

Ram Kumar Vs. Union of India

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Court : Delhi

Decided On : Feb-04-1997

Reported in : 1997IIAD(Delhi)165; 66(1997)DLT529; 1997(41)DRJ151; (1997)116PLR31

Judge : Mahinder Narain and; M.S.A. Siddiqui, JJ.

Acts : [Constitution of India](#) - Articles 28A and 300A; [Land Acquisition Act, 1894](#) - Sections 23

Appeal No. : Regular First Appeal No. 209 of 1993

Appellant : Ram Kumar

Respondent : Union of India

Advocate for Pet/Ap. : V.P. Singh,; D.V. Khatri and; S.S. Sabharwal, Advs

Judgement :

Mahinder Narain, J.

(1) The appellants Ram Kumar and others arc bhumidars of Khasra Nos. 67/2,67/3, 67/8 67/9 67/13, 67/18,67/23, and 54/31, in all measuring 25 bighas 8 biswas, situated in the revenue estate of Narela.

(2) The above said land of the appellants was acquired by notice of acquisition under section 4 of the Land Acquisition Act (hereinafter called as 'the Act'), which was issued on 30.10.1963. Section 6 notification in connection with the acquisition of the appellants' land was issued on 16.1.1969. The award with respect thereto was made on 22.9.1986, and possession taken on 23.9.1986.

(3) The notice of acquisition was issued as the land of the appellants was likely to be acquired for the public purpose of planned development of Narela Township. By his award dated 22.9.1986, the Land Acquisition Collector awarded a sum of Rs. 6650.00 per bigha to the appellants.

(4) Aggrieved by the said determination of the market value by the Land Acquisition Collector, the appellants preferred reference under section 18 of the Act for enhancement of the market value. The learned Additional District Judge enhanced the market value in section 18 reference to Rs. 18,750.00 per bigha.

(5) Aggrieved by the said determination of the market value, the appellants filed the present appeal under section 54 of the Act, claiming that the market value of their land should be determined at Rs. 24,000.00 per bigha. Later by an application moved for that purpose, the appellants further sought amendment of the claim of enhancement of the market value which was allowed on 7.10.1996, and the appellants were permitted to raise their claim to Rs. 30,000.00 per bigha.

(6) At our insistence, learned counsel for the respondent has placed before us the revenue map of the town of Narela, and in the composite map filed before us, has also indicated location of the village Mamurpur.

(7) The revenue map of Narela has peculiar outlines, inasmuch as its shape is like human leg/foot from the knee down. It appears to have curved calf like the human leg, a heel and an arch of a foot. Above the arch of the foot, is the village Mamurpur. In fact this outline reminds us of the map of Italy which is also shaped like a foot with difference that the island of Sicily is near the tip of the toes of the foot, which gives the impression that Italy and Sicily islands, represent a foot hitting a football. Here, in the case of Narela and Mamurpur, Mamurpur appears to be resting above the arch of the foot. Mamurpur has common borders with the

town of Narela along the slope of the arch of the foot.

(8) It is in view of this peculiar geographical and .revenue boundaries of the town of Narela and Mamurpur that the appellants have relied upon the sale of land in Mamurpur for the purpose of determination of the market value of the land in Narela town. For this purpose, the appellants rely upon a sale deed dated 13.3.1963, which sale deed related to sale of land in village Mamurpur, which, as stated above, is contiguous to, and adjoins Narela Town. This very sale deed of 13.3.1963 was the basis of determination of the market value of the land in village Mamurpur in R.F.A. No. 554 of 1992, and the price was determined at Rs. 25,000.00 per bigha. The market value was determined as Rs. 25,000.00 per bigha, the notification for acquisition having been issued on 30.10.1963, as in the instant appeal. In that case, however, as the claim in the appeal was confined to Rs. 22,000.00 per bigha, we held that the appellant was entitled to receive Rs. 22,000.00 per bigha.

(9) In support of the case of the appellants for higher compensation, Mr. V.P. Singh, Senior Advocate, appearing for the appellant, has brought to our notice the fact that the town Narela was urbanised in the year 1922, and since then a Notified Area Committee exists in that town. He has also referred to and relied upon the statement made by the Land Acquisition Collector and the Additional District Judge that the land in Narela Town is of much better location than the land in village Mamurpur. This is so because it has been asserted before us that Narela has been a flourishing grain market for a very very long time. In addition, Narela Town has been enjoying the facilities like developed roads, electricity, hospitals, schools. It has one of the biggest grain markets, has an industrial area, has a commercial area, and has large developed colonies. That the land is level land, and requires no investment in the matter of 'development'. It is also pointed out that the land in Narela is near the National Highway No. 1) i.e. the G.T. Karnal Road, and the Delhi Ambala railway line runs through Narela.

