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Madan Mohan Sharma Vs. Collector and anr.

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Court : Jammu and Kashmir

Decided On : Jul-19-2005

Reported in : 2006(3)JKJ589

Judge : S.K. Gupta, J.

Acts : Land Acquisition Act, 1990 - Sections 6, 7, 9, 18, 23, 24, 28 and 35

Appeal No. : CIA 45/2001

Appellant : Madan Mohan Sharma

Respondent : Collector and anr.

Advocate for Def. : A.H. Qazi, Addl. AG.

Advocate for Pet/Ap. : D.C. Raina, Sr. Adv. and; Vikram Singh, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Gupta, J.

1. This appeal is directed against the judgment and decree dated 17.8.2001 passed by the learned District Judge, Jammu in file No. 7/2AH in case entitled Madan Mohan Sharma v. Collector, Land Acquisition, Jammu, whereby the claim of the appellant-petitioner for enhancement of compensation has been rejected

and no interest as contemplated under Sections 28 and 35 of the Land Acquisition Act has been awarded.

2. On being approached by the Director, School Education with an indent to acquire the land aggregating 16 kanals and 10 marlas contained in Khasra No. 1053/M located at Village Dablehar, Tehsil R.S. Pura, for construction of Government High School, Dablihar, a notification was issued by the Revenue Department under Sections-6 and 7 of the State Land Acquisition Act (hereinafter referred to as the Act) in declaring that the said land is required for the purpose, i.e., for the construction of the Government High School, Dablihar. Thereafter notices under Sections 9 and 9(a) of the Act in succession were issued to the land owners/interested persons and also to the indenting authority, i.e., Director School Education, Jammu. The appellant-petitioner, Madan Mohan Sharma, however, claimed a compensation @ Rs. 3 lacs per kanal of the land under acquisition in his application made on 16.9.1998. Tehsildar, R.S. Pura, however, intimated in his report to the acquisitioning authority that no sale transaction has taken place in the locality for the last three preceding years, but after inspecting the site and in view of the location he proposed the tentative rate of Rs. 1 lac per kanal for the land acquired for seeking approval to the proposed rate of compensation. Accordingly, the matter was placed before the Deputy Commissioner, Jammu for approval, who in turn, referred the case to the Committee of the Collectors for seeking their expert opinion for the proposed rate of compensation in respect of the land under acquisition as to the genuineness of the rate proposed by the Additional Commissioner, Jammu in the draft award. The Committee of the Collectors, however, found that the rate of compensation in respect of the land under acquisition proposed in the draft award by the Additional Commissioner is on much higher side and a sub-Committee of Assistant Commissioner (Revenue), Jammu, Asstt. Commissioner (General), Jammu and Collector J&K; Housing Board, Jammu was constituted to visit the spot to ascertain the approximate rate of land in the locality. The sub-Committee, however, proposed the rate of compensation at Rs. 45,000/-per kanal for the land acquired. The matter was discussed in detail in the Committee of Collectors and the Committee agreed with the rate of compensation of Rs. 45,000/- per kanal, proposed and recommended by the sub-Committee. The Deputy Commissioner, Jammu found the rate of

compensation per kanal of the land acquired at Rs. 45,000/- as reasonable and genuine and also approved the same in respect of the land under acquisition. The rate of compensation of the land under acquisition of Rs. 45,000/- per kanal, therefore, came to be adopted and, accordingly, the final award came to be passed on 12.3.1999.

3. Madan Mohan Sharma, appellant-petitioner being not satisfied with the rate of compensation did not accept the award in respect of the land acquired under the Land Acquisition Act, he made an application to refer the matter for determination of the Court. The appellant also disputed the apportionment of the amount of compensation as per the shares of the land owners and he claimed the full amount of compensation in respect of the land acquired being its owner as the land acquired falls within his share. The reference Court after inviting objections from the parties, framed the following issues for settlement:

1. Whether the amount of compensation awarded by the Collector is not as per market rate prevailing at the time of acquisition. If so, what was market rate? OPP

