Union of India Vs. Brij Mohan Gupta (Decd.) and ors.

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Court : Delhi

Decided On : Apr-03-1972

Reported in : AIR1973Delhi64

Judge : S.N. Shankar and; B.C. Misra, JJ.

Acts : Land Acquisition Act, 1894 - Sections 18

Appeal No. : First Appeal Nos. 79-D and 86-D of 1963, against judgment and decree of Hans Raj, Addl. Dist. J., De

Appellant : Union of India

Respondent : Brij Mohan Gupta (Decd.) and ors.

Advocate for Def. : L.R. Gupta and ; R.S. Kela, Advs.

Advocate for Pet/Ap. : R.K. Mehra, Adv

Judgement :

Shankar, J.

1. This order will dispose of Regular First Appeal Nos. 79-D of 1963 and 86-D of 1963.

2. By Notification dated April 24, 1957. issued under Section 4 of the Land Acquisition Act. hereafter called 'the Act', the appropriate Government acquired

118 bighas and 12 bids was of land situated in Basaidarapur estate for the Central Dairy under the Milk Supply Scheme. this are included land measuring 4 bighas and 19 bids was forming part of field Nos: 2860/1133/4 situated near Railway Station. Patel Nagar. owned by the appellants in R.F.A. 86 -D of 1963, hereafter called the 'claimants.' The Land Acquisition Collector. by his award dated November 6, 1958. assessed the market price of the acquired land at Rs.3.50 per sq. yd. Dissatisfied with this valuation the claimants applied for reference to the Court under Section 18 of the Act. The learned Additional district Judge. after recording evidence and hearing the parties. assessed market value of the claimant's land at Rs.10/- per sq. yd. In R.F.A 86-D/63 the claimants have assailed this assessment and contend that the market rate should have been assessed at Rs.17.90 per sq. yd. while Union of India. as appellant in R.F.A. 79-D/63 has contended that the learned Additional District Judge erred in enhancing the compensation beyond what was granted by the Land Acquisition Collector.

3. At the stage of reference before the learned Additional District Judge, Union of India, also maintained that the claimants were not the heirs of the deceased owner Prem Raj and that no claim under Section 9 of the Act in respect of the acquired land had been preferred and for that reason the claim for enhancement was incompetent. The learned Additional District Judge framed the first two issued on these pleas. He decided the first issue in favor of the claimants and the second issue was not pressed before him. these two contentions have not been canvassed before us in this appeal. The only question agitated by the parties before us is as to the market value of the acquired land on the date of Notification under Section 4 of the Act i.e. April 24. 1957.

4. In arriving at the conclusion that the market value of the land was Rs. 10/- per sq. yd. the learned Additional District Judge referred to three transactions of sale evidence by Exhibits A-3, A-5, and A-7 According to the sale deed Exhibit A-5, on December 15, 1956. Pritam Singh purchased 514 sq. yds. of land situated in khampur estate for a sum or Rs.10000/-. This sum included the cost of a foundation that Excluding this cost. market price of the land has been worked by the learned Additional District Judge at Rs. 19.70 per sq. yds. According to Exhibit A-7, another sale deed dated March 1, 1957. a plot of 1200 sq. yds. of land

