

(1980) 12 DEL CK 0032

In the Delhi High Court

Case No : Regular First Appeal No. 532 of 1969

WG. C.D.R. Pritam Singh Bhinder and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-12-1980

Acts Referred:

Citation : (1981) ILR Delhi 892

Hon'ble Judges : T.P.S Chawla, J

Bench : Single Bench

Advocate : B.R. Iyengar, R.C. Gupta, P.P. Malhotra and S.K. Mishra, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) The eleven appellants were joint owners of some land which has been acquired by the Government. They are dissatisfied with the compensation awarded by the Collector and the Additional District Judge. Therefore, in this appeal they have sought enhancement of the compensation.

(2) The land comprised 25 bighas 8 bids was (5.29 acres) situated in the revenue estate of Yakutpur in the South of Delhi. It lay on the right side of Link Road, after about two-third of the way from Lajpat Nagar to Kalkaji colony. Roughly, the outline of the land formed a rectangle. One of the shorter sides, measuring 354"-6", abutted East on Link Road. On the South and West, the land was bounded by Greater Kailash Colony No. 1. On the North there was Kailash Colony.

(3) The notification u/s 4 of the land Acquisition 1894 was issued on 4th February 1964. It stated that the land was required for the Planned Development of Delhi. The Collector awarded compensation at the rate of Rs. 5,000 per bigha. On a reference being made, the Additional District Judge increased it to Rs. 30,000 per bigha. The appellants have throughout claimed Rs. 60,000 per bigha, and that is their claim in this appeal.

(4) In order to deal with the arguments advanced on behalf of the appellants, it is necessary to recount in some detail the reasoning of the Additional District Judge. As a preview, I might say, that he adopted the mean of two differently derived values of undeveloped land in the vicinity as the rate at which compensation should be awarded to the appellants. One value was based on transactions relating to undeveloped land : the other on transactions relating to developed plots.

(5) There were six sale transactions proved relating to undeveloped land. In each case the land was situated in Greater kailash Colony No- I, and the purchaser was D.L.F. Housing and Construction (Private) Limited, the company responsible for developing that colony. One of the transactions was of 1960 and another of 1962. The Additional District Judge discarded both of them as he considered they were too remote in time from the relevant date, that is, 4th February 1964 when the notification for acquiring the appellants' land was issued.

(6) All the remaining four transactions took place on the same date, .namely, 20th .February 1963. Of these, two were sales of only occupancy rights and, hence, of not much use in determining the market value of ownership. Of the remaining two, one was distinguished on the ground that it pertained to a small plot whereas the area of the land to be valued was large. ("This small plot was apparently sold at the very high rate of Rs. 73,200.00 per bigha). The Additional District Judge took into consideration only the sixth transaction. This transaction yielded the rate of Rs. 23,077.00 per bigha. By rounding off, he came to the conclusion that, according to this section of the evidence, the market value of undeveloped land at the relevant time was Rs. 23,000 per bigha. Since a bigha is 1008 sq. yds., that may be taken to be equivalent to Rs. 23.00 per sq. yd.

(7) Only one criticism was made against this part of the judgment of the Additional District Judge. Counsel for the appellants said that the rate furnished by the small plot should not have been ignored. In support, he cited The State of Maharashtra (Public Works Department) Vs. Bapurao Dnyanoba Chiddarwar and Others, . That case does hold that "in given circumstances" the rate at which a small plot is sold may be taken into consideration for valuing a large area of land. it was explained that the observations in . The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, . implying the contrary were pot intended to be "an absolute proposition". Nevertheless. I think what the Supreme Court said accords with common experience : that a large area of land cannot be sold at the same rate as a small plot. Perhaps, if no better matching instance, is adduced there: may be no option bat to derive the market value of a large area from the price fetched by a small plot. But, here, a transaction in a larger area was at hand in the evidence, "and there was no need for the Additional District Judge to be driven to that extremity.

