

(2006) 05 DEL CK 0119

In the Delhi High Court

Case No : LA.APP. 696-716 of 2005 and 7 of 2006 and CM 90/06

Union of India (UOI)

APPELLANT

Vs

Shri Ram Kumar and Others
 Shri Ram Kumar (Decd.)
thru his LR"s and Others Vs Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 18, 23(1A), 4

Citation : (2006) 05 DEL CK 0119

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Sanjay Poddar, Adv for LAC and Gaurav Sarin, for DDA in LA.app. 7/2006 and CM 90/06 and S.S.Tomar, in LA.app. 696-716/200, for the Appellant; S.S.Tomar in LA.APP. 7/2006 and CM 90/06 and Sanjay Poddar, Adv for LAC and Gaurav Sarin, for DDA in LA.APP. 696-716/2005, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—This regular first appeal, u/s 4 of the Land Acquisition Act (hereinafter referred to as the "Act") is preferred against the judgment and order dated 26.7.05 passed by the Court of Sh T.R. Nawal, Additional District Judge, Delhi in respect of Award No. 4/1980-81 passed in LAC No. 734/1993. The necessary facts giving rise to the present appeal are that the respondents in this appeal Along with other persons were Bhumidars of land having one-third share each in Khasra Nos. 65/7 (0-8), 65/8 (0-8), 65/11/2 (0-4), 65/12 (0-8), 64/4 (0-9), 64/5 (0-4), 64/8 (0-8), 65/8 (0-8), 65/11/2 (0-4), 65/12 (0-8), 64/4 (0-9), 64/5 (0-4), 64/8 (0-8), 61/25 (0-5) and was having full share in khasra Nos. 65/6 (0-8), 64/9 (0-8), 64/10 (0-8), 62/16 (0-8), 63/13 63/20 (0-8) situated in the revenue estate of village Rithala, Delhi. The land of the respondents was acquired by the Government vide notification dated 27.4.79 issued u/s 4 of the Act in furtherance to which declaration u/s 6 was issued on 27.4.79. The notices u/s 9 and 10 of the Act were issued to the interested persons and pursuant to the said notices they filed their claims before the Land

Acquisition Collector. After considering the claims received, the Land Acquisition Collector made the award u/s 11 of the Land Acquisition Act bearing No. 4/1980-81. For the land measuring 6 bighas and 12 bids was Collector had fixed the market value of the land @ Rs. 2,100/- per bigha. The respondents dissatisfied from the award of the Land Acquisition Collector filed objections u/s 18 of the Act for claiming higher quantum of compensation and for proper determination of the market value of the land which was acquired under the said notification. The learned Reference Court vide its judgment and order dated 26.7.05 enhanced the compensation @ Rs. 54 per square yard in respect of the acquired land and granted other statutory benefits and interest in terms of the provisions of the Act. Being aggrieved from the said judgment and order of the Reference Court, the Union of India has filed an appeal before this Court being Land Acquisition Appeal No. 7/06 while the appellants in that appeal were also dissatisfied from the said order and they filed appeals being Land Acquisition Appeal Nos. 696-716/05 to the extent for further enhancement of the compensation awarded to them and claimed compensation @ Rs. 105 per square yard. Thus, we will dispose of both these appeals by a common judgment.

2. It is contended on behalf of the Union of India that the Reference Court has granted much higher compensation which is unreasonable and is not even permissible in law. Contention of the Union is also that principle of annual decrease @ 12% could not be applied in the facts of the present case, particularly, when the case of *Jasrath v. Union of India* in RFA 751/94 was the judgment relying on a notification much subsequent to the notification for acquisition of the land in the present case.

3. According to the claimants, in *Jasrath* case the High Court had further enhanced the compensation and had given the market value to the claimants @ Rs. 67 per square yard for the notifications issued on 13.2.81 as such they were entitled to enhancement even on the strength of the same judgment. It may be noticed at this stage itself that the judgment of the High Court in *Jasrath* case *supra* was set aside by the Supreme Court vide its judgment dated 7.9.05 and all the cases including the case of *Jasrath* was remitted back to the High Court for determination afresh in accordance with law.

