State of U.P. and Another Vs. Mangli

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Court : Allahabad

Decided On : Oct-20-2000

Reported in : 2001(1)AWC419

Judge : Sudhir Narain and;Krishna Kumar, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4, 11, 18, 23 and 25

Appeal No. : First Appeal No. 333 of 1992 with other First Appeals

Appellant : State of U.P. and Another

Respondent : Mangli

Advocate for Def. : A.D. Prabhakar and ;Pankaj Mithal, Advs.

Advocate for Pet/Ap. : B. Dayal, Adv. and ;Yatinder Singh, A.G.

Judgement :

Krishna Kumar, J.

1. All the abovementioned appeals have been filed by the appellants against the judgment and award dated 24.12.1991 passed by the XIIIth Additional District Judge, Meerut in land acquisition references filed by the owners and bhumidhars of the land whose land was acquired by the Special Land Acquisition Officer for the Meerut Development Authority. The owners of the land were not satisfied with

the award given by the Special Land Acquisition Officer, Meerut and, therefore, filed references before the District Judge, Meerut. All the references were decided by the XIIIth Additional District Judge. Meerut, by single and common judgment.

2. As all the abovementioned appeals were filed against the single and common judgment passed by the XIIIth Additional District Judge, Meerut, all the appeals were heard together and are being disposed of by a single and common judgment. However, for convenience, the First Appeal No. 333 of 1992 shall be the leading case.

3. In short compass, the facts of the present case are that the land in question was acquired for Meerut Development Authority, Meerut, under the scheme known as Pandav Nagar Awasiya Yojna. The Special Land Acquisition Officer passed different awards for acquisition of the land on 3.9.1987, 19.9.1988. 7.10.1988, 31.3.1989, 17.5.1989. 7.7.1989, 3.9.1989 and 22.9.1989. Aggrieved and dissatisfied with the quantum of award, the owners of the land filed 29 references before the District Judge, Meerut.

4. The land in question was situated in village Nagla Battu Yadgarpur. The Special Land Acquisition Officer awarded same rate in all his award to the owners. Therefore, all the references were consolidated by the court below and reference No. 86 of 1989 was made leading reference in which evidence was recorded and taken.

5. The date of notification under Section 4 of the Land Acquisition Act is 11.4.1985 and the date of notification under Section 6 of the Land Acquisition Act is 28.5.1985. The possession was taken on different dates mentioned in the order by the learned lower court. The details of land acquired had also been mentioned in the judgment of the learned lower court and it need not be mentioned in this judgment.

6. The owners have filed references on the ground that acquired land was situated in the dense abadi or Meerut city and posh colonies of Meerut, Saket and Prabhat Nagar are adjacent to it. It was also alleged that acquired land had full residential potentiality. It was also alleged that some land near the acquired land was sold at

the rate ofRs. 300 per sq. yard of 22.11.1988. It was also alleged that the Government has fixed the rate of stamp duty of Rs. 250 to 300 per sq. yard of the land in question. The acquired land was very near to Meerut-Mawana Road, Meerut-Garh Road and Meerut-Kila Parikshitgarh road. These roads had further enhanced the value of the acquired land. It was also alleged that adjacent to the acquired land, there were the residences of Sri Raghukul Tilak, the then Governor of Rajasthan, Sir Sita Ram, the Commissioner, Meerut and Civil Surgeon, Meerut. It is also alleged that offices of the Life Insurance Corporation and I.T.I, are also adjacent to the acquired land.

7. It is alleged that the Special Land Acquisition Officer did not consider all these facts while awarding the compensation. It is also alleged that the Special Land Acquisition Officer committed illegality in deducting 25% of the value on the ground of large area acquired.

8. It is alleged that the claimants-respondents were also entitled for further 12% of compensation in accordance with Section 23(1)(a) of the Act. It was also alleged by the claimants that they were also entitled for improvement made and the construction raised on the acquired land.

