

(1963) 07 AHC CK 0006

Allahabad High Court (Lucknow Bench)

Case No: First Appeal No. 53 of 1953

Raja Mohammad Amir Ahmad
Khan

APPELLANT

Vs

Uttar Pradesh Government

RESPONDENT

Date of Decision: July 29, 1963

Acts Referred:

- Land Acquisition Act, 1894 - Section 23, 23(2)

Citation: AIR 1964 All 201

Hon'ble Judges: R.N. Sharma, J; J. Sahai, J

Bench: Division Bench

Advocate: Kalbe Mustafa, for the Appellant; Standing Counsel and S.D. Misra, for the Respondent

Final Decision: Partly Allowed

Judgement

R. N. Sharma, J.

This is a First Civil Appeal against the judgment and decree passed by the District Judges Bitapur in a reference made to him u/s 18 of the Land Acquisition Act. A piece of land-measuring 8.10 acres situate in Mauza Naurangabad, Pargana and District Kheri consisting of three plots and having a building and boundary wall standing thereon was acquired by the Collector from the appellant. It has been conceded before us that this land is situate within the area of Kheri town known as the Civil Lines. The Collector awarded a compensation of Rs. 4036/- for the building and boundary wall and Rs. 283/12/- for the land treating the appellant as an occupancy tenant of this land.

The appellant was not satisfied with the compensation awarded and asked for a reference to the Court u/s 18 of the Land Acquisition Act. His contention was that he was not an occupancy tenant but a perpetual tenant, and that he should be allowed compensation according to the potential value of the land and compensation for

severance of the portion of the land acquired from the whole land belonging to him. He also claimed interest on the amount of compensation. The learned District Judge held that the land in question should be treated as in perpetual tenancy of the appellant. He did not find the appellant entitled to any compensation for the potential value of the land or for its severance from the rest of the appellant's and, but enhanced the compensation for the land to Rs. 3,900/- according to what he considered to be the market value. Compensation for the building and wall remained the same i.e., Rs. 4036/-. The learned District Judge also held that the appellant was entitled to interest on the amount increased by him from the date of award at 6 per cent per annum. The appellant was not satisfied with the decree of the learned District Judge and has come up in appeal.

2. It is not disputed before us now that the appellant was a perpetual tenant or lessee of this land. The grounds pressed before us on behalf of the appellant are that the compensation awarded for the land is much too inadequate and was wrongly assessed by the Court below, that he is entitled to compensation for the potential value of the land and for its severance from the remaining land, and that, in any case, he is entitled to an additional amount equivalent to 15 per centum on the market value of the land as provided in Sub-section (2) of Section 23 of the Land Acquisition Act. According to the calculations of the appellant the compensation for the land should be Rs. 78117/-. But he has prayed for a decree only for Rs. 40,000/-, because he did not like to pay larger amount of court-fee.

3. We have heard the learned counsel for the appellant and the learned Standing Counsel for the State. The learned Standing Counsel has very fairly conceded that the appellant is entitled to an additional amount equivalent to 15 per centum on the market value in consideration of the compulsory nature of the acquisition. The lower Court erred in not allowing such amount and we hold that the appellant is entitled to the additional amount of 15 per centum on the amount that may be awarded to him as compensation for the acquisition of his land.

4. The questions of market value and potential value of the land may be discussed together. It is not disputed that this land is situate in the Civil Lines of Kheri and is close to the residences of the District Magistrate and other officers which are situate closeby. This land may therefore fetch higher price than that of lands situate elsewhere. However, there is nothing to show that this land could be used for building a market or any other commercial building. It was situate in residential area and could be used only for construction of houses or bungalows. The value of such land may be a little higher than that of similar lands elsewhere but it cannot equate with the value of lands situate in bazars or commercial centers. It is also to be taken into account that Kheri is a small town and price of land in residential areas at such a place cannot be very high like that of lands in bigger towns.

5. It is contended on behalf of the appellant that he could have divided this land into small plots and sold them for construction of residential buildings and thus he could

have realised considerable amount as price for the land. For developing such a big area of land and parcelling it out into small building plots considerable expense is needed. Roads have to be made and water and electricity have to be laid. By the construction of roads the area to be utilized for construction is reduced. Thus a big area of waste land like the present one cannot have the same proportionate value as a small piece of land meant for constructing residential building.

6. The learned District Judge assessed the compensation on the basis of an exemplar of the year 1922. In that year the Forest Department had acquired 7.18 acres of land in this locality for Rs. 5,101/7/4 and 3.2 acres for Rs. 2273/8/-. Thus he found the market value of this land to be Rs. 700/- per acre and on that basis calculated the price of 8.10 acres at Rs. 5,670/-. The appellant was not the proprietor of the land but only a perpetual lessee. Thus this amount of compensation was apportioned between the Zamindar and the appellant at Rs. 1,770/- and 3,900/- respectively.