4. After the cases was remitted to the High Court, the High Court vide a detailed judgment in the case of *Jasrath v. Union of India* being RFA No. 751/94 decided on 26.4.06 redetermined the compensation and held that the claimants would be entitled to receive compensation @ Rs. 27,000/- per bigha for Category A land while @ Rs. 25,000/- per bigha for Category B land. As far as this Court is concerned, the judgment dated 26.4.06 would govern the field and the present case would have to be decided in the light of the principles and compensation awarded in that judgment. In *Jasrath* case the Court had dealt with all the three notifications dated 13.2.81, 20.2.81 and 13.3.81 in relation to acquisition of land in the revenue estate of village Rithala. In the present case, the land was acquired from the revenue estate of the same village vide notification dated

27.4.79. The claimants, thus, cannot claim the same compensation which has been awarded by the Court to the owners of the land whose land was acquired by notifications of the year 1981 of village Rithala. Obviously, they would be entitled to get lesser amount. The fair and reasonable market value of the land has to be determined by the Court with reference to the date of notification u/s 4 of the Act. In the case of Jasrath, the Court had mainly relied upon two documents i.e Ex PW1/1, a sale deed which was executed in the year 1979 and Ex A1 which was another sale deed wherein one bigha of land was sold for a sum of Rs. 35,000/-. The average of these two documents was taken to be the fair market value of the land at the time of acquisition. This computation was even justified with reference to other accepted norms of determination of fair market value of the acquired land. As far as Ex A1 is concerned, it would not be much relevant for determining the compensation in the present case because the sale deed was executed after issuance of notification u/s 4 of the Act i.e 27.4.79. Ex PW1/1 was executed on 9.7.80 while the notification in the present case was issued u/s 4 of the Act on 27.4.79 thus even this sale instance cannot be adopted as a determinative factor for adjudication of the main issue arising in the present appeals. Ex A1 was executed on 9.4.81. Both these exhibits only indicate increasing trend in the price of the land in village Rithala. In terms of location and potential, the judgment of the High Court in Jasrath case fully covers the issue and need no further discussion. In view of the above discussion, we are of the considered view that the claimants would be entitled to get enhanced compensation. They will be entitled to get statutory benefits for acquisition of their lands. The learned Reference Court has fallen in error in allowing the statutory benefits u/s 23(1-A) of the Act to the claimants. It cannot be disputed that the notification was issued u/s 4 on 27.4.79 the award was made in the year 1981 i.e prior to 1982 when the amended provisions of the Land Acquisition Act came into force. As such the claimants could not have been awarded the benefit under that provision by the Reference Court. The learned Counsel appearing for the parties fairly conceded to this undisputable position of law.

5. Reverting back to the compensation which the claimants should get, some element of guess work would have to be applied in the facts and circumstances of the case by the Court, for the reason that there is hardly any evidence led by the parties in this case and everybody had relied upon Ex A1, the judgment in the case of Jasrath and Ors. v. Union of India and on that basis the amount of compensation was determined by the Reference Court. As that judgment itself has been set aside and fresh compensation payable to the claimants have been determined, thus, it would be just and fair to reduce certain amount payable to the claimants for the notification of acquisitions issued in the year 1981. There is nothing on record to show that the land of the claimants does not fall in category A of Jasrath's case. While applying certain guess work and with reasonable calculations, we are of the considered view that the claimants could be awarded a sum of Rs. 22,000/- per bigha. This amount we have calculated with reference

to the judgment passed in the case of Jasrath and Ors. v. Union of India in RFA No. 751/94 decided on 27.4.06 and after reducing the compensation for nearly one year and ten months @ 12% compounding. This principle normally would not apply to such determination but there is no other evidence on record on the basis of which we could reasonably determine the fair market value of the acquired land at the time of notification. The market value of the land in Jasrath's case was arrived at by us after considering the effect of Ex PW1/1. For the reasons afore-stated, the above appeals are disposed of holding that the claimants would be entitled to receive compensation @ Rs. 22,000/- per bigha and they would be entitled to interest and other benefits except the benefit under provisions of Section 23(1-A) of the Land Acquisition Act. Parties are bear to their own cost.