

State Vs. Mohd. Yasin

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Court : Jammu and Kashmir

Decided On : Jul-16-1981

Judge : Mufti Baha-Ud-Din Farooqi, Ag. C.J. and; G.M. Mir, J.

Acts : Jammu and Kashmir State Land Acquisition Act, 1990 Smvt. - Section 23; ;
[Land Acquisition Act, 1894](#) - Sections 6 and 23

Appeal No. : Civil First Appeal No. 53 of 1978

Appellant : State

Respondent : Mohd. Yasin

Advocate for Def. : Abdul Qayoom, Adv.

Advocate for Pet/Ap. : H.M. Sadiq, Adv.

Disposition : Appeal dismissed

Judgement :

Mir, J.

1. This appeal arises out of an order and decree passed by the learned District Judge, Anantnag on a reference made to him under Section 18 of the Land Acquisition Act by the Collector (Asstt. Commissioner) Anantnag.

2. It appears that about 8 kanals of land were acquired by the State appellant at Dooru Anantnag from 3 persons, Mohd. Yasin, Mst. Bega Bane and Qadir. The Collector fixed the market value of the land so acquired at Rs. 4,000 per kanal. Except the respondent herein, i. e. Mohd. Yasin, the other two persons from whom the land had been acquired have accepted the award of the Collector. The respondent made a request to the Collector to refer the matter under Section 18 of the Land Acquisition Act to the District Judge for adjudication.

3. On recording evidence of a large number of witnesses and on perusing a good number of sale deeds, the learned District Judge vide his order dated 4-8-78 enhanced the rate of acquisition from Es. 4,000 to Rs. 6,000 per kanal in favour of the respondent. It was because of this that the State has filed this appeal in this court.

4. Out of the total land acquired under Land Acquisition Act by the Collector, it is admitted that the respondent was the owner of 5 kanals and 12 marlas of land only. From the perusal of the evidence on record and its valuation made by the learned District Judge, it appears that the Notification u/s. 6 of the Land Acquisition Act was issued with regard to the acquisition of the land in question on 18-7-72. It was in the evidence that the State purchased some other pieces of land in Duroo (Anantnag) in 1971 and also in 1973 @ Rs. 3,000 to Rs. 4,000 per kanal. It was also in the evidence that some more pieces of land had been sold by others to purchasers at a price ranging from Rs. 1,500 to Rs. 3,000 per kanal. After discussing the whole evidence learned District Judge has reached the conclusion that in 1971 State itself had purchased a piece of land @ Rs. 4,000 per kanal. It has been, however, established in evidence that the piece of land, subject matter of the dispute, was situated on the general road side while the pieces of land purchased only a year before by the State were situated in the interior of the village and the purpose for acquiring that piece of land was to build a Girls School and also a Police Post. There was amongst other sale deeds, one sale deed on the record which shows that 12 marlas of land have been sold @ Rs. 5,000 and that piece of land was situated also on the general road side. On a comparison of all the relevant matters raised during the evidence, the learned District Judge had fixed the rate per kanal as stated above.

5. It was agreed at the bar that the Collector had to determine the value of the land acquired in accordance with the provisions of Land Acquisition Act especially those narrated in Section 23 of the Act. The provisions of the section have to be taken into consideration in determining the compensation to be paid. The first matter to be considered for awarding compensation u/s. 23 of the Act was to find out the market value of the land on the date of the publication of the Notification u/s. 6 of the Land Acquisition Act. There were several other methods narrated in this provision of law to find out the fair compensation to be paid to the person from whom the land has to be acquired. For the purposes of disposing of this appeal, as in the Reference under Section 18 before the learned District Judge, however, the main requirement was to ascertain the market value of the land acquired from the respondent on the date of the Notification issued under Section 6 of the Act. From the Evidence which has been relied upon by the District Judge, it was obvious that the market value of land per kanal in the same locality in 1971 was about Rs. 4,000 per kanal. Even the State itself had purchased the land in the interior of the town @ Rs. 4,000 per kanal. The market value of the piece of land in 1971 could be taken into consideration for fixation of the market value of the land acquired or sold in 1972, as 1971 and 1972 were so approximate that it could not be said that the market value prevailing in 1971 was so far away in time that it could not be reasonably taken into consideration in 1972. No doubt, the value of the land acquired is to be determined for compensation to be awarded at the time of issue of the Notification u/s. 6 of the Act, but there is general consensus of opinion that while fixing the real market value, the potentialities of the land in question also have to be taken into consideration. In the instant case the land acquired by the State was situated by the road side and on taking into consideration the evidence which remains unchallenged the piece of land could have been used for building shops and suites which would have brought considerable income to the owner in contrast to the piece of land situated in the interior of the town (Duroo) which had been acquired earlier by the State, While fixing the market value these factors are to be taken into consideration. If the land in dispute was admittedly situated on the road side it would have for various reasons fetched more price than the compensation awarded to the respondent by the State. All potentialities of the land acquired have to be taken into account as part of the value of the land.

