
(2003) 09 AHC CK 0022

In the Allahabad High Court

Case No : First Appeal No's. 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691,

U.P. State Industrial Development Corporation

APPELLANT

Vs

Bhim Singh and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 1(1), 23, 24, 4(1), 51

Citation : (2003) 6 AWC 5745 : (2003) 3 UPLBEC 2750

Hon'ble Judges : Yatindra Singh, J; Mukteshwar Prasad, J

Bench : Division Bench

Advocate : S.M.A. Kazmi and Satish Chaturvedi, for the Appellant; R.K. Jain, Pushkar Mehrotra, Sandeep Sharma, Manu Saxena, B.D. Mandhyan, P.K. Mishra, R.K. Misra, Satendra, Rajiv Gupta and J.P. Pandey, for the Respondent

Judgement

Yatindra Singh, J.—The main question involved in these appeals relates to the market value of the land acquired.

FACTS

2. A notification u/s 4(1) of the Land Acquisition Act, 1894 (the Act) was published on 16.4.1986 in respect of 438 Bigha 16 Biswa 6 Biswansi (274.322 acres) of land situate in village Kasna, Tehsil Dankaur, District Bulandshahr. The land was acquired for Uttar Pradesh Industrial Development Corporation (the acquiring body). The notification u/s 6 of the Act was published the next day and possession of the land was taken on 03.02.1987.

3. The land acquired is recorded as Jangal Avval Aabi, Jangal Avval Khaki, Jangal Doyam Aabi and Jangal Doyam Khaki in the revenue records. The SLAO passed an award on 1.6.1988. He considered many sale-deeds but relied upon the sale-deed dated 16.10.1985 executed by one Maniram in favour of Arjun Singh. This sale-deed was for 10 Biswa Avval Aabi land and was sold for Rs. 21,000/-. This

gives a rate of Rs. 42,000/- per Bigha or Rs. 13.80 per square yard. The SLAO deducted 25% from this value due to large area acquired. He awarded Rs. 31,500 per bigha for Avval Aabi land and then determined the value of other type of land by comparing the circle rates of different quality of land with Awal Aabi land. The market value determined by him is as follows :

SI.	Quality of land	Circle Rate	Rate per Bigha	Rs.	No.
1.	Jungle Avval Aabi	4=50	31,500	2.	Jungle Awal Khaki 2=44 17,000
3.	Jungle Doyam Aabi	3=42	21,040	4.	Jungle Doyam Khaki 1=75 12,250

4. The persons whose lands were acquired filed references.

The claimants filed following five sale-deeds before the Court below :

SI.	Date of the	Name of	Area	Amount	Rs.	Rate square	Quality of
No. sale-deed	seller	yards	Rs.	Land			
1.	05.11.1985	Shiv Dayal	9	Biswa	27,000	20/-	Doyam S/o Ruggi Khaki
2.	06.02.1986	Tota Ram	42 sq. M.	2,000	47	Abadi land	S/o Chatar Singh
3.	22.04.1987	Ram 5	Biswa	51,000	68	Not known	Swaroop S/o Ram Sher Khan
4.	06.02.1988	Gurtag	3 Bigha	6-3,76,000	37.5	Singh S/o 1/2	Biswa Mahendra Singh
5.	06.02.1989	Virendra	17	1,22,000	100	Kumar S/o Biswansi	Narayan Singh

5. The claimants have also filed the last two sale-deeds alongwith application under Order XLI, Rule 27, CPC in the leading appeal, but as these two sale-deeds were already filed by some claimants in their cases and have been referred to in the judgment of the Court below, we are considering them on merits.

6. There are four decisions of the reference Courts. Two (No. 1 and 2) were filed before the Court below and two (No. 3 and 4) have been filed in this Court under Order XLI, Rule 27. These two judgments are subsequent to the decision of the Court below in the present cases.

