dags acquired. The bona fide character of these deeds have not been challenged. It was suggested that Exts. B and C were not signed by the Collector. But they have been prepared and signed by one Sambhu Ram Das. S. K. on 1-6-59. These therefore are the documents which ought to be taken into consideration in preference to the sale deeds. Exts. 2, 4, 5, 3 and 6A referred to above.

From the Exts. 1, B, C, D and E, it appears that there was a gradual rise of prices of the land of the village. The average price in 1957 was Rs. 1300/- per bigha; that in 1958 Rs. 2050/- per bigha. So the rise was at the rate of Rs. 750/- approximately per bigha per year. Therefore in 1959, the price would be about Rs. 2800/- per bigha, or in round figure, say Rs. 3000/- per bigha.

10. I therefore modify the award of the learned Sub-Judge and award compensation at the rate of Rs. 3000/- per bigha and allow interest (solatium) at the rate of Rs. 15 per cent on the said value in consideration of the compulsory nature of the acquisition u/s 23 (2) of the Land Acquisition Act with interest at the rate of 6 per cent on the difference between the sum awarded by this Court and that awarded by the Collector less on the amount already paid to the claimants, with effect from 5-12-60 till the date the balance is paid by the Collector to the claimants.

11. The appeals are partly allowed with the modification indicated above. The cross-objection filed by the Respondent in F. A. No. 99/65 is dismissed. Parties will bear their own costs.

Appeals partly allowed

