

Chandan and ors. Vs. Union of India

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Court : Delhi

Decided On : Jul-20-1992

Reported in : 48(1992)DLT202; 1992(24)DRJ553

Judge : D.P. Wadhwa and; R.L. Gupta, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 54

Appeal No. : Regular First Appeal No. 240 of 1990 and Civil Miscellaneous Appeal No. 754 of 1991

Appellant : Chandan and ors.

Respondent : Union of India

Advocate for Pet/Ap. : V.P. Singh,; Mukul Dhawan,; Om Prakash,;

Judgement :

D.P. Wadhwa, J.

(1) In all these 32 appeals filed under section 54 of the [Land Acquisition Act, 1894](#) (the Act for short) the award is same. The land which is subject-matter of the acquisition proceedings is situated in Village Tughlakabad. Notification under section 4 of the Act was issued on 23 January 1965 and declaration under section 6 on 30 October 1969. The award was given on 4 November 1981. The Land Acquisition Collector assessed the compensation payable at the rate of Rs.

4,000.00 per bigha . In respect of the land subject-matter of one appeal (RFA 468/89) the compensation was assessed at Rs. 1,000.00 per bigha. In this case it was submitted that there were 10 to 8 deep pits in the land and also it could not be put to agriculture use.

(2) On a reference made under section 18 of the Act the learned Additional District Judge enhanced the compensation payable and assessed the market value at Rs. 23,000/ per bigha. In the case of land in Rfa 468/89 the market value was assessed at Rs. 4,000.00 per bigha.

(3) Of the 32 appeals. 28 have been filed by Union of India against different judgments of the Court below enhancing .the amount of compensation as aforesaid. The respondents filed their cross-objections seeking enhancement of the compensation. Then during the pendency of these appeals the respondents filed applications under Order 6 Rule 17 and section 151 of the Code Civil Procedure seeking to amend the grounds of appeal and claiming yet further enhanced amount of compensation after making the deficiency in court fee payable on that account. These applications have been kept pending and were ordered to be heard along with appeals. There are, however, no such applications in RFAs. 212/81, 187/88, 199/88. 347/88, 462/87, 2/ 88 and 249/88. The respondents, it appered. did not feel it necessary to file any such applications for enhancement of compensation in RFAs 344/90 and 166/92 inasmuch as they had already claimed compensation at a much higher rate. The applications for enhancement of compensation were filed after judgment of this Court in Rfa 299/84 (Virender Singh v. Union of India, decided on 23 April 1991) In that case land also pert am to Village Tughlakabad but a notification under section 4 of the Act was issued on 5 July 1993 and a declaration under section 6 on 12 August 1975. This Court assessed the market value of the acquired land at the rate of Rs- 68,000- per bigha. On the basis of this judgment it was submitted before us that the market value of the land subject matter of all these appeals would work out to be at the rate of Rs. 42,000.00 per bigha though compensation after amendment was claimed at Rs. 60,000.00 per bigha. In Rfa 299/84 the Court observed that it was not disputed that the land in that village was in Kalkaji area, a developed residential colony. Reference was made to a circular dated 28 March 1966 issued

by the Central Government in the Ministry of Works, Housing and Development fixing the market value of the plots for residential use in Kalkaji Colony at the rate of Rs. 60.00 per square yard. The court further observed that this circular was quite relevant and would form reasonable and fair basis to determine the market value of the land for the year 1973. The court, thererfoere, accepted the contention of the appellant in that appeal that the market value of the land had since enhanced from 1966 when the circular was issued and accepted the claim of the appellant and fixed the market value at the rate of Rs. 68.00 per square yard. We do not think we have to follow the judgment of this Court in Rfa 299/84 for fixing the market value of the land in the appeals before us. There are two principal reasons for this. (1) Notification under section 4 of the Act in Rfa 299/84 was issued on 5 July 1973 while in the present case it was on 23 January 1965, and (2) the judgments of the Supreme Court, wherein it had said that 1/3rd of the market value should be deducted for development of the acquired land, were not brought to the notice of the Bench. However, we feel bound by the observations made by the Bench that the market value of the land as fixed by the Central Government in 1966 as per circular dated 28 March 1966 would form a reasonable and fair basis to determine the market value of the land subject- matter of the present appeals.

