Border Security Force and anr. Vs. the Land Acquisition Officer and ors.

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Court : Rajasthan

Decided On : Jul-03-1996

Reported in : 1997(1)WLC518; 1996(1)WLN466

Judge : B.R. Arora and; A.S. Godara, JJ.

Appeal No. : D.B. Civil Special Appeal No. 27 of 1988

Appellant : Border Security Force and anr.

Respondent : The Land Acquisition Officer and ors.

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated February 11,1988 passed by the learned Single Judge, by which the learned Single Judge allowed S.B. Civil Miscellaneous Appeal No. 104 of 1979 filed by the claimants and enhanced the compensation awarded by the learned Civil Judge and also, granted solatium @ 30% and enhanced the rate of interest on the amount of compensation.

2. Fifty-seven Bighas eleven Bishwas of land belonging to Balveer Singh and Raghuvir Singh bearing Khasra Numbers 1620, 1621, 1622 and 1625 situated on Mandore Road, Jodhpur was acquired by the State Government for the purpose of Border Security Force. Notification under Section 4 of the Land Acquisition Act (for

short, 'the Act') that the land is needed for Border Security Force, was issued and published in the gazette on 22-1-68. The declaration under Section 6 of the Act that the land is required for public purposes, with respect to this land was issued on 24-2-68 and the possession over the land was taken on 10-6-1968. Claimants Balveer Singh and Raghuvir Singh, after the acquisition of their land, filed their claims before the Land Acquisition Officer for the grant of compensation of Rs. 4,59,008.66 p. Oct of this Rs. 2,56,687/- were claimed as the cost of the land, Rs. 1,02,921/-were claimed as the cost of the building and construction raised on the land, Rs. 81,400/- were claimed as the cost of the trees, Rs. 10,000/-were claimed as the cost of manure used for agricultural purposes and Rs. 14,000/- were claimed as the general damages. The Land Acquisition Officer, Jodhpur, by his Order dated 23.6.69 awarded the compensation with respect to the cost of land amounting to Rs. 52,650/-, the cost of the building and construction at Rs. 61,347.96p. and cost of manure at Rs. 7500/-. The compensation for the cost of the trees was not determined at that time, which was later-on determined by the Land Acquisition Officer by its Award dated 31.7.69 and the Land Acquisition Officer awarded the compensation of Rs. 8515/- as the cost of the trees. The Land Acquisition Officer, however, dismissed the claim of the claimants for the award of Rs. 14,000/- as the general damages. Thus, the Land Acquisition Officer awarded, in all, the compensation of Rs. l,30,912.94p.

3. The claimants, aggrieved with the inadequacy of the amount of compensation awarded by the Land Acquisition Officer, filed an application under Section 18 of the Act for making a reference to the Civil Court and the matter was referred to the Civil Judge for determination of the adequate amount of compensation. The Border Security Force and the State, also, filed Cross Objections before the learned Civil Judge, which were treated as the applications under Section 18 of the Act. The learned Civil Judge, by his Award dated 31-5-79, allowed the application under Section 18 of the Act filed by the claimants and enhanced the amount of compensation for the cost of land from 52,650/- to Rs. l,06,179.75p. and the cost of the trees from Rs. 8,515/- to Rs. 59,940/- and maintained the compensation so far as the building and the construction over the land as well as the cost of the manure are concerned. The learned Civil Judge also, maintained the order passed by the Land Acquisition Officer regarding rejection of amount of

claim against the general damages. The learned Civil Judge, also, awarded the interest @ 4% per annum. Thus, the total compensation, awarded by the Land Acquisition Officer was enhanced from Rs. l,30,912.96p. to Rs. 2,31,967.71p.

