

Anil Kumar Sharma Vs. Union of India

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Court : Delhi

Decided On : Jul-21-2000

Reported in : 86(2000)DLT825; 2000(54)DRJ875

Judge : Devinder Gupta and; S.K. Agarwal, JJ.

Acts : Land Acquisition Act, 1897 - Sections 4 and 6

Appeal No. : R.F.A. Nos. 601, 603 and 604 of 1992

Appellant : Anil Kumar Sharma

Respondent : Union of India

Advocate for Def. : Ms. Geeta Luthra. Adv.

Advocate for Pet/Ap. : Mr. Om Prakash. Adv

Judgement :

ORDER

Devinder Gupta, J.

1. These three appeals are being disposed of by a common judgment since question of fact and law are same and similar.

2. The land, which is the subject matter of these appeals, situated in village Kondli was acquired for Planned Development of Delhi. For the lands, which are subject

matter of R.F.A. No.603 and 604 of 1992 notification under Section 4 of the Land Acquisition Act, 1897 (hereinafter referred to as 'the Act') was published on 17.11.1980 and for the lands, subject matter of RFA. No.601/92, the said notification under Section 4 was published on 25.2.1981. It was followed by separate declarations issued in Section 6 of the Act. For the lands covered by notification dated 17.11.1980, Collector Land Acquisition made his Award No.80/82-83 and for the lands covered by notification dated 25.2.1981 he made Award No.57/81-82. Compensation was assessed and offered by the Collector Land Acquisition at a uniform rate of Rs.8,500/- per bigha. Feeling dissatisfied the claimants sought references. Reference court through a common judgment delivered on 20.8.1992 answered the references and while making determination enhanced the amount holding the claimants to be entitled to compensation at the rate of Rs.76,550/- per bigha. Still feeling dissatisfied the claimants have sought further enhancement in the amount of compensation at the rate of Rs.400/- per sq. yard.

3. Learned counsel for the parties were heard and the record was perused. The Collector Land Acquisition noticed the location of the acquired land situated within Revenue Estate of village Kondli stating that it is adjacent to the boundaries of village Dallupura on the South and village Gharuali and Khichripur on the North. The land was stated to be contiguous to U.P. Border and NOIDA industrial area on the East and Kotla Hindon Canal on the West. Though Delhi Land Reforms Act, 1954 was stated to be applicable to the acquired land, but it was observed that it did not affect the potentiality of the land in any way. Most of the area under acquisition was found to be agricultural and irrigated. From a very small portion out of it earth was found to have been removed from 2 to 8 ft. deep converting the area into pits. A puce road was found to be passing through the land under acquisition leading to U.P. Industrial Town known as N.O.I.D.A. The Collector further observed that the land besides being used for agricultural purposes had special adaptability for residential-cum-Industrial purposes. After coming up of NOIDA Township in U.P.. Which at that time was a big industrial complex, the Collector observed that the land of village Kondli had gained importance and its potentiality had also increased. No sale transaction was stated to have taken place in the village during the last five years proceeding the date of notification under

Section 4 of the Act. Collector also observed that though some area of this village had previously been acquired by the Government by various awards but keeping in view the potentiality, which the land had acquired after coming up of NOIDA Township in U.P. the said awards rendered for acquisition, which took place through notifications issued in 1959 and 1973 would not be proper and safer quite for assessing the market value of the land under acquisition, therefore, the same were discarded. Acquired land was also found to be having no similarity with the land, which was acquired through notification issued on 19.8.1978. The Collector noticed that help could be taken of one sale transaction dated 14.2.1974 for 5 bighas for a consideration of Rs.30,000/- located towards North of village abadi of Kondli but for substantial change in situation i.e. (a) the land situate in this village gaining importance because of coming up of NOIDA; and (b) another residential complex having come up quite adjacent to the land under acquisition. The land of village Kondli had gained special adoptability for housing or factory purposes, therefore, the said sale transaction was also discarded. Sale transaction of 2 bigha 14 bids was of land situate in the adjacent village Dallupura dated 18.7.1980 was taken as the base. The average sale price worked out to Rs.12,962.96. It was held that the said land was situated about 1 k.m. away from the acquired land and was having similarity in fertility but slight difference of potentiality for building purpose. Dallupura had already gained importance because of coming up of NOIDA complex and because of building activities of Delhi Development Authority in village Chilla Saroda Bangar. Taking the said sale transaction to be a guiding factor, the Collector opined that Rs.8,500/- per bigha would be the most appropriate and fair market value.