situated in Khampur was purchased by on Nathu Prasad for Rs. 27,600/-. The market price, according to this transaction. worked out to Rs.23/- per sq. yd . Exhibit A 3 is the mutation in regard to land measuring 18 bids was also situated in Khampur sold by deed of sale dated April 27. 1956 for a consideration of Rs.15.866/-. The market value of and. according to this transaction. works out to Rs.17/- per sq. yd. All these lands, however. the learned Additional District Judge found. were better situated and could not be equated with the acquired land. He then proceeded to consider the case of lands of one Bansi Lal which had been acquired and in respect of which market value had been fixed by order of the Court. Exhibit A-6. Bansi Lal has developed a good part of his land, before acquisition, into a colony known as Amrit Park with residential, commercial and cinema plots; but a part of this land was still undeveloped when Notification under Section 4 was issued on April, 24, 1957. On acquisition compensation payable to Bansi Lal for this land was assessed by the Court by Exhibit A-6 at the rate of Rs. 25/- per sq. yd. for cinema plot Rs. 20/- per sq. yd. for commercial plots, Rs. 17/- per sq. yd. for developed residential plots and Rs. 14/- per sq. yd for the undeveloped plots. The learned Additional District Judge observed that the land of the claimants was not a part of a colony like Amrit Park with all the amenities available to it and also that as it was at some distance from Amrit Colony so it could not be valued at the rates assessed for Bansi Lal's lands. In the background of all these facts, however, in conclusion, he held that having regard to the situation of the acquired land and the fact that Pritam Singh had purchased the land which abutted on the main road at the rate of Rs. 19.70 per sq. yd. and which land was at a distance of two furlongs only from the acquired land, the market price of the acquired land could reasonably be assessed at Rs. 10/- per sq. yd.

5. Shri R.K. Mehra appearing on behalf of the union of India in R.F.A. 79-D/63 contended that reference by learned Additional District Judge to the transactions of sale in respect of lands situated in Kahmapur including the land purchased by Pritam Singh was wholly irrelevant because the acquired land was situated in Basaidarepur and not Khampur. We are unable to sustain this submission. A reference to the 'Aks Shajra' Exhibit R.6 produced by the union of India shows that Basaidarapur and Khampur estates are adjacent to each other, divided by a common boundary wall. Exhibit A-4 'Shajra Kishtwar of Mauza Khampur and

Basaidarapur' also bears out this fact. According to Exhibit A-W 3/3. 'Goshwara Fasalajat' showing distance of the acquired land from the various lands cited in evidence, by way of instances, the land purchased by Pritam Singh, though in Khampur estate, was at a distance of 429 yards and the land forming the subject-matter of sale deed Exhibit A-7 also in Khampur, was at a distance of 517 yards only from the acquired land. Evidence on the record thus unambiguously showed that these lands were situated in the same locality. In these circumstances the learned Additional District Judge was fully justified in taking into account the prevailing market rates in respect of lands which were in the same locality and the fact that they fell within two different estates fro purposes of Revenue record was not material in the facts of this case. Lands situated in both these estates had been acquired for Shadipur Extension Scheme as observed by the learned Additional District Judge, and this had similar and equal repercussions in respect of lands situated in both the estates.

6. The learned counsel them urged that the Additional District Judge should have relied on the transactions of sale proved as Exs. R.1, R.2, R.3, R.4 and R.5 which all related to lands in Basidarapur. This submission also is without merits.

7. Exhibit R.1 and R.3 relate to sales that took place in January, 1953 and December 1953 respectively according to the recitals in the mutations. Original sale deeds in pursuance of which these mutations were made were not produce in Court. Assuming that these sales were made at the rates prevailing in 1953 it was not the case of the Land Acquisition Collector that there were no sales in the locality after 1953 other than these two transactions. In fact the claimants have proved on record transactions relating to subsequent years. Then again in regard to the land acquired the Land Acquisition Collector in his award under the heading 'Fair and Reasonable Value' has said:--

'The land under acquisition is situated within the municipal limits and near business and residential buildings and localities such as Patel Nagar, Factories Area of Najafgarh Road, Patel Nagar Railway Station etc. It is bounded by the Ramjas Hills and the boundary of village Khampur towards the East; the Railway lines and Patel Nagar Railway Station towards the West, some built-up area situated beyond the developed area of Shri Bansi Lal Kaura towards the South. This land has potentiality and special adaptability for building purposes.

'Some land out of it has been partially developed by Shri Bansi Lal Kaura, Sole Proprietor of the All India Land and Finance (Housing and Construction Co.) known as Amrit Part Colony by laying out metalled roads, Water-pipes, fire hydrants, storm-water-drains, etc. but much remains to be done by the him for full development of the colony'.