4. Aggrieved with the order passed by the learned Civil Judge enhancing the compensation from Rs. 1,30,912.96p. to Rs. 2,31,967.71p., the State filed S.B. Civil Miscellaneous Appeal No. 122 of 1979 against the excessive quantum of compensation awarded by the learned Civil Judge; the Border Security Force, also, filed S.B. Civil Misc. Appeal No. 102 of 1979 hallenglng the quantum of compensation awarded by the learned Civil Judge. The claimants, also, filed S.B. Civil Miscellaneous Appeal No. 104 of 1979 challenging the inadequacy of the compensation awarded by the learned Civil Judge. The State, also, filed S.B. Civil Misc. Appeal No. 125 of 1979 in which the State claimed itself to be the owner of the land and claimed that the share in the compensation may be awarded to it.

5. The appeal filed by the claimants was allowed while the appeals filed by the State as well as the Border Security Force were dismissed. The learned Single Judge, while allowing the appeal filed by the claimants, enhanced the cost of the land from Rs. 1,63,119.75p. to Rs. 2,41,350.3 lp. but dismissed the appeal filed by the claimants for enhancement of the compensation relating to trees, manure and general damages. The learned Single Judge, also, awarded solatium @ 30% and interest @ 9% per annum for the first year and thereafter @ 15% per annum.

6. Neither the Border Security Force nor the State filed any appeal against the judgment passed by the learned Single Judge in S.B.Civi] Miscellaneous Appeals No. 122, 102 of 1979 and 125 of 1979. The present appeal was filed by the Border Security Force initially challenging the judgment passed by the learned Single Judge enhancing the amount of compensation, in which the State was made one of the respondents. Later on, an application was moved and the State was transposed as one of the appellants.

7. It is contended by the learned counsel for the appellant that in the case of the acquisition of agricultural land, for determination of the market value, Capitalisation Method for determination of the amount of compensation is the most appropriate method, and the learned Single Judge was not justified in determining the value of

the land by applying the method of Sale of comparable land and the market value determined by the learned Single Judge is, therefore, not proper. In support of his contention, learned counsel for the appellant has placed reliance over: Additional Special Land Acquisition Officer v. Yamanappa Bascdingappa Chalwadi : [1994]2SCR121 and the Special Land Acquisition Officer, Malaprabha Darn Project, Saundatti etc. v. Madivcdappa Basalingappa Melavanki etc. : (1995)5SCC670 ; (ii) the market value of the land is to be determined keeping in view the prevailing market condition as on the date of publication of the Notification under Section 4(1) and the future potentiality of the land cannot be taken into consideration for determining the market value; and (ill) the Award was passed by the Collector in the present case before 30.4.82 and, therefore, Section 23(1-A) of the Act is hot applicable to the present case and as such the solatium and the enhanced rate of interest cannot be allowed to the claimants. In support of his case, learned counsel for the appellant has placed reliance over: K.S. Paripooran v. the State of Kerla and Ors. : AIR 1995 SC1012 .

8. Learned counsel for the respondents, on the other hand, has supported the judgment passed by the learned Single Judge and submitted that in the facts and. circumstances of the case the learned Single Judge has applied the right method for determining the market value and the market value determined by the learned Single Judge is a fair market value and does not require any interference. So far as consideration of the potential value of the land for determining the compensation is concerned, it is submitted by the learned counsel for the respondents that while determining the compensation, the potential value of the land can be taken into consideration. In support of his contention, learned counsel for the respondents has placed reliance over: State of Maharashtra v. Gurappa Hiroji Ram and Ors. : [1994]1SCR336 . It has, also, been contended by the learned counsel for the respondents that the solatium and the enhanced rate of interest were granted by the learned Single Judge by the consent of the parties and the judgment passed by the learned Single Judge granting solatium and the enhanced rate of interest have not been challenged by the appellant in the appeal and, therefore, the appellant cannot be permitted to raise these grounds at the time of arguments.

9. We have considered the submissions made by the learned counsel for the parties.

10. The question for consideration before us is: what is the just and adequate compensation which could be awarded to the claimants in the present case and whether the compensation awarded by the .learned Single Judge was just and proper ?