(8) Besides, the rate of the small plot was astonishingly high and inexplicable." It was more than three times the rate furnished by the transaction on which the Additional District Judge relied," which, be it noted, was of the same date. The

difference in the size cannot account for such a wide divergence in the rate. indeed, the rate for this small plot, in its undeveloped state, was nearly as much as the rate for a fully developed plot in the locality. It is hard to believe, that the lack of development had on appreciable effect on its value. The sale deed relating to this small plot was never produced in evidence. The only proof of the transaction was a copy of the mutation in the revenue records. If the sale deed had been produced, it is possible that the particular circumstances affecting the transaction would have emerged. Its probative value could then have been properly appraised. However, "with the state of the record as it is, and all the doubts being left unresolved, I think, it was wholly prudent of the Additional District Judge not to rely upon this transaction.

(9) As regards developed plots, there were nine sale deeds on record. The plots were all situated in Greater Kailash Colony No. 1. Again, the Additional District Judge eliminated those transactions which were distant in time. These were three in all two of 1961, and one of 1962. The six thus left were all of 1963, extending over the period February to October. They showed that there was a rise and fall in the rate, and then a rise again which became suddenly steep. The average of all the six transactions was Rs. 78.00 per sq. yd. The Additional District Judge took this as the market rate of a fully developed plot in the locality.

(10) To deduce there from the rate for undeveloped land, the Additional District Judge did two things. First, he deducted from that rate the cost of development, administration expenses, and brokerage. The aggregate of these he found to be Rs. 7.60 per sq. yd. Deducting that from Rs. 78.00, the rate came down to Rs. 70.40.

(11) Secondly, he determined the area which would be left for building purposes after making provision for roads, lanes, parks etc. Going by the evidence relating to Greater Kailash Colony No. 1, the Additional District Judge found that, after development, only 51 per cent of the total land remained available for sale as plots, and therefore 49 per cent was monetarily lost. Therefore, the average rate for the entire area of undeveloped land would be 51 per cent of Rs. 70.40, that is Rs. 35.90 per sq. yd. Thus, by this method of working down from the price of a developed plot the Additional District Judge found this market value of undeveloped land to be approximately Rs. 36.00 per sq. yd.

(12) Having obtained two figures Rs. 23.00 per sq. yd. on the basis of evidence relating to undeveloped land, and Rs. 36.00 on the basis of developed plots the Additional District Judge assessed the market value of the appellants' land by taking the mean of the two. The rate came to Rs. 29.50, but he rounded it off to Rs. 30.00 per sq. yd.

(13) In working down from the price of a developed plot, the Additional District Judge followed *M/s. D.L.F. Housing and Construction (P) Ltd. v. Union of India* Air 1957 P&h 325. The method has been adopted in other cases also : for example *The State of Maharashtra (Public Works Department) Vs. Bapurao Dnyanoba*

Chiddarwar and Others, , and the cases mentioned therein. Counsel for the appellants raised no objection to this method as such. On the contrary, he approbated it, though, of course, he Wished to work it will his own figures to which I will presently adv6rt. His real objection was to the averaging afterwards with the rate derived, from the sales of undeveloped land. He contended that "that was unwarranted dilution of the result.

(14) The correctness of this argument depends on how much credit should be given to the figures obtained by this method. That, in turn, requires scrutiny of the intrinsic validity of the method itself.

(15) The cases which employ this method seem to assume that the market value of undeveloped land, having a building potential, can be accurately deduced from the price of a fully developed plot in the neighborhood by simply subtracting the cost of development and other expenses, and making an allowance for the area liable to be lost in the process of development. None of the cases that I was shown contain any detailed discussion of the point. But, obviously, the underlying premise is that the difference between the price of a developed plot and undeveloped land is due solely to the developmental "process, and nothing else. That, it seems to me, is a fallacy. The price of a fully developed plot is the product of many other factors operating over and above, and after, its development.

