

(2012) 10 AHC CK 0188

In the Allahabad High Court

Case No : First Appeal No's. 967, 961, 963 and 966 of 1999

Union of India and Others

APPELLANT

Vs

Anil Kumar and Another

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 15, 16, 17

Citation : (2013) 1 ADJ 83 : (2013) 3 ALJ 57

Hon'ble Judges : Sheo Kumar Singh, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Subodh Kumar and S.C, for the Appellant; A.K. Gupta, for the Respondent

Judgement

Arvind Kumar Tripathi II, J.—Heard learned counsel for the parties and perused the record. These four first appeals have arisen out of the judgment and decree dated 9.7.1999 passed by Additional District Judge, Kanpur Nagar in Land Acquisition Reference Case No. 64/70 of 1997 Anil Kumar and others v. Union of India and others and Land Acquisition Reference Case No. 92/70 of 1997, Deoraj and others v. State of Uttar Pradesh and others.

2. These two references were decided by a single judgment and both state and claimants have preferred their respective appeals, hence all the cases are being taken together.

3. Briefly stated, the claimants of the two cases, are owners of land Khasra plot Nos. 42 and 43 (area 0-17-10) which is equal to 2144 Sq. Yards situate in village Shafipur, Kanpur Nagar, known as Lal Banglow. The claimants of Misc. Case No. 64/70 of 97 Anil Kumar and others are the owners of the above land to the extent of 2/3rd share while the claimant of Misc. Case No. 92/70 of 97 are owners of 1/3rd share. The possession of the above land is said to have taken place some time in the year 1971 for construction of the stadium of Air Force and there was some talk about the settlement of compensation and exchange of land, but this could not be finalised and the case went up to the High Court. The

High Court vide order dated 7.2.1996 passed in Civil Misc. Writ Petition No. 23834 of 1995 directed the State Government to acquire the above land under the Land Acquisition Act. Consequently, the notification u/s 4 of the Land Acquisition Act was issued on 16.2.1997 and notification u/s 6 of the Land Acquisition Act was made on 18.3.1997. The formal possession of the above land is alleged to have been taken on 31.3.1997 and the award was also made on 31.3.1997. In the award the S.L.A.O. Kanpur Nagar found the acquired land as potential for building purpose and awarded compensation at the rate of Rs. 1,000/- per sq. yard. Aggrieved by this award the claimants filed this two references, References Case No. 64/70 of 1997 Anil Kumar and others v. Union of India and others and Reference Case No. 92/70 of 1997 Deoraj and others v. State of U.P. and others.

4. It has been alleged by the claimant that the possession of the acquired land was taken in the year 1969 and on the land there were 45 Sheesham Trees. They claimed the market value of the acquired land to be Rs. 5,000/- on the date of notification and the alleged compensation is insufficient and inadequate. It has been further alleged that the acquired land is situate at the heart of Lal Banglow which is highly modernised commercial area abutting to Jajmau area internationally famous for leather and leather goods. It was also alleged that the land was surrounded by roads, markets etc. and on account of dispossession the claimant have suffered a loss and have not been properly awarded interest and solatium.

5. Opposite parties No. 1, 2 and 4 filed common written statement and denied the allegations advanced in the claim petition. But admitted that the acquisition proceedings started as per direction of the Hon"ble High Court in Writ Petition No. 23834 of 1995 and Khasra plots No. 42 and 43 were acquired under the Land Acquisition Act. They further alleged that the compensation awarded by the S.L.A.O. Kanpur is sufficient and adequate and alleged that the acquired land is far from Kanpur City and as such the claimants not entitled for any additional amount.

6. Opposite party No. 3 filed their separate written statement and denied the allegations advanced in the claim petition and alleging that the compensation awarded by the S.L.A.O. Kanpur is sufficient and proper.

The learned Court below framed following issue:

1. Whether the compensation award is inadequate, if yes, at what rate they are entitled to get compensation of the acquired land.
2. On which date possession was claimed by the Government of India and what will be its effect.
3. Whether claimants have not been paid compensation for the Sheesham trees situated in the plot, if yes, then to what amounts the claimants are entitled.
4. To what relief if any claimants are entitled.

7. The learned Court below after considering the oral and documentary evidence held that the market value of the acquire land was Rs. 1,200/- per sq. yard on the date of notification and thus compensation awarded is insufficient and inadequate. While deciding issue No. 2 learned Court below held that possession of the land acquired is taken in the year 1971 and the acquisition was made later on at the direction of the Hon"ble High Court and thus the claimants are entitled for 12% additional amount on the market value of the acquired land from the date of possession i.e. 1.7.1991 till the date of notification i.e. 16.2.1997. While deciding issue No. 3, the Court below opined that it has not been proved that there were Sheesham trees in the plot, so they are not entitle for any compensation for the trees as alleged in the claim petition. In view of the above findings, issue Nos. 1 to 4 were decided accordingly.

