

Ganpat Vs. Union of India

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Court : Delhi

Decided On : Feb-02-2001

Reported in : 2002(62)DRJ630

Judge : Mr. Devinder Gupta and; Mukul Mudgal, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 18, 23, 23(1) and 54

Appeal No. : RFA Nos. 185/89, 186/89 and 457/89

Appellant : Ganpat

Respondent : Union of India

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

Judgement :

ORDER

Devinder Gupta, J.

1. These three appeals have been preferred under Section 54 of the Land acquisition Act, 1894(hereinafter referred to as 'the Act') against the judgment of Shri Padam Singh, additional District Judge, Delhi answering three separate references under Section 18 of the Act and thereby determining the amount of compensation payable to the claimants/appellants. The claimants/appellants felling aggrieved have sought further enhancement in the amount of compensation

at the rate of Rs.30,000/- per bigha.

2. 123 bighas 4 bids was of land situated in village Nanglor-Jat, Delhi was notified for being acquired for public purpose, namely, Planned Development of Delhi through notification issued under Section 4(1) of the Act on 22.8.1973. It was followed by declaration issued under Section 6 of the Act on 31.7.1976. Collector proceeded further but before award could be announced, the acquiring Department informed him that only 55 bighas 11 bids was of land, which was lying vacant be acquired. Accordingly Collector Land Acquisition proceeded to make his award No. 97/80-81 on 23.1.1981 offering compensation at the market rate of Rs.5650/- per bigha. Claimants feeling dissatisfied sought references. The reference Court by the impugned awards held the claimants entitled to compensation at the rate of Rs. 6,000/- per bigha. Still feeling dissatisfied the claimants have in these appeals sought further enhancement in the amount of compensation.

3. We have heard learned counsel for the appellant. None appeared on behalf of the respondents when the appeals were called for hearing. These appeals have been on the hearing board for quite some time. On the last date appeals were adjourned for today specifically for being heard. Accordingly, the hearing proceeded in the absence of learned counsel for the respondents.

4. Upon compulsory acquisition of property, an owner is entitled to the value of the property in its actual condition, at the time of expropriation, with all its advantages and possibilities excluding any advantage due to the carrying out of the scheme for the purpose for which the property is acquired. Thus value of the acquired land with its possibilities has to be adjudged for paying compensation to the claimants whose property is acquired. The principles to determine the quantum of compensation are contained in Section 23(1) of the Act. The Court has to take into consideration the prevailing market value of the land on the date of notification under Section 4(1) of the Act and the market value has to be determined by reference to the prices, which a willing seller might have reasonably expected for a similar property from a willing purchaser. The underlying principle of fixing the market value with reference to comparable sales is to reduce the element of speculation. In a comparable sale, the features are:-

(i) it must be within a reasonable time of the date of the notification under Section 4(1):

(ii) it should be a bona fide transaction:

(iii) it should be a sale of the land acquired or its adjacent land; and

(iv) it should possess similar advantages.

Before such instances of sales can be considered as proper instances or relevant instances, there must be material evidence on record by examining the vendor and vendee to prove that the transactions are genuine.

5. Similarly the awards given by the Collector offering compensation for acquisition of lands by notification of the same date are at least relevant material and are in the nature of admission with regard to value of the land on behalf of the State and if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates found in the said awards would be a reliable material to afford a basis to work upon for determination of the compensation. Similar is the position with respect to the awards of the Reference Court or the judgments rendered by the High Court in appeals determining the market value of lands acquired under the Act, where such awards or judgments have become final.

6. Under Section 23 of the Act compensation, which is payable to claimant is the market value of land on the date of publication of notification under Section 4(1) of the Act. Notification under Section 4(1) of the Act has, therefore, vital significance.