2. Whether the amount of compensation has not been properly apportioned as per their shares of the land owners. If so, what is the correct apportionment of the amount to the extent of their shares? OPP

3. Relief.

4. In support of his claim for enhancement of rate of compensation of the land acquired, the appellant-petitioner examined PW Shanker Singh, Tehsildar, JDA, PW Yash Pal, Patwari Halqa, besides himself coming into the witness box. The reference Court relying on the statements of the Tehsildar, Patwari concerned and also on the revenue record placed on record, proved in their statements, held that the acquired land on which Government High School building has been constructed belongs to appellant-petitioner, Madan Mohan Sharma, one of the share holders and is, thus, entitled to receive the entire compensation under Government Order No. LB 10/88 REA dated 23.4.1980 irrespective of the apportionment statement of the award which, in fact, is contrary to the Revenue record and the observations made by the High Court in OWP No. 388 of the year

1995, that the appellant-petitioner (Madan Mohan's) title on the land prima facie appear to be established by documents placed on the record of the writ petition.

5. In regard to issue No. 1 which pertains to the rate of land prevalent in the area at the time of acquisition, the trial Court returned a finding that there is no evidence to show that the rate of land at the time of acquisition was higher than the proposed rate of land per kanal at Rs. 45,000/-, awarded as compensation by the respondents, except the plea put across by the petitioner that the Tehsildar, R.S. Pura had recommended Rs. 1 lac per kanal and the same be awarded. It was further found that the sub-Committee was constituted to ascertain their consensus opinion about the genuineness of the rate of the land proposed by the Deputy Commissioner in his draft award and the rate of land prevalent. That the proposed market rate of land under acquisition of Rs. 10,000/- per marla by Halqa Patwari and further recommended by Addl. Commissioner is neither genuine nor fair particularly when no sale of the land has taken place in the Village during past three years, i.e., 1995, 1996 and 1997. The District Judge, Jammu also found that after the detailed discussion with the Committee of the Collectors and considering their report based on the location, potential and commercial value of the land acquired, Deputy Commissioner, Jasmmu agreed the rate of Rs. 45,000/- per kanal as compensation and approved the same to be the prevalent market rate in the area where the land acquired is situated.

6. However, the learned District Judge, Jammu, reached at the conclusion that the appellant-petitioner has failed to prove the extent of enhanced rate per kanal, prevalent in the area at the time of acquisition, to which he is entitled, either by documentary or by any positive or cogent oral evidence and held that the appellant-petitioner is only entitled to the rate of compensation of Rs. 45,000/- per kanal, approved by the Addl. Deputy Commissioner, Jammu and which is adopted in the award passed in the acquisition case and, thus, refuted his claim which became the subject-matter of challenge in this appeal.

7. Mr. D.C. Raina, Sr. Advocate appearing for the appellant has assailed the award passed by the Collector under the Act and further upheld by the reference Court mainly on twin grounds: firstly that neither the Collector was justified in

reduction of compensation recommended at the rate of Rs. 1 lac per kanal in the draft award by the Assistant Collector to Rs. 45,000/-per kanal though the evidence produced in support of his claim by the appellant-petitioner was of the witnesses belonging to the Revenue department which remained un-rebutted, nor the Court is legally justified in rejecting the appellant's evidence in support of enhancement of compensation. Secondly, the entitlement of the appellant-petitioner to interest on the awarded amount in terms of mandate of Sections 28 and 35 of the Act which has neither been accepted by the Collector at the time of making the award nor allowed by the Reference Court at the time of upholding the award by the Collector.

8. As regards his first contention raised by Mr. Raina, appellant's counsel, it is pertinent to point out that general principles for determining the compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect 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 under Section 6 of the Act but its potential, commercial value and also location must be taken into account. The sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. However, the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under Section 6 are: (i) opinion of experts, (ii) the price paid within reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages: and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Further these methods, however, do not preclude the Court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value.