9. The appellants filed objections (written statement) alleging therein that the Special Land Acquisition Officer has allowed sufficient compensation. It was denied that the rate of acquired land was Rs. 300 per sq. yard. It was alleged that Prabhat Nagar and Saket Colonies are at much distance and there was no abadi around the acquired land. It was further alleged that the residences as alleged by the claimants-respondents are at much distance. It was further alleged that acquired land was being used as agricultural land and there was no abadi nor it was fit for abadi.

10. The Meerut Development Authority filed separate writtenstatement alleging therein that the land has been acquired for welfare of the public at large and huge amount has been spent for development of the land. It was also alleged that there were no improvement, construction or trees standing on the acquired land. It was further alleged that the Special Land Acquisition Officer allowed proper compensation and there was no justification for further enhancement.

11. The learned lower court on the basis of the pleadings of the parties, framed seven issues and decided them separately and came to the conclusion that the compensation awarded by the Special Land Acquisition Officer was insufficient and inadequate. The learned lower court considering the situation of different land, upheld common rate for all the land holders at the rate of Rs. 155 per sq. yard and thereafter deducting 20% of it for largeness of the area acquired, allowed compensation at the rate of Rs. 124 per sq. yard along with interest and solatium to all the claimants. Against the said award, these appeals and cross appeals have been filed.

12. We have heard the learned counsel for the parties.

13. Learned counsel for the parties only confined their arguments in respect of the rate of the acquired land given by the learned lower court. But while dealing with this point, the situation of the land will have to be discussed.

14. Learned counsel for the appellants contended that the learned lower court fixed the rate on the basis of stamp rate of that circle. We are not convinced with this contention because although the learned lower court has mentioned in the judgment about the stamp rate of the circle, but has not taken it into consideration for fixing the value of the land, rather the learned lower court considering the circle rate, came to the conclusion about utility and potentiality of the land for the purpose of abadi.

15. Learned counsel for the appellants contended that the land on the either side of the Garh roadhas more value because of its situation and that value cannot be applied to the acquired land. Again the learned lower court has not fixed the value of the land, which was prevalent at the Garh road rather the learned lower court has taken into consideration the land, which was near the Garh road and which was at far off places and considering the situation, calculated a mean rate. While repelling the argument of the learned counsel for the defendants about the benefits to be given to the public at large, the learned lower court, relying upon the case law, has rightly held that while deciding rate of compensation, the present situation and use of the land to be acquired was to be taken into consideration and the benefits to be provided to the public at large shall not be considered. Although

it was argued that it was a low lying land requiring lot of expenses in developing the same, but no such evidence was adduced. It appears that the land was plain and level.

16. It is also clear from the arguments of the learned counsel for the parties that no sale deed of large area was available and, therefore, the sale deeds of small area were taken into consideration and the learned lower court deducted 20% of the total amount for large area acquired.

17. Learned counsel for the appellants placing reliance upon several case laws, argued that this deduction must not be less than 50% to 60%. This argument shall be considered at a later stage.

18. The first point for consideration before this Court is about the situation of the land. The contention of the claimants was that the acquired land had been acquired with full residential potentiality and it was very near, rather adjacent to well-developed and posh colonies of Meerut city, while from the side of the appellants, it was contended that said posh colonies were at much distance. This fact, however, was not disputed that the acquired land is situated in the Meerut city itself and this fact should not be lost sight that at present the land upto 2 or 3 Kms.from outer limits of the developing city have got full potentiality of abadi. Meerut city has been expanded in recent times upto several Kms. beyond the outer limits of old city. Although it is a fact that the acquired land was being used as agricultural land, but around the said land, there were several colonies and residences of important personalities and important offices and, therefore, the contention of the learned counsel for the appellants that it was an agricultural land, has no substance. The land within city, even if, being used for agriculture purposes, shall be held to have full potentiality of abadi.

