

Anar Singh Vs. Union of India

Anar Singh Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/692871

Court : Delhi

Decided On : Apr-17-1984

Reported in : AIR1985Delhi298; 26(1984)DLT367; 1984RLR571

Judge : A.B. Rohatgi and; G.C. Jain, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4

Appeal No. : Regular First Appeal No. 396 of 1976

Appellant : Anar Singh

Respondent : Union of India

Advocate for Pet/Ap. : Arun Kumar,; S.K. Kaul and; C.K. Mahajan, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) Pursuant to a notification under Section 4 of the [Land Acquisition Act, 1894](#) the Act') dated 24th October, 1961, the appeallant's land was acquired by the respondent. Union of India. The land was situated in village Jasola admeasuring 8 bighas bearing Khasra No. 18 min in which the appellant has got only half share, i.e., 4 bighas only, made the award (No. 14/74-75). He offered compensation to the appellant at the rate of Rs. 4500 per bigha. On a reference under Section 18 of the Act, the learned Additional District Judge enhanced the compensation from Rs.

4500 to Rs. 4900 per bigha. He found that there was no material before him to determine the market value of the land. So he said : "We have to be guided by our own experience. The Land Acquisition Collector fixed the market value at Rs. 4500 per bigha. I think it should be Rs. 4900 per bigha and I assess it accordingly.' From his order dated 9-5-79 the appellant appeals to this court.

(2) Village Jasola is situated on the two sides of Mathura Road. On one side it adjoins village Bahapur. On the other side of the road village Okhia as well as Bahapur adjoin village Jasola. Counsel for the appellant concedes that there is no sale transaction in this village evidencing the market value of the land on 24-10-61, the date with which we are concerned. But he says that the acquired land had great potential value which factor has been completely ignored both by the Land Acquisition Collector as well as by the additional district judge. He has brought to our attention the fact that the market value of the land village Bahapur was ranging between Rs. 14.25 and Rs. 21 per sq. yd. In particular, he referred us to the cases decided by this court in respect of village Bahapur where the market value was determined between Rs. 14.25 and Rs. 21.35 per sq. yard as would appear from the following decisions : 1. Union of India v. Dr. Har Gobind : R.F.A. No. 341171, decided on 2-5-1977(1). In this case, the notification under section 4 was issued on 24-10-61. The market value of the land was fixed at Rs. 19 per square yard. 2. Union of India v. Piare Lal : R.F.A. No. 11-D/66, decided on 16th August, 1976(2). Section 4 notification was of 3-6-1961. The market value of the land was determined at Rs. 20 per square yard. 3. Amrit Singh v. Union of India R.F.A. No. 286/77 decided on 23-5-1979(3). Notification under section 4 was issued on 24-10-61. The market price of the land was determined at Rs. 21,350 per bigha. 4. R. N. Tikku v. Union of India : L.P.A. No. 170/80 decided on 24-8-1980(4). Notification under section 4 was issued on 13-11-1959. The market price of the land was determined Rs. 14.25 per sq. yard.

(3) These cases are no doubt concerning the land of village Bahapur. Village Bahapur as we have seen, adjoins village Jasola on both sides. If the prices of the land in village Bahapur were rising, it is not possible to say that there was no increase in the value of the land in village Jasola. In R. N. Tikku's case, the Division Bench has observed that during those days of 1959 the prices were rising

and there was an increase of Rs. 4 per year. They said, 'one can therefore safely say that the rate of escalation was Re. 1 per square yard for every three months'. We cannot assent to this broad generalisation. But we can say this that there had been an upward trend in market values generally is not only indisputable as a matter of opinion, but is affirmatively supported by satisfactory proof.

(4) It will not therefore be correct to say, as was observed by the learned judge, that there is no material to guide us in this case. There may not be any sale transaction in village Jasola. The transactions of the adjoining village can be a good guide When there is no evidence available in this village. This is well settled.

(5) The learned additional district judge fixed the value of the land at Rs. 4900 per bigha on the hypothesis that the land had no potential. In our opinion he was in error. After all we have to take potentiality into consideration and potentiality means such uses to which land can be put in the near reasonable future. It is the duty of the valuer 'to take into consideration every intrinsic quality and every intrinsic circumstances which tends to push the value either up or down, just because it is relevant to the valuation and ought therefore to be cast into the scales of the balance before he looks to see the resultant figure on the dial at which the pointer finally rests', [per Scott L.J. in *Robinson Brothers (Brewers) Ltd. v. Houghton* (1937) 2 K.B. 445 (5) at p. 469]. Potentiality of the land question is one intrinsic quality which we must take into account. As the Privy Council has said : 'For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined [that time under the Indian Act being the date of the notification under Section 4(1)] but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is self-evident.' (*Raja Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer* : 1939 Mad. 532 (6)).

(6) In our opinion the learned judge assessed the value on a totally wrong basis. Potentiality is a right and proper subject for consideration in ascertaining the compensation to be paid on expropriation. Prospects and possibilities of future development ought to be taken into account in determining the price to be paid for

property compulsorily acquired.

(7) One other observation must be made here. The learned judge went by his experience. But what is that experience he has not told us. A case has to be decided not on one's own predilections but on such materials as are available to the valuer. If there are no instances of sale available of this very village it is permissible for the valuer to go to the adjoining village and ascertain the value of the land situated in close proximity. He can then give proper weight to the factors both favorable and unfavorable in the process of evaluation. It has to be remembered that the 'value of the potentiality must be ascertained' by the valuer 'on such materials as are available to him and without indulging in the feats of the imagination'. [Raja Vyricheria Narayana Gajapatiraju (supra) at p. 548].

(8) Mr. Mahajan, on behalf of Union of India, made a twofold submission. First he said that the land in village Jasola on the other side of the road was not as advantageous as was the land on this side of the road adjoining Bahapur. He said that the acquired land was situated at a distance of two furlongs from the main Delhi Mathura Road. He submits that on one side there was development and on the other side with which we are concerned there was much less development. Secondly, he said that the acquired land was subject to the provisions of the Delhi Land Reforms Act while Bahapur land was not. The fact that it was subject to the provisions of the Delhi Land Reforms Act is not disputed by Mr. Arun Kumar, Counsel for the appellant. But he says that if land in village Bahapur as on 13-11-59 can be evaluated at Rs. 14.25 per sq. yard as was done by the Division Bench in R. N. Tikku's case it would not be unjust and unfair to evaluate the appellant's land at Rs. 10,000.00 per bigha as on 24-10-1961. We cannot lose sight of the fact that this village Jasola is adjoining Bahapur. This also must be borne in mind that notification under section 4 was issued on 24-10-1961. One thing is certain. The acquired land had great potential whether it was situated on this side of the road or the other side of the road.

(9) In our opinion, it will be fair and just to award compensation at Rs. 10,000.00 per bigha as claimed by the appellant. We accordingly order that the appellant will be paid compensation at the rate of Rs. 10,000.00 per bigha. Whatever has

already been paid to him will be deducted. In addition to compensation he will also be entitled to solarium at the rate of 15 per cent and interest at the rate of 6 per cent per annum from the date of dispossession till payment and costs.

(10) As there is a difference of more than three years between the notification under section 4(24-10-61) of the Land Acquisition Act ('the Act') and the declaration under Section 6 of the Act (7-12-66) the owner will also be entitled to interest at the rate of 6 per cent per annum on the market value of the land under section 4(3) of the Land Acquisition (Amendment & Validation) Act, 1967 provided there is no overlapping in the payment of interest under Section 28 of the Act and Section 4(3) of the Amendment Act.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com