Advantages that the land possesses, present or future, in the hands of the owner himself may reasonably be taken into consideration while fixing the compensation to be awarded to him. The owner would be within his rights to have the price assessed in reference to those advantages which would give the land the maximum value. It is not only the existing benefits derived from the land by the owner that have to be taken into consideration but even possible benefits in the future have to be gone into and considered while fixing the compensation of the land acquired. The potential value of the land has to be taken into consideration while fixing the market value of the land. The value of the land would not entirely depend on the actual use to which the same was being put on the date of the publication of the Notification. Where a piece of land sought to be acquired is situated by the road side in a town or a village which is fast and steadily growing, the land has to be valued with reference to the use to which it could have been put in future by its owner. The method to determine the market value/ price of a plot of land was to find out instances of sale of the same or similar type of land and/or a portion thereof near about the date of Notification under Section 6. In the instant case some instances of the sale have been brought out in evidence but the location of the land in question is somewhat different from the pieces of land sold. The land in question is situated admittedly on the general road and has a real and potential value as against the pieces of land which have been sold and purchased within the town itself. It is conceded that it may be rather difficult to assess in comparison the value of a piece of land situated on the road side as against the one situated within the town itself. But a piece of land situated by the general road must reasonably be considered to possess higher value than the piece of land situated inside the town as the land on roadside could be utilised for commercial, industrial and other like profitable purposes. Valuation of immovable property could not be said to be an exact science. It is an enquiry that relates to a subject which is full of uncertainties and where there is more than ordinary guess-work, It may be unfair to require an exact exposition of reasons for the conclusion arrived at. Certain methods on valuation have, however, been recognised in various judicial pronouncements, one of these methods was undoubtedly the exact location and situation of the piece of land acquired.

6. In AIR 1971 Madh Pra 32, it has been held (at p. 34) :--

'That the general principles for determining the compensation are specified in Sections 23 & 24 of the Act but the compensation must be determined by reference to the price which a willing vendor would reasonably accept or obtain from a willing purchaser. The value to be ascertained is the value to the seller of the property in its actual condition at the time of its expropriation with all its existing advantages and with all its possibilities excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. The value of the potentialities has to be taken into account even where the only possible purchaser is the authority purchasing under powers enabling compulsory acquisition. The land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined but also by a reference to the uses to which it is reasonably capable of being put in the future.'

7. In AIR 1972 SC 1417, it has been observed as follows (at p. 1420):--

'The compensation payable to the owner of the land is determined by a reference to the price which a seller might reasonably accept to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s. 4 of the Act, but its potential value also must be taken into account.'

8. The learned District Judge has come to the conclusion that on the consideration of the entire evidence recorded by him it could reasonably be said that the value of the land in question could not have been less than Rs. 6,000 per kanal at the time of Notification u/s. 6 of the Act was issued. It was admitted that Duroo was fast developing into a town and naturally the value of the land has gone up. The land situated by the roadside must, therefore, be reasonably held to have increased in value in higher degree than the pieces of land situated in the interior of the town. I am, therefore, in full agreement with the learned District Judge that the respondent whose land measuring 5 kanals 12 marlas (five kanals and twelve marlas) has been acquired deserves to be paid compensation at the rate of Rs. 6,000 (six

thousand rupees) per kanal plus an amount equivalent to 15% on the said market value in consideration of the compulsory nature of the acquisition as laid down in Sub-clause (2) of Section 23 of the Land Acquisition Act.

9. The learned District Judge has finally directed that 'the compensation and 'Jabarana' already accepted by the applicant under protest will be deducted from the total amount and the remaining compensation shall be paid to him without any interest.' Here he has omitted to notice the provisions of Section 35 which requires the Collector to pay interest on the amounts awarded @ 4% per annum from the date the possession is taken over until the amount is paid or deposited. Thus, the respondents were entitled to interest as well which has been refused by the District Judge: But since they have not come up in appeal nor filed cross-objection, I am unable to grant any relief in this behalf. The direction must, in the circumstances, be allowed to stand.

10. Before concluding it may be noted that the decree does not exactly follow the judgment of the learned District Judge. He had allowed the compensation @ Rs. 6,000 per kanal. The decree sheet, however, recites that the same shall be paid @ Rs. 10,000 per kanal. Thus some error has crept in the preparation of the decree sheet. It is, therefore, directed that the decree sheet shall stand corrected to the extent that the compensation shall be payable @ Rs. 6,000 per kanal instead of Rs. 10,000 as provided in the decree sheet.

11. With this modification in the decree the appeal is hereby dismissed with costs.

Farooqi, Ag. C.J.

12. I agree.