(4) 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. 60.00 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, therefore, 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 Circuit of 1966 itself. The market value of the land in all these appeals has, therefore, to be fixed at Rs. 60.00 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 Spl. Tehsildar, land Acquisition, Vishakapatnam Vs . Smt. A. Mangala Gowri, : [1991]3SCR472a . Reference in this case was made to many earlier decisions of the Supreme Court and one of such decisions is in the case of Tribeni Devi Vs . Collector of Ranchi. : [1972]3SCR208 , where the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities'. In M/s. Dlf Housing and Construction (P) Ltd. Vs . Union of India. , the court found that the acquired land was across the road of a developed colony Rajouri Garden. The evidence showed that the sale price of development plots in the Rajouri Garden came to Rs. 23.00 per square yard. After taking into account the land set apart for roads, open spaces and other facilities and the development charges including the brokerage and administrative expenses, the court found the price of the developed land would work out to Rs. 11.56 per square yard. That would be about half of the price for a developed plot. In the present case, however, we find that there is no such evidence and we have to adopt the rough and ready method laid by the Supreme Court. Accordingly, we will hold that 1/3rd of the market value be deducted for the development of lands acquired and, thus, the market value would come to Rs. 40/- per square yard or Rs. 40,000.00 per bigha.

(5) Then the question arises as to what should be the market value of the land subject-matter of Rfa 468/89. It was submitted before us that no distinction should be made between this land and the other lands and in this connection reference was made to a Bench decision of this Court in Sham Krishan Chandiwalla and another Vs . Union of India, : 14(1978)DLT83 , wherein it was held that where the acquisition of the land was for the planned development of Delhi it was unnecessary to consider whether the land was chahi, Aabi or rosli, for in such a case, the potentiality of the land would be the same. Some other cases of this

Court were also referred to where it was said that no distinction be made when a big chunk of land in any particular village had been acquired and that market value should be the same of all the lands. All those cases in our view depend upon the facts of those cases. This cannot be a universal rule. In *Harcharan Vs . State of Haryana*, : AIR 1983 SC43 , the court held that it was a well settled principle that the best evidence with regard to evaluation of price of land in a proceeding for ascertainment of compensation for land acquired under the Act was the Award of the Court subject of course, to the comparison of the land areawise, topography wise and usewise. It was also submitted before us that the acquired land could be developed into residential colony and for that purpose strength was drawn from the circular of the Central Government of the year 1966. That being so, it cannot be said that the land which has deep pits should be valued at the same rate. Of course, it would but be material whether any particular piece of land can be used for agricultural purposes or not. We, therefore, cannot determine market value of the land in Rfa 468/89 as in other appeals. But then the valuation of the land in Rfa 468/89 will have also to be proportionately enhanced. As observed by the Supreme Court certain amount of guess is involved in all these cases. We will, therefore, fix the market value of this land at the rate of Rs. 7,000.00 per bigha.

(6) Thus, in all the appeals except in Rfa 468/89 compensation is, thus, enhanced by Rs. 17,000.00 per bigha and in Rfa 468/89 by Rs, 3.000.00 per bigha.

(7) Accordingly, all appeals filed by Union of India are dismissed and cross objections are allowed. The applications filed by the respondents for amendment of the memorandum of Cross-objections seeking higher compensation are allowed to the extent of the market value as fixed by us. All these respondents shall make up deficiency in court fee within one month and no further time for this purpose will be granted. In appeals filed against Union of India where there are no applications for enhancement of compensation, those appeals shall stand allowed to the extent compensation is claimed therein as in all these appeals compensation has been claimed at a rate less than what has been fixed by us by this judgment. In all the appeals except Rfa 212/81 the respondents shall also be entitled to: (a) 12% additional amount under section 23(1-A) of the Act from the date of the notification under section 4 of the Act to the date of the award of the Collector or the date of

taking possession of the land, whichever is earlier; (b) 305 solarium on the market value of the land as provided by section 23(2) of the Act; (c) interest under section 28 of the Act. i.e., 9% per annum for the first year from the date of taking of the possession and ter 155 per annum till the payment is made: and (d) 6% interest under section 4(3) of the Land Acquisition (Amendment & Validation) Act, 1967, as there is a difference of more than three years between the notification under section 4 and declaration under section 6 of the Act which are dated 23 January 1965 and 13 January 1969 respectively. In R.F.A. 212/81 the respondents shall, however, be entitled to solarium at the rate of 15% on the market value as provided in section 23(2) of the Act and interest at the rate of 6% per annum on the enhanced amount of compensation from the date of possession of the land till the payment of the enhanced compensation as per section 28 of the Act, and also to 6% interest under section 4(3) of the Land Acquisition (Amendment & Validation) Act, 1967, as allowed in other appeals. Respondents will also be entitled to proportionate costs limited to court fee only.

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