

(1974) 05 DEL CK 0030

In the Delhi High Court

Case No : Regular First Appeal No. 258 of 1972

Union of India

APPELLANT

Vs

Shamsher Bahadur

RESPONDENT

Date of Decision : 23-05-1974

Acts Referred:

Citation : (1974) ILR Delhi 565

Hon'ble Judges : P.N. Khanna, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : Harish Chandra, S.G. Dhanda, S.N. Chopra, Raj Lal, Ravinder Narayan, S.P. Joshi, Maheshwar Dayal and J.N. Aggarwal, for the Appellant;

Judgement

P.N. Khanna, J.

(1) This judgment will dispose of Regular First Appeal Nos. 258 and 338 of 1972. Regular First Appeal No. 258 of 1972 is filed by the Union of India in which Mr. Justice Shamsher Bahadur, herein referred to as "the claimant", and M/s. Housing and General Finance Private Limited, herein called "the coloniser", are respondents Nos. 1 and 2 respectively. Rfa 338 of 1972 is filed by the claimant in which the Union of India and the coloniser

(2) The notification u/s 4 of the Act was made on October 24, 1961. The notification u/s 6 of the Act was issued on October 26, 1969. The area under acquisition consisted of small individual plots, but the Collector considered it not possible to work out the value of each and every plot and assess separate values thereof. According to him the entire area under acquisition constituted a large block measuring 1648 bighas and 3 bids was and hence it had to be assessed as such. He divided the entire area into four categories : (1) The first category consisted of land left for common purposes like roads, parks, etc. in the residential colony known as Dilshad garden colony. The value of this land, was assessed by him at Rs. 2000.00 per bigha, (2) the second category was of land earmarked for commercial purposes. Its value was assessed at Rs. 10,000.00 per

bigha, (3) the third category was land earmarked for cinema which was valued at Rs. 15,000 per bigha, and (4) the fourth category consisted of the remaining land which was in the shape of separate plots for residential purposes and which was valued at Rs. 7000 per bigha. While fixing the market value of land in this category, the Collector referred to an earlier award No. 2111 for land in Jhilmil Taharpur, where the market value of land had been fixed at Rs. 5000.00 The Collector found that the situation and location of the land in this case was much better than of the land acquired under award No. 2111, inasmuch as it was much closer to Shahdara and Delhi and was fairly inhabited. Grand Trunk Road from Delhi to Ghaziabad runs at a distance of about 1" to 2 furlongs towards the Southern side of this land. He was, Therefore, of the view that the market value of land under acquisition was bound to be much more than that of the land acquired under the award No. 2111.

(3) Before the Additional District Judge, a compromise was reached between the coloniser and the plot-holders, according to which the area for the common purposes was determination to be 23.77 per cent of the plotted area. Eighty per cent of compensation for the same was to be paid to the plot holders, while 20 per cent was to go to the coloniser. The share of the claimant in such land was Ii bids was (claimed to be 14 bids was by the claimant).

(4) The learned Additional District Judge worked out a theory, according to which the value of a plot of land was taken to consist of two parts: (a) one representing the contribution made by land left for common purposes, which was 23.77 per cent of the plotted area, and (b) the remainder which he called the intrinsic value of the plot. He worked this theory for apportioning the compensation to be shared between the coloniser and the claimant. 23.77 per cent was deducted out of the market value worked out by him, to which was added the value of the common land of the first category. Out of this, he awarded eighty per cent to the plot-holder and twenty per cent to the coloniser, as per the compromise between them. We do not think, it is necessary to indulge in this kind of splitting up and then adding up, for it is not possible to make a correct assessment by this method and also because it is much easier and simpler to assess the market value of the plot as it is. This is more so in this case as a statement has been made at the bar on behalf of the claimant that he will not make any separate claim for compensation in respect of any interest or share in the common land if his plot is valued as it is, with all its available amenities and other advantages and disadvantages.