SI.	LAR No.	Date of notifica-	Name of the	Rate of compen-	No.
		tion u/s 4 of the Village	sation per square	Act yard. Rs.	
1.	160 of 1990	Ram 25.02.1989	Tugalpur 67	Saran Singh v. State	2.
598 of 1991,	Isar 25.04.1989	Haldauna 47	Singh and others v. State	3.	91 of 1992,
01.03.1989	Kasna 65	Rameshwar Singh v. State	4.	103 of 1989,	16.04.1986
Kasna 65	Chahat Ram v. State				

7. The claimants produced two witnesses, namely Bhim Singh (PW-1), and Laloo

Mal (PW-2) but they are not parties to the sale-deeds filed by the claimants.

8. The acquiring body filed four sale-deeds :

SI.	Date of deed	Name of seller	Area square yards	Amount Rs.	Rate per land Rs.	Quality	No. of sale-
1.	28.02.1986	Harpal and Chandu	01.08.00	61,36,003	17.2.06	Jungle others S/o Doyam	Khaki
2.	06.01.1986	Harbans Lal	12.11.00	78,500		Jungle S/o Avval Sumera	Khaki
3.	21.08.1986	Smt. 8-15-0	80,003.52			Doyam Omwati	Khaki W/o Tota Ram
4.	16.10.1985	Mani Ram	0-10-0	21,000	12.88	Awaal S/o Nathu Aabi	Singh

9. The acquiring body also produced four witnesses Soran Singh DW-1, Jogendra Singh DW-2, Yogeshwar Pandey DW-3, and P.N. Verma DW-4. These witnesses are not parties in any sale-deeds filed by the acquiring body.

10. The Court below mentioned the evidence adduced by the parties and rulings cited by them and thereafter without giving any specific reason held as follows :

"Taking into consideration the submissions made by the learned counsel for the parties, the citations referred to above, the situation/location of the, acquired land and its material potentiality. I am of the opinion that it would be fair, just and equitable if the claimants are awarded compensation at the rate of Rs. 35.00 per sq. Yard (flat rate)".

11. The Court below also awarded solatium of 30% on the enhanced amount and also awarded 12-1/2 per annum interest from the date of notification to the date of possession on the enhanced amount and further awarded 9% per annum from the date of possession for a period of one year and thereafter 15% per annum till the date of payment of the enhanced amount. Hence the present appeals by the acquiring body.

12. We have heard counsel for the parties. There is no dispute on the solatium or the interest granted by the Court below on the enhanced amount but there is serious dispute regarding the market rate of the property and consequently on the amount enhanced by the Court below. Following points arise for determination in these appeals.

(i) Whether the certified copy of the sale-deeds are admissible without examining any party to the sale-deed?

(ii) Should the award be given on the basis of quality of land or belting should be adopted or uniform rate be awarded?

(iii) What is the market value of the land acquired?

POINT NO 1 : CERTIFIED COPIES - ADMISSIBLE

13. Section 51-A of the Act (quoted below) states that certified copy of a document registered under the Registration Act may be accepted as evidence of the transaction recorded in such document. This section was subject matter of interpretation in some decisions of the Supreme Court. There were some observations in a few cases that despite this section parties to the sale-deeds ought to be produced before they can be accepted. These cases are :

- (i) Baldeo Singh v. State of Punjab JT 1996 (8) SC 280 (The Baldeo Singh case).
- (ii) P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, (The Ram Reddy Case).
- (iii) Inder Singh and Others Vs. Union of India (UOI) and Others, (The Inder Singh case).

14. These cases came to be considered in the subsequent decisions of the Supreme Court reported in State of Haryana v. Ram Singh, JT 2001 (6) SC 8 (the Ram Singh case). The Court observed that the observations in the Baldeo Singh case were made in the light of the following facts.

* The sale-deeds were challenged as collusive.

** The sale-deeds were entered into only for the purposes of inflating the market value in anticipation of the acquisition proceedings.

15. The Supreme Court in the Ram Singh case further held that:

The decision (in the Baldeo Singh case) is not an authority for the proposition that the certified copy of registered sale-deed is inadmissible in evidence without proof of the execution of the documents by the vendor/purchaser or any other witnesses.

16. The Ram Reddy case and the Inder Singh case came to be considered in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, The Supreme Court after considering these cases and Section 51-A of the Land Acquisition Act held :

When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document", it enables the Court to treat what is recorded in the document in respect of the transactions referred to therein as evidence.

