(2006) 08 AHC CK 0228

Allahabad High Court

Case No: First Appeal No. 851 of 1992

U.P. Avas Evam Vikas Parishad		APPELLANT
	Vs	
Shyam Sunder, State of U.P. and Special Land Acquisition Officer (Avas Evam Vikas)		RESPONDENT

Date of Decision: Aug. 4, 2006

Acts Referred:

- Land Acquisition Act, 1894 - Section 23, 23(1), 4, 54
- Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 - Section 28

Citation: (2006) 7 ADJ 355 : (2006) 4 AWC 3561

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Advocate: P.K. Singhal, V.K. Barman and Pankaj Barman, for the Appellant; Faujdar Rai and C.K. Rai, for the Respondent

Final Decision: Allowed

Judgement

Prakash Krishna, J.

Present appeal arises out of Land Acquisition Reference No. 8 of 1989 and is directed against the award of Civil Court dated 24lh August, 1991, passed by the learned Addl. District Judge, Ballia, whereby he granted compensation of 0.09 acres of land at the rate of Rs. 1,80,000/- per acre, out of which claimant/respondent No. 1 is entitled to 3/8 of it; the compensation for trees and construction at Rs. 97,500/- and damages under Clauses (4) and (5) of Section 23(1) of the Land Acquisition Act at Rs. 50,000/- together with interest and solatium etc.

2. Feeling aggrieved against the aforesaid award, the acquiring body has preferred the above appeal u/s 54 of the Land Acquisition Act, 1894.

3. The land was acquired for the benefit of the appellant by issuing a notification dated 8th March, 1980 u/s 28 of the U.P. Avas Vikas Parishad Adhiniyam, read with

Section 4 of the Land Acquisition Act. By means of the aforesaid notification 0.9 acres of land in village Madhavpur was acquired, which includes plot No. 195 area 0.09 acres. Claimant/respondent No. 1 is the Asami of the said plot No. 195. It is not in dispute that being Asami, he was entitled and has been rightly granted compensation at the rate of 3/8 of the total compensation awarded by the reference court. The possession of the said plot was taken on 25th March, 1980 and the award passed by the Land Acquisition Officer is dated 22nd September, 1986. It is common case of the parties that the aforesaid land was acquired for the scheme known as Harpur Bhumi Vikas Evam Grah Sthan Yojna. The reference court as noted above enhanced the compensation by the order under appeal.

4. Feeling aggrieved against the aforesaid enhancement made by the reference court the present appeal is at the instance of U.P. Avas Evam Vikas Parishad.

5. Sri V.K. Burman, learned Senior Counsel appearing for the Parishad has challenged the judgment of the reference court only on the following two points:

Firstly, the rate of compensation granted to the claimant/respondent is towards higher side. In other words the reference court has granted compensation over and above the market value of the land thus acquired. Elaborating the argument it was submitted that there is no evidence on record to show the cost escalation of the land in the village. Elaborating the argument it was submitted that while determining the final compensation the reference court has made deduction at the rate of 25% on account of the bulk acquisition, while it should have been at the rate of 30%. Secondly, he submitted that the compensation awarded to the tune of Rs. 50,000/- under Clauses 4 and 5 of Section 23(1) of the Land Acquisition Act, (para 13 of the judgment of the reference court) is unjustified and is not tenable in law. There being no reliable or cogent evidence that the claimant has suffered damages to the tune of Rs. 50,000/- by reason of the acquisition which injuriously affected the earnings and compelled the claimants to change their residence and place of business. In contra, the Learned Counsel for the claimant/respondent No. 1 placed reliance upon the judgment of the reference court in support of his submission.

6. The first point which falls for determination is with regard to the question of amount of compensation towards acquisition of plot No. 195, measuring 0.09 acres. The reference court under issue No. 1 has noted that as many as 41 sale deeds were produced in respect of the lands lying in village Madhaypur within a period of three years prior to the date of notification. It has treated the two sale deeds dated 10th May, 1977 and 14th February, 1978 as exemplars for determination of the compensation of the market value of the land in question. It has rightly taken into account the aforesaid two sale deeds in as much as the sale deeds are with respect to the land, which has been acquired under the notification. The learned Senior Counsel has not disputed for treating these two sales deeds as exemplars. His argument is that on the basis of the sale deed of 10th May, 1977, the market value of the land comes to Rs. 1,54,000/- per acre and it comes to Rs. 1,84,000/- per acre on