4. The reference court considered the evidence led by the claimants, which was in the nature of various lease deeds executed by the Delhi Development Authority and by New Okhla Industrial Development Authority (for short 'NOIDA'). Considering some of the lease deeds and discarding three other lease deeds, the reference court based his decision in determining the amount of compensation relying on the sale transactions alleged to have taken place in NOIDA. Reference was made to the statement of P.W.I. Shri B.K. Sharma, Assistant Development Manager, NOIDA that land rates in NOIDA varied between Rs. 120/- per sq.yard to Rs.185/- per sq.yard during the period 1979 to 1981. The claimants land as on the

date of notification under Section 4 of the Act was found to be utilised for agricultural purposes. As the rates available were with respect to residential plots, the reference court considered it expedient to take the lowest rates, which were prevalent for the residential plots in the year 1981 to be the guiding factor. Ex.A.11 reflected rate of Rs.135/- per sq.mt. whereas lease deed Ex.A.12 reflected land rate at Rs.175/- per sq. meter. Taking Rs.135/- per sq. meter as the land rate to be the base and allowing a deduction of 1/3rd towards development of drains, electricity and other amenities, the reference court concluded that the market value of the claimants land would be in the vicinity of Rs.90/- per sq. yard or in other words Rs.76.50 per sq. meter and accordingly proceeded to hold fix the market value of the acquired land at Rs. 76,550/- per bigha. This judgment is under challenge in the instant appeal at the behest of the claimant/appellant.

5. The appellant's case is that the Reference Court failed to appreciate the fact that the land in question was practically developed in all respects. It was already surrounded by fully developed land in respect of which electrical, water and sewerage connections had already been laid down and buildings had already come up. The entire land was rather ready to be utilised as building sites. The reference court thus was not justified in making deductions at the rate of 1/3rd towards development charges. Reference Court also lost sight of the fact that the land rates in Delhi at all points of time have been 4 to 5 times more than the land rates of adjacent lands situate in NOIDA. Reference court also erred in not correctly taking the potentiality of the land though it was an admitted position that land could be utilised for residential as well as commercial and agricultural purposes. It was unjust to work out rates only for residential purposes. Rates of industrial plots and commercial plots are many times more than residential plots. The reference court did not take notice of the lease deed Ex.A.1 pertaining to village Kondli wherein total area involved was 43-1/2 bighas. The land rates work out to Rs.208/- per sq. yard in the year 1976. Acquired land being adjacent to the same village, there was no reason why the claimant/appellant's land would not be assessed on that basis by allowance appreciation over the rate evidenced in lease deed Ex.A.1. Lease deeds Ex.A.13, Ex.A.7: Ex.A.8 and Ex.A.9 were also erroneously discarded. Village Dallupura though is not far away but the lands were comparable to the acquired and ought to have been taken as the base for

assessing the market value. Moreover, the reference court also ignored from consideration the schedule of rates notified by the Government of India, wherein rates during the relevant period for residential plots were fixed at Rs.800/- per sq. yard and for commercial area at Rs.1600/- per sq. yard. There was no reason why the claimant's land would not have been assessed at least at the rate, which is now claimed by the appellant.