9. The controversy in the instant case is centered with the question of valuation of the lands under acquisition. The question for consideration is: what is the just and adequate compensation to which the lands would command determination? It is settled law that the burden of proof of market value prevailing as on the date of publication of notification under Section 6 of the Act is always on the claimants. The witnesses were examined by the claimant-appellant to discharge the burden of proof in regard to the rate of land prevalent in the vicinity at the time of acquisition. PW Yash Paul, Patwari from the Revenue Department was posted in the Halqa Dablihar in the year 1995-96 where the land acquired is situated. According to this witness, sale transactions were banned and the people used to sell and purchase the land on the mutual understanding on the basis of receipts. It is also in his evidence that according to the receipt produced before him the rate of land was Rs. 10,000/- per marla. He had prepared the document showing the average three years value of the land and submitted a report to the Tehsildar indicating the proposed rate of Rs. 10,000/- per marla of the land in the vicinity at Dablihar. However, no sale deed with regard to the sale and purchase of the land executed prior to the imposition of the ban of any area adjacent or nearby to the land under acquisition has been brought on record. The appellant-petitioner has also stated nothing about the rate of land prevailing at the time of publication of notice under Section 6 of the Act or that the value of the land acquired was more than to that of one ascertained and approved by the Deputy Commissioner. Petitioner's statement is only to the effect that the rates are increasing day by day but without any documentary or cogent or positive or oral evidence in sustenance of his claim for enhanced compensation of the land acquired. It was merely a fragment of the imagination of the petitioner in stating that the amount of compensation has not been determined in accordance with the market rate prevailing at the relevant point of time, in the absence of any evidence oral or documentary produced in support of his claim for enhancement of compensation. Even PW Shanker Singh, Tehsildar submitted his report based on the information provided by the Halqa Patwari, namely Yash Paul who in his report stated that no transaction of land has taken place in the locality since last three years and the prevalent rate of land is Rs. 10,000/- per marla. The land admittedly has been acquired in the year 1998. PW Yash Paul, Patwari in his statement had referred to

one sale deed of one marla of land sold for Rs. 27,000/- and the same was registered in the year 1987, while proposing the rate of Rs. 10,000/- per marla of the land acquired in his report. This report seems to be based on the opinion of the Halqa Patwari, Yash Paul without any material available with him and brought on record. There is no evidence to indicate that who had sold the land of one marla for Rs. 27,000/- in the year 1987 and it was either adjacent to the land or located nearby the said land. Even the person who is stated to have purchased the said land was never examined.

10. It is settled proposition of law that when a report of an expert is sought to be relied upon by the claimant proposing the rate of compensation of the lands acquired and if the data or the material on the basis of which such report is based is not produced before the Court and unless authenticity of the same is made good and the method of valuation adopted therein is correct, it cannot be acted upon by the Court.

11. It is further apt to point out that the opinion for the valuation of the acquired land given by such an expert can be of no assistance in determining the market value of such land, unless such opinion is formed on relevant factual data or material, which is also produced before the court and proved to be genuine and reliable, as any other evidence. The methods of valuation of acquired land adopted by the expert in his report is found to be not in consonance with the recognized methods of valuation of similar lands. In determining the market value of the acquired land, it can no doubt receive assistance from such report, if it is rightly done and the date on which the report is based is placed before the court and its authenticity is established as is the view taken by the Apex Court in case reported as : AIR 1995 SC840 , titled Special Land Acquisition Officer v. S.O. Tumari.

12. On the receipt of the draft award from the Additional Deputy Commissioner who proposed the tentative rate of compensation of land acquired as Rs. 1 lac, the Deputy Commissioner, Jammu in order to ascertain the consensus opinion about the proposed rate of compensation of the land under acquisition, appointed the Committee of Collectors and placed the matter before it. It was observed by the

Committee of the Collectors in its report that the proposed rate is on much higher side and in turn appointed a sub-Committee of Assistant Collectors which visited the spot who keeping in view the location, quality and commercial value of the land assessed the proposed rate of Rs. 45,000/- per kanal as the rate of land acquired. This report of the sub-Committee when considered in a detailed discussion of the Committee of the Collectors found the rate of Rs. 45,000/- per kanal of the acquired land as fair, genuine and agreed with it and subsequently was approved by the Deputy Commissioner and adopted by the Collector in his final award.

