

**Bharat Singh and Others Vs. Uoi and ors**

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**Court :** Delhi

**Decided On :** Jul-22-2011

**Judge :** Pradeep Nandrajog, J.

**Acts :** Land Acquisition Act - Section 4; Code of Civil Procedure (CPC) - Sections 151, 152, 153

**Appeal No. :** LA.APP. 500/2008 & CM APPL.905/2011

**Appellant :** Bharat Singh and Others

**Respondent :** Uoi and ors

**Advocate for Def. :** Mr.Sanjay Poddar; Mr.Sachin Nawani; Mr Siddharth Panda, Adv.

**Advocate for Pet/Ap. :** Mr Bhagwat Prasad Gupta; Mr.Inder Singh, Adv.

**Judgement :**

CM 906/2011 in LA.App.No.500/2008(Exemption) Allowed, subject to just exceptions.

CM 2171/2011 in LA.App.No.500/2008 (Delay) For the reasons stated in the application the delay in filing the appeal is condoned.

LA.App.No.500/2008 and the other above captioned connected matters

1. A large chunk of land in the revenue estate of village Kilokari, Nangli Rajapur, Garhi Mendu and Khizrabad were acquired pursuant to a notification dated 23.6.1989 issued under Section 4 of the Land Acquisition Act and the purpose of the acquisition was channelization of Yamuna River. Pertaining to the said notification, vide judgment and order dated 7.6.2011, dealing with lands in village Kilokari, Nangli Rajapur and Khizrabad I had dismissed all the appeals and cross objections holding that the fair market value of the subject lands assessed at `89,600/- per bigha by the learned Reference Court was correct. I had noted therein that the learned Reference Court had personally visited the site and had prepared a report dated 22.11.2006 graphically narrating the topology of the land. A rough site plan had been prepared. I had noted that the subject land was between the river bank of River Yamuna and the Forward Bund. I had noted that the subject land was in the Flood Plain area of river Yamuna and except for a few patches where agricultural activity could be undertaken, the land was mostly grass land, bushy and shrub vegetation. I had noted that the aquatic vegetation was poor in this stretch due to degraded water quality of river Yamuna. There being no sale deeds which could form some evidence pertaining to sale transactions for similar situated lands, I had opined that the same shows hardly any buyer interested in the lands. I had thus held that the decision of a Division Bench of this Court in the judgment reported as *Tindey & Ors. v. UOI & Anr.* 2000 (54) DRJ 384 where for salabi land in village Khizrabad fair market value determined per bigha as of 10.5.1976 at `35,000/- per bigha would be a good basis as a starting point. The reason was that in *Tindey's* case this Court specifically noted that the land was salabi i.e. waterlogged; as were the instant lands. Thereafter, noting the observations of the Supreme Court in the decision reported as 2008 (14) SCC 745 *General Manager Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jeewanbhai Patel & Anr.*, wherein the Supreme Court held that there was no universal rule that land rates appreciate by 10% or 12% each year and that various factors have to be considered; if with reference to the past prices the market price at a subsequent date has to be determined. I had specifically dealt with the argument that for agricultural land in village Kilokari, pertaining to a

notification dated 13.11.1959 fair market value assessed as of 13.11.1959 was `26,000/- per bigha as per decision dated 10.10.1984 in RFA No.117/1974 Smt.Angoori Devi v. UOI & Ors., on basis whereof it was being urged that land in village Kilokari which is the subject matter of the present acquisition should be granted a higher rate not only for the reason that Kilokari was better situate but also that Kilokari was an urbanized village. Repelling Angoori Devi's case to be a good guideline, I had specifically noted that lands in village Kilokari with which I was concerned in the appeals which I was deciding were lying on the other side of Ring Road and between the river bank of river Yamuna and the Forward Bund and thus these lands could not be equated with the other lands of village Kilokari.

2. The said decision would bind me today save and except depending upon the fate of CM No.13287/2011 filed by the appellant of LA App.No.59/2007, which appeal was decided by me in the judgment of mine which I have just referred to hereinbefore. The application under Section 151, 152 and 153 CPC seeks clarification, correction and modification of my decision dated 6.7.2011 and as would be evidenced from its pleadings hereinafter noted, the application actually seeks a review.

3. In para 2 of the application it is stated that while deciding LAC No.18/2005 Attar Singh v. UOI, the learned Reference Court had clearly observed that agricultural lands in village Kilokari are better situate vis-à-vis lands in village Khizrabad and thus it is sought to be urged that an error has been committed while penning the judgment and order dated 7.6.2011. Thereafter, it is pleaded that since village Kilokari was urbanized, the escalation granted by me at the rate of 7.5% per annum with reference to the price fixed in Tindey's case is ex-facie wrong. Though not pleaded in the application, during arguments today, Sh.B.P.Gupta states that since I was influenced by the observations of the Supreme Court in Rameshbhai's case (supra) wherein Supreme Court had held that in rural areas appreciation would normally be between 5% to 7% per annum which could be safely adopted and suitably increased if there was some evidence to prove otherwise, the same principle could not apply to an urban village.

4. I note that I had referred to the decision in Rameshbhai's case to simply bring home the point that where, for years together, no sale purchase takes place for a particular kind of a land in a village, this would be proof of there being hardly any buyers for the land. As rural areas, away from cities, have less percentage increase in the land value, similar would be the position of disadvantaged lands in urbanized villages. Though not highlighted by me, but I highlight now. Mere urbanization of an area without a further consideration of the nature of land use prescribed post urbanization would result in wrong conclusion being arrived with reference to the market value of land if mere urbanization is the index factored and the land used index ignored.

5. In my decision I had highlighted that as per Master Plan, the subject lands were to be developed as green areas having recreational activities around the river Yamuna and hardly any land to be used for a residential or a commercial purpose. I had highlighted that the appellant, Sh.Bed Ram, had admitted that there was just no development on the lands in question. I note that village Kilokari was urbanized in the year 1966. Instant notification is dated 23.6.1989. It is relevant that in spite of being urbanized in the year 1966, no development took place on the subject lands for over 23 years.

6. There is neither any error, clerical or otherwise committed by me. It was on the aforesaid process of reasoning I had held that for the subject lands they would have the same value whether they were comprised in the low lying areas of village Kilokari, Khizrabad or Nangli Rajapur. I would highlight that the contra argument of the Union pertaining to similar low lying lands in village Ghari Mendu which were also acquired for the same purpose and pursuant to the same notification was rejected. The argument was that agricultural lands of village Ghari Mendu which were acquired were on the Eastern bank of river Yamuna and were locationally disadvantaged I had held that so poor was the quality of the acquired lands that they could be treated as BPL (Below Poverty Line) and it would be difficult to draw a further classification of a category BBPL (Below, Below Poverty Line).

This was so held in a decision of even date, deciding a batch of appeals relating to village Ghari Mendu, lead matter being LA.App.No.613/2008 Union of India v. Khazan Singh & Ors.

7. I have dealt with the issue on merits raised in the application, which as is apparent from the narratives hereinabove, is in sum and substance an application seeking review and I have treated the same as a review application and I have not quibbled on the technicalities of law that a review petition is being masked as one under Section 151, 152 and 153 CPC.

8. Accordingly, I dismiss CM No.13287/2011 in LA App.No.59/2007.

9. Following my decision in Bed Ram's case I dismiss all above captioned appeal and cross objections and decree that parties shall bear their own cost.

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