

inder Prasad Vs. Union of India

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Court : Delhi

Decided On : Sep-04-1984

Reported in : AIR1985Delhi304; 1985RLR147

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

Acts : Land Acquisition Act - Sections 4, 18, 30 and 31

Appeal No. : Regular First Appeal Nos. 119 and 507 of 1979

Appellant : inder Prasad

Respondent : Union of India

Advocate for Pet/Ap. : Hari Shankar and; Rattan Lal, Advs

Judgement :

Avadh Behari, J.

(1) These are 2 Cross appeals from the order of Additional D.J. Dt.23.12.78.

(2) Pursuant to notification of 6.3.67, u/s 4 of Land Acquisition Act (the Act) the Union of India, respondent acquired building No. 20, Tilak Marg, New Delhi owned by the appellant. In due course the Land Acquisition Collector made the award. He awarded compensation at Rs. 100.00 per sq. yard for the land. For the super-structure standing on the land he awarded Rs. 62,270.00. For trees he gave Rs.

606.00.

(3) On reference u/s 18 of the Act the learned Additional D.J. enhanced the compensation. For the land he awarded to the owner Rs. 150.00 per Sq. yd. instead of Rs. 100.00. For super-structure he awarded Rs. 99. 270.00. This meant an increase of Rs. 37,000.00 over and above what the Collector had awarded to the land owner for the super structure. The learned judge held that out of the compensation so awarded half will go to Capt. Mahabir Prasad Memory Trust and half to the appellant, Inder Persad (now dead and represented by his widow Smt. Sneh Lata Prasad). from the order of the Additional D.J. these two appeals have been brought R.F.A. 119/79 is the owner's appeal. R.F.A. 507/79 is the appeal of the taker of the land, Union of India.

(4) R.F.A. 119/79 is the owner's appeal only one claim has been made and it is about the value of the land. Mr. Hari Shanker learned counsel for the land owner, says that the land ought to have been valued at Rs. 200.00 per Sq. yd. For this contention he has mainly relied on sale deed of 2..2.65 in respect of 24, Feroz Shah Road, This property, built on a plot of land admeasuring 1.315 acres, was sold for a sum of Rs 23 lacs by Smt. Vidya Malhotra to Ssr Embassy. One Mr. R.C. Mehta. architect, was examined by the land owner. He deposed that the super structure on 24, Feroz Shah Road, in his opinion, should cost about Rs. 2 lacs. The value of the land on his estimate came to Rs. 21 lacs. The market price of the land on this basis works out to Rs. 330.00 per Sq. yd. This was his evidence. There is no evidence in rebuttal as against this.

(5) At the stage of the L.A. Collector a curious thing happened in this case. It is mentioned in the award of the Collector that 'the Land and Development Officer has intimated that the market value fixed by the Government for Tilak Marg is Rs. 150.00 per sq. yd. on the material date, that is 6.3 1967. These values have been fixed by the Government. for the purpose of levy of various charges under the lease.' But the Collector did not accept the value intimated by the L.&D.O. The reason he gave is that Tilak Marg area can be used for institutional purposes only. thereforee he reduced the value as given by the L.&D.O.; by 1/3rd and assessed the value of the land at Rs. 100.00 per sq. yd. At the stage of reference the

learned Judge did not agree with this method of reduction. He acted on the information 'intimated by the L.& D.O. to the Collector. According to the intimation he fixed the market value of the land at Rs. 150.00 per Sq. yd.

(6) In our opinion the method adopted by the Collector as well as well by the learned Judge is open to serious objection. The Act requires the Tribunal assessing compensation to determine the market value of land at the relevant date, which under the Act is the date of notification under S. 4 of the Act. Mr. Rattan Lal, counsel for the Union of India, has drawn our attention to a booklet issued by the Government of India. In this booklet the land values of lease hold lands in various localities of New Delhi and old Delhi for residential and commercial purposes have been given as prevailing in 1965. It is interesting to note that Barakhamba Road which is in the close vicinity of Tilak Marg has been valued at Rs 200.00 per sq. yd. for residential purposes and Rs. 400.00 per sq. yd. for commercial purposes in 1965. No price is given of Tilak Marg in this booklet. In our opinion this booklet has no evidentiary value.

(7) The time honoured test to determine the value is the price which a willing purchaser will pay to a willing seller. For that actual transactions freely entered into by the seller and the purchaser must be examined.

(8) The owner is entitled to the value of the land at the time of S. 4 notification. The measure of compensation is the market value. The value of the land must be taken to be the amount which if sold in the open market by a willing seller it might be expected to realise. Market value is the price which a seller might reasonably expect to obtain from a willing purchaser. What the L. & D.O. has 'intimated' is not a fair test of value. The market value cannot be ascertained from an officer, however highly placed, or from a booklet or a directory. This was the main source of error in the Collector's and the Judge's determination. They admitted into their mind these very considerations which the Act directs them to exclude. The market value must be ascertained from actual transactions of neighbouring properties of a similar character. The price paid for comparable properties in the neighborhood are the best evidence of the market value. The 'willing buyer' and 'willing seller' concept is well rooted in the theory of compensation in compulsory acquisition.

The law depends entirely on the concept of market value' because there is no other objective test available at present, and objectivity is vital. The L. & D.O. is a misleading guide because his estimate is subjective and largely based on his own opinion. We have, therefore, come to the conclusion that the Collector and the Judge assessed the value of the land on a totally wrong basis.