8. Land acquired had thus a potential value and its market rate was not static. Transactions of sale relating to the year 1953 could form no basis for determining the market price of the acquired land in April, 1957 and the learned Additional District Judge very correctly ignored the mutations Exhibits R. 1 and R.3

9. Coming to the other mutations we find that Exhibit R. 2 is a copy of mutation made on March 30 1957 in respect of an extensive piece of land purchased by Bansi Lal (the same person whose land has been assessed in Exhibit A. 6) for a sum of Rs. 2,50,000/-. Annexure R. 4 is also a mutation made in October, 1955 in respect of 3 bighas 10 bids was of land purchased by the same Bansi Lal. It is stated by the Land Acquisition Collector in the award relating to the acquired land that Bansi Lal appeared as a witness before him and stated that he had purchased the land in 1951. The learned counsel for the claimants urged that what had happened was that Bansi Lal had entered into agreement for the purchase of the land in 1951 and then in pursuance of these agreements he subsequently obtained sale deeds and mutations. He said that the sale deeds executed in favor of Bansi Lal would bear out these facts. Union of India apart from tendering the mutations R. 2 and R. 4 in evidence led no other oral evidence to prove the transactions recorded in them. It would be unsafe in these circumstances to place any reliance on Exhibit R.2 and R.4 and to adopt them for the purpose of assessing the market value of the acquired land. In the absence of the sale deeds it is not possible to find out whether rates disclosed by these mutations were the rates agreed upon and settled in 1951 or at any time thereafter.

10. The same is the position in regard to the transaction evidenced by the mutation Exhibit R. 5. This sale took place by means of a document registered on

August 12 1956 but the original sale deed for reasons unexplained has not been produced.

11. The contention thereforee that the learned Additional District Judge should have assessed the market value of the acquired land on the basis of mutations Exhibits R. 1 R. 2 R. 3 R. 4 and R. 5 cannot be sustained.

12. Shri Lala Ram Gupta appearing for the claimants in regular first appeal 86-D/63 maintained that the learned Additional District Judge had erred in holding that the market value of the acquired land could not be assessed on the basis of the valuation in regard to the lands of Bansi Lal. The learned counsel placed strong reliance on Exhibit A.6 the other of the court fixing the market value of Bansi Lal's land and pointed out that rates determined by the Additional District Judge in this order were subsequently confirmed by the High Court in appeal in Rfa No. 62-D of 1962 decided on 16-11-1966 (Punj). He maintained that the learned Additional District Judge should have valued the acquired land on the basis of the rate fixed for developed plots of Bansi Lal after taking into account and giving allowance for the cost of development. There is no merit in the latter submission. No evidence was led before the learned Additional District Judge as to the cost of development or the probable expenses that would be incurred in developing the acquired land. It is not open to the claimants in these circumstances to make out a case at the stage of appeal for which no foundation had been laid at the stage of trial.

13. After a careful consideration of the evidence on record and hearing the learned counsel for the parties we are, however, of the view that acquired land is comparable to the undeveloped land of Bansi Lal the market rate of which on March 24, 1957 had been determined by Exhibit A. 6 to be Rs. 14/- per sq. yd. The learned Additional District Judge has not adopted this valuation on two grounds: firstly he observed that the acquired land was at a distance from the undeveloped land of Bansi Lal and secondly, he said that the undeveloped plots of Bansi Lal were a part of Amrit Colony with all the amenities of a Colony available to them after development. which amenities were not available to the land of the claimants. Both these reasons do not stand scrutiny. Reference to Exhibit A 4 shows that the lands of Bansi Lal are contiguous to the acquired land towards the north. There is

no land in between the two. It is, thereforee, not correct to say that the acquired land is far from Bansi Lal's lands as observed by the learned Additional District Judge. Similarly, it is not correct to say that the amenities that could be available to the undeveloped land of Bansi Lal after development would not be available to the acquired land. Brij Mohan one of the claimants, appeared as A.W. 4 before the learned Additional District Judge. He stated that he had arranged with Bansi Lal that he would supply sewage line for purposes of the acquired land also. In cross-examination he further stated that this agreement had been reduced to writing and that he had already filed this agreement with the Land Acquisition Collector. Nothing has been brought to our notice to doubt this statement of Brij Mohan. We, thereforee, do not see why the acquired land should not be valued at rates fixed for the undeveloped lands of Bansi Lal in Exhibit A. 6 namely Rs. 14/- per sq. yd.