8. Feeling aggrieved by findings recorded by the reference Court on issue Nos. 1, 2, 3 and 4, Anil Kumar and others have filed First Appeal No. 971 of 1999, Deo Raj and others has filed First Appeal No. 963 of 1999 and State of U.P. has filed First Appeal No. 966 of 1999 and First Appeal No. 967 of 1999.

9. It was argued from the side of Union of India that the learned judge has wrongly and illegally ignored the exemplar sale-deed filed by them to the adjoining plot and also wrongly relied upon sale-deed which is situated at a distance of more than one Km. for the purpose of enhancing valuation from Rs. 1,000/- to Rs. 1,200/-. It was also argued that the learned lower Court has erred in law in calculating the compensation and by giving 12% interest from the date prior to the notification u/s 4, because the collector has no jurisdiction to take into consideration any matter relating to the land acquisition prior to notification u/s 4/17 of the Land Acquisition Act. The possession contemplated u/s 23(1) (a) of the Land Acquisition Act denotes the date of taking possession in pursuance of Notification and not prior to that period. Taking possession under the Land acquisition Act cannot be construed to be anything done or any happening which took place before the Notification.

10. Learned counsel of Anil Kumar and Deoraj argued that the learned Court below was wrong as per calculating the mean of the value given of exemplar relied by the Union of India and one of which learned Court below has relied. He has further argued that from that mean, decrease of amount by Rs. 50/- is not according to law.

11. From the discussion and argument above, following points are to be decided:

1. What can be the method of calculation for calculating the compensation?

2. What remedy is available to the claimants, if the possession has been taken prior to the date of notification.

12. A perusal of the impugned judgment reveals that the building potentiality of the acquired land has not been disputed by acquiring body or the State. On the other hand, S.L.A.O. himself was of the opinion that the acquired land was

situated in developed locality and as such he awarded Rs. 1,000/- per sq. yard compensation being market value of acquired land. The claimants have alleged that the acquired land is situated abutting Kanpur-Lucknow Highway. They have further alleged in para 10 of the claim petition that the acquired land is situated within the Municipal Limits of Kanpur City and at the heart of Lal Banglow, highly modernised Commercial market abutting to Jajmau area. Even Tayyab Khan, Amin as D.W. 1 from the side of Union of India has accepted that towards west of the acquired land there are houses, shops and bye-pass. Towards east side there is a link road, which connects to the G.T. Road. Towards north side a road and after that Vihar Colony, a sub-post-office is there and towards south there is Bangali Colony. Towards east also Air force gate and office are there.

13. In view of this, the reference Court was right in holding that the acquired land possessed building potentiality on the date of notification.

14. The S.L.A.O. has awarded the compensation at the rate of Rs. 1,000/- per sq. yard. The claimants have claimed compensation at the rate of Rs. 5,000/- per sq. yd. Claimants have filed several lease and three sale-deeds to prove the market value of the acquired land.

15. First sale-deed was executed by Bhopendra Singh in favour of Onkar Nath Tripathi in respect of Khasra plot No. 369, area 88 sq. yard of village Muzaffarpur, Kanpur, which was transferred on 27.9.1995. The reference Court has not relied upon this exemplar as the sale-deed relates to the land of another village Muzaffarpur, Kanpur, while the acquired land is situated in village Shafipur. Another sale-deed was filed which was executed by Thakurdin Jaiswal in favour of Smt. Meena Gupta in respect of Khasra plot No. 167, area 144 sq. yd. With some construction over it for consideration of Rs. 3,20,000/- on 27.11.1996. In this deed the cost of construction has been shown a Rs. 1,02,000/- and the cost of land was shown as Rs. 2,18,000/- This goes to show the market value of the land to be Rs. 1,500/- per sq. yd. Another sale-deed was executed by Radhakrishna Pal in favour of Shyam Kishan Ram in respect of house No. 115, area 160 sq. yd. Of village Shafipur for consideration of Rs. 2,25,000/- on 27.11.1992. The Court below has rejected this exemplar as this transaction took place much before the date of notification.

16. What the Court below has done that it accepted the mean of the two transactions, one relied by S.L.A.O. and another of the sale-deed by Thakurdin Jaiswal in favour of Smt. Meena Gupta. Thus, Court below come to figure of Rs. 1250/- per sq. feet and by abundant caution, he further decreased the amount by 50% and decided the market value as Rs. 1200/- per sq. yd. On the date of notification.