7. In the instant case, by the impugned judgment, the Reference Court has failed in its duty to make determination of compensation in accordance with law. The reference Court appears to be under an impression that compensation has to be fixed with reference to the date of making of the award by the Collector and for that reason alone he appears to have observed in the impugned award:-

'Considering all the aspects of the petitioner's land, as the present award is for the land 123 bighas, out of which 55 bigha 11 bids was land was acquired, at the time of this award dated 23.1.81, the market value of the land of the petitioners should

have been the same as given by Shri S.R.Goel. the then Ld.ADJ. Delhi Rs.6000/- per bigha in his judgment dated 29.1.87. '

[Emphasis supplied]

8. The approach of learned Reference Court thus while answering the references and determining the amount of compensation has been erroneous.

9. It is well established that when land is being compulsorily taken away from a person he is entitled to say that he should be given highest value, which similar land in the locality is shown to have fetched in a bonafide transaction entered into between a willing purchaser and a willing seller near about the time of acquisition. Reference, if any, need be made to a decision of Supreme Court in Sri Rani M.Vidjayalakshamma Rao Bahadur v. The Collector of Madras 1969 M.L.J.45 .

10. Learned counsel for the appellant urged that the acquired land as on the date of notification keeping in view its location and proximity to the developing colonies as on the date of notification under Section 4(1) of the act had very good potential for being utilised both for residential and commercial purposes.As regards the location of the acquired property as also its potentiality and proximity to the developing colonies, reference was made to the observation of the Collector made by him in his award with respect to the acquired land, which states:-

'The price of land in this village has been rising year by year.As is apparent during 1972-73 it jumped almost to become double as compared to 1970-71. Similarly in 1970-71 it had become double then/that of the preceding year. This phenomenon is on account of resettlement of 2 new colonies, namely, sultan Puri and Mangol Puri in this area and consequent abnormal increase in population of the village.In result plots in the vicinity of these colonies have fetched higher price; small plots have earned more value than big plots.This has also been established by the sale instances, though in their own cases, quoted by the Claimants. It is not correct to make the sale of small plots basis for determining market price when large area of land is under acquisition.It will, therefore, be safer to give weight to the average value arrived at from sale of big and small plots combined during the preceding 5 years.'

Assessment of compensation for land acquired must take into account several factors including the nature of the land, its present use, its location in relation to the adjoining land, the use to which neighbouring land has been put and the impact of such use on the land acquired. The question as to whether land had potential value as a building site or not is primarily one of fact depending upon several factors such as its condition and situation, the use to which it was put or was reasonable capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas as well as educational, cultural or medical institutions, existing amenities, like water, electricity and drainage and possibility of their future extension, whether the nearby town is a developing or a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighborhood thereof.

11. The Reference Court in the impugned judgment on the basis of evidence and other material on record found that the acquired land is situated and surrounded by the colonies like Punjab Colony and Kavita Colony. It was also surrounded by roads, railway lines, schools, hospitals and other facilities were also available in the area of the land in question. Admittedly, the land was located by the side of National Highway No. 50 and as per the observations of the Collector as well as findings of the Reference Court, two new colonies Sultan Puri and Mangol Puri had already come up somewhere in the year 1970-71 in close proximity of the acquired land. The Collector also noticed about the extent of the appreciation in the valuation of land in and around vicinity of the acquired land. During the relevant period, according to him, new colonies of Sultanpuri and Mangolpuri had come up prior to 1970-71. In comparison to the market rates of the lands, which were prevalent in 1970-70, the same became almost doubled during 1972-73 and the rates, which were prevalent in 1970-71 were also double than what prevailed in the preceding year.

12. As has been noticed above, the Reference Court did not apply the correct criteria in determining the amount of compensation and for that reason he fell in error in arriving at the correct market value of the land. He placed reliance upon the award of another case of the Reference Court, which was not of comparable lands

and was not for the same period.

13. In view of the above position, we will have to refer to the evidence and the material on record in order to determine the market value of the acquired as on the date of notification under Section 4(1) of the Act.

