

Baboo Ram and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-02-1980

Reported in : AIR1980All324

Judge : Satish Chandra, C.J. and ;K.C. Agarwal, J.

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

Appeal No. : First Appeal No. 429 of 1978

Appellant : Baboo Ram and ors.

Respondent : State of U.P.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : L.P. Singh, Adv.

Disposition : Appeals dismissed

Judgement :

K.C. Agarwal, J.

1. These two appeals and 48 more are directed against the judgments of the Second Additional District Judge, Kanpur, dated August 21, 1978, made in connected References under Section 18 of the Land Acquisition Act. The two appeals, which are being decided by this judgment, are First Appeal No. 429 of

1978, Babu Ram and Ors. v. State of U.P. arising out of Land Acquisition Case No. 76 of 1970 and First Appeal No. 438 of 1978, State of U.P. v. Babu Ram and Ors, arising out of the said land acquisition case. We propose to deal with these two appeals together and the judgment delivered in these appeals would be read as judgment in all the other remaining appeals.

2. The land in dispute was situated in village Beri Akbarpur Bangar, Pargana and Tehsil Kanpur. A preliminary notification under Section 4 of the Land Acquisition Act was issued on February 22, 1957 for acquiring 381 acres of land consisting of 364.17 acres of agricultural holding and 16.83 acres of non-agricultural holding. The acquisition proceedings were started at the instance of the Central Government for construction of Indian Institute of Sugar Technology. In appeal 529, there were four claimants, namely, Baby Ram, Ganga Prasad, Shyam Lal and Chhotey Lal. In the said acquisition scheme, 10 bighas 8 Biswas 10 Biswansis Sirdari and 6 Bighas 10 Biswas 10 Biswansis Bhumidhari land (in all 16 Bighas 19 Biswas), belonging to the said four persons jointly was also acquired. The Land Acquisition Officer fixed compensation by Award No. 11 dated 1st July, 1959. The Land Acquisition Officer awarded a sum of Rs. 2,400/- for the well to the claimants and Rs. 3,715.40 Paise as total compensation to these claimants.

3. On August 10, 1959, the claimants filed applications before the District Land Acquisition Officer for reference under Section 18 of the Land Acquisition Act. They contended that the well had been under-valued, and that they should have been given compensation of Rs. 5000/-. They also claimed that the market value of the land in the village in question was Rs. 5000/- to Rs. 6000/- per Bigha, and that they should have been awarded compensation at that rate.

4. On November 10, 1975, the Land Acquisition Officer made the reference to the District Judge with the recommendation that the claim was exaggerated and was liable to be rejected. After the reference was received by the District Judge, the Collector claimed that the compensation awarded by the Land Acquisition Officer was reasonable and was not required to be interfered with. The State admitted that the claimants' land had come within the extended limits of the NagarMahapalika, but denied that its market value could be Rs. 5000/- or Rs.

6000/-per bigha.

5. On the pleadings of the parties, the following two issues were framed:

1. Whether the compensation awarded is inadequate and unfair?, and
2. What should be the reasonable compensation?

6. By the impugned judgment dated August 21, 1978 the learned Second Additional District Judge enhanced the compensation to Rs. 2000/- per bigha. Both the parties were, however, dissatisfied with the award. Consequently, the State of U.P. filed Appeal No. 438 whereas Appeal No. 429 was filed by the claimants Baby Ram and others.

7. For proving their claim, the claimants produced three witnesses, namely, Shyam Sunder, Nathu Ram and Babu Ram. Shyam Sunder gave the distance between G. T. Road and Bithoor Road. The next witness Nathu Ram had four or five bighas of land in his cultivation. He deposed that he had taken the aforesaid land from one Radha Mohan, and that he was cultivating the same. According to him, the land acquired could yield Rs. 250/- per bigha as income. In the cross-examination he had to admit that his name was not recorded in the revenue papers. He could not give the details of expenditure. From a reading of his statement, it appears that he had no knowledge about the income from cultivation, and that he had been procured by the claimants to depose in their favour. His testimony did not inspire confidence. The third witness was Babu Ram. He admitted that his land was situated at a distance of seven miles from the Head Office of Kanpur. According to him, although no irrigation facilities were available, the land could yield Rs. 400/- to Rs. 500/- per bigha as net income. In the cross-examination however, he was shattered completely. He admitted that he could not give any detail of the income or expenditure incurred by him during a particular crop or year. The learned Additional District Judge appears to be right in refusing to rely on the testimony of these witnesses. In our view also, the statements of these witnesses are not helpful in determining the market value of the land acquired.

