

(2016) 10 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : CIMA No. 163 of 2003 MP No. 483 of 2003 c/w Cross Appeal(C) No. 184 of 2003

Union of India

APPELLANT

Vs

Mohd Arif Mughal

RESPONDENT

Date of Decision : 14-10-2016

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 23

Citation : (2017) AIRCC 945

Hon'ble Judges : Mr. Alok Aradhe, J.

Bench : Single Bench

Advocate : Mr. Hunar Gupta, CGSC, for the Appellant; Mr. Bari Abdullah Malik, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Alok Aradhe, J. (Oral)- In these appeals preferred under Section 52 of the State Land Acquisition Act, Samvat, 1990 (hereinafter referred

to as the Act), the appellants have assailed the validity of the judgment dated 30.04.2002 passed by the trial Court. The CIMA No.163/2003 has

been preferred by Union of India challenging the judgment dated 30.04.2002 passed by the trial Court, whereas Cross Appeal(C) No. 184/2003

has been assailed by the claimants seeking enhancement of the amount of compensation. Since common questions of law and facts arise for

consideration in these appeals, they were heard analogously and are being decided by this common order.

2. The facts leading to filing of these appeals briefly stated are that the land measuring 99 Kanals 15 Marlas was sought to be acquired by the

Ministry of Defence for construction of barracks for Rashtriya Rifles at village

Maitra Tehsil Ramban. The process of acquisition was set in motion by issuing of notification under Section 4(1) of the Act on 04.11.1995. Thereafter a notification under Section 6 of the Act was issued on 29.04.1997. The Collector Land Acquisition, Ramban vide award dated 31.03.1999 determined the compensation @ 30,000/- per kanal for agricultural land and Rs.18,000/- per kanal for Gair Mumkin land besides determining the compensation for trees and structures existing on the land. Being aggrieved, the claimant filed the application under Section 18 of the Land Acquisition Act before the Additional District Judge, Ramban. The Additional District Judge, Ramban vide judgment dated 30.04.2002, award compensation at the flate rate of Rs. 30,000/- per kanal in respect of the land measuring 99 kanals 15 marlas and further directed that the claimant shall be entitled to grant of 15% solatium and interest at the rate of 10% per annum. In the aforesaid background, the claimants as well as the Union of India have filed these appeals.

3. Learned counsel for the Union of India has submitted that the trial Court grossly erred in awarding the compensation irrespective of the quality of the land. It is submitted that out of 99 Kanals and 15 Marlas of land, the land measuring 44 Kanals and 1 Marla was hail/Warahal Changi, Warahal Mandi land which was used for agricultural purposes, whereas the land measuring 55 Kanals and 14 Marlas was utilised for Gair Mumkin purposes i.e., non agricultural purposes. It is further submitted that the trial Court ought to have appreciated that the value of the large tract of land could not have been determined on the basis of sale deed which pertains to small piece of land. It is further submitted that the trial Court grossly erred in awarding the rate of interest at the rate of 10%. In this connection, attention of the Court has been invited to Section 35 of the Act and it has been submitted that the claimant shall be entitled to interest at the rate of 6% per annum on the whole of the compensation which was awarded.

4. On the other hand learned counsel for the respondents has supported the Award passed by the trial Court and has submitted that the assessment of market value of the land has been made for the purposes for which the land is acquired and utilized. Therefore, the trial Court has rightly applied the uniformity for acquisition of land. It is further submitted that

even though the award was passed on 31.03.1999, yet the amount determined by the Collector was deposited on 04.08.2003. Therefore, the trial Court has rightly awarded the interest at the rate of 10%. In

support of the aforesaid submissions, learned counsel for the respondents has referred to the decision of this Court in the case of Union of India

v. Ghansham & ors reported as (2008)1 JKJ (HC) 261 and State v. Probodh Chander & ors reported as (2003) 2 JKJ (HC) 554.

5. Learned counsel for the claimants in CIMA No.184/2003 has submitted that the trial Court ought to have appreciated that PW-1 Gulab-ud-Din

has stated that he has sold the adjacent land to the Department of Horticulture at the rate of Rs.50,000/- per kanal in the year 1995, therefore, the

trial Court ought to have appreciated that the market value of the land in any case could not have less than 44,000/- per kanal. In this connection,

learned counsel for the claimants has invited the attention of this Court to the Sale Deed dated 04.07.1998 by which the land measuring 2 Marlas

has been sold for consideration of Rs.7000/- per marla which shows the market value of the land was Rs.1.40 lac per kanal. Learned counsel

while opposing the submissions has pointed that the relevant date for fixation of the market value is the date of notification under Section 6 of the

Act i.e 29.04.1997 and therefore, the Sale Deed dated 04.07.1998 which pertains to the post notification period cannot be taken into account for

determining the market value. It is also submitted that the aforesaid sale deed pertains to the small piece of land which cannot be taken into account

for determining the large tract of land.

