

(2008) 05 AHC CK 0061

Allahabad High Court

Case No: None

State of U.P.

APPELLANT

Vs

Purushottam Das Tandon

RESPONDENT

Date of Decision: May 22, 2008**Acts Referred:**

- Land Acquisition Act, 1894 - Section 4

Citation: (2008) 3 AWC 3195**Hon'ble Judges:** S.U. Khan, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

These appeals are directed against common judgment and award dated 14.12.1971 given by Presiding Officer, Nagarmahapalika Tribunal, Allahabad in references No. 2 and 3, both of 1966.

2. Two bungalows bearing Nos. 7 and 9, situate on Hastings Road, Allahabad having an area of 11 acres 3411 square yards and 8 acres 2982 square yards respectively were acquired. Reference No. 2 of 1965 was in respect of Bungalow No. 9 and reference No. 3 of 1965 was in respect of Bungalow No. 7. Initial notification was issued on 13.5.1958. Award was given on 24.2.1964. Bungalow No. 7 belonged to Beni Prasad Tandon (B.P. Tandon) respondent in F.A. No. 195 of 1975 and bungalow No. 9 to Purshottam Das Tandon (P.D. Tandon) respondent in F.A. No. 19 of 1975. Both bungalows were constructed over nazul land. Lease of Bungalow No. 7 was expiring on 7.10.1968 and of Bungalow No. 9 on 9.6.1969.

3. Obviously lease-hold rights of the lessees in the land of both The bungalows and the constructions standing thereupon were acquired. Even though in every lease of

nazul land, there is a provision for resumption of the land, if required for public purposes, however that right was not exercised by the Government of U.P. It was pure and simple acquisition.

4. The contention of State to the effect that it was a case of resumption and not acquisition was rightly rejected by the Tribunal below as the Government having got both the options opted to proceed with proceedings for acquisition of leasehold rights in the land in dispute and constructions standing thereupon. Initial notification in the nature of notification u/s 4 of the Land Acquisition Act was issued on 13.5.1958 and award was given on 24.2.1964.

5. Special Land Acquisition Officer awarded compensation of lease-hold rights over the land and constructions standing thereupon. Being dissatisfied with the awarded compensation, respondents in these appeals requested for making references, which were accordingly made and decided by the impugned judgment. The learned Presiding Officer of the Tribunal below enhanced the amount of compensation against each head. The details of amount of compensation awarded by S.L.A.O. and Presiding Officer of the Tribunal are as follows:

Bungalow No. 7

Sl. No.	Names of item	Compensation awarded by S.L.A.O.	Compensation awarded by P.O., Tribunal
1.	Lease-hold rights	Rs. 11,387.40	Rs. 79,592
2.	Buildings and fixtures etc.	Rs. 1,10,226	Rs. 1,98,600
3.	Trees and flowers	Rs. 4,704	No separate amount awarded
		Total Rs. 1,26,317.40	Total Rs. 2,78,192

Bungalow No. 9

Sl. No.	Names of item	Compensation awarded by S.L.A.O.	Compensation awarded by P.O., Tribunal
1.	Lease-hold rights	Rs. 12,725.96	Rs. 58,590
2.	Buildings and	Rs. 1,14,611.60	Rs. 2,05,153

	fixtures etc.		
3.	Trees and flowers	Rs. 4,831.50	No separate amount awarded
		Total Rs. 1,32,169.06	Total Rs. 2,63,743

Valuation of Lease Hold Rights:

6. The claimants had contended that lease-hold rights of the adjoining lands were sold in near past (in between 1957 and 1960) @ Rs. 4 per square yard and claimed compensation at the said rate (in that regard, some sale deeds were also filed). However, the Presiding Officer did not accept the said contention.

7. Initially before S.L.A.O., the T claimants had claimed compensation for the land @ Rs. 8,000 per acre. However, later on they got the references amended and claimed the compensation @ Rs. 4 per square yard as market value.

S.L.A.O., had held that there was no provision of renewal and transfer of lease-hold rights. Learned Presiding Officer held that leases were renewable and transferable and in fact similar leases of adjoining lands were renewed and transferred.

8. The Presiding Officer of Tribunal for determining the market value of the lease-hold rights placed reliance upon four letters (Ex. 4 to 7) written by the Chairman, Improvement Trust, Allahabad and Collector, Allahabad to the claimants. Exs. 4 is letter dated 30.4.1952 written by the Chairman, Improvement Trust, Allahabad in regard to Hastings Road Development Scheme (for which ultimately the properties in dispute was acquired). Through the said letter, copy of terms and conditions, on which Improvement Trust, Allahabad was agreeable to the development by the claimants, were annexed. Ex. 5 is the copy of the said terms and conditions. The essential ingredients of the said terms and conditions were approval of lay out plans by the Town Planner, Sub-plotting according to the said plan, development work was to be done by the contractors under the provision of the Trust. Sub-plotting could be done by the approval of the Government and premium of the lease could be between Rs. 8,000 and Rs. 8,500 per acre. On the basis of the said terms and conditions, the learned Presiding Officer held that:

Rs. 8,000 per acre had been offered by the Improvement Trust, Allahabad and the Collector, Allahabad, hence offer should be the reasonable value of the lease-hold rights after deducting Rs. 1,200 per acre as cost of development and improvement, which was to be done by the original lessees under the aforesaid terms and conditions (Ex. 5).