(10) We have already given description of the land in Mamurpur, whose location we have explained above. Mamurpur is enclosed by narela Town in two of its boundaries. Narela is slightly more advantageous than the village Mamurpur. The

advantages of Mamurpur were described by us in R.F.A. No. 554 of 1992 as follows:- 'Besides this, the acquired land has on its eastern side the G.T. Road and Kondli Industrial Area, on its southern side has Narela Industrial Area, on Western side Narela Abadi and railway line, and on its Northern side it again has Kondli Industrial area. In other words, the acquired land is surrounded by fully developed area. It is also not disputed that the land in question was agricultural land, which was level land, and without any kind of depressions or defects. It, therefore, hardly needed any development to be done to make it fit for use as a development site, and it could be used for any purpose after development, whether industrial or residential.

(11) It was contended by the counsel for the appellants that the judgment of the Supreme Court (N.M. Kasliwal and M. Fathima Beevi, JJ) in *Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality*, : AIR 1992 SC2298 , contains the following observations:- 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 developed 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.

(12) The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances 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 principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it

has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We, are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10.00 per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed.

(13) Learned Counsel for the appellants contended that the aforesaid observations of the Supreme Court are fully applicable to the case of the appellants land, that no money is required to be spent on development of the land, and, therefore, there is no question of making any deduction on account of so called developmental cost, and that the Additional District Judge was in error in making deductions from the market value in connection with the alleged developmental cost to the extent of 25% of the value of the land.

(14) Mr. V.P. Singh, Senior Advocate, appearing for the appellants, has contended, in our view rightly, that although in the grounds of appeal the appellants appeared to have stated that the developmental cost should not exceed 20%, at best it is concession of law made by counsel, and concession of law never binds parties. In the facts and circumstances, he contended that there cannot be any deduction, as a matter of fact, or as a matter of law from the market value of the land of the appellants.

(15) Mr. V.P. Singh has brought number of cases to our attention, in which the developmental costs have been deducted from the determined market value of the land, starting from , which according to him, is the earliest of the judgments relating to deduction on account of 'development' costs he has been able to trace out. We have not been able to find any principle, either in , or any other subsequent judgments of any High Court and also of the Supreme Court as to why deductions for development are to be made from the market value. Section 23 of the Act requires determination of market value on the date of Section 4 notification.

It does not talk of deductions for development cost. Nor does any other provision of the Land Acquisition Act permit making of such deductions from the market value. So why should they be resorted to? Of course, there are number of judgments of the Supreme Court which talk in terms of developmental costs, being taken out of the market value determination. These cases are : AIR 1992 SC421 . None gives a statutory justification for the same.

(16) We feel that the deduction of the developmental cost of land from the market value determined, may not be justified on and after the incorporation of Article 300A in the [Constitution of India](#). Article 300A was incorporated in the Constitution with effect from 20.6.1979. The effect of the terms of Article 300A docs not appear to have been brought to the notice of various courts before which matters of determination of market value had come up, especially in so far as it related to the effect of Article 300A on the provisions of sections 23 and 24 of the Act. It would be desirable to note the terms of Article 300A, which reads as under:-

'300A. Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law.'

(17) It is also necessary to reproduce the terms of sections 23 and 24 of the Act which read as under:-

'23. Matters to be considered in determining compensation - (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall taken into consideration : Firstly, the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1); the Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any) sustained by the person interested, at the lime of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to

change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land. (I-A). In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Explanation - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded. (2). In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition. 24. Matters to be neglected in determining compensation- But the Court shall not take into consideration : firstly, the degree of urgency which has led to the acquisition; secondly, any disinclination of the person interested to part with the land acquired; thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit; fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put; fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under Section 4, sub-section (1); or eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.'

(18) Sections 23 and 24 of the Act form a complete code or charter, which is to be used for the purpose of arriving at the market value of the land. The courts cannot

ignore it, nor can the court add to it, as that is the function of legislature. Whereas section 23 of the Act relates to factors which are to be taken into account for determination of market value, section 24 of the Act deals with the factors which, are not to be taken into account in arriving at the market value of the land. Neither in section 23 nor in section 24 of the Act is there any authority for making deduction for cost of development cost of land which is acquired. On and after incorporation of Article 300A in the Constitution, making of deduction on account of development cost from the market value of land became impermissible, and without authority of law, as neither section 23 nor section 24 of the Act contemplated such deductions, and any deduction made by courts on account of development cost would be contrary to statutory provisions. And in view of Article 300A, without authority of law, and, therefore, not only ultra virus the provisions of sections 23 and 24 of the Act, and, therefore, illegal, but also would be unconstitutional. We are, therefore, in agreement with the contention of the counsel for the appellants that no deduction on account of development cost can be permitted to be made from out of the market value of the land.

(19) Such a deduction, if made, is not only contrary to the provisions 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 that extent, market value would not have been paid for such an extent of the land, and would be contrary to the authority of section 23 of the Act, and, therefore, of Article 300A of the Constitution. We, therefore, hold that the appellants are entitled to have the market value of their land determined, without taking into account the cost which is likely to be incurred, if development of their land is undertaken. In the instant case, there is added reason for it, that the land is already located in a developed area as Narela already is developed. We do not know what plans for development exists for Narela. None have been brought to our notice despite our asking for it. therefore, we do not know, and we cannot particularise with reference to any pre-existing development plan as to what is the maximum potential of the land of the appellants with reference to the proposed use of the appellants' land in any pre-existing plan for development of Narcla Town. Mention of this is for the reason that it is axiomatic that areas which are meant for commercial exploitation in the planned development would fetch a much

higher rate than areas which are not commercial. We say no more than that.