11. The land in question is a 'Chahi' land and is a fully irrigated one. The learned Civil Judge, while granting the compensation treated the land as the fully irrigated land while according to the Land Acquisition Officer, 30 Bighas of the land was Barani and 27.11 Bighas of land as Chahi land the learned Civil Judge did not agree with the view taken by the Land Acquisition Officer and on the basis of the evidence produced by the parties held that all the land was irrigated/Chahi land. This fact that the total land in question is irrigated land, was neither challenged before the learned Single Judge nor it has been challenged before us. While determining the compensation where the agricultural land has been acquired, no universal method for determination of the compensation can be applied and each case has to be considered on its own special features; but some of the recognised modes for determining the compensation relating to the agricultural land are (1) comparable authenticate transaction of the sale of land or a part of the land; (ii) authenticate transaction of sale of agricultural land of similar nature in the vicinity; and (lit) the net annual income from the land which may be capitalised at a certain number of years of purchase and the number of years determined by the Superme Court is ten.

11 A. In the case of agricultural land, the best evidence of the valuation of the land would be the price obtained by the similarly situated land with similar advantages in the same area and in the absence of any transaction of sale of the similar land, the alternative method of Capitalisation of Net Income Method with an appropriate multiplier can be applied. The value of the land that the law recognises in respect of the agricultural land acquired under the provisions of the Act is the fair market value taking into consideration any or all uses to which the land is reasonably adopted and might, with reasonable probabilities, be applied.

11B. In: Additional Special Land Acquisition Officer v. Yamanapa Basalingappa Chawadi : [1994]2SCR121 the Apex Court held that-

While disposinga of batch of the appeals this Court held that ten years multiplier would be the proper method in determining the total market value by following the method of capitalisation as just and reasonable principle. We find that this principle is quite consistent with the valuation of the land allowed by multiplying the value of the annual yield, in the absence of any other acceptable evidence. Following the ratio we hold that ten year multipilier is the proper method of valuing the lands by capitalisation method. The appeals are accordingly allowed in part and the respondents are entitled to solatium at 15% and interest @ 5% from the date of taking possession till date of deposit. The appellant is entitled to recover the balance amount from the respondents. No costs.

12. In: the Special Land Acquisition Officer, Malapabha Dam Project, Saundatti etc. v. Madivalappa Basalingappa Melavanki etc. : (1995)5SCC670 the Supreme Court held-

Since on merit, the learned Judge was not inclined to interfere with the determination of the compensation applying 15 years multiplier, the land in question being a small extent of land on fact of this case we are, also, not inclined to up set a wrong application of law. However, it will not operate as a precedent to any future case or other cases arise from the same Notification. All cases need to be decided applying only ten years multiplier.

13. In: Calcutta Metropolitian Development Authority and Anr. v. Dominion Land and Industries Ltd. and Anr. : (1995)4SCC231 the Apex Court determined the market value which reflected from the genuine and bonafide agreement to sell pertaining to the very land acquired under the Land Acquisition Act and held that 'there was no scope for determining the market value of such acquired land by adopting the method belting or hypothetically building sale out or method of comparable sale in the vicinity of the acquired land or the like.'