6. Learned counsel for the respondent on the other hand urged that compensation cannot be awarded on per square yard basis. Being large tract of land, compensation has to be awarded on per bigha. Compensation also cannot be assessed making the land rates of Delhi Development Authority plots as the base since the entire land belonging to Delhi Development Authority meant for allotment is developed one. Even if the same has to be taken into consideration, deduction has to be made at least to the extent of 1/3rd for development. Sale instances or other transaction of adjoining villages cannot be made basis unless it is shown that land of the adjoining villages is comparable to the acquired land. Sale transaction Ex.A.1 also could not form basis for determining the amount of compensation since it was sale of a plot for commercial purpose, which would not be relevant and cannot be taken as a guiding factor for determining the amount of compensation.

7. Location of the land noticed by the Collector and the reference court has already been referred to above. One fact, which deserves to be noticed again is that NOIDA Township was in close proximity to the land in question and the acquired land had as on the date of issuance of notification under Section 4 of the Act great potentiality for being utilised for residential purposes as also industrial and commercial purposes. On the date of notification, there was already a road by the side of the acquired property leading from Delhi to Noida. It is also not in dispute that on 12.5.1976 in an auction a plot of land measuring 2880 sq. meter situated within the same revenue estate and in close proximity to the acquired land had fetched an amount of Rs.7,17,000/- with Rs.17,925/- as ground rent. The plot was a cinema plot and was auctioned by the Delhi Development Authority. The fact that road passed through the land leading to NOIDA, which was already a developed colony is also an admitted fact. NOIDA was not far away from Kondli. In

the vicinity of village already development activity was in progress at the behest of Delhi Development Authority. Collector Land Acquisition himself admitted that the acquired land besides agricultural use had special adaptability for residential-cum-Industrial purposes. As such there is no reason why any deduction should be allowed from the market value reflected in the instance of smaller plot of land.

8. The Supreme Court in Bhagwathula Samanna and others Vs . Special Tahsildar and Land Acquisition Officer. Visakhapatnam Municipality : AIR 1992 SC2298 , noticed that National Highway ran very near to the proposed Port Trust Colony. The lands already acquired for South Eastern Railway Staff Quarters lay to the southern side of the land under acquisition. The colony was found to be in a vast developing part of the Municipal town. Having found that the land is to be valued only a building site and the advantageous position in which land in question lay though forming part of larger area, it was held that the High Court should not have applied the principles of deduction on the ground that it was not necessary in every case that such deduction should be allowed. It was held that where the acquired land is in the midst of already developed land with amenities of roads, electricity etc. the deduction in the value of the comparable land is not warranted, Relevant part of the said decision says:-

'The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle, it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.'

9. Relying on the above decision, a Division Bench of this Court in Ram Kumar and others v. Union of India and another (1997) 66 D.L.T.236, while determining the amount of compensation payable for acquisition of properties situated in Narela, acquired through notification issued on 30.10.1963 under Section 4 of the

Act held that the deduction towards development cost of land from the market value determined, may not be justified on and after incorporation of Article 300-A of the Constitution of India. It was held that deduction if made, will not only be contrary to the provision of Sections 23 and 24 of the Act but also result in not paying the market value for the 1/3rd or 1/4th or to whatever extent the development cost is attributed to the land acquired. To extent to which market value is held as would not be payable, would be contrary to Article 300A of the Constitution.

10. In *Dharam Vir and others v. Union of India* RFA.554 of 1992, decided on 26.9.1996 by a Division Bench of this Court, it was held that acquired land was surrounded by developed area, which had already roads and Railway line, therefore, there was no justification for deduction towards development cost to the extent of 30% or to the extent of 25%.