(5) Other things being equal, the market value of a piece of land, in the ultimate analysis, will depend upon the interaction of the forces of demand and supply. The demand itself is regulated by various factors including the location of the plot, its surrounding neighborhood, its proximity to a park or a main road for example, and such other things. The supply would similarly take into account various factors, including the cost to the seller, not only of the land but also of providing amenities and conveniences for the land. The price of a particular piece

of land in the open market on or near about a particular date, at which it is actually sold is normally the result of free interaction of the said forces of demand and supply and is taken as the correct indication of its market value. In the absence of a transaction of sale on a given date involving the particular piece of land itself, transactions of sale of similar or near similar land in or around the neighborhood are taken as a guide to determine the value of the particular land. Due allowance can be made here and there for differences, if any.

(6) In this case, seven transactions of sale have been brought to the notice of the court. Three of these transactions have been relied upon by the claimant, viz, exhibit A 1 (exhibit A2 is the sale deed of the same transaction), exhibit A4 and exhibit A5 while the Union of India has placed reliance on four transactions, viz. exhibits R1 to R4, which are copies of mutations. Exhibit R 1 is in respect of land with an area of 2.9 bighas sold on March 30, 1959 at the rate of Rs. 6122.00 per bigha. Exhibit R 2 related to the sale of land measuring 1265 sq. yds. sold on September 5, 1961 at the rate of Rs. 4665.00 and exhibit R3 related to the sale of half plot of land measuring 4.17 bighas sold on January 13, 1961 at Rs. 1856.00 per bigha. The value of these plots is even less than Rs. 7000.00 fixed by the Collector. The learned Additional District Judge rightly ruled them out of considerations as the low price indicated some defect in that transaction concerned, more especially as the prices fetched in these transactions were far below the prices at which land in exhibits A4 and A5 were sold. No Explanation was offered on behalf of the Union of India to explain the comparatively high price fetched by land of exhibit A4 or exhibit A5, except that which as we will discuss presently, has been found unsatisfactory. Exhibits R1 to R3 cannot, Therefore, serve as a guide for our purpose. Exhibit R4 was another piece of land measuring 2.9 bighas sold on March 6, 1961 at the rate of Rs. 7083.00 per bigha. Both pieces of land which are the subject matter of exhibits R3 and R4 are half the total area of the respective plots. These plots form part of the entire layout plan which was duly sanctioned by the local authorities. It is quite conceivable that a portion of a plot, the whole of which has been sanctioned in the lay-out plan, as one unit, may not receive the approval of the local authorities, for the purpose of constructing a house thereon, and the owner may have to face difficulties when going in for arranging construction. Even otherwise, the very fact that the owners of the said plots sold away half area of the plot, in spite of the risk involved of facing difficulties for erecting construction, shows that these were sales by persons, who, perhaps, may be in need of cash money. These sales appear to be in the nature of distress sales and do not provide a safe guide in the matter of assessing the market value of the land in question. It is also significant to note that there is a wide variation between the prices of plots which are the subject matter of exhibits R1 to R4. These transactions, Therefore, cannot provide a safe guide for our purposes.

(7) The claimant had relied upon copies of mutations, exhibits A 1, A4 and A5. Exhibit A2 is a copy of the sale deed of the same land which is the subject matter of mutation exhibit A1. The learned District Judge ruled out of consideration

exhibits A1 to A2 on the ground that these documents do not relate to land, but to land with a house standing thereon. The value of the structure was not separately indicated in the sale deed, exhibit A2. The value of the land itself could not, Therefore, be ascertained.