(9) Ferozshah Road sale was a genuine and not a collusive transaction. It must be accepted as a true measure of compensation, though for 1965. It represents what a willing purchaser was prepared to pay to a willing seller as a result of 'a friendly negotiation'. We feel bound to differ from the learned Judge, and for that reason to estimate more highly the property, the subject matter of this appeal. We hold, as we ought to, that Ferozshah sale was a trustworthy guide to the value of the appellant's land. What the L. & D.O. had 'intimated' as the price of land, ought not to have been allowed to enter into the judicial verdict at all. Concrete instances and actual transactions of sale are the material on which the judgment of a properly instructed tribunal dealing with assessment of compensation ought to be. Not on information or intimation given by an outside authority.

(10) The truth of the matter is that neither the collector nor the court paid any attention to sales adduced in evidence. If there is one single method for determining compensation more important than others, it is this, the value of the land shall be taken to be the amount which if sold in the open market by a willing seller might be expected to realise.

(11) The land owner in the present case gave evidence of land prevailing in the Diplomatic Enclave, Barakhamba Road and Feroz shah Road. It is true that there is no evidence of sale of any property in Tilak Marg. But that does not mean that the market price of the land in the neighborhood cannot be admitted into evidence. If there is no sale at Tilak Marg we have to go to the nearby locality and neighbouring streets to find out the market value of the land at the relevant time. In our opinion 24 Ferozshah Road sale is a most apposite transaction illustrating the market value of the land at Tilak Marg at the relevant time. It is a safe and reliable guide to the market value. 24, Ferozshah Road was sold in 1965. We are concerned with 1967. The price of the land of 24, Ferozshah Road was Rs. 330.00

per sq. yd. as was deposed by Mr. R.C. Mehta, architect. It was price in 1965, as we have said. We, therefore, have no hesitation in awarding to the land owner Rs. 200.00 per sq. yard on account of land as has been claimed by her. This appears to us to be a most modest claim. It is in no way an extravagant claim. We are inclined to think that the expropriated owner made a rather low estimate of the worth of his own property. Before the collector he claimed only Rs. 200.00 per sq. yd. for the land. If he had asked for more we would have given him more. There is evidence that his property was worth more than what he claimed. Rs. 200.00 per sq yard in a fashionable locality such as Tilak Marg in the heart of metropolis in 1967 is, by all accounts, a conservative estimate.

(12) Mr. Rattan Lal on behalf of the Union of India has argued, that Ferozshah Road ought not to be taken as a guide because it is so close to Connaught Places and Connaught place, he says, is essentially a commercial locality. We do not agree, Ferozshah Road is a residential locality. That it is situated near Connaught place is true. But that is true of Tilak Marg equally. All roads lead to Rome. In any case we have not awarded to the land owner Rs. 330.00 per sq. yard as was the price prevailing in 1965, at Ferozshah Road. We have awarded only Rs. 200.00 per sq. yard which was claimed by her. It is a matter of common Knowledge that the prices were appreciating and there can be no doubt that between 1965 and 1967 there was an upward trend in the market.

(13) Mr. Rattan Lal has also questioned the finding of the learned Judge as to the value of the superstructure. He has argued that the L.A. Collector was right in awarding Rs. 62,270.00 and that there was no case for increasing it by a sum of Rs. 37,000.00 as was done by the learned Judge. This is a fallacious argument. The learned Judge accepted the evidence of the Government's own witness Sh. B.D. Sharma, Assistant Engineer, who was produced by the Union of India in support of their case. The witness evaluated the superstructure at Rs. 62, 270.00. But in cross-examination he admitted that he had not given any thing for earth filling which was required for the construction of the building. It is not denied that the building is at much higher level than the ordinary ground level. In cross-examination he admitted that he had forgotten to take this earth filling item into account. He also admitted that the earth would cost about Rs. 37,000.00. In our

opinion the learned judge was absolutely right in awarding a further sum of Rs. 37,000.00 on account of earth filling. He was, perfectly justified in awarding to the owner Rs. 99,270.00 on account of superstructure.

(14) For these reasons we award to the land owner compensation at the rate of Rs. 200.00 per sq. Yard for the land underneath the superstructure. Whatever has already been paid on account of land, will be deducted. In addition she will be entitled to solarium at the rate of 15% and interest at the rate of 6% per annum from the date of dispossession till payment and proportionate costs of the appeal. Half of the compensation will go to Mahabir Prasad Memory Trust and half will go to Smt. Sneha Lata Prasad.

(15) We may, however, add that the dispute u/s 18, 30 and 31 of the Act is still pending in the Supreme Court between claimant/lessee and the Lesser, L. & D.O. This court in R.F.A. 53/77 decided on 9.10.78 has held that the compensation has to be apportioned between the land owner and the L. & D.O. in the following proportion : owner-75% L.& D.O.-25%. We therefore, order that the amount of enhanced compensation will be paid in the above proportion. This payment will however to be subject to the decision of the Supreme Court in the appeal. The payment will be made if there is no stay order from the Supreme Court.

(16) R.F.A. 507/79 There is no merit in the appeal of the Union of India. We have held that the Collector underestimated the value of the superstructure. We have held that the compensation for the land at the rate of Rs. 100.00 per Sq. yd. is not just. Since the land owner has succeeded in her appeal and we have held that the value of the superstructure has rightly been estimated by the learned Judge at Rs. 99, 270.00 and that land ought to be valued at Rs. 200.00 per sq. yard, this appeal of the Union of India fails and is dismissed leaving the parties to bear their own costs.