11. The claimant/appellant also placed reliance upon documents Ex.A3. Ex.A7, Ex.A8 and Ex.A9, which are lease deeds executed by Delhi Development Authority. Reference Court ignored these documents Ex.A3 and Ex.A.7 to Ex.A9 on the ground that the transaction reflected therein relate to allotment of land in Jhilmil Tahirpur Industrial Area. Transaction reflected by Ex.A.3 was relatable to the year 1980, whereas the other transactions were subsequent to the date of acquisition i.e. 13.7.1983, 2.12.1983 and 6.5.1983 respectively. Reference Court observed that no reliance can be placed on the lease deeds relating to industrial plots and that the said lands were put to auction by the Delhi Development Authority. According to him, auction rates never reflect true market rates as auction rates keep on fluctuating time and again depending on various factors. There is always tendency amongst bidders to go on bidding in order to acquire a particular plot. therefore, auction rates cannot be made basis for determining the market value.

12. Judgment delivered by reference court in LAC No.96/85 titled as *Avtar Singh v. Union of India* on 15.10.1987 (copy Ex.A.10) was also discarded by the Reference Court on the ground that the said decision was based upon sole instance of auction of plots, therefore, the same cannot be taken as a good guide to

determining the amount of compensation.

13. Reference court in our view was not justified in having altogether ignored from consideration transaction evidenced by documents Ex.A.3 and Ex.A7 to A9 merely on the ground that the same were post notification transaction. In the instant appeals, notifications under Section 4 of the Act were issued on 17.10.1980 and 25.2.1981 respectively whereas the lease deeds Ex.A.3 and Ex.A7 to Ex.A9 were executed on 13.7.1983, 2.2.1983 and 6.5.1983 respectively.

14. In *State of Uttar Pradesh Vs . Major Jitendra Kumar and others* : AIR 1982 SC876 it was held that reliance by the High Court on subsequent sale deeds for computation of quantum of compensation in the absence of any material showing fluctuation in the market rate cannot be said to be erroneous. In *Mehta Ravindrarai Ajitrai (deceased by L.Rs.) and others Vs . State of Gujrat* : [1989]3SCR743 , it was held that where sale of land adjacent to the acquired land was cited as an instance for determination of market value, the same could not altogether be ignored merely because it was a post-acquisition sale when there was no evidence indicating that there was sharp or speculative rise of the land prices after acquisition. Of course, some deduction from the price indicated in the sale deed had to be made for factors such as rise in prices of land after the acquisition.

15. In *Rupinder Handa Vs . Union of India* : 51(1993)DLT5 also a Division Bench of this Court held that if the market value has to be fixed for a subsequent year or a previous year, then the market value has to be assessed by awarding Rs.1,000/- per bigha more or less as the case may be.

16. The appellants have also placed reliance upon Schedule of Rates notified by the Government of India. The reference court did not place any reliance nor discarded the same. On 21.10.1981 notification was issued by the Government of India, Ministry of Works, Housing and Urban Development on the schedule of market rates in different areas Delhi/New Delhi. It is stated in the notification that the matter of revision of the schedule market rates in Delhi with effect from 1.4.1981 was under consideration. thereforee, land rates have now been revised, which are to be adopted for all purposes except for hotel, cinema and purposes of recovery of unearned increase. As per the notification, Delhi has been divided in 8

separate groups. Group-I being heart of Delhi, namely, Connaught Place whereas Group-II is another important area outside Group-I being highly prices area. Lesser important areas fall in other later groups. For Group-I and Group-II, schedule market rates per sq.meter for residential for the period from 1.4.1981 to 31.3.1983 were fixed at Rs.2,000/- per sq. meter and for commercial purpose at Rs.13,000/- per sq. meter and Rs. 10,500/- per sq. meter respectively. For Group-III rates fixed for residential and commercial plots were Rs.2,000/- and Rs. 6,000/-; for Group-IV Rs. 1600/- and Rs. 4800/-; Group-V Rs. 1200/- and Rs.2400/-; Group-VI Rs. 1000/- and Rs. 2000/-; Group-VII Rs.800/- and Rs.1600/- and for Group-VIII Rs. 400/- and Rs. 800/- per sq. meter. Admittedly the acquired area fall under Group-VII for which the market rates for residential plots were fixed at Rs.800/- per sq.meter and for residential plots at Rs. 1600/- per sq. meter. For Group-VIII lands are those situate in Narela and other outlying colonies for which market rates were fixed at Rs.400/- per sq.meter for residential plots and at Rs.800/- for commercial plots respectively.