the basis of subsequent sale deed, dated 14th February, 1978. Elaborating the argument he submitted that there was no justification for the reference court to take into consideration any increase in the price of the land. The said argument is not correct on the facts and circumstances of the case. Undoubtedly the aforesaid two sale deeds are with respect to the land acquired under the notification and prior to three years of the relevant notification, which is dated 8th March, 1980. The reference court has rightly concluded on the basis of two sale deeds that the escalation in the price of the land is well established. In the present case even the Land Acquisition Officer did not doubt or dispute the genuineness and correctness of the aforesaid two sale deeds. He rejected the subsequent sale deed of the year 1978, which gives the market value of the land at Rs. 1,84,000/- per acre on the ground of guess, conjectures and surmises as it is for higher price. The reference court having it found that the aforesaid two sale deeds depict true and honest sale transactions, in my view was justified to draw an inference that there is price escalation of the land in the village and has rightly fixed the market value of the land at the rate of Rs. 2,40,000/- per acre as on the relevant date i.e. in the year 1980. It may be noted here that after fixation the _ aforesaid market value of the land at Rs. 2,40,000/- per acre, it has reduced it by 25% on account of bulk acquisition and finally determined the market value at the rate of Rs. 1,80,000/-per acre. At this place, the argument of the Learned Counsel for the appellant that there should have been deduction of 30% or more is to be considered. He has placed reliance upon the following judgments of the Apex Court in support of his submission:

7. K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acqusition Officer and another, . In this case it was held that extent of deduction for development charges depends upon the development needed in each case. This case is distinguishable on the facts and has no application to the controversy involved in the present appeal. In this very case it was noted by the Apex Court in para 10 of the judgment that as a general rule for laying of the roads and other amenities 33.33% is required to be deducted. Where development has already taken place appropriate deduction needs to be made. It has been further noted that situation as existed on the date of notification and other relevant facts as on that day has to be taken into account. Considering these facts and also the situation of the land in question, it is evident in the case in hands the land acquired was Abadi of the claimant/respondent No. 1. His residential house was indisputably existed on the land in question. The plot in question was already being used for residential purposes. The area in question was not an undeveloped area. The next case relied upon is U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr. (1998) 2 SCC 467 , wherein it was held that deduction of 1/3 of the value of land towards cost of development was justified on the ground for determining the market value of a large property on the basis of the sale transaction for small properties a deduction should be given. In this very case, the Apex Court has noted its other ? decision also, wherein the deduction of 25% was also justified. To the same effect is Ravinder

Narain and Another Vs. Union of India (UOI), wherein it was held that exemplars of small plots can not be said to be safe criteria, however, in appropriate cases in the absence of other material such instances may be used for determination of compensation after making reasonable deductions. To the same effect is Hans Raj Sharma v. Collector Land Acquisition 2005 (58) ALR 477.

8. Coming to the facts of the present case the total land acquired is itself is not a big area, but a small area measuring 0.90 acres. In other words it is less than one acre ad admitted by the learned Counsel for the parties. Out of it the area of the land acquired of respondent No. 1 is 0.09 acres. It comes to 1/10 of the total area acquired. The exemplars which have been relied upon referred to above are also of the small areas, i.e. for 0.065 acres and 0.0475 acres, as mentioned in para 8 of the judgment. In this view of the matter there was no justification in making deduction of 25% on account of bulk acquisition. Taking into consideration the entire facts and circumstances of the case, the fixation of the market value at Rs. 1,80,000/- by the reference court can not be said to be unjustified. It has taken into account the potentiality of the land acquired. A reference can be made to a judgment of Apex Court in Land Acquisition Officer (Revenue Division Officer) Nalgonda (A.P.) v. Morisetty Satyanarayana and Ors., (2002) 10 SCC 570 wherein it has been held as follows:

It is true that normally while fixing the market price of the land under acquisition, when the sale instances are for small piece of land then appropriate reduction is required to be made while fixing the market price of the land under acquisition. However, in the present case, the land which is acquired is out of the same survey number. Various sale deeds produced on record reflect the increase in price of the portions of land of the same survey number. Other evidence on record indicates that in the village there is increase in market price of land during the relevant years. Therefore, considering the increasing trend of the market price and the fact that small pieces of land owned by different persons are acquired, this would not be a fit case for reducing the amount on the ground that relevant sale deed is for a small piece of land.

9. There is thus, no legal infirmity in the judgment of the reference court, so far as it relates to grant of compensation at the rate of Rs. 1,80,000/- per acre, out of which the claimant has been held to be entitled being Asami at 3/8 of it. The first point is decided accordingly.