The words "may be accepted as evidence" in the section indicate that there is no compulsion on the Court to accept such transaction as evidence, but it is open to the Court to treat them as evidence. Merely accepting them as evidence does not mean that the Court is bound to treat them as reliable evidence. What is ought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the Court to weigh all the pros and cons to decide whether such transaction can be relied on for

understanding the real price of the land concerned.

17. The law in this regard may be summarised that certified copies of the sale-deeds are admissible to show the transaction recorded in such document; though the Courts are not bound to treat them as reliable evidence. The question of relying on them depends on the facts and circumstances of the case. Where the documents are challenged as collusive or only for the purposes of inflating the price of the land sought to be acquired or in anticipation of acquisition proceedings then the Court may not rely upon them unless parties to the sale-deed are examined to prove the circumstances in which they came to be executed.

POINT NO. 2 : UNIFORM RATE SHOULD BE AWARDED

18. The counsel for the acquiring body submitted that the acquired land was agricultural land and the value of the land should be calculated according to the quality of the land as has been done by the SLAO. The claimant and the acquiring body had filed different sale-deeds. Some of the sale-deeds are subsequent to the date of publication of notification u/s 4(1) of the Act and some of them are prior to the date of acquisition. The sale-deeds of smaller area or subsequent to the date of publication of notification u/s 4(1) of the Act are not relevant for considering the price of the land acquired, but these different sale-deeds indicate that even the earlier sale-deed in respect of inferior quality of land (as indicated by the circle rate) were sold on higher price than the subsequent sale-deed of better quality land. This indicates that the land in the village was not being sold according to the agricultural quality of the land but was being sold according to the situation of the land. In view of this it would not be appropriate to award compensation according to the quality of the land as has been done by the SLAO.

19. A huge piece of land measuring about 275 acres has been acquired. No evidence has been produced by the parties to show if any land was close to any road or not. No map is on the record. It is not disputed that at present a new set up has been established. There is no evidence on the record to show that belting is possible. In view of this, it is not proper to award compensation of the land by belting. This leaves us with one choice i.e. to award uniform rate for the required land.

POINT NO. 3 : VALUE OF THE LAND

Reference Court Decisions - Not Relevant

20. The claimants in order to prove the value of the land have filed two decisions of the reference Court. They have filed two more decisions along with application under Order XLI, Rule 27. These decisions were rendered subsequent to the date of decision in the present case. As they are decisions regarding value of the land by reference Court and were rendered after the decision in this case they are admitted. However, whether any reliance is to be placed upon them or not will be

discussed in the succeeding paragraphs.

21. The first decision (paragraph 6 of the judgment) is in LAR No. 160 of 1990 Ram Saran and Ors. v. State. This relates to village Tugalpur, Tehsil Dankaur. In this case the reference Court has awarded Rs. 2 lakhs per bigha which comes to about Rs. 67 per sq. yard.

22. The second decision (paragraph 6 of the judgment) is in LAR No. 598 of 1991 Isar Singh and Ors. v. State. This relates to village Haldauna and the reference Court has given an award of Rs. 1,40,000/- per bigha and this comes out to about Rs. 47 per sq. yard.

23. The aforesaid two decisions relate to another village. There is some dispute regarding distance between the land acquired in the first two cases and the land acquired in the present case but it is not disputed that they are of adjoining village and are situate towards Delhi side.

24. That third decision (paragraph 6 of the judgment) is in LAR No. 91 of 1992, Rameshwar Singh and Ors. v. State. This relates to the same village i.e. where the property in dispute in this case is situate. The reference Court has given an award at the rate of Rs. 65 per sq. yard.

25. The aforesaid three decisions have been given in respect of the land in which notification u/s 4(1) of the Act was published on 25.2.1989, 25.4.1989 and 1.3.1989. Notification u/s 4(1) of the Act in the present case was published on 16.4.1986. Publication of notifications in the three decisions are approximately three years after publication of notification u/s 4(1) of the Act in the present case and it would not be prudent to rely upon the rates awarded in these three decisions.

