

(2004) 01 AHC CK 0176

Allahabad High Court

Case No: First Appeal No. 625 of 1998

Allahabad Development
Authority

APPELLANT

Vs

Shakeel Ahmad and Others

RESPONDENT

Date of Decision: Jan. 29, 2004

Acts Referred:

- Land Acquisition Act, 1894 - Section 23, 23(1A), 23(2), 4(1)

Citation: (2004) 2 AWC 986

Hon'ble Judges: V.N. Singh, J; A.K. Yog, J

Bench: Division Bench

Advocate: A.K. Mishra and Ashwant Kumar, for the Appellant; Rajeev Sharma and K.D. Tripathi and R.C. Rai, S.C., for the Respondent

Final Decision: Partly Allowed

Judgement

A.K. Yog, J.

Allahabad Development Authority, Allahabad through its Secretary (defendant-appellant) (hereinafter called "A.D.A.") has filed the above noted first appeal u/s 54, Land Acquisition Act (called "the Act") against impugned judgment and compensation award dated May 15, 1998, passed by Vth Additional District Judge, Allahabad in Land Acquisition Reference No. 51 of 1994, Shakeel Ahmad and two Ors. v. Government of U.P. through Collector and Anr. whereby the court below had enhanced compensation and fixed at the rate of Rs. 115 per sq, metre, i.e., Rs. 2,60,000 per bigha and also additional compensation u/s 23(1A) of the Act @ 12% market value along with 9% per annum interest on enhanced compensation amount w.e.f. the date of taking possession (i.e., 12.11.1990) till its actual payment and interest @ 15% per annum in case compensation amount is not deposited within one year, i.e., upto 12.11.1991.

2. Details of land in question, which is subject-matter of compulsory acquisition under the Act, is admittedly agricultural land of two Khatas, situated in Mauja, Kasari, Masari Paragana and Tahsil, Chail, district Allahabad.

I. Khata No. 344 Ka

Sl. No.	Plot No.	Area
1	25285	01/08/00
2	281/2	0-7-0
3	314	0-8-0
4	401	0-7-0
5	565	0-7-0
	Total	3-00-0

II. Khata No. 344 Kha

Sl. No.	Plot No.	Area
1	252(M)	0-5-0
2	921	0-16-0
3	947	0-12-0
4	983	0-08-0
5	1971	0-06-0
6	1869	0-04-0
	Total	02/11/00

Total : 1 + 11=5-11-0. Relevant dates are :

21.7.1990	Notification u/s 4(1) of the Act
15.9.1990	Notification u/s 6. read with Section 17(1) of the Act.

12.11.1990 Possession
taken
of the
land
in
question.

12.10.1992 Award
by
S.L.A.O.
fixing
three
rates ;
i.e.. (i)
@ Rs.
44.88
per
sq.
metre,
(ii) Rs.
50.86
per
sq.
metre
and
(iii) Rs.
59.84
per
sq.
metre.

3. Not being satisfied, the claimants filed L.A.R. No. 51 of 1994 u/s 18 of the Act before the District Judge, Allahabad. It was finally decided by Vth Additional District Judge, Allahabad, by means of the above mentioned impugned judgment and award and has given rise to the present first appeal.

4. Before the court below, the claimants (contesting respondents) contended that the land, of which they were bhumidhars, was surrounded by urban localities, namely, Kasari, Masari, Chak Niratul, Rajrooppur and Beniganj ; site had facility of electricity and water supply, there existed hospital in nearby vicinity ; the land in question was 1/2 Km. to one Km. from G.T. Road and Kaushambi Road, prevailing circle rate fixed by Collector under Indian Stamp Act was Rs. 300 to Rs. 400 per sq. metre land in the nearby colony called, "Guru Teg Bahadur Nagar" was Rs. 500 to

Rs. 600 per sq. metre and the land in question was inside municipal limit. (Reference may be made to paras 4 and 9 (ii) of reference petition-P.P. 22 of the Paper Book). Compensation for loss of sarso and bajara crops, allegedly sown over aforesaid plots, was also claimed.