(16) The extent to which a colony has become inhabited is one such factor. As the colony grows more popular the price rises rapidly just on that account. This was recognised by a division bench of this court in Madan Mohan Manoharlal Vs. Union of India, . It was the reason why the court refused to allow the same rate of increase in the value of undeveloped land as had been shown to have occurred, during the like period, in a well-established colony nearby.

(17) The price is also affected by the amenities available, the class of people living in the colony, the exact situation of the plot and so many other intangible considerations. I do not think it is necessary to, dilate on them.

(18) Now, the method of working down takes no note of any of "these other factors which go to compose the price of a developed plot. The results obtained by this method cannot, Therefore, be very reliable. Furthermore, it is important to observe, that the results are bound to represent the uppermost value theoretically possible of the undeveloped land. That is because no reduction has been made from the price of a developed plot on account of any factor other than development.

(19) In the present case the evidence shows that Kailash Colony was started in 1952 and was fully developed by 1955. Greater Kailash Colony No. I was started in 1956 and was, fully developed in 1963. So, both these colonies were already thriving in 1963. Admittedly, the land belonging to the appellants was at that time merely an expanse of unleveled . Working" down from the prices prevailing in Greater Kailash Colony No. I in 1963 can only provide an idea of the highest

conceivable value of the appellants' land. It would have to be scaled down to reach a realistic result.

(20) Counsel for the Union demonstrated one further defect in the method. He cited the well-known passage from AIR 1939 98 (Privy Council) , in which Lord Romer said : "The compensation must be determined Therefore by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser". He also cited Raghubans Narain Singh v. The Uttar Pradesh Government Air 1967 S.C. 465, for the same proposition, and especially in order to emphasise that "due regard" must be had to the "existing condition" of the land. Applying these propositions to the present case, he asked : "Who would buy the appellants' land in the state in which it was ?" A moment's thought produces the answer : "Only a coloniser". Anyone else would not be interested in undeveloped land. He then asked : "What would a coloniser pay for this land ?" The answer he gave was that, at the very least, the coloniser would further reduce the worked down price so as to secure a reasonable profit for himself. For, otherwise, he would make nothing out of it.

(21) No answer was given to this argument, and I find it irrefutable. It serves to draw attention to the fact that the method of working down omits to take account of the coloniser's profit. Even if the owner develops the land himself, it makes no difference. There will still be some part of the ultimate price of the developed plot which will be attributable to his labour, and not to the value of the land. Hence, in finding the value of undeveloped land from the value of a developed plot, the reward for labour expended in development must -be excluded.

(22) Though the cases which follow M/s- D.L.F. Housing and Construction (P) Ltd. v. Union of India Air 1967 P&h 325, tend to be more rigid, it is instructive that, in that case itself, the rate obtained by working down was not forthwith implemented. It was reduced on account of "other factors". One was, that another owner of the acquired land had claimed compensation at a lower rate. The other, that a part of the land had been " purchased at a much lower rate a short while before the compulsory acquisition. If the worked down rate can legitimately be subjected" to corrections on these scores, the averaging resorted to by the Additional District Judge is amply justified having regard to the transaction relating to undeveloped land on which he also relied.

(23) That transaction, it will be remembered, was a sale in 1963 of undeveloped land situated in Greater Kailash Colony No. 1. The purchaser was D.L.F. Housing and Construction (Private) Limited. It is recited in the sale deed that the land is near a built-up colony and that the vendors are getting a very good price. Obviously, that price must have included the full value of the building potential of the land. This transaction provided an almost perfect parallel for valuing the land of the appellants. On this basis they could not have got compensation at a rate more than Rs. 23.00 per sq. yd. To give them the worked down rate of Rs. 36.00 per sq. yd. would clearly riot have been right.

(24) At the same time, there were two factors entitling the appellants to more than Rs. 23.00 per sq. yd. Their land had the advantage of abutting on Link Road. And, on 30th December, 1960, they had obtained the sanction of the Municipal Corporation of Delhi to layout plan for a colony. No development work was done on the land pursuant to that sanction. Still, it must be conceded that they were one important step ahead of their owners of similar undeveloped land.