9. The learned Presiding Officer further held that:

Chairman, Improvement Trust and Collector, Allahabad had agreed by their letters dated 9.6.1953 and 4.7.1953 (Exs. 4 and 7) to allow the claimants to develop the land to get plotting done and sublet to different lessees on a premium of Rs. 8,000 to Rs. 8,500 per acre.

10. It may be mentioned that land was acquired by Improvement Trust, Allahabad constituted under U.P. Town Improvement Act, 1919, which was repealed by Section 581 of U.P. Nagarmahapalika Adhiniyam, 1959. It was argued before the Tribunal below as well as this Court that offers made by the Improvement Trust, Allahabad were not relevant as transaction could not materialise in pursuance of the said offer and the said offers are not binding upon the State and they did not operate as estoppel against the State. In this regard, reference may be made to the authority of the Supreme Court in [Numaligarh Refinery Ltd. Vs. Green View Tea and Industries and Another](#), wherein it has been held that offer of Government regarding particular rate for land as compensation even if rejected by land owner, document evidencing such Government offer is important piece of evidence for determining compensation. Merely because Government cancelled its decision for the reason that land owner did not agree to the rates suggested will not make much of a difference.

11. Accordingly, I do not find any error in the quantum of compensation determined by Presiding Officer for the lease-hold rights and the method adopted for the same by him.

Valuation of construction:

12. As far as valuation of constructions is concerned, the learned Presiding Officer had thoroughly examined valuer's report submitted by both the parties and relevant portion of Financial Hand Book, Vol. 5 Part-I (1152) Pages 216 and 217 prescribing the procedure for determining the market value of the constructions. The learned Presiding Officer has discussed different items of the constructions separately and valued them separately under the following headings:

Main building, out-houses, wells, road construction, ground improvement, electricity fixtures, pipe line, water storage tanks, pucca drain in garden, stone steps in garden, gate pillars, latrine (tiled), angle-iron boundary, iron gate, iron frame keeper shed, pillars and side walls, flower plants and trees, godown.

13. Thereafter, valuation has been determined on the basis of the formula prescribed under the Financial Hand Book including the depreciation of the walls. Thereafter, valuation of joinery, which includes doors and door frames, windows and shutters has been determined. Thereafter, valuation of roofs and floors has separately been determined. As walls were constructed with lime and mortar, hence they were held everlasting as prescribed by Financial Hand Book. No depreciation has been made from the cost of the same. Life of joinery has been held to be 120 years and of roofs and floors 75 years as per the formula given in the aforesaid

portion of Financial Hand Book.

14. Learned Presiding Officer also mentioned in the judgment that P.W.D. had to revise its rates of construction prescribed in 1955 in the year 1962. The S.L.A.O. had determined the market value of the construction on the basis of 1955 rates. However learned Presiding Officer took average of the rates prescribed by P.W.D. in 1955 and 1962 holding that the year 1958, when initial notification was made, would fall almost in between the two.

15. Section 48A has been added in Land Acquisition Act by U.P. Nagarmahapalika Adhiniyam, 1959. By virtue of the said section, if award is given after more than two years from the initial notification (as is the case in the instant matter), then apart from the compensation for land and building, damages are also to be awarded for belated award. In the Division Bench Authority of this Court in Prabhu Lal v. S.L.A.O. 1973 ALT 656, it has been held that measure of damages under the said section is rise in price/market value in between the two dates. The net result is that the market value/price has to be determined as on the date of award, i.e., 1964 in the instant matter. Accordingly, even if it is held that the learned Presiding Officer was somewhat liberal in determining the market value of the constructions, the same is set off by the fact that learned Presiding Officer wrongly held that market value/price should be determined as in 1958. In fact it ought to have been determined as in 1964 when award was given.

16. There is one more aspect of the matter which requires consideration. u/s 381 of U.P. Nagarmahapalika Adhiniyam, Presiding Officer should be approached to grant certificate of fitness to file appeal to the High Court. Appeal may be filed if certificate is granted. However if certificate is refused, then appeal may be filed by leave. In both the contingencies, appeal is to be filed on the question of law. In the instant case, a belated application (limitation to file such application is 30 days u/s 381(5) of the Act) for grant of certificate was filed, which was rejected on the ground of delay. In this appeal, nothing has been said regarding explanation of delay in filing the application for grant of certificate before the Tribunal below.

Accordingly, I do not find any error either factual or legal in the impugned judgment. Appeals are therefore dismissed.