17. Ex.A3 is statement as regards auction sale for the Delhi Development Authority for residential and industrial plots in Jhilmil Tahirpur. Average auction rates in respect of residential plots in Jhilmil Phase-1 and II are shown as under:-

'Year Rate per sq.mt.

1980 408/-

1981 701/-

1982 769/-'

18. Whereas average auction rates in respect of industrial plots in Jhilmil Tahirpur Industrial Estate are shown as under:-

'Year Rate per sq.mt.

1982 Rs.1223.96

1984 Rs.1275.90'

19. Ex. A10 is the judgment delivered on 15.10.1987 by Additional District Judge, Delhi with respect to determination of the amount of compensation for 4 bigha 19 bids was of land situate in village Jhilmil Tahirpur, acquired for Planned Development of Delhi by virtue of notification issued under Section 4 of the Act on 27.7.1981. Compensation was held payable at the market value assessed at Rs.625/- per sq.yard. In the said decision lease deed Ex.A.7 was made the base. Allowing deduction of 30% towards development charges, market value was assessed. Appeal was preferred against the said decision of the reference court being RFA.365/89, which was dismissed by a Division Bench of this Court on 4.8.1989. Admittedly, no further appeal was filed to Supreme Court. The decision has thus become final.

20. The determination of the amount of compensation by the reference court in the impugned judgment is by taking the lowest available land rates for residential plots in Noida base and making deduction of 30% there from. The same in our view is not in consonance with the other material, which has been brought on record. Though Noida was a developing area and located in close proximity to the land acquired, which is subject matter of these appeals, but that factor alone could not have been the guide to import rates available in Noida to assess the market value of lands situate in village Kondli. This is so since an instance with respect to village Kondli was available for the year 1976, namely, document Ex.A.1 wherein the rate reflected was Rs.208/- per sq.yard. for a similar plot. Much development had taken place in the locality from 1976 onwards to 1980 and 1981, when acquisition took place. For residential plots in Jhilmil Tahirpur for the year 1980 average rate per sq.meter was Rs.345/- per sq.yard i.e. Rs.408/- per sq.meter. For industrial plot the rate reflected for the corresponding period in Ex.A.3 is Rs.1040/- per sq.yard (Rs.1223/- per sq.mtr.). In the schedule of rates issued by Government of India on 1.4.1991 the minimum market rate of residential plot effective from 1.4.1981 to 31.3.1983 for all out lying colonies in Delhi is shown as Rs.400/- per sq.metr, whereas for Jhilmil Tahirpur the market rate for residential plot during said period is shown as Rs.800/- per sq.metr. These schedule of rates issued by Government of India are not altogether irrelevant but can also be taken note of as relevant guide for determining the amount of compensation for which reference be made to a decision of this Court in RFA No.299/84 titled as Virender Singh etc. v. Union of

India decided on 23.4.1991. It was held by a Division Bench that market value of land fixed by Government of India in 1966 for neighboring locality of Kalkaji would be a reasonable and fair basis for determining the market value of the land.

21. In Chander & Others Vs . Union of India : 48(1992)DLT202 , a Division Bench of this Court also relied upon similar circular issued by the Central Government on market rates in Delhi holding:-