14. In: K. Posayya and Ors. v. Sub-Tehsildar : AIR 1995 SC1641 the Supreme Court held--

It is settled law that market value is to be determined either on the basis of the prevailing person of sale and purchase between willing vendor and willing vendee or value of the crops realised applying suitable 10 years multiplier or in case of land valued of expert valuer like urban properties could be considered for determination of the compensation. Market value cannot be fixed with mathematical precision but must be based on sound discretion exercised by the reference court in arriving at just and reasonable price. It should not be based on feats of imagination or flight of fancy. Determination of compensation for compulsory acquisition involves consideration of the price which a (hypothetical) willing purchaser can be expected to pay for the lands in the existing use as well as relatable potentialities. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land, location, suitability of the purpose it was purchased, its existing potentialities and likely use to which the land is capable of being put in the same condition would offer to pay the price, as on the date of the notification. In case of acquisition of large cracts of lands for projects situated in several villages, stray sale-deed of small extent here and there would not form the basis to determine the compensation. The reference court should be circumspect, pragmatic and careful in analysing the evidence and arriving at just and fair market value of the lands under acquisition which could be fetched on the date of the notification. The nature of the land, the crops raised and the nature of the income likely to be derived from the lands, the expenditure to be incurred for raising the crops and the net profits etc. would be the relevant factors in arriving at the net market value and if evidence is produced in that behalf on its basis applying the suitable 10 years multiplier, the market value need to be determined. The owner or claimant should not be put to loss by under valuation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory duty of the Court to maintain the balance between diverse interests.

15. In State of Uttar Pradesh v. Smt. Ram Kumari Devi etc. : [1996]2SCR749 the Apex Court held that--

It is laid down by this Court which is well settled principle that it is the duty of the Court to assess reasonable compensation. Burden is on the owner to prove the prevailing market value. On adducation of evidence by the parties, the acid test which the court has to adopt is that the Court has to sit in the arm-chair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the Court is intending to fix the market value in respect of the acquired land. Since it is a compulsory acquisition, it is out the solemn duty of the Court to assess reasonable compensation so as to allow the same to the owner of the land whose property has been acquired by compulsory acquisition and also to avoid needless burden on public exchequer.

16. The true test for determining the market value of the land and the compensation to be paid to the claimants, whose land has been acquired, is that a claimant cannot be deprived of his land except on payment of Just and adequate compensation, which is the price of the land which a willing purchaser may pay to the welling seller and for determining that, one of the method is Authenticate Transaction of Sale in respect of very land that was acquired or genuine or bonafide previous sales of the neighbouring land.

17. The learned Single Judge adopted one of the recognised modes and relied-upon a genuine and bonafide sale of land which is situated opposite to this very land on main Mandore Road in between. The land on the opposite side was a Barani land while the land of the claimants, in the present case, was a land with full irrigation facilities. The learned Single Judge accepted the sale transaction of EX.9 and the value reflected in the said transaction and multiplied it by five because the land In question was an agricultural Chahi land. While applying the multiplier of five, the learned Single Judge took into consideration the Award made by the Land Acquisition Officer applied in the case of same tehsil where in the same Land Acquisition Officer awarded the compensation, in the case of Chahi land, multiplying by five the value of Barani land. There is a difference between Barani Land and irrigation/Chahi land. The learned Single Judge was, therefore, justified in applying the multiplier of five to the price of Barani land because the same measure for awarding the compensation should be adopted when the land is situated in the same locality and is of the same locality and different measures cannot be applied. The learned Single Judge applied these principles which are

germane and relevant to adjudge the market value of the land. Though the Capitalisation Method that a multiplier of ten is to be applied, is a good method for determining the market value of the land but the Comparable Sale Method is, also, a good method for determination of the market value and while determining the market value of an agricultural land, the situation, locality advantages, i.e., irrigation facilities, the nature of soil etc. have to be looked into and a speculative sale or rise or boom in the price are not to be considered. The determination of the compensation by the learned Single Judge and the principle adopted by him in determining the value of the land is perfectly legal and valid in the facts and circumstances of the case and the judgment passed by the learned Single Judge does not require any interference.

18. The next question which requires consideration is: whether the learned Single Judge was justified in awarding 25% of the value of the land over and above the compensation on the basis of potentiality of the land in dispute for being used as a building site etc. Compensation, according to Sections 23 and 24 of the Act with respect to undeveloped agricultural land having potentiality for future non-agricultural use, can be determined on the basis of the prevalent market condition as on the date of publication of the Notice under Section 4(1) of the Act. Clause Fifthly of Section 24 prohibits taking into consideration the future potentiality. The value has to be assessed on the basis of the use of the land at the time of acquisition and not taking into consideration the future potentiality.