19. The learned lower court has held that prior to the date of notification under Section 4 of the Act, the land adjacent to acquired land was being sold for residential purposes and there were references of abadi plots, roads including Garh-Mukteshwar road in the boundaries of the said sale deeds. The mention of these facts in the boundaries are itself sufficient to indicate beyond doubt that acquired land had acquired full residential potentiality. This fact was admitted by

the Special Land Acquisition Officer in his award. Even the land in question was acquired for raising residential colony.

20. In the award the Special Land Acquisition Officer has mentioned that he inspected the land in question. He has mentioned that this land is situated towards east of the Meerut-Kila Parikshit Garh Road, Meerut-Mawana Road and the residence of the Commissioner, Meerut. It was also mentioned that towards the south and west of the land in question, there was Prabhat Nagar colony. It was also specifically mentioned by the Special Land Acquisition Officer that the land in question is situated in the midst of abadi and had full residential potentiality.

21. Considering this statement of the Special Land Acquisition Officer based on inspection of locality and corroborated with the evidence led by the claimants before the trial court, there cannot be any doubt that theland in question had acquired with full residential potentiality at the time of notification under Section 4 of the Land Acquisition Act.

22. Learned counsel for the appellants has further contended that there was a nala, which reduces the utility of the land. From the judgment of the lower court as well as from the evidence of Om Pal. D.W. 2, it is clear that this nala was in the midst of the acquired land and land of both sides of nala has been acquired. Further there is nothing in the evidence that this nala in any way was reducing the utility of the land. It has also come in the judgment of the trial court that Mansarowar colony, another posh 'locality of Meerut, is situated at a distance of one and a half miles and in between the acquired land and Mansarowar colony, there were posh colony of Saket and Commissioner's residence and this shows that the colony and the residence of the Commissioner, etc. are at the distance of even less than one km. or so and, therefore, it cannot be said that they are at far off places. We are thus fully convinced that the land in question has acquired full residential potentiality even prior to the date of notification under Section 4 of the Land Acquisition Act.

23. Learned counsel for the appellants contended that the acquired land shall be used for development, construction of roads, etc. and, therefore, there must be deduction of 40% of the amount. On the other hand, learned counsel for the

respondents contended that the land in question after development of roads, park, etc. will be sold to the public at large many times more than the rate on which the land is acquired, therefore, there cannot be any deduction. It is further contended that the land in question is in the vicinity of the developed colonies and, therefore, no development is required and on this ground also, there cannot be any deduction on this count.

24. In support of his contention, learned counsel for the appellants placed reliance upon the judgment of Hon'ble Supreme Court in Special Tehsildar, Land AcquisitionVishakapatnam v. Smt. A. Mangala Gowri, AIR 1992 SC 666, wherein Hon'ble Supreme Court held that in building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are conditions precedent to approve lay out for building colonies. However, even in that case law Hon'ble Supreme Court held where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3rd would not be justified.

From the above case law, it is clear that deduction is to be made only when there is need for development of the land, but when it is in the vicinity of the developed colony, no deduction should be made.

25. In A. R. Rangamannar Naidu v. Sub-Collector of Chidambaram, AIR 1993 SC 399, the Hon'ble Supreme Court held 'we see no reason why the High Court should have reduced the compensation awarded by the Reference Court on the ground that roads and drainage had been laid out. The fact that these improvements had been made on the land shown that what was acquired was more valuable than what it would have been without the improvements.'

26. Learned counsel for the appellants has further contended that some land was near Garh road where there were posh colonies and some land was at a distant place and, therefore, there should have been belting system. This argument of the learned counsel for the appellants has no force, firstly, this argument was not raised before the trial court because there is no such mention and secondly, betting system has been deprecated by the Hon'ble Supreme Court in several cases. The learned trial court considering these facts had taken the mean of the

prices, which was highest and which was lowest.