14. It was suggested by Shri Mehra that the undeveloped lands, of Bansi Lal were in fact demarcated plots with roads laid out for them and so the acquired land could not be treated at par with them. Evidence on the record does not support this suggestion. A reference to Exhibit A. 6 shows that the claim laid by Bansi Lal in respect of the undeveloped land of Amrit Colony was not for undeveloped plots but for undeveloped 'area' only. While stating facts in Exhibit A. 6 referring to the claim for compensation as laid by Bansi Lal the learned Additional District Judge has said:

'He demanded compensation of the residential plots in that colony at the rate of Rs. 35/- per square yard for the business premises at the rate of Rs. 45/- per square yard and of the undeveloped area at the rate of Rs. 25/- per square yard and also claimed ....'

The undeveloped area of Bansi Lal was thus only undeveloped land and not demarcated plots. It is true that in the concluding part of the order, Exhibit A. 6 the learned Additional District Judge has used the word 'plot' with reference to the are of the land and not the plots. The relevant part of the order is in the following term:

'Undeveloped plots measuring 1025 square yards at the rat of Rs. 14/- per square yard'.

The use of the word plot in this part of the order in the context of the claim in our view cannot be read to mean that the undeveloped area mentioned in the claim had been demarcated into plots with roads laid out for them.

15. We are thereforee, of the view that the prevailing market rate for the acquired land on April, 24, 1957 for the purpose of compensation payable to the claimants should be Rs. 14/- per square yard and not Rs. 10/- per square yard as assessed by the learned Additional District Judge.

16. Shri Mehra referred to D.L.F. Housing and Construction (P) ltd. v. Union of India, and Mrs. V. Kannia Lal v. Collector of Madras : AIR1966 Mad82 and urged that in arriving at the market rate of undeveloped land due allowance should be made for the cost that would have been incurred in the development of the plots and the laying of the road etc. This line of arguments by either of the parties is wholly uncalled for because as we have already said they did not lead evidence on this line before the Additional District Judge and it is not possible for this Court to work on the basis of pure surmises and conjectures to arrive at any definite figure of market rate at the relevant time. The question of determining market value after making allowance for the cost of development etc., thereforee does not arise. The authorities cited by the learned counsel are thus of no help in this case.

17. The learned counsel also cited M.S.O.S.P.V. Velayudam Chettiar v. The Special Teshildar for Land Acquisition, Madurai, : AIR1959 Mad462 and contended that the instances of sale cited by the claimants related to small parcels of land and they could not form the basis for determining the value of the large tract of the acquired land. This principle is also of no relevancy in this case. We have not relied on any instance of a 'Petty Extent' as referred to in the cited case. Our decision is based on the market value of the adjacent undeveloped land of Bansi Lal which measured 1025 sq. yd. according to Exhibit A-6. The ratio of the cited decision, thereforee is no at all attracted to this case.

18. In the result, we dismiss with costs R.F.A. 79-D/63 filed by the Union of India and partially accept R.F.A. 86-D/63 filed by the claimants to the extent that instead of Rs. 10/- per square yard the claimants shall be entitled to compensation for the acquired land at the rate of Rs. 14/- per square yard. solarium payable to the

claimants will also be calculated at the rate of Rs. 14/- per square yard. The claimants will also be entitled to interest on the enhanced compensation at the rate of six per cent per annum with effect from the date of payment. Union of India shall pay proportionate costs of R.F.A. 86-D/63 to the claimants.

19. Counsel's fee in both the appeals Rs. 200/-.

20. Order accordingly.