14. The Reference Court had consolidated the reference petitions. Evidence is recorded only in one case. Claimants examined vendors and vendees and reliance was placed upon four sale transactions. Ex.A.1. is the sale transaction dated 12.11.1971 with respect to 160 sq.yards of land for consideration of Rs. 4,800/-. Ex.A.2. is another sale instance of 100 sq.yards of land dated 12.11.1971 for a consideration of Rs.3,200/-. Ex.A.8 is the sale transaction with respect to 200 sq.yards of land dated 30.1.1970 wherein the consideration shown is Rs.2500/-. Ex.A.9 is another sale transaction with respect to 200, sq.yards dated 10.10.1972 wherein consideration reflected is Rs.5,400/- and Ex.PW/2/1 is the sale transaction with respect to 200 sq.yards of land dated 12.11.1971 wherein consideration reflected is Rs.4600/-.

15. The sale instances relied upon by the claimants are of the year 1970 or 1971. According to the Collector, land rates in 1970-71. Similarly, in 1972-73 the same were double as compared to the rates in 1971-73 the same were double as compared to the rates in 1971-72. Thus in comparison to the rates reflected in the sale instances by the appellants, the rates would have been double as on the date of notification under Section 4(1) of the Act. But in cases the normal appreciation at the rate of 12% p.a on the market value as reflected in the five sale transactions, in that case as on 20.8.1973 an average market value in and around the vicinity would not have been less than Rs.36/- per sq.yard. Learned counsel for the appellant contended that since as per the material on record and the evidence recorded by the Reference Court and the observations of the Collector, the land was surrounded by developed and developing colonies and all facilities were available, therefore, there will be no question of considering deduction to be made from the market value. Reliance was placed by him on the decision of Supreme Court in *Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer* : AIR 1992 SC2298 wherein it was held:-

'that 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 developed having all amenities and situated in an advantageous position. If smaller areas within the large tract are 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.'

16. It is true that large area of land cannot possibly fetch a price at the same rate at which small plots are sold. But in a given circumstance it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land, because of advantageous position, is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the price reflected would be a good criteria for arriving at market value for large junk of land. As two colonies, namely, Sultan Puri and Mangol Puri has already come up near the acquired land as on the date of notification under Section 4(1) and the acquired area was held located in the close proximity to the already developed colonies like Punjabi Colony and Kavita Colony, there is no reason that why the acquired land had no potentiality for being utilised for building purposes. Moreover, as on the date of notification under Section 4(1) the acquired land was located by the side of National High Way No.10. Common facilities like pucc roads, schools, hospitals were also available to cater to the needs of the people before land was notified for acquisition. As such considering the facts and circumstances and applying the ratio of the aforementioned decision in Bhawathula Samanna's case (supra) we are of the view that even if adjoining colonies had already come up and there was pressure to waive the acquired land for development but that alone will not be a ground not to allow any deduction at all since there is no material brought on record that there were internal roads or other facilities available. In case the entire area covered by the acquisition had to be evaluated as a developed site for building purposes, same area might be required for being left out for common purposes like lanes, sewerage etc. and considerable amount might be required for making the area fit

for development and for that purpose, we are of the view that 1/4th deduction deserves to be made from the market value for smaller plots of land as on 2.8.1973. Accordingly, we are of the view that as on the date of notification under Section 4(1) of the Act, the fair market value of the land of village Nangloi Jat acquired through notification dated 22.8.1973 was Rs. 27,000/- per bigha.

17. Consequently, appeals are allowed with proportionate costs. Impugned judgments are modified holding the claimants entitled to compensation at the rate of Rs.27,000/- per bigha as on 22.8.1973. In addition to the amount of compensation, claimants are held entitled to solarium on the market value at the rate of 30% and interest at the rate of 9% p.a. for the period of one year from the date of Collector taking possession till payment and at the rate of 15% p.a. thereafter. It is further directed that in case answer to reference to Larger Bench, interest is ultimately held payable on solarium by the Supreme Court, the claimants will also be paid interest accordingly.

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