'It is not disputed before us that colony of Kalkaji was carved out of the land of the village Tughlakabad. The colony is developed with roads, parks, schools and having other civil amenities. The circular of the Central Government containing information for guidance of leaseholders fixes the market value of the residential plots in Kalkaji at the rate of Rs.60/- per square yard. It is mentioned in the circular that the land value indicated in it was determined some time in 1965 and though issued in 1966 would not purport to indicate current market value of any particular plot for the purpose of Direct Taxes Act which would depend not only on the exact location of the plot within the specified area but also on the date as on which the valuation had to be made under the respective Acts. The circular also states that the instructions contained therein were for the limited purpose of providing assistance to the lessees in the matter of assessment of charges by the Lesser and were, in no way, to be construed as statutory rules and regulations on the subject. Nevertheless, as held in RFA 299/84 the circular does give reasonable basis of the market value of the land in the colony of Kalkaji in the year 1965. It is, thereforee, not necessary to refer to any judgment fixing the market value of the adjacent land to the lands subject matter of these appeals when sufficient guidelines could be obtained from the Central Government circular of 1966 itself. The market value of the land in all these appeals has, thereforee, to be fixed at Rs.60/- per square yard less 1/3rd of the same deducted for the purpose of development of lands. The latest decision of the Supreme Court on the question of deduction of 1/3rd of the market value is reported in Special Tehsildar Land Acquisition Vishakapatnam Vs . Smt. A. Mangala Gowri, : [1991]3SCR472a .'

22. In Ram Lal v. Union of India and others RFA.131/88, decided on 28.11.1995, another Division Bench of this Court also placed reliance upon the land rates fixed

under similar notification by the Central Government observing:

'This market value, if allowed, would be in consonance with the average rates, as recognised in schedule of rates issued by the L&DO; in Ext.A-5 for the commercial plots located in the same vicinity on the main New Rohtak Road, namely, Rs.2,400/- per sq.yards as on 1.4.1982.'

23. As per schedule of rates notified by the Central Government, lands in the locality in which the acquired land was located as on the date of acquisition, market rates for residential plots were Rs.800/- per sq.meter and for commercial plots at Rs.1600/- per sq.meter. Even otherwise for the lowest category residential plots, the market rates notified were at Rs.400/- per sq. meter purposes and Rs.800/- per sq. meter for commercial plots. Judgment Ex.A.10 relates to the acquisition, which had taken place through notification dated 27.7.1981. Market rate was fixed at Rs.625/- per sq. yard, after allowing a deduction of 30%. Appeal against the said judgment was dismissed. Land rates for residential plots in the year 1980 in Jhilmil Tahirpur were shown in Ex.A.3 at Rs.345/- per sq.meter (Rs.408/- per sq. yard). These factors if taken into consideration lend full support to the evidence adduced on behalf of the appellant that the prevalent rates in Noida were far less than the rates for similar categories of land located in any other part of Delhi. The sale instances proved before the Reference Court, the schedule of rates notified by the Government of India and the judgment Ex.A.10 form relevant and valid basis for determining the amount of compensation but after allowing some reasonable deduction there from since large tract of land is involved. Assuming that rates as specified in the schedule were fixed by taking into consideration all relevant factors, there is no reason why it be not held that the fair market value of the land in the vicinity as on the date of notification for similar plots would be Rs.800/- per sq. meter. Even ignoring the submissions made on behalf of the appellant that deductions cannot be made since the area was already developed and was possessed of amenities and making the maximum permissible deduction, which can be made on all counts i.e. 50% there is no reason why it be not held that the market value of residential plots in village Kondli, as on the date of notification were not less than Rs.345/- per sq. yard. There is no scope for further deductions. Accordingly, we hold the market value of the acquired land as

on the date of notification under Section 4 of the Act to be at Rs.345/- per sq. yard.

24. Consequently, we allow these appeals holding the claimants/appellants to be entitled to compensation at the rate of Rs.345/- per sq. yard. In addition, the claimants/appellants will also be entitled to solarium at the rate of 30% on the enhanced amount of compensation and additional amount of 12% on the market value from the date of publication of notification under Section 4 of the Act to the date of award or date of Collector taking possession, whichever is earlier. The claimants/appellants shall also be entitled to interest at the rate of 9% p.a. for a period of one year on the enhanced amount of compensation from the date of possession and thereafter at the rate of 15% p.a. till date of payment with proportionate costs.

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