

Moradabad Development Authority Vs. Chidda and ors.

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Court : Allahabad

Decided On : Mar-03-2004

Reported in : 2004(2)AWC1525; (2004)2UPLBEC1825

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 23

Appeal No. : First Appeal Nos. 251, 253 and 254 of 1997

Appellant : Moradabad Development Authority

Respondent : Chidda and ors.

Advocate for Def. : V.P. Rai, Adv.

Advocate for Pet/Ap. : A.K. Misra, Adv.

Disposition : Appeal allowed

Judgement :

M. Katju, J.

1. This appeal has been filed by the Moradabad Development Authority against the judgment and decree of the Additional District Judge, Moradabad in L.A.R. No. 57 of 1995 and other connected cases decided on 17.12.1996. Copy of the impugned judgment is on page 30 of the Paper Book filed by the appellant.

2. We have heard learned counsel for the parties and have carefully perused the impugned judgment.
3. The facts of the cases are that a notification under Section 4 read with Section 17 of the Land Acquisition Act was issued, on 30.3.1990. The purpose of the acquisition was planned development by the appellant for housing purpose. The total area acquired under the notification is of 72.595 acres or 2,93,781.80 square metres. Notification under Section 6 was issued on 14.12.1990, and thereafter, possession of the said land was taken on 21.6.1991. The date of the award under Section 11 of the Land Acquisition Act is 24/25.10.1994. The rate for the land awarded as per the award was Rs. 80 per sq. mt. Out of the total area of 72.595 acres of land which was acquired, compensation in respect of an area of 17.32 acres was determined on the basis of a voluntary agreement between the appellant and the claimants which was fixed at Rs. 100 per sq. mt. The present dispute is regarding compensation for the remaining land.
4. The Special Land Acquisition Officer in his award has relied on the exemplar of sale deed dated 25.10.1989 of 100 sq. mt. of land at the rate of Rs. 80 per sq. mt. Rama Shanker is the vendor of that land and Smt. Usha Dhama is the vendee. There were 18 other sale deeds which were summoned by the S.L.A.O. from the office of the Sub-Registrar in which the rate of the land varied from Rs. 1.83 per sq. mt. to Rs. 70 per sq. mt. However, the S.L.A.O. relied on the sale deed in which the rate fixed was Rs. 80 per sq. mt. which was higher among all exemplars.
5. Sri A. K. Mishra, learned counsel for the appellant submitted that even fixing Rs. 80 per sq. mt. was a highly excessive and exorbitant rate, and the S.L.A.O. should not have ignored other sale deeds since there is no legal principle that only the highest rate in any of the exemplars has to be adopted. However, we are not prepared to accept the submission of Sri A.K. Mishra that the rate which should be awarded for the land in the present dispute should be less than Rs. 80 per sq. mt. because the appellant cannot challenge that rate on account of Section 25 of the Land Acquisition Act. We have, therefore, to see whether the rate awarded by the reference court under Section 18 was excessive and arbitrary or not.
6. The reference court (the court below) has fixed the rate at Rs. 270 per sq. mt.

7. Before the reference court a judgment of other reference cases had been produced, but since appeals are pending against those judgments we are not inclined to go by the valuation fixed in those judgments. We have to see the exemplars produced in the present case. Four exemplars were produced in the present case. The details of these are as follows :

PaperWo.

Date

Vendor

Vendee

Plot Area No.

Amount Rs.

Rate

Rate in Paper book

20C

3.7.89

Bhookan

Rame-shwar Pd.

Abadi 84.70 sq. mt.

50,000-(only20.000-paid)

590 persq. mt.

87

21C

25.4.90

Masroor Ahmad

Mohd. Sadeek

Abadi 140. 515 sq. mt.with house/ structure

73.000-

519.5 1 per sq.mt.

92

22C

5.4.89

Rakesh Kumar

Shanno Devi

Abadi 84.20 sq. mt.

46.000-actually paid Rs.8.000

564.3 0 per sq. mt.

100

23C

15.5.89

Vijay Singh

Amar Singh

Abadi 63.91 sq. mt.including structure

33.000-

625 per sq. mt.

105

8. In our opinion the aforesaid exemplars could not have been relied upon by the court below because they were in respect of infinitely small pieces of land as compared to the huge chunk of land of more than 72 acres which has been acquired in the present case.

9. In this connection a Division Bench decision of this Court in a very recent decision in First Appeal No. 522 of 1993, *Krishi Utpadan Mandi Samiti v. Khushi Ram and Ors.*, decided on 26.2.2004, has held that the exemplars of small plots cannot be relied upon when the land acquired is a larger chunk of area. In this Division Bench decision reference has been given to many of the relevant Supreme Court decisions and we need not repeat the same. The latest Supreme Court decision in *Union of India v. Zila Singh*, (2003) 10 SCC 166, has also been cited in the aforesaid decision of this Court.

10. In view of the above decisions we are of the opinion that the enhancement of the rate from Rs. 80 to Rs. 270 per sq. mt. in respect of the land in question was patently illegal and arbitrary and the impugned judgment is hereby set aside.

11. We may mention that along with solatium under Section 23(2) an additional compensation under Section 23(1A) and with interest the rate of Rs. 80 per sq. mt. will really come to about Rs. 130 per sq. mt.

12. In the agreement which the parties executed for 17.32 acres land only Rs. 100 per sq. mt. had been agreed to be paid to the claimants, Thus, what the S.L.A.O. has granted is in fact even above Rs. 100 per sq. mt. and we see no reason why the reference court should have interfered with this writ.

13. In *Special Land Acquisition Officer v. Sri. S. O. Tumari*, AIR 1995 SC 840, (vide para 22) the Supreme Court held that the burden is on the claimant to show that the S.L.A.O. did not award the proper compensation or that the claimant was

entitled to higher compensation. In the present case, the claimants (respondents) have not been able to show that the S.L.A.O. did not award the proper compensation. In the aforesaid decision of the Supreme Court the award of the Land Acquisition Officer was affirmed. We are also inclined to affirm the award of the S.L.A.O. in the present case as the claimants have not been able to show that they are entitled to higher compensation than what was awarded by the S.L.A.O. In fact we are of the opinion that the S.L.A.O. has awarded excessive compensation but in view of Section 25 of the Land Acquisition Act we cannot reduce the said compensation awarded by the S.L.A.O. However, we direct that in future the S.L.A.O. should follow the guidelines laid down by us in *Krishi Utpadan Mandi Samiti v. Khushi Ram and Ors.* (supra), and should not fix the rate at the highest rate in exemplars produced before nor rely on the circle rate.

14. In the present case, the claimants have not led any proper evidence for making out a case for enhancement of the compensation awarded by the S.L.A.O.

15. For the reasons given above this appeal and the other connected appeals are allowed, and the award of the Special Land Acquisition Officer is restored.

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