26. The fourth decision (paragraph 6 of the judgment) is in bunch of cases in which leading case is LAR No. 103 of 1989, Chahatram and Ors. v. State. These cases relate to the same village and arise out of same acquisition. In these cases an award at the rate of Rs. 65 per sq. yard has been given. The counsel for the claimants placed reliance on this decision and submitted that the rate therein should be awarded. They further submit that the claimants have not filed any appeal against the award awarding them Rs. 35 per sq. yard, and, therefore, the amount awarded cannot be enhanced, but at least rate of Rs. 35/- per sq. yard should be maintained.

27. We have perused the decision given in LAR No. 103 of 1989. The rate given in this decision is not based on any sale-deed but is merely based on the decision in LAR No. 91 of 1992, Rameshwar Singh in which notification u/s 4(1) of the Act was published in the year 1989. This decision has not been accepted by us. In view of this, the rate awarded in the LAR No. 103 of 1982 can not be accepted. Had the Court decided the case on the basis of some sale-deed, we could have considered the same. Apart from it, first appeals are pending in this Court against this decision and appropriate decisions would be given by this Court at

the time of hearing of those appeals.

28. The counsel for the claimants submitted that

* The acquired land was initially in district Bulandshahr, and now has become part of Greater NOIDA. It is a city of the future and in view of future potentiality of the land, the rate awarded by Court below should not be disturbed.

* The acquired land has potential as an Industrial area. It is acquired by the State Industrial Development Corporation whose object is to promote industrial growth and this land would be utilised by the industries as is clear from the evidence adduced by the claimants that the factories are in existence over the acquired land.

29. Greater NOIDA was established in the year 1992 much after the publication of notification u/s 4(1) of the Act. There is nothing on the record to show that the acquired land has become part of Greater NOIDA. However, it is admitted by the counsels for the acquiring body that some portion of the acquired land has become part of Greater NOIDA.

30. The oral evidence on behalf of the claimants (PW-1 and PW-2) was recorded on 12th October, 1994 and the oral evidence on behalf of the acquiring body was recorded in the month of March and May 1995. It is correct that in oral statements given by the claimants, they have stated that the factories have come up; but this does not mean that they were in existence on the date of publication of notification u/s 4(1) of the Act namely on 16.04.1986.

31. Sri Yogendra Singh, Lekhpal of the acquiring body (DW-2) has made a statement that Asian Paint was the first company to be allotted land. The allotment letter and possession memo are also on the record. They are dated 29.10.1987 and 29.4.1988. The land has been allotted to other companies and possession has been given to other companies after the allotment and possession was given to the Asian Paints. The buildings have come into existence after possession was handed over. It is wrong to say that the buildings were in existence on the date of publication of notification u/s 4(1) of the Act.

32. Section 23 of the Act states what matters are to be considered in determining the compensation. It states that market value of the land is to be determined on the date of publication of notification u/s 4(1) of the Act. Section 24 of the Act explains matters to be neglected in determining the compensation. Fifth clause of Section 24 of the Act states that any increase to the value of the land acquired, likely to accrue from the use to which it will be put when acquired, is not to be taken into account. The acquiring body is Industrial Development Corporation of the State. Its purpose is to increase industrial development in the State. The fact that acquiring body would utilise the land for Industrial Development cannot be taken into account as it is clearly prohibited u/s 24 of the Act. It is also a settled proposition of law *Rajashekar Sankappa Taradandi and others Vs. Asstt. Commissioner and Land Acquisition Officer and others*, .

33. In the Ram Singh case (referred in paragraph 14 of this judgment) the Court after awarding the market value of land awarded some additional money for the future potential of the land. The Supreme Court set it aside and made following observations :

"The statute does not allow for payment of any further amount on account of "potential value" over and above the market value. Besides "market value" means exactly what it says, viz. The price which the asset would or could be expected to fetch in the open market. Where a property has the potentiality of more profitable use, it will command a better price than property without such potential. In other words, potentiality forms part of the market value and may be a factor to be taken into account for the purpose of determining the market value. But once the market value is determined, there is no question of awarding any further amounts in addition thereto by reason of any further future potential".