5. A written statement was filed on behalf of State of U.P. (P.P. 47 of the Paper Book) categorically pleading that the land was undeveloped and uneven at the time of notification u/s 4 of the Act, there was no irrigation facility, 40% deduction was liable to be granted on the head of development, no factory or industry existed in the vicinity of the land in question.

6. In the writers statement, paras 9, 10 and 11 filed by A.D.A. (P.P. 53 of the Paper Book), it is mentioned that the land was not developed, it was used only for agriculture purpose, there was no urbanisation ; Railway Station, G.T. Road were 3 Kms. away circle rates were not relevant and huge amount was required for developing the land in question.

7. One of the claimants, Mohd. Hasim appeared as P.W. 1 (page 57 of the Paper Book) wherein he admits that he was bhumidhar of the land, people in village were selling their land by carving out plots for residential purposes. He has nowhere stated that these plots were under as per Master Plan and/or Municipal Bye-Laws. He has referred to the four sale deeds, details of which are :

Paper No.	Date	Vendor	Vendee	Plot No.	Area	Amount	Rate	Page in paper book
8C/417.4.89	17.4.89	Bhishan Kumar	Shankar Bahadur	1654	12sq.mt.	26,000	2130	132
						per sq.mt.		
8C/74.7.89	7.8.89	Akhilesh Kumar S. Misra	K. Bahadur	1033	326 sq.mt.	25,200	2000	137
						per sq.mt.		
8C/98.9.89	9.8.89	Maqsood Ahmad	Neeru Dhawan	68	134 sq.mt.	30,000	223.21	141
						sq.mt.		
8D/122.8.87	22.8.87	Mahaveer Dular	Ram Dular	26	126 sq.mt.	22,500	178	146
						sq.mt.		

8. Reliance is being placed upon and arguments made by both the sides at the Bar with reference to the said four sale deeds only.

9. Perusal of the aforesaid tabulated chart shows that exemplar 18C/9 dated September 8, 1989 executed by Maqsood Ahmad in favour of Neeru Dhawan, with respect to plot No. 68 measuring 134 sq. mt. for Rs. 30,000 is in maximum proximity of the Notification u/s 4 of the Act with respect to the land in question. Market rate is Rs. 223.21 sq. mt. (say Rs. 224 per sq. mt.). Exact site vis-a-vis the land in question is, however, not available and none of the counsels for either side raised this issue before us.

10. Strikingly, all the exemplars are below 150 sq. mt., i.e., too small in area as compared to the large area of the land which is the subject-matter of compulsory acquisition in the case in hand.

11. In the case of [Ravinder Narain and Another Vs. Union of India \(UOI\)](#), Apex Court, referring to its earlier decisions, vide paras 6 and 7, observed :

"Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria" and

".....it cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating court to make compensation of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."

12. Comparing the area of the plots, mentioned in the exemplars vis-a-vis the large extent of area which is the subject-matter of present compulsory acquisition u/s 4(1) of the Act, we are of the opinion that certain deductions have to be made while determining market rate in the instant case. Seeing disparity and the proportion in area in the two, rates mentioned in the exemplars can be safely reduced to half.

13. Our view is supported from the decision in the case of the [The Collector of Lakhimpur Vs. Bhuban Chandra Dutta](#), Para 4 of the judgment is reproduced below :

"In our opinion the High Court overlooked the fact that the plots which were subject-matter of sale deeds Exhibits-1 to 4 were comparatively of small areas and it is like the one which was the subject-matter of acquisition has to be sold it cannot possibly fetch a price at the same rate at which small plots can be sold"

14. The market rate of the land, which is subject-matter of compulsory acquisition in the instant case, can thus be taken to Rs. 112 per sq metre.

15. Learned counsel for the appellant submitted that the rate awarded by the court below at the rate of Rs. 2,60,000 per bigha will come to Rs. 115 per sq. mt. Learned counsel for the appellant further submitted that certain deductions, i.e., 30% should be allowed for development work, like road, parks, etc.