27. Learned counsel for the respondents has contended that while considering the rate to be allowed, it may be taken into consideration by this Court that around the land in question, there are developedcolonies and, therefore, the Meerut Development Authority shall not have to incur much expenses in providing sewer line, water connection, drainage, etc. It is contended that when the land around the land in question was already developed, the acquired land did not need any development. There appears full force in the argument of the learned counsel for the respondents because very little amount shall have to be incurred in the development of that locality.

28. Considering the above discussion, the learned lower court was fully justified in not making deduction in rate for development of land. The learned lower court also did not commit any mistake or illegality in not adopting the belting system.

29. Another argument of the learned counsel for the appellants is that the land being the agricultural land, the rate should not be fixed in yard, rather it should be fixed in acre or bigha. This argument again has no force inasmuch as the Special Land Acquisition Officer has given the rate at Rs. 60 per sq. yard. Further when the land was acquired with full residential potentiality, the rate can be given in yard and there is no justification for allowing the rate in bigha and acre.

30. Now coming to the important question of rate of acquired land : From the side of the appellants, sale deeds were filed in which the land was sold at the rate ranging from Rs. 25 to Rs. 60 per sq. yard. However, only one of them was most near to the date of notification and the rate mentioned in the sale deeds was Rs. 60 per sq. yard.

31. Learned counsel for the respondents contended that so many times, the rate is shown less than the actual agreed rate to avoid income-tax and stamp duty and at some time, because of urgency and need of money, the seller sells the land at reduced rate. From the side of the claimants, several sale deeds were filed showing the rate of Rs. 250 to Rs. 300 per sq. yard. The plots of these sale deeds were situated in thesame village, i.e., village Nagla Battu Yadgarpur. Meerut. The

date of notification under Section 4 is 11.5.1985 and prior to this date, the sale deed dated 25.2.1985 was prior and nearest to the date of notification.

32. The learned trial court held that two sale deeds, one filed by the respondents and the another filed by the appellants were nearest to the date of notification and in one sale deed, the rate was mentioned as Rs. 250 per sq. yard and in another sale deed, the rate was mentioned as Rs. 60 per sq. yard. The learned lower court taking the mean of it, held the rate of the whole of acquired land at Rs. 155 per sq. yard. This rate is also justified in considering the fact that the land which was near the posh colonies was of very high rate and the land which was at far off places was of very low rate. Therefore, by taking the mean of the two, the land of each situation was considered. Therefore, the learned trial court committed no error in holding the mean rate of Rs. 155 per sq. yard.

33. Now the next question for consideration before this Court is about the deduction of percentage because of largeness of the acquired land. Undisputedly, the sale deeds submitted by each side, are of small plots and this rate cannot be made applicable to a very large area acquired by the appellants.

34. Learned counsel for the respondents has contended that because the land is less than eight acres, there cannot be any deduction of largeness of area. This contention is not correct because considering the area mentioned in the award, it is clear that it was much more than eight acres.

35. Learned counsel for the respondents further brought our attention towards the letter dated 4.6.1988 issued by the Director of Land Acquisition to all the District Magistrates whereby a direction was issued to the District Magistrates that in case the land had acquired residential potentiality, a deduction of 25% be fixed for largeness of the area.

36. Learned counsel for the respondents has contended that in view of the provisions of Section 25 of the Act, there cannot be a deduction of more than 25%, which was an offered rate of deduction by the Government. We are not convinced with this contention because Section 25 of the Act provides that amount of compensation awarded by the Court shall not be less than the amount awarded by

the Collector. The word is amount of compensation and not the rate. It cannot be made applicable to the said rate of deduction as proposed in the letter dated 4.6.1988. This fact, however, may be kept in mind by this Court that the Collectors were supposed to deduct only 25% of the amount because of largeness of the area.