34. The Supreme Court in another decision of Administrator General of West Bengal Vs. Collector, Varanasi, while commenting upon different criteria for finding out the market value of the land observed that the sale-deeds provide the best method of finding out market value of the property. The Court held that:

"Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and indeed the best evidence of market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available."

35. To sum up, the compensation to be awarded under the Act is the market value of the land on the date of publication of notification u/s 4(1) of the Act. The market value includes the price for future potential of the land and no extra amount is required to be awarded for the same. The best way to find out the market value is to consider the price fetched by similar land with similar advantages and potentiality under bona fide transaction of sale at about the time of notification u/s 4(1) of the Act.

SALE DEEDS FILED BY THE PARTIES

36. The acquiring body has produced four sale-deeds (for details see paragraph 5 of the judgment) these four sale-deeds have been considered by the SLAO but he chose to place reliance on the sale-deed dated 16.10.1985 executed by Maniram. It is true that he has given his award according to the quality of land and we are not determining the value according to the quality of land but fact still remains that he did not consider other sale-deeds for finding out the market value of the land. In view of this, only one relevant sale-deed which could be considered from the side of the acquiring body is the one dated 16.10.1985 executed by Maniram.

37. The claimants have produced five sale-deeds (for details see paragraph 4) of the judgment. The second sale-deed produced by the claimants is dated

6.2.1986 and was executed by Totaram. It is only for 42 sq. Metre of land. The land acquired is much bigger than this and this being of very small area cannot be considered for the land acquired.

38. The sale-deed at serial Nos. 3, 4 and 5 filed by claimants arc of the year 1988 and 1989. These sale-deeds are of subsequent date. They cannot be considered. Apart from it, the land was already acquired in the year 1986 and more land was to be acquired and the possibility of these sale-deeds being for the purpose of inflating the price cannot be ruled out. They are also rejected.

39. The first sale-deed filed by the claimants is dated 05.11.1985. This is for nine Biswa of land and gives rate of Rs. 20/- per sq. Yard. This is the sale-deed which was subsequent to the sale-deed relied upon by the SLAO and is nearer in time to the date of notification u/s 4(1) of the Act. It is of the same village and it is for 9 Biswa of land. It is more appropriate to consider this sale-deed while determining the value of land. Of course proper adjustments have to be made as it is of small area in comparison to the area of the land acquired.

40. The area of the sale-deed selected by us is only 9 Biswa. The land acquired is 438 Bigha 16 Biswa 6 Biswansi (274.322 acres). The counsel for acquiring body submitted that atleast 40% should be reduced from the same. The SLAO has merely deducted 25% from the market value calculated by him on the basis of the sale-deed selected by him. The sale-deed selected is few months prior to the date of notification u/s 4(1) of the Act. In these circumstances it would be appropriate to deduct only 25% from the market value. The result is that claimants arc entitled to the uniform rate at Rs. 15/- per sq. Yard. There was no dispute regarding solatium and interest and the claimants would also be entitled to solatium and interest on the enhanced amount as awarded by the Court below.

CONCLUSIONS

41. Our conclusions are as follows :

* Certified copies of the sale-deeds are admissible to show the transaction recorded in such documents though the Courts are not bound to treat them as reliable evidence. The question of relying on them depends on the facts and circumstances of the case. Where the documents arc challenged as collusive or only for the purposes for inflating the price of the land sought to be acquired or in anticipation of acquisition proceedings then the Court may not rely upon them unless parties to the sale-deed arc examined to prove the circumstances in which they came to be executed.

* The compensation to be awarded under the Act is the market value of the land on the date of publication of notification u/s 4(1) of the Act. The market value includes the price for future potential of the land and no extra amount is required to be awarded for the same. The best way to find out the market value is to consider the price fetched on similar land with similar advantages and potentiality under bona fide transaction of sale at about the time of notification u/

s 4(1) of the Act.

* In this case it is not appropriate to award compensation according to the quality of the land or by belting; the uniform rate for the acquired land is the best option.

* The claimants are entitled to uniform rate of Rs. 15/- per sq. yard. They will also be entitled to solatium and interest as awarded by the Court below on the enhanced amount.

The appeals are partly allowed with proportionate costs.