10. The next point urged by the learned Counsel for the appellant is with regard to the grant of compensation amounting to Rs. 50,000/- u/s 23(1) Clause 4 and 5 towards damages, under issue No. 2. The claimants claimed Rs. 75,000/-as damages under the aforesaid clauses on the ground that the acquisition of the land has injuriously affected their earnings and they were compelled to shift their place of residence and business. It is established on the record that at the time of acquisition the claimants were residing in their house existing on the land which has been

acquired. Obviously acquisition of land and the house compelled them to shift to other place. The question which arises whether under such circumstances any amount as compensation can be granted under Clause 4 and 5 of Section 23(1) of the Land Acquisition Act. Clause 4 provides that while determining the compensation to be awarded for the land acquired under the Act. Court shall also take into account the damages if any sustained by the person interested at the time of the Collectors''s taking possession of the land.

11. The said Clause reads as follows:

fourthly, the damages (if any) sustained by the person interested, at the time of the Collector''s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings.

12. Neither there is any evidence nor there is any pleading or finding by the court below that by reason of taking possession of the land in question any other property of the claimants has been affected in any manner, or his earning has been suffered.

13. Learned Counsel for the claimant/respondent tried to justify the award of Rs. 50,000/- as compensation under this head with reference to Clause 5 of the aforesaid Section 23(1) of the Act.

14. The said Clause reads as follows:

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business the reasonable expenses (if any) incidental to such change.

15. This clause refers to the payment of reasonable expenses, if any, incidental to change, if in consequence of acquisition of the land by the Collector, the person interested is compelled to change his residence and place of business. Words "incidentally to such change" are important. It means the only expenses of removal can be admissible under this Head. There is no evidence on record to show that the expenses, if any, borne by the claimants on account of the change of his residence or place of business. In the absence of material to show that the claimant has incurred expenses for taking his new residence for starting business at new place, the reference court was not justified in awarding a sum of Rs. 50,000/- as compensation under the aforesaid provision. The judgment of the court below lacks discussion of relevant facts on this issue without making any reference to the relevant facts and circumstances, in a cursory manner, it has awarded a sum of Rs. 50,000/- The relevant portion from the judgment of the reference court is reproduced below :-

Unfortunately, there is nothing on record to show as to what is the status of the claimants and other property owned by them. It is also not shown that the claimants were doing some other business ever prior to the acquisition. In fact, no cross

version has been put about the damage caused to the claimants as envisaged in fifth clause of Section 23. In the circumstances I have no reason to reject the only evidence in this respect. The claimants have, however, claimed Rs. 25000/- as damages for change of residence and Rs. 50,000/- as damages for rehabilitation. The damages on account of rehabilitation necessarily include change of residence. The damages for the same event can not be granted only because a circumstances can be defined in two separate words. I, therefore, hold that the claimants are entitled to Rs. 50,000/- only as damages for rehabilitation and are not entitled to any additional damages for change of residence.

16. From the earlier part of the judgment it is clear that the only evidence worth the name is own affidavit wherein he assessed the damages at Rs. 75,000/- The reference court was of the opinion that as the said affidavit is uncontroverted, therefore, reliance can be placed upon it. It is difficult to approve the above approach of the reference court. The reference court was not justified in awarding damages for rehabilitation being not admissible in law. At the most incidental expenses that too on production of satisfactory evidence could have allowed under Clause 5 of Section 23(1). Interestingly it may be noted that the said affidavit has not been made part of the Paper Book. During course of the argument, the learned Counsel for the claimant/respondent chosen not to place or refer even the said affidavit from record before the, Court. In this view of the matter there is practically no evidence to show that the claimant/respondent has incurred such a huge expenses on account of change of residence and place of business, which may be incidental to such change.

17. Looking to the facts and circumstances of the case, this Court is of the opinion that a sum of Rs. 10,000/- by way of token should be awarded towards expenses which was incidental to change of residence and place of business. The judgment of the reference court is modified accordingly. In place of Rs. 50,000/- granted u/s 23(1) of the Act it is held that the claimants are entitled for a sum of Rs. 10,000/-only.

18. In the result the appeal is allowed in part and the judgment of the court below is modified by reducing the amount of compensation awarded u/s 23(1) Clause 4 and 5 to Rs. 10,000/- only. The remaining part of the judgment is confirmed. No order as to costs.