8. Next comes the documentary evidence which was led by the claimants to prove the compensation claimed. For the said purpose, the claimants produced seven documents. Exhibit-1 was a copy of the award dated 28th February, 1975, in Reference No. 13 of 1973, Gulab and Ors. v. State of U.P. Since we will deal with each of these documents separately, we need not mention the grounds here which weighed with us in not placing reliance on them. Exhibit-2 is also an award in the matter of arbitration between Uma Shanker Gupta and Union of India, dated November 16, 1973. Exhibit-3 is a copy of the judgment of the High Court given in first Appeal No. 82 of 1980. Ext.-4 is a copy of an award given by the Tribunal, Nagar Mahapalika, Kanpur, dated 9-11-1962- Exts.-5 to 7 are the sale deeds executed on 19-7-1954, 5-8-1953 and 27-11-1963 respectively.

9. Before dealing with the evidence of the claimants and thereafter that of the State Government, it appears appropriate to mention that the market value which is payable to a person whose land is acquired is not what the persons who take the land will gain by taking it, but what the person from whom it is taken will lose by having been taken from him. The meaning of the expression 'market value' and the factors to be considered in determining it have been succinctly stated by the Supreme Court in *Raghubans Narain Singh v. State of U.P.* (AIR 1967 SC 465), thus:

'Market value on the basis of which compensation is payable under Section 23 of the Act, means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition with all its existing advantages and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired.

10. For the purposes of determining potentiality, the Supreme Court said:

'It is not the fancy or the obsession of the vendor that enters the market value, but the objective factor, namely, whether the said potentiality can be turned to account within a reasonably near future.'

11. It is, therefore, a question of fact in each case as to whether a particular land has the potentiality of being used as a building site. This factor has to be decided on the basis of the evidence led by the parties. In this connection, it is worthy of being noted, as said by the Supreme Court in *Chaturbhuj Pande v. Collector, Raigarh* (AIR 1969 SC 255) that:

'The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life,'

12. It is settled that to determine compensation is not an exact science. The question of fair compensation is not algebraic problem which could be solved by abstract formula. There is an element of guess work inherent in most cases involving determination of market value of the acquired land. The basic thing, however, is to keep into account the relevant factors while so doing.

13. The evidence of the claimants could be divided into two parts. The first part consists of sale deeds, and the second is those of judgments and awards. The claimants filed three sale deeds, which were Exhibits 5, 6 and 7. Ext. 5 is a sale deed dated 19-7-1954 executed by Natha in respect of 2 Biswas of land of village Beri Akbarpur for a sum of Rs. 600/-. From the description given in the sale deed it appears that this land was situated adjoining to a house. This sale deed was discarded by the court below on the ground that this was for a very small piece of land situated adjacent to houses. The ground given appears to be fully justified. Under the law, it is settled that the transactions of small plots can afford no real assistance when a large area has to be valued.

14. In *Smt. Padma Uppal v. State of Punjab* (AIR 1977 SC 580), the Supreme Court observed that it was well settled that in determining compensation the value fetched for small plots of land could not be applied to the lands covering a very large area inasmuch as large area of land could not possibly fetch the price at the same rate at which the small plots are sold. This decision was followed and approved by the Supreme Court in *Prithvi Raj v. State of M.P.* (AIR 1977 SC 1560). Therefore, the ground given for discarding the sale deed appears to be well founded.

15. The next sale deed is Ext. 6 dated 5-8-1953. This sale deed is also liable to be discarded on the same ground on which Ext. 5 could not be accepted. Under Ext. 6 a very small piece of land was sold. An exemplar in respect of a small piece of land cannot be a good evidence for determining the market value of a big portion of land. The court below, therefore, rightly discarded this document as well.