(25) By raising the rate of compensation to Rs. 30.00 per sq. yd. by resort to the process of averaging, the Additional District Judge must be deemed to have given the appellants an increase for those two factors. Otherwise, there was no justification for giving them more than Rs. 23.00 per sq. yd. when there was a good and reliable exemplar at that rate. As I have already tried to show, the rate worked down from the price of a fully developed plot was the maximum rate theoretically possible for the land in its undeveloped state. I think it can be presumed that by averaging the two, the Additional District Judge was intending to achieve what he considered to be a fair result having regard to all the relevant factors. Both the downward and upward effect of the averaging were justified. Though his method is not unimpeachable, the result is not unjust. In a subject "abounding with uncertainties", as Lord Hobhouse said, "it would be very unfair to require an exact exposition of reasons for the conclusion arrived at" : see *The Secretary of State for Foreign Affairs v. Charlesworth, Filling & Co. and T. D. Charlesworth & Co.*, 26 Bombay 1(7)

(26) However, it was contended, that, in any event, the Additional District Judge had not adopted the right figures in his calculation downward from the price of a fully developed plot. The first objection was that he had erred in taking the market rate of a fully developed plot as Rs. 78.00 per sq. yd". This figure, it may be recalled, was the average of the six transactions, in 1963, relating to developed plots in the adjacent colony. Counsel for the appellants cited *The State of Madras Vs. P. Seetharamammal and Another*, , to show that, in assessing compensations, the transaction of "the highest value should be preferred to the rest, unless there were strong circumstances justifying a different course". In the present case. the last of the six transactions was in October 1963, and it was at the rate of Rs. 100.00 per sq. yd. It was urged that the Additional District Judge should have taken this, if not more, to be the rate for a fully developed plot; particularly, when this transaction was the closest in point of time to 4th February, 1964 the relevant date for determining the compensation.

(27) I do not accept this argument. In *Madan Mohan Manoharlal Vs. Union of India*, , it was stated" that when plots are located in different parts of a colony, the "proper yard-stick" would be their "average price"". The same principle was applied in respect of transactions during a certain period (June to December 1958) and their "average" was taken. I am bound by that judgment. It is also worth noting that in *D.L.F. Housing and Construction (P) Ltd. Vs. Union of India (UOI)*, , the court likewise took "the average sale price of developed plots".

(28) Moreover, there were circumstances in the present case "justifying a

different course". The six transactions exhibited three changes in the trend of the rate over a period of eight months. It is not impossible that there might again have been a fall after the latest rise. The argument of counsel for the appellant requires me to assume that the rate was either constant from October 1963 to 4th February 1964, or there was a progressive rise. In the absence of evidence, no such conclusion can be drawn. In my opinion, the Additional District Judge took the right course in taking the average of the six transactions.

(29) Next, it was submitted, that the Additional District Judge went wrong in deducting Rs. 7.00 per sq. yd. from the price of a fully developed plot on account of the cost of development, administration expenses, and brokerage. At one stage in the argument it was even mildly suggested, on the strength of Mohammed Karimuddin and Others v. The Collector of Madras, First Line Beach, Madras (1965) 1 M.L.J. 66(9), that deductions for provision of "amenities" like roads and drainage etc. could not be made at all. But that case has been explained away in Mrs. W. Kannia Lal and others v. The Collector of Madras (1965) 2 M.L.J. 454,(10) and I doubt if it was correctly decided. This second case clearly holds that "the cost of factors required to bring the undeveloped lands on par with the developed lands" must necessarily be deducted, and the judge who delivered the judgment in the first case was a party to the second.