37. Placing reliance upon the judgment of Hon'ble Supreme Court in State of Haryana v. Gurcharan Singh and another, AIR 1996 SC 106, learned counsel for the respondents has argued that the award made by the Collector is an offer and cannot be reduced by the Court even though Collector had committed palpable error of law.

38. In Ram Piari and another v. Land Acquisition Collector, Solan and others, JT 1996 (3) SC 758, the Hon'ble Supreme Court replied in negative the question whether the High Court was justified in awarding a lesser amount than that awarded by the Collector under Section 11.

39. The above noted case law, however, is not applicable to the facts of the present cases because the amount was not reduced by the reference court, rather it was enhanced. One single factor affecting the compensation cannot be taken into consideration. Therefore, even if the Collector offered a deduction of 25% because of largeness of the area, that does not mean that deduction cannot be made by the reference court for more than 25%.

40. Learned counsel for the appellants has contended that in several cases, the Hon'ble Supreme Court reduced the rate from 1/3rd to even 60% because of largeness of the area.

41. As discussed earlier, the sale deeds, which were taken as exemplar sale deeds for fixing the rate of the land in questions, were of very small piece of land, while the land acquired was much more than eight acres in area. It may, however, further be taken into consideration that the whole land was very near to very developed and posh colonies of Meerut city and the land in question is also situated by the side of the important roads and, therefore, whole area acquired, had the best potentiality of abadi and hence it is not proper to deem it as a land of

far off places where the rate may be reduced to 50% or 60% because of largeness of the area.

42. In P. Ram Reddy and others v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others, (1995) 2 SCC 305, the Hon'ble Supreme Court held 'where the small extent of land sold is insignificant when compared with large extent of land acquired, the market value of large extent of acquired lands shall not be determined on the basis of value fetched by sale of infinitesimally small extent of land. But, in exceptional cases when small extent of land sold for a price as compared with the acquired large extent of land, the market value of which is required to be determined is not so insignificant, the Court depending upon the possibility of the large extent of land of the claimant being sold as a small extent of land as that already sold for a price the market value of the large extent could be fixed on the basis of the price fetched by sale of small extent.'

43. The above noted case law makes it clear that it depends upon the facts of each case as to what deduction should be made where sale deeds are of small piece of land and acquired land is very large. In this context, it may also be stated that as already stated, the situation of land in question being very near to the posh locality, there is ho justification for deduction of rate by about 40% to 60%. Here again, it may be repeated that the offer of the Collector was of25% deduction and, therefore, the deduction should not have been less than 25%. However, it can be more than this offer.

44. Placing reliance upon the judgments of Hon'ble Supreme Court in (1995) 5 SCC 422 and 1996 (9) SCC 640, learned counsel for the appellants argued that there was deduction of 60% and 65% respectively.

45. In Administrator General of West Bengal v. Collector, Varanasi, AIR 1988 SC 943, a deduction of 40% was held as non-interfereable by the Hon'ble Supreme Court.

46. In the case in AIR 1995 SC 2481, deduction of 40% was held justified.

47. In Chimanlal Hargovinddas v. Special Land Acquisition Officer, AIR 1988 SC 1652, deduction of 25% was held justified by the Hon'ble Supreme Court.

48. Considering all the above noted case laws and the situation of the land as discussed above, we are of the view that the deduction of 20% allowed by the reference court was not justified. We are of the opinion that it must be 25%. This deduction shall be made from the rate of Rs. 155 per sq. yard as allowed by the reference court. The rate comes to Rs. 116.25. In view of this conclusion, the cross appeals praying for enhancement have no force and are liable to be dismissed.

49. In view of what has been indicated herein above, all the appeals are partly allowed. The impugned judgment of the learned lower court is modified. The respondents are entitled to the rate of Rs. 116.25 per sq. yard for the acquired land.

50. The cross-objections filed in First Appeal No. 227 of 1992, 303 of 1992, 314 of 1992 and 315 of 1992 are accordingly disposed of.

However, the parties shall bear their own costs.