16. The third sale deed Ext. 7 dated 27-11-1963 was executed by Brij Mohan Lal Misra in respect of 1000 square yards of land of plot No. 360, situated in Kalyanpur Kalan. This land was sold for the construction of a factory. The sale deed was rightly ignored on the ground that it was a sale deed executed much after the notification with which we are concerned in the present case. This exemplar of the year 1963 could not help in determining the value of the land as it was in 1957.

17. So far as the other documents were concerned, they consisted of the awards and the judgments of the Tribunal and the High Court. The learned Additional District Judge has given cogent and good reasons for discarding them. We are also of opinion that these documents do not afford any help in finding out the valuation of the land acquired.

18. Ext. 1 dated 28-2-1975 is the award given by the Nagar Mahapalika Tribunal in respect of the land of village Beri Akbarpur. In this case the notification was issued in the year 1946. This exemplar was ignored on the ground that it was of a time much prior to the present notification of the year 1957. We agree with the reason given by the learned Additional District Judge for discarding it.

19. Ext. 2 was the award dated 16-11-1973 of the District Judge, Kanpur. A bare reading of the award showed that the land, which was the subject matter of that case, was situated in an area which had many potentialities attached to it. The market value having been determined in this case in respect of the year 1961, could not be of any help for finding out the valuation of the year 1957.

20. Ext. 3 dated 31-8-1972 was the judgment of the High Court in respect of the land situated in village Nauri Khera on Kalpi Road. The High Court found that the land was situated in an area where large number of factories had already come

into existence. Therefore, the land, which was the subject-matter of acquisition of that case, was found to have the potentiality of being used as a factory site. This judgment is, therefore, of no help in finding out the valuation of the land acquired.

21. The last document was Ext. 4. This was the award of the Tribunal Nagar Mahapalika dated 9-11-1962, in respect of land situated in Juhi, acquired for abadi site. The learned Additional District Judge has given various reasons, with which we agree, for discarding them.

22. Thus, for the discussion made above, we find that there was no satisfactory evidence from the side of the claimants to prove their claim of compensation to be fixed at the rate of Rs. 5000/- or Rs. 6000/- per bigha.

23. The learned Additional District Judge, however, referred to the evidence adduced from the side of the State Government. The first exemplar filed by the State was the certified copy of the sale deed dated 22-2-1957. This incidentally appears to be of the same date on which the notification under Section 4 had been issued by the State Government. Under this sale deed, 1 bigha 11 biswas of land had been sold for Rs. 1,860/- which means that on the date on which the compensation had to be fixed the land was sold at Rs. 1200/- per bigha.

24. The next document was the copy of the judgment of the Additional District Judge, Kanpur, in respect of the lands relating to the same scheme. The finding arrived at in that case was that compensation should be fixed @ Rs. 1500/- per bigha. Relying upon the two exemplars filed by the State Government, the court below fixed the value of the land @ Rs. 2,000/- per bigha.

25. The argument of the State Counsel, however, was that when there was no evidence from the side of the claimants and the evidence filed by the State Government showed that the land was being sold @ Rs. 1500/- per bigha, the court below committed an error in fixing the compensation at Rs. 2000/- per bigha. The submission is not acceptable to us. After having taken into account the fact that the land was situated in an area which had the potentiality of being used as a building site, we find that the compensation of Rs. 2,000/- per bigha was correctly borne out from the evidence of the parties and that it was not required to be

interfered with. We have already said above that an element of guess work is permissible in assessing compensation.

26. In the instant case, while fixing compensation @ Rs. 2000/- per bigha, the learned Additional District Judge was right in valuing the land by Belts. It was open to the court below to test the evidence placed before it on the basis of probabilities. The court below considered the exemplars of the State Government and other circumstances as well as the evidence of the claimants while holding that the correct value of the land to be assessed could be Rs. 2,000/- per bigha. We are unable to subscribe to the argument of the learned counsel for the State that the judgment of the court below is based on speculation and conjecture. Since the judgment of the court below holding that compensation was payable @ Rs. 2000/- per bigha, was based on relevant considerations, it is not possible to set aside the same.

27. In the result, the appeals fail and are dismissed with costs.

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