19. In Rajashekar Sankappa Taradami and Ors. v. the Assistant Commissioner and Land Acquisition Officer and Ors. : [1996]3SCR503 the Supreme Court held that 'in view of the fact that as on the date of notification there was no development in that area, though the land were capable to be put to non-agricultural use and that Section 24 Clause Fifthly prohibits taking into consideration the future potentiality because of acquisition in determining the compensation.'

20. The same view was reiterated by the Supreme Court in: Hookinyar Singh etc.etc. v. Special Land Acquisition Officer, Moradabad and Anr. : [1996]3SCR422 and the Apex Court held--

Proper tests and principles laid down by this Court must be applied to determine compensation. Since the LAO as well as the High Court placed reliance on the sale deed which commanded market value of a maximum of Rs. 15,000/- and odd, the question is: what would be paid in respect of the land The Court must not indulge in feats of imagination but, sit in the arm-chair of a prudent purchaser in open market and to put a question to itself whether as a prudent purchaser it would offer the same price in the open market as is to be determined? This should be the acid test. The District Court was not right in holding that the lands are possessed of future-potentiality as public purpose is industrial development. Section 24 clause fifthly prohibits taking into consideration future user to which the land will put when acquired Considered from the fluctuation in the prices placed on record and large area involved in the acquisition, situation of the lands, actual user of the lands as agricultural lands and on the totality of the facts in this case, treating all the lands as agricultural lands, we are of the considered view that the market value of the land per acre would be Rs. 35,000/-

20A. In view of the judgment of the Apex Court that though the lands are possessed of future potentiality but consideration of the future user to which the land will be put when acquired is prohibited from consideration while determining the compensation in view of Clause fifthly of Section 24 of the Act, the learned Single Judge was not right in awarding 25% of the compensation on the total value of the land. The judgment passed by the learned Single Judge enhancing 25% compensation on the value of the land, therefore, deserves to be quashed and set-aside.

21. The next question which requires consideration is: whether the learned Single Judge was right in awarding solatium and interest at the enhanced rate in view of Section 23(2) of the Amending Act which was made applicable to the awards made in between 30.4.82 and 24.9.84 while the award in the present case was made by the Collector much before April 30, 1982. The appellants cannot be permitted to raise this ground at the time of argument without any ground taken in the Memo of Appeal. The enhanced rate of solatium as well as the interest were awarded by the learned Single Judge on the basis of the agreement arrived-at between the parties. It has specifically been mentioned in the judgment passed by

the learned Single Judge that 'the learned counsel for the B.S.F. as also the learned Deputy Government Advocate agree that the claimants are entitled to 30% of the value of the acquired land by way of solatium instead of 10% awarded by the learned Civil Judge. They are, also, agreed that the claimants are entitled for 9% per annum interest from the first year from the date of caking possession over the land in dispute over the amount of award and 15% after the expiry of first year if the payment is not made.'

22. The amount was awarded on the basis of the agreement. This finding recorded by the learned Single Judge has not been challenged by the Border Security Force or the State Government in the appeal. No ground challenging this finding has been taken in the memo of appeal. This argument was advanced only during the course of arguments without making any amendment in the Memo of Appeal.

In the absence of any ground challenging this finding or the Judgment of this paint the appellants cannot be permitted to agitate this ground challenge this judgment which was passed on the basis of the agreement between the parties. The contention raised by the learned counsel for the appellants is, therefore, bereft of any substance.

23. In the result, the appeal filed by the appellants is partly...allowed. The amount of Rs.48,270/-, i.e., 25% of by the learned Single Judge for the future potential value of the land, is ordered to be deducted from the amount of compensation. The rest of the award/compensation granted by the learned Single Judge does not require any interference. The claimants will be entitled for the compensation amounting to Rs. 1,93,080/- only as the price of the land.