17. Both the parties have challenged this market value.

18. It has been mentioned itself in the judgment that possession of the above land is said to have been taken some time in the year 1971 for construction of the stadium of Air force and there was some talk about the compensation and

exchange of land between the parties, but this could not be finalised and the matter went up to the High Court and the High Court directed the State Government to acquire the above land under the Land Acquisition Act. Consequently, the notification u/s 4 of the Land Acquisition Act was issued on 16.2.1997 and notification u/s 6 of the Land Acquisition Act was made on 18.3.1997 and the formal possession of the above land has been shown to be taken on 31.3.1997. These circumstance clearly goes to show that at the time of notification of land has already been used for stadium. This fact has also to be considered while determining the market value of the land.

19. In the case of Special Land Acquisition Officer Vs. Karigowda and Others, , the Apex Court has held that:

By development of law, the Courts have adopted different methods for computing the compensation payable to the land owners depending upon the facts and circumstances of the case. The Courts have been exercising their discretion by adopting different methods, inter alia the following methods have a larger acceptance in law;

(a) Sales Statistics Method: in applying this method, it has been stated that, sales must be genuine bona fide, should have been executed at the time proximate to the date of notification u/s 4 of the Act, the land covered by the sale must be in the vicinity of the acquired land and land should be comparable to the acquired land. The land covered under the sale instance should have similar potential and occasion as that of the acquired land.

(b) Capitalization of Net Income Method; This method has also been applied by the Courts. In this method of determination of market value, capitalization of net income method or expert opinion method has been applied.

(c) Agriculture Yield Basis Method: Agricultural yield of the acquired land with reference to revenue records and keeping in mind the potential and nature of the land wet (irrigated), dry and barren (barren). Normally, where the compensation is awarded on agricultural yield or capitalization method basis, the principle of multiplier is also applied for final determination. These are broadly the methods which are applied by the Courts with further reduction on account of development charges. In some cases, depending upon the peculiar facts, this Court has accepted the principle granting compound increase at the rate of 10% to 15% of the fair market value determined in accordance with law to avoid any unfair loss to the claimants suffering from compulsive acquisition. However, this consideration should squarely fall within the parameters of Section 23 while taking care that the negative mandate contained in Section 24 of the Act is not offended. How on or any of the principles afore stated is to be applied by the Court, would depend on the facts and circumstances of a given case.

20. In case of Anjani Molu Dessai Vs. State of Goa and Another, , the Apex Court has held that:

The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of under-valuation or other price depressing reasons. Consequently averaging cannot be resorted to.

21. The above discussion of above case clearly goes to show that if there are several sales of similar lands whose price range in narrow bandwidth, average thereof is to be taken. In the present case, the exemplar relied upon by the S.L.A.O. was Rs. 1,000/- per sq. yard and one relied upon by the reference Court was of Rs. 1,500/- per sq. yard, so the value disclosed in the two sales are markedly different.

22. From the above discussion, we are of the view that the sale-deed relied upon by the S.L.A.O. ought to have been refused for consideration and the sale-deed executed by Thakurdin Jaiswal in favour of Smt. Meena Gupta should have been taken into account.

23. From the above discussion, we are of the view that method used by the reference Court was wrong and the market value should have been Rs. 1,500/- per sq. yard and we thus decide the market value of Rs. 1,500/- per sq. yard. Union of India has cited several rulings to show that the claimant are entitled to interest on additional amount from the period of date of section 4(1) notification and not from the date of taking possession. Union of India has relied upon Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, , R.L. Jain (D) by Lrs. Vs. DDA and Others, , Smt. Lila Ghosh (Dead) through LR Shri Tapas Chandra Roy Vs. The State of West Bengal, , The State of Bihar and Another Vs. Kedar Sao and Another, , Ahad Brothers Vs. State of M.P. and Another, and Land Acquisition Officer & Asstt Commissioner and another v. Hemanagouda and others, (2005) 12 SCC 443.

24. It is admitted that the possession was taken prior to the date of notification. So it is to be examined as to what remedy was available to the claimants and whether the reference Court has erred in granting interest from the date of possession.

25. The case of R.L. Jain v. DDA and others (supra) is Full Bench decision. In this case, it has been held in paras 11, 12 and 12 that:

11. "In order to decide the question whether the provisions of Section 34 of the Act regarding payment of interest would be applicable to a case where possession has been taken over prior to issuance of notification u/s 4 (1) of the act, it is necessary to have a look at the scheme of the Land Acquisition Act. Acquisition means taking not by voluntary agreement but by authority of an Act

of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title to the property vests in the State. The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the land owner. Part II of the Act deals with acquisition and the heading of Section 4 is "Publication of preliminary notification and powers of officers thereupon". Sub-section (1) of Section 4 provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-section (2) provides that thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any land in such locality, to dig or bore in the subsoil and to do all other acts necessary to ascertain whether the land is adapted for such purpose, etc. etc. This provision shows that the officers and servants and workmen of the Government get the lawful authority to enter upon and survey the land and to do other works only after the preliminary notification u/s 4(1) has been published. Section 5-A enables a person interested in any land which has been notified u/s 4 (1) to file objection against the acquisition of the land and also for hearing of the objection by the Collector. If the State Government is satisfied, after considering the report, that any particular land is needed for public purposes or for a company, it can make a declaration to that effect u/s 6 of the Act and the said declaration has to be published in the Official Gazette and in two daily newspapers and public notice of the substance of such declaration has to be given in the locality. Thereafter the Collector is required to issue notice to persons interested u/s 9(1) of the Act stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 provides for making of an award by the Collector of the compensation which should be allowed for the land. Section 16 provides that when the Collector has made an award u/s 11, he may take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances. This provision shows that possession of the land can be taken only after the Collector has made an award u/s 11. Section 17 is in the nature of an exception to Section 16 and it provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17 (1) can be invoked and possession can be taken over only after publication of notification u/s 9(1) which itself can be done after publication of notification u/s 4 (1) and 6 of the Act. Even here in view of sub-section (3-A) the Collector has to tender 80 per

cent of the estimated amount of compensation to the persons interested/entitled thereto before taking over possession. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification u/s 4 (1) of the Act and if possession is taken prior to the said notification it will be dehors the Act. It is for this reason that both Sections 11 (1) and 23 (1) enjoin the determination of the market value of the land on the date of publication of notification u/s 4 (1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification u/s 4 (1) is the sine qua non for any proceedings under the Act. Section 34 of the Act, on the basis whereof the appellant laid claim for interest, reads as under:

34. Payment of interest--When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum for the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.

12. The expression "that Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23 (1) means market value of the land on the date of notification u/s 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under sub-section (2) of Section 23. The heading of Part II of the Act is "Acquisition" and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4 (1) and 9 (1) of the Act. If possession is taken prior to the issuance of the notification u/s 4 (1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the act. The word "so taking possession" can

under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification u/s 4 (1) of the Act which is dehors the provisions of the Act.

13. In Union of India (UOI) Vs. Budh Singh and Others, , after analysis of the provisions of the Act the Bench arrived at the following conclusions: (SCC P. 236, para 5)

The parameter for initiation of the proceedings is the publication of the notification u/s 4 (1) of the Act in the State Gazette or in an appropriate case in District Gazette as per the local amendments. But the condition precedent is publication of the notification u/s 4 (1) in the appropriate gazette. That would give legitimacy to the State to take possession of the land in accordance with the provisions of the Act. Any possession otherwise would not be considered to be possession taken under the Act.

26. In this case, the Apex Court has specifically held that in a case where a land owner is dispossessed prior to issue of earlier notification u/s 4 (1) of the Act, the Government merely take possession of the land. It is fully open to the land owner to recover compensation of the land by taking appropriate legal proceedings, therefore, he is only entitled to get rent or damages for use and occupation for the area Government has taken possession of the property. Where possession is taken prior to the issues of the preliminary notification it will be just and adequate that the Collector may also determine rent or damages for use of the property to each of the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition for the property. As the matter is too old hence it will not be proper to remand the matter for such determination. Hence we are of the view that Collector be directed and is so directed to determine such amount as compensation for use and occupation of the land from the date of taking possession till the date of notification i.e. 1.7.1971 till 16.2.1997, within a period of one year from producing a certified copy of this order. If the Collector fails to do so within that period, then it will be open to the claimants to resort to appropriate legal action/ remedy.

27. As of discussion above, all four appeals are liable to be partly allowed.

28. F.A. No. 961 of 1999 and F.A. No. 963 of 1999 are partly allowed. The claimants shall be entitled for a compensation of Rs. 1,500/- per sq. yard being the market value of the acquired land. The claimants shall be further entitled for 30% solatium on the enhanced amount.

29. Claimants are further awarded 9% interest on excess amount that has been found due by this Court and that has not been paid by the S.L.A.O., Kanpur Nagar, from the date of notification i.e. 16.2.1997 till the period of one year and after the expiry of the above period, claimants are further entitled for 15% p.a. interest on the above excess sum which has been found due by this Court and which has not been awarded by the S.L.A.O. Kanpur Nagar till the date of

payment u/s 28 of Land Acquisition Act. F.A. No. 966 of 1999 and F.A. No. 967 of 1999 are also partly allowed. The 12% additional amount of the market value from 1.7.1971 to 16.2.1997 i.e. from the date of taking possession to the date of notification which has been allowed by the reference Court is disallowed and instead, claimants are entitled to rent/damages as determined by Collector Kanpur Nagar, as directed above.