7. It has been urged by the learned counsel for the appellant that the transaction of the year 1922 cannot be a good exemplar for assessing the compensation in the year 1947 when this land was acquired. The appellant has relied on certain exemplars of the period in which this land was acquired. The exemplars are of two lease deeds relating to the land situate on the same road on which the acquired land lies. However, one of these lands lies at a distance of about a furlong from the land acquired and so it cannot be said to be a good exemplar. The other lease deed was executed on 15-7-47 subsequent to the date on which this land was acquired. The appellant could have executed such lease deed to create an exemplar in his favour and we do not think that the lease deed dated 15-7-47 should be taken into account.

8. Then there are certain sale deeds Exts. 7 and 9 to 18 and a Qabuliat Ext. 21 but it is not proved by any evidence that the lands of those deeds were in close proximity to the land acquired so that the prices for which they were transferred could be taken as exemplars for determining the value of the land acquired. In Shyam Mohan's deeds the land has been shown as situate at Lakhimpur Nazul. The land transferred by Ext. 18 is situate in Mohalla Nae Basti and the land leased out by Ext. 21 was situate close to Opera House. It is not known where this Opera House was.

9. Some witnesses were examined by both parties to prove the value of the land acquired. P. W. 1 Abdul Hai is the Mukhtaramin of the appellant. He has stated that the Courts are separated from this land by only a road and the bazar, hospital and the Government High School are at half a furlong, 100 steps and 150 steps respectively. He further stated that two acres land adjacent to the land, acquired has been let out to Raja Kukra at Rs. 125/- per year. However, no document has been filed to prove this allegation. P. W. 2 Jagan Nath Prasad was examined as an expert. He is a broker for negotiations of transfers of lands. He has said that 6.74 acres land was purchased by Shyam Mohan in 1946 for Rs. 6,000/- but admitted that only half of that price was paid. According to him the land acquired is in the same condition

as it was 40 years back and that now there has been depreciation in the price of land and the prices have been halved. Thus the statement of this witness does not help the appellant and, on the other hand, proves that the value of land has depreciated instead of appreciating. P. W. Mubarak Hussain states that the land acquired was lying as it is since his memory. The statement of Syed Hasan Rizvi, the manager of the appellant's estate, is to the same effect. He says that no constructions have been made on this land for the last 27 years and that it has been in the same condition since 1927 and it was never used even for cultivation within the memory of the witness.

10. Two witnesses were examined for the respondent but they did not state anything worth noticing.

11. Having regard to all this evidence it cannot be said that the learned District Judge committed any error in determining the compensation on the basis of the price paid for similar land in 1922. The land now acquired has been lying waste and useless and if sold, it could not have fetched a good price. As we have said above, it was a big area of land and the cost of developing it by constructing roads etc., would have been considerable and nobody could have paid a high price for such a land. Thus there is no good criterion for fixing the value of this land at a rate higher than what was determined by the learned District Judge.

12. We do not agree with the argument of the learned counsel for the appellant that there has been any loss or diminution in the value of the land because of the parcelling out of the portion of the land acquired. A map of the locality was drawn up by a commissioner and it is appended to his report dated 4-11-52. The total area of the land which belonged to the appellant is shown in green colour in this map and the portion acquired is enclosed with red lines. It will appear from this that some land has been left out to the north and some to the south and only a portion in the middle has been acquired. It has been contended before us that the value of the small areas left to the north and to the south will be diminished a great deal. As a matter of fact, smaller plots fetch proportionately higher prices when sold than big plots of land. Further more, the building of the Tahsil is being constructed in the portion of the land acquired and thus the value of the land left out to the north and to the south will appreciate considerably because of its proximity to the Tahsil. As we have said above, the land acquired is situate in residential area of the Civil Lines and no market etc., could have been established thereon. No use was made of this land for the last about 40 years and even if residential buildings were constructed. they could not be let out on high rents. It is in the appellant's own evidence that the Superintendent of Police is paying a monthly rent of Rs. 70/- in that locality and other officers are paying ranch less. Thus we do not think that the land acquired had any potential value for which the appellant could be entitled to compensation.

13. As a result of the above discussion we hold that the market value as determined by the Court below was correct. However, as stated above, the appellant is, under

Sub-section (2) of Section 23 of the Land Acquisition Act, entitled to an addition of 15 per centum on the amount of compensation determined by the Court below. The appeal is allowed and the decree of the Court below is modified to the extent that over and above the amount of compensation allowed to the appellant by the Court below, he shall be entitled to recover from the respondent an amount equivalent to 15 per centum of the compensation. The rest of the decree stands. In the circumstances of the case we order that the parties shall bear their own costs in this Court.