(8) The land in exhibit A4 was a residential plot measuring one bigha in area, which was sold on March 18, 1959 for Rs. 19,000.00. The value of land in general in Delhi had been rising since 1959 as was noticed even in D.L.F. Housing and Construction (P) Ltd. Vs. Union of India (UOI), . The value of land in exhibit A4 on the date of the notification u/s 4 of the Act in 1961, too must have been much more. The learned Additional District Judge was of the view that the land in exhibit A4 "must be surrounded by buildings on all sides. In view of this factor, its value must be more than that of the land in question". He was of the view that only "a stray building" existed near the land in question. The land in exhibit A4 was also found to be near G. T. Road. Taking these factors in view, the learned Additional District Judge considered the land of exhibit A4 to be more advantageously situated than the land in question. But, there is nothing on record to support the view of the District Judge, that the land in exhibit A4 "must be surrounded by buildings on all sides". The number of buildings in the neighborhood is just a matter of guess. The award just spoke of factories and houses in this area. If there are factories around the land in exhibit A4, its value for residential purposes would be adversely affected. Without proper evidence in this respect, it was not proper to rule out the instance of the land in exhibit A4. We, on the other hand, think that by making suitable allowance for the advantages, even if any, in the land of exhibit A4, its value (Rs. 19,000.00 in 1959) can provide a safe guide for assessing the market value of the land in question. Keeping this in view, Rs. 16,000.00 per bigha for the land in question, cannot be said to be an excessive estimate.

(9) The land in exhibit A5 has a petrol pump of Caltex India Ltd., installed thereon. This land was sold on March 1, 1961 at the rate of Rs. 20,800.00 per bigha, its total area being I bigha and 4 biswas. It is very near the main G. T. Road, going from Delhi to Ghaziabad. It was used, according to the learned Additional District Judge as also according to the counsel for the Union of India, for commercial purposes. But there is no commercial area near or around it. It did not have any houses, shops or other commercial or industrial establishment in its neighborhood. Nor did it enjoy the amenities like water supply, electricity, proximity to a shopping centre, availability of any internal roads, etc, which were available to the land in question, as it situated in a fully developed colony near a park. There appeared to be some building also near the land in question. Although the land of exhibit A5 was considered to have an edge over the land in question, owing to its proximity to the main G. T. Road, the latter in turn has the aforesaid advantages in its favor, over and above the former. Even if the use of land in exhibit A5 as a petrol pump site and its proximity to G. T. Road, are taken as advantages, suitable allowance can be made for these factors. We. Therefore, think that the Additional District Judge was right in making such allowance for

these advantages by reducing the value indicated in exhibit A5, by one fourth and fixing Rs. 16,000.00 as the value of the land in question.

(10) The learned Additional District Judge, however fell into an error when he considered Rs. 16,000.00 per bigha to be the gross value of the land out of which 23.77 per cent was deducted to find out the intrinsic value. As already discussed, this was a wrong approach. We, Therefore, are of the view that no deduction can be made from out of this value (viz. Rs. 16,000.00 per bigha). The appeal of the Union of India, seeking a reduction in the compensation allowed to the claimant is accordingly without any merit and is dismissed. As the compensation now fixed by us is little more than that fixed by the learned Additional District Judge, we allow the appeal of the claimant.

(11) In the result, the order of the learned Additional District Judge is set aside. We hold that the market value of the land in question is Rs. 16,000.00 per bigha. The Collector is directed to work out the market value of the claimant's land on this basis.

(12) The claimant shall also be entitled under sections 28 and 34 of the Act to interest at 6 per cent per annum on the amount of compensation in excess of the sum, which the Collector had awarded as compensation from the date he took possession to the date of payment of such excess into court of Additional District Judge. As the declaration u/s 6 of the Act was made after the expiry of three years from the date of publication of the notification u/s 4 of the Act, the claimants shall also be entitled to interest u/s 4(3) of the Land Acquisition (Amendment & Validation) Act, 1967, at six per cent per annum on the market value M worked out according to our aforesaid direction from October 24, 1964 (i.e. three years after the date of notification u/s 4 of the Act) to the date of tender of payment of compensation, after fully accounting for and deducting the amounts "already paid. Provided that interest shall not be paid twice over for the same period. The claimant shall also be entitled to 15 per cent on the market value as solarium.

(13) In the peculiar circumstances of the case, the parties shall bear their own costs in both appeals.