6. I have considered the submissions made by learned counsel for the parties and have perused the record. It is well settled that when a large area

is acquired, it is not fair to assess the market value of the land on the basis of sale deeds pertaining to small area. In this connection, reference may

be made to the decision of Hon'ble the Supreme Court in the case of Administrator General of West Bengal v. Collector, Varanasi (AIR

1988 SC 943), wherein Hon'ble the Supreme Court has held that the prices fetched for the land similar to the acquired land with similar

advantages and potentiality at about the time of preliminary notification constitutes the best evidence. It has further been held that the sale

transaction subsequent to the preliminary notification in respect of the land

acquired can be relied upon for determining market value of land under acquisition on proof that market value was stable between date of preliminary notification and transaction in question. The burden to prove the aforesaid fact is on the party wanting to rely on it. It is trite law that in land acquisition proceedings, compensation has to be fixed on the basis of hypothetical sale or about the time of the notification under the Act. In this regard reliance may be made to (1990) 4 SCC 495 (Tek Chand (dead) by LRs and others v. Union of India and others). Similarly, in the case of State of M.P and others v. Harishankar Goel and another reported as (1997) 2 SCC 487, it has been held that if large chunk of land is required for acquisition the market value of the land cannot be determined on square feet basis. In the case of Viluben Jhalejar Contractor (dead) by LRs. v. State of Gujarat reported as (2005) 4 SCC 789, it has been held that comparable instances of sale of lands, which have proximity from time angle as well as situation angle, can be considered and suitable adjustments to be made having regard to various positive and negative factors. Reliance can also be made to the decision in the cases of Lal Chand v. Union of India and another, reported as (2009) 15 SCC 769 and Valliyammal and another v. Special Tehsildar (Land Acquisition) and another, reported as (2011) 8 SCC 91.

7. The claimants have produced Gulab-ud-Din PW-1, Mohd Shafi PW-2, Mohd Umar Nizami PW-3, Ram Saran W-4, Mansa Ram PW-5, Rakhi Ram PW-6 as their witnesses and two claimants namely Mohd. Ramzan and Mohd Hanief have also appeared themselves as PW-7 and PW-8, whereas on behalf of the Union of India, Nazir Ahmed Girdawar and Ali Ahmed Girdawar have been examined as witnesses.

8. PW-1, namely, Gulab-du-Din has been examined to prove the fact that he had sold land at the rate of Rs.50,000/- per kanal to the Department of Horticulture through private negotiation, however, in the cross-examination, he has admitted that the acquired land is away from his land and river flows in between the two lands. Similarly, PW-2, namely, Mohd. Shafi has stated that he has sold the land to Horticulture Department through private negotiation for Rs.50,000/- per kanal and the acquired land is situated at a distance of one kilometre (1km). PW-3, namely, Mohd Umar Nizami has been examined to prove that the value of the land is

Rs.12,000/- per marla. However, in his cross-examination he has admitted that the acquired land is 10 to 20 feet away from the main road. It has also been admitted by him that he has not executed any sale deed irrespective of the land sold by him. Similarly, PW-4, namely, Ram Saran has stated that the land which he had sold is situated at road side, whereas, the acquired land is half kilometer away from the road. PW-5, namely, Mansa Ram has stated that he has sold the land at the rate of Rs.45000/- per kanal. Similarly, PW-6, namely, Rakhi Ram has been examined to prove that his land measuring 1(one) marla was acquired for Rs.7000/- and his land is situated at one and half kilometre away from the acquired land. Similarly, PW-7, namely, Mohd Ramzan has been examined to prove the fact that his land measuring 39 kanals and 10 marlas was acquired and the value of land is Rs.2.00 lacs per kanal. Another claimant PW-8, namely, Mohd Hanief has stated that 40 kanals of land was acquired, whereas the acquired land is situated away from the road. According to the aforesaid witnesses, the market value of the land is Rs.50,000/- per kanal.

9. From the perusal of the evidence on record referred to (supra), it is evident that there are only two registered sale deeds with regard to land in question on record. One of the sale deeds was executed in the year 1986 by which land measuring 1(one)marla was sold for Rs.2200/- and in the year 1998 i.e., after the issuance of notification under Section 6 of the Act, land measuring 1(one) marla was sold at the rate of Rs.7000/-. Thus, such sale instances which pertain to small piece of land cannot be taken into account to determine the market value of the property. There is no material on record to show that market value of land remained constant from date of notification under Section 6(1) of the Act till execution of sale deed in the year 1998. For this reason also no reliance can be placed on the sale deed executed in 1998, which is a post notification sale deed.

The burden to prove the market value of the property on the date of issuance of notification under Section 6(1) of the Act was on the claimants which they have failed to discharge. Therefore, in the considered opinion of this Court the trial Court on the basis of meticulous appreciation of evidence on record, has rightly fixed the market value of the land at the rate of Rs.30,000/- per kanal.

10. So far as the submissions made by learned counsel for the Union of India that the trial Court grossly erred in awarding compensation

irrespective of the quality of the land is concerned, the reference in this connection may be made to the decision of this Court in the case of Union

of India v. Ghansham and ors.(supra), wherein it has been held that the assessment of market value of the land has to be made by keeping the

purpose in view for which the land is to be utilized for compensation and uniform market rate of the land can validly be applied for applying for

compensation. Therefore, the aforesaid contention of the learned counsel for the Union of India is required to be mentioned to be rejected. So far

as the contentions of learned counsel for the Union of India that the trial Court has grossly erred in awarding the compensation, suffice it to say that

the award was passed on 01.03.1999 and the amount determined by the Collector was deposited by the Union of India only on 04.08.2003.

Therefore, in view of Section 35 of the Act, the claimants are entitled to interest for the period of one year from the date of which the possession

was taken at the rate of 10% and thereafter at the rate of 10% from the date of expiry of period of one year on the amount of compensation or

part thereof which have been deposited on the date of such expiry.

11. In view of the preceding analysis to the aforesaid extent, the impugned judgment is modified and it is directed that the amount awarded by the

Tribunal shall carry interest initially for a period one year at the rate of 6% and thereafter at the rate of 10% on the amount of compensation

awarded by the trial Court till the actual deposit is made.

12. Accordingly, the appeals are disposed of.