(20) Mr. V.P. Singh has contended before us that inasmuch as the instant case is of large scale acquisition wherein by one single notification large tracts of land, not only in Narela Town, but also in Mamurpur and other adjoining villages were proposed to be acquired for planned development, the appellants are entitled to a market value determination not on the basis of the realised potential of the land, that is to say for agricultural purposes, but as a development site, a site suitable for development of land for any purpose, whatsoever.

(21) The land of the appellants is level land, free from depression and pits. It has been declared by notification to be fit for development. In a number of cases, decided by the Supreme Court, it has been held that when large scale acquisition of land is made for the purpose of development, then as the entirety of the land is acquired for the purpose of development, the market value determination for all the lands should be on a uniform basis, and that the evidence of sale in contiguous areas, even in contiguous villages, can be taken into account for the purpose of arriving at the market value on the date of notification under section 4 of the Act. These cases are : : [1988]2SCR1025 (Administrator General of West Bengal v. Collector, Varanasi) (S. Natarajan and M.N. Venkatachaliah, SJ); : AIR 1992 SC2298 , (Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality) (N.M. Kastiwal and M. Fathima Beevi, JJ); : [1988]2SCR1025 (Parameshwari Devi (dead) by L.Rs. etc. v. Punjab State Electricity Board and another) (K. Ramaswamy and R.M. Sahai, JJ) and : [1994]3SCR902 (K. Periasami v. Sub-Tehsildar (Land Acquisition)) (K. Ramaswamy and N. Venkatachala, JJ).

(22) As against this, Mr. S.S. Sabharwal, learned counsel appearing for the Union of India, has brought to our attention a judgment of the Supreme Court, reported as JT 1996 (9) 536, decided by K. Ramaswamy and G.B. Pattanaik, JJ. We have carefully perused this judgment of the Supreme Court, which appears to be contrary to the decisions of the Supreme Court, pronounced earlier. It is not possible for us to reconcile the two contrary views expressed by the Supreme Court. The observations in the latter judgment of the Supreme Court in JT 1996 (9)

536, which seem to suggest that same value need not be paid for contiguous lands, seem to be contrary to the letter and spirit of section 28 of the Act. That Section comes into operation for the benefit of persons who have not made a reference under Section 18 of the Act, and ensures payment of market Value at the same rate as has been received by those who did make a reference under Section 18 of the Act, and got an increase in market value. It appears to us to mean that there should equality in the matter of determination of market value of lands acquired under the same notification. Section 28(A) of the Act reads as under:-

'28-A.Re-determination of the amount of compensation on the basis of the award of the Court. - (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court: Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded. (2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants. (3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to such reference as they apply to reference under Section 18.'

(23) The terms of section 28-A indicate to us that even in cases where section 18 reference is not preferred by an owner, and some other owners whose land was

acquired under the same notification, are awarded a higher rate of compensation under section 18 of the Act, then the owners who did not seek enhancement, would also be entitled to enhancement of the market value at the same rate as determined in the reference filed by others under section 18 of Act upon their making an application to the Land Acquisition Collector within the time limited by the statute. To us, this provision represents the anxiety of the legislature to ensure that all persons similarly situate are treated equally. Indeed this is the mandate of the Constitution itself, as found in Article 14 of the Constitution. We would, therefore, with respect, preferred to follow the view of the Supreme Court, earlier expressed, that all persons whose lands are affected by a single notification are entitled to the same compensation when large scale extent of lands are acquired for planned development.

(24) We do not accept the arguments of Mr. Sabharwal that the evidence of the sale deed in Mamurpur is not relevant, or that the sale deed itself cannot be regarded as a document, establishing the market value. That sale deed has been exhibited in these cases. According to that sale deed, the market value of the land in village Mamurpur is Rs. 25,000.00 per bigha. There is concurrent findings of fact in this case that the land in the Town of Narcla is better situated than the land in village Mamurpur. There is no reason at all for us not to arrive at the determination of the market value on the basis that the land in Narela has the market value of Rs. 25,000.00 per bigha on the date of notification under section 4 of the Act for acquisition of the appellants' land in the town of Narcla.

(25) Accordingly we fix the market value of the land of the appellants at Rs. 25,000.00 per bigha, and in view of the facts and circumstances of this case that no development was required for the land, and in view of the judgment of the Supreme Court in : AIR 1992 SC2298 , development cost is not to be incurred for it, and in view of the constitutional provision, and as a result of incorporation of Article 300A in the Constitution, and its effect on sections 23 and 24 of the Act, we say that no deductions have to be made on account of any alleged developmental cost for arriving at the market value of the appellants' land.

(26) This appeal, therefore, succeeds, and the decree of the court below is modified to that extent, indicated herien.

(27) No order as to costs.

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