(30) The real brunt of the argument was that the Additional District Judge should have accepted the opinion of a retired Assistant Engineer, called by the appellants, who estimated that the cost of development in 1964 would be Rs. 3.29 per sq. yd. His report shows that he made calculations on the basis of the Central Public Works Department (Delhi) schedule of rates of 1955 and 1962. These schedules, as everyone knows, are hopelessly out of date by the time they are published. Even the Central Public Works Department generally invites quotations at a percentage above the scheduled rates. It is further patent from the report prepared by the Engineer that, throughout, he has made every assumption which would favor the appellants. I am not surprised that the Additional District Judge rejected his evidence.

(31) From D.L.F. Housing and Construction (P) Ltd. Vs. Union of India (UOI), , it appears that in 1957 the cost of development in Delhi was about Rs. 4.50 per sq. yd. In Madan Mohan Manoharlal Vs. Union of India, , it was accepted to be Rs. 8.00 per sq. yd. in 1961 without even raising a dispute. That exposes how ridiculous is the figure of Rs. 3.29 per sq. yd. attained by the Engineer called by the appellants.

(32) The Additional District Judge relied on the evidence relating to the cost of construction of Greater Kailash Colony No. I for reaching the conclusion that the cost of development administration expenses and brokerage would be about Rs. 7.00 per sq. yd. In applying that rate to the appellants' land he was really being lenient, because he disregarded the fact that that colony had begun to be constructed in 1956 when things were much cheaper.

(33) Lastly, it was argued that the Additional District Judge was not right in holding that, after development, only 51 per cent of the land would be available for sale as plots, when the layout plan sanctioned by the Municipal Corporation of Delhi itself indicated that 78.45 per cent would be available, and only 21.55 "per cent would be lost. The Additional District Judge reasoned that if the land of the appellants was to be brought on the "same level" as Greater Kailash Colony No. 1 "in the matter of development and existence of amenities" there would have to be loss of a like proportion of the area. However, the answer is in the report of the Engineer called by the appellants. He explains that the loss of land for "unremunerative purposes" was "remarkably low" because (a) provision of sites for schools, religious institutions, electric sub-station and community centres etc. was dispensed with by the sanctioning authority and (b) there were already roads along and leading into the colony. This Explanation seems to me to be perfectly sound. These were the advantages "the appellants "land was getting by virtue of being adjacent to Greater Kailash Colony No. 1.

(34) In any case, if the sanctioning authority had thought it fit to sanction a plan setting aside only 21.55 per cent of the land for development and "amenities", I do not think it was open to the Additional District Judge to sit in judgment over it. Nor can it be inferred there from that the colony which the appellants planned to construct would necessarily be inferior. Therefore, I accept this contention on behalf of the appellants and" hold that .78.45 per cent of the area would be available for sale as plots. Consequently, the average rate for the entire land would be 78.45 per cent of Rs. 71.00, that is Rs. 55.69 per sq. yd. Averaging this with the rate of Rs. 23.00 per sq. yd. derived from the transaction relating to undeveloped land, as the Additional District Judge did, the rate comes to Rs. 39.34 per sq. yd. Rounding that off, I would hold that the appellants were entitled to compensation at the rate of Rs. 40.00 per sq. yd.

(35) Before concluding I should mention that counsel for the appellants did also cite Mathura Prasad Rajgharia and Others Vs. State of West Bengal, , for contending that the Additional District Judge should have adopted the "method of belting" for valuing, the appellants land. No such . plea was raised before the Additional District Judge, and if is not of a kind that can be entertained for the first" time in appeal. I would add that, in the case cited, the Supreme Court said that the method of belting was appropriate where there was "a large area of land in an urban locality". The word large" is a relative term, and I do not think that the area of the land owned by the appellants was so large" as to warrant "belting".

(36) For the reasons I have stated, this appeal partly succeeds. The appellants will be paid compensation at the rate of Rs. 40.00 per sq. yd., instead of Rs. 30.00 per sq. yd., for their land which was acquired. The compensation will be divided between them according to their shares. In addition, they will be paid solarium at 15 per cent on the amount of increase hereby allowed, an interest thereon at 6 per cent per annum from the date on which possession of the land

was taken till the date of payment into court. They will also have their proportionate costs of this appeal.

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