13. It is further borne out from the record that no sale of land has taken place in the Village for the last three years of the initiation of the acquisition proceedings. Even the claimant did not produced any witness from the Village where the land is situated in support of his entitlement to claim enhancement of compensation at the rate of Rs. 1 lac per kanal. A Photostat copy of tentative award submitted for approval before the Deputy Commissioner in adopting the rate of Rs. 1 lac per kanal of the land acquired alongwith the copy of another award issued by the Addl. Deputy Commissioner, Jammu dated 3.10.1996 with the rate of land acquired at Rs. 1,40,000/- in different acquisition proceedings was produced before the sub-Committee of the Assistant Collectors which, however, considered both these documents and found in view of their long past experience and being employees of Revenue Department dealing with frequently in such matters viz. determination of the market value of the land in acquisition proceedings that the rate of Rs. 1 lac of the acquired land proposed in the draft award is on much higher side and proposed the rate of Rs. 45,000/- per kanal for adoption in the case to be fair and reasonable. This rate of compensation was, however, approved by the Deputy Commissioner to be most reasonable and fair.

14. Bearing in mind the principles laid down by the Apex Court in catena of cases in determining the compensation of the land acquired, I do not find any justification to interfere with the determination of rate of compensation of the land acquired by the Collector in his award and subsequently upheld by the Reference Court because neither any documentary nor any oral evidence has been produced by the appellant-petitioner with regard to the sale of the land within the vicinity either adjacent or nearby to the land acquired to prove the enhanced rate of

compensation per kanal prevalent in the area at the time of declaration in the notification issued under Section 6 of the Act. The award of the Collector in adopting the rate of compensation of Rs. 45,000/- and approved by the Deputy Commissioner, Jammu with Jabrana @ 15% of the land acquired is in my opinion as per the methodology of determination indicated in Section 23 of the Act and is, thus, genuine and fair.

15. The appellant-petitioner has relied upon the report of the Tehsildar, indicating the tentative rate of Rs. 1 lac per kanal, proposed for the land acquired, and claimed enhancement of the rate of compensation from Rs. 45,000/- to Rs. 1 lac per kanal with interest. The evidence of the Tehsildar with regard to the value of the land was merely his opinion. There is nothing on record providing bases for forming his opinion. In the circumstances, I find no ground for further enhancement of amount of compensation.

16. The next contention raised by Mr. D.C. Raina, Sr. Advocate appearing for the appellant-petitioner pertains to his entitlement to receive interest on the amount of compensation from the date of his dispossession. Undoubtedly, it is the liability of the Collector in terms of the relevant provision to pay the amount of award together with interest in the event of amount of compensation not being paid in time.

17. In the instant case, the Indenting Department, i.e., Director School Education was already in possession of the land on which the Government High School, Dablihar is constructed since 1968. A request was made by the Indenting Department for acquisition of the land for constructing Government High School on 9.7.1998 and the final award of compensation was issued on 12.3.1999, the appellant-petitioner, however, when did not accept the award in claiming the enhanced rate of compensation in respect of the land acquired and also disputed as to the apportionment to receive compensation and requested for a reference to be made under Section 18 of the Act to the concerned Court for determination.

18. It is not in dispute that the award amount was deposited on 25.8.1999 and the interest could be claimed only on account of delay in making the payment of compensation. The amount of compensation having been deposited soon after the

passing of the award and making the reference to the Court under Section 18 of the Act at the request of the appellant-petitioner and there being also a dispute raised as to the apportionment of compensation disentitles the appellant-petitioner to claim interest on the amount of compensation awarded by the Collector as the title of the appellant-petitioner of the land for receiving compensation was determined for the first time. The contention of Mr. D.C. Raina, Sr. counsel appearing for the appellant with regard to the award of interest in such circumstances is not tenable and, thus, declined.

19. In the result, the appeal in my view, does not possess any merit and the same is, accordingly, dismissed. The parties to bear their own costs.

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