16. In support of his said contention, he has relied upon the following decisions :

(1) Administrator General of West Bengal v. Collector, Varanasi, AIR 1998 SC 943 (Para 6 Court allowed 33% deduction for development),

(2) [Hasanali Khanbhai and Sons and Others Vs. State of Gujarat,](#)

(3) [Smt. Basavva and others Vs. Special Land Acquisition Officer and others,](#)

(4) [Hasanali Walimchand \(Dead\) by L.RS. Vs. State of Maharashtra,](#)

(5) [Vijay Kumar Moti Lal Vs. State of Maharashtra,](#)

(6) [Smt. Tribeni Devi and Others Vs. Collector of Ranchi,](#)

(7) [P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others,](#)

17. Apart from above, Supreme Court in the case of [Basant Kumar and Others Vs. Union of India \(UOI\) and Others,](#) vide para 7, held :

"..... It is settled legal position that if the land is already developed then what has to be seen is the nature of development and money expended by the developer and as to what was the market value prevailing on that basis as on the date of notification, and what was the situation of the acquired land on that date ; all these and other relevant facts have to be taken into consideration and then market value should be determined. Merely because a land is developed or developing land, it would not be that same compensation is to be adopted to determine the market value for the entire land as a developed land. If it is to be developed, it is a settled legal position that at least 1/3rd of the compensation has to be deducted towards providing amenities, like roads, parks, electricity, sewage, water facilities, etc. This Court had upheld deduction of even 60% towards development charges....."

18. Taking into account aforesaid decision, we are of the view that at least 1/3rd should be reduced towards development cost. On that basis market rate shall come to Rs. 76 per sq. metre (say Rs. 80 per sq. metre).

19. Learned counsel for the appellant referred to the discussion with reference to Issue No. 1 contained in the impugned judgment and pointed out that court below has gone wrong In taking into account irrelevant considerations, like the proposed user of land, viz., the land in question acquired for housing scheme ; in the vicinity there were certain development and that there existed road at some distance from, the land. According to the learned counsel, potentiality of the land was not relevant for deciding market value. The appellant has placed reliance upon the following cases :

(1) [National Capital Power Project/National Thermal Power Corporation Ltd., Ghaziabad Vs. Abhay Ram and others,](#)

(2) [Raja Srivalgoti Sarvagana Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others,](#)

(3) [Kanwar Singh and Others Vs. Union of India,](#)

20. It is, therefore, now settled position that future potentiality of the land under compulsory acquisition is not relevant. Section 23 of the Act deals with "matters to be considered in determining compensation" and lays down that in determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1).

21. Section 23(3), as amended by Act XXII of 1954, in application to Uttar Pradesh, clarifies that for the purpose of clause first of Sub-section (1) (a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause.

22. Again Section 24(5) of the Act while providing for "matters to be neglected in determining compensation" provides that Court shall not take into consideration-fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired.

23. Learned counsel for the respondents, however, referred to the decision in the case of [Bhagat Ram Vs. The State of Punjab and Others,](#)

24. There is no quarrel with the ratio decidendi laid down in the aforesaid cases but that is not relevant for the present case.

25. However, as already discussed above, relevant provisions under the Act as well as decisions of the Apex Court clearly lay down that while calculating market rate, it is to be seen as to for what purpose the land was used at the time of notification. The other circumstances are also to be taken into account. It may be noted that in the instant case claimants themselves filed exemplars on the basis of which above market rate is being arrived at on the criterion laid down by the Apex Court.

26. No other point has been raised or pressed before us.

27. Claimants are entitled to the compensation at the market rate of Rs. 80 per sq. metre (for the area equivalent to half of 5-11-0) ; additional compensation @ 12% of the market value u/s 23(1A) of the Land Acquisition Act ; 30% solatium on the compensation u/s 23(2) of the Land Acquisition Act and interest @ 9% per annum on enhanced compensation amount from 12.11.1990 (date of taking possession) for a period of one year and thereafter @ 15% per annum on the aforesaid enhanced amount of compensation @ Rs. 80 per sq. metre + additional compensation + solatium.

28. Accordingly, present first appeal stands partly allowed. Judgment and award dated 15.5.1988, passed by Vth Additional District Judge, Allahabad in Land Acquisition Reference No. 51 of 1994, Shakeel Ahmad and two Ors. v. Government

of U.P. through Collector and Anr., is hereby set aside. Claimant respondents shall receive Rs. 5,000 as costs.