

Ran Singh and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-10-2002

Reported in : AIR2002All94

Judge : B.K. Rathi, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 23(1)

Appeal No. : F.A. No. 809 of 1993

Appellant : Ran Singh and ors.

Respondent : State of U.P.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.P. Gupta, ;Vivek Chaudhary and ;Pankaj Mithal, Advs.

Judgement :

B.K. Rathi, J.

1. The Ghaziabad Development Authority framed a scheme for the development of the city within the municipal limits and for that purposes the land of the appellants and of other persons was acquired. The notification under Section 4(1) of the L.A. Act (hereinafter referred to as 'Act') was issued on 28-12-1963 and the notification under Section 6 was Issued on 22-9-1986. The possession of the land was also

taken. The award was delivered by the Land Acquisition Officer on 22-9-1986. Against that award on the request of the appellants reference was made before the District Judge, Ghaziabad. That reference No. 25 of 1987 was decided by the judgment dated 30-3-1991 along with other references by Vth Additional District Judge, Ghaziabad. He has awarded compensation (c) Rs. 8/- per sq. yards to the appellants for their acquired land. 30% solitium has also been awarded along with 9% interest.

2. The appellants felt dissatisfied with award and filed this appeal claiming that the compensation be awarded @ Rs. 40/-per sq. yards. Later on the memo of appeal was amended and the claim was enhanced and compensation @ Rs. 100/- per sq. yardshas been claimed. The required court-fee has also been paid.

3. I have heard Sri S. P. Gupta, learned Senior Advocate assisted by Sri Vivek Chaudhary, learned Counsel for the appellants and the learned Standing Counsel and have perused the entire records.

4. After considering the arguments I am of the view that only short point is involved for consideration in this appeal. The land in the present case was acquired for the development of two colonies within the municipal limits of Ghaziabad city. The land in dispute is situated in village Raheespur in district Ghaziabad. The other land of Sewak Ram and Anoop Singh situated in village Jatwara Kalan was also acquired for development of the same colonies.

5. It has been argued that though the land of the present appellants is in the different village but is adjoining to the land of Anoop Singh and Sewak Ram of Village Jatwara Kalan. In this connection, learned Counsel for the appellants has referred to the statement of Ram Kishan, P. W. 1. He has stated that the land of village Jatwara Kalan of Anoop Singh and Sewak Ram are adjoining to the disputed land. It is contended that the statement of Ram Kishan is unrebutted.

6. Learned counsel has also referred to the judgment of the reference Court. In para 33 of the judgment, the reference Court has observed that the land of Sewak Ram is in proximity of the land of the present appellants. The notification under Section 4(1) of the Act regarding the land of Jatwara Kalan was made on 18-6-

1962 and under Section 6 on 27-10-1964 and possession was taken on 22-12-1964 and the award was given on 26-6-1967. On the basis of this, it has been argued that the appellants are entitled to compensation at the same rate at which the compensation has been awarded for the land of village Jatwara Kalan of Sewak Ram and Anoop Singh.

7. It has been further argued that the reference of Anoop Singh and others in L. A. reference No. 376 of 1982 was decided on 31-5-1984 and they were awarded compensation @ Rs. 40/- per sq. yards by the 1st Additional District Judge, Ghaziabad. On the basis, the appellants claimed compensation in the memo of appeal (c) Rs. 40/- per sq. yards.

8. It is further contended that Anoop Singh and other filed appeal before this Court which was First Appeal No. 288 of 1985 against the above judgment. This first appeal was decided by this Court by judgment dated 5-2-1993 by Hon'ble P. P. Gupta, J., that this Court has awarded compensation for the land (c) Rs. 84/- per sq. yards; that therefore, the appellants are entitled for compensation at the same rate.

9. It has also been argued that the appellants are entitled to compensation at the same rate at which the other tenure holders are granted compensation notwithstanding the fact that initially in the appeal, the compensation (r) Rs. 40/- per sq. yards only was claimed. Learned Counsel for the appellants in support of the argument has referred to the decision of the Apex Court in Bhag Singh v. Union Territory of Chandigarh (1985) 3 SCC 737 : (AIR 1985 SC 1576). In this case. High Court enhanced the compensation and directed that the enhanced amount shall be given subject to the claim put forward in the memo of appeal preferred by the claimants and payment of court-fee. The appeal was preferred to the Division Bench which further enhanced the compensation only in respect of the claimants, who had paid proper court-fee. The matter came to the Apex Court and the following observation of the Apex Court is material (para 3) :

'We are of the view that when the learned Single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to

enhance compensation and the case of the appellants stood on the same footing, the claimants should have been given an opportunity of paying up the deficit court-fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned single Judge and the Division Bench should not have in our opinion adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court-fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value.'

10. In view of this principle laid down by the Apex Court, the appellants are entitled to compensation (r) Rs. 84/- per sq. yards for the land acquired notwithstanding that in the memo of appeal initially compensation @ Rs. 40/- per sq. yards only was claimed. Subsequently, the claim has been, enhanced to Rs. 100/- per sq. yards and the court-fee has been paid. The claim cannot be rejected on the ground that enhancement of the claim has been made after the expiry of period of limitation, The limitation in this matter is not material in view of the above observations of the Apex Court.

11. Apart from this, the appellants are also entitled to the solatium (r) 30% of the compensation and interest (c) 9% on the enhanced amount of compensation.

12. The parties shall bear their own costs.

13. The appeal is accordingly disposed of.

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