

(2015) 11 ADJ 522 : (2016) 114 ALR 494

Allahabad High Court

Case No: First Appeal Nos. 232 of 2005, 159, 161, 150 of 2006, 148 of 2007, 146 of 2006, 134, 149 of 2007, 162 of 2006, 107 of 2010, 147 of 2006, 595 of 2005, 189 of 2008, 164 of 2006, 132, 133, 147, 150 of 2007, 163 of 2006, 135 of 2007, 148, 149 of 2006, 151 of

Union of India and
Others

APPELLANT

Vs

Anupal and Others

RESPONDENT

Date of Decision: July 20, 2015

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 23(2), 4, 4(1), 54

Citation: (2015) 11 ADJ 522 : (2016) 114 ALR 494

Hon'ble Judges: Sudhir Agarwal and Ranjana Pandya, JJ.

Bench: Division Bench

Advocate: Ajit Kumar Singh and Sudhanshu Srivastava, for the Appellant; Arun Kumar, A.K. Tripathi, R.G. Upadhyay, Surendra Tiwari and Suresh Mishra, for the Respondent

Final Decision: Dismissed

Judgement

1. Heard Sri Sudhanshu Srivastava, counsel for the appellants and Sri Arun Kumar, Sri R.G. Upadhyay, Surendra Tiwari holding brief of Sri Suresh Mishra and Sri A.K. Tripathi, counsel for the respondents. These 28 appeals under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as the "Act, 1894") have arisen from a common award/Judgment and decree dated 2nd March 2001 passed by Sri A.K. Upadhyay, XIII Additional District and Sessions Judge, Ghaziabad deciding various Land Acquisition References (hereinafter referred to as the L.A.Rs.), details whereof are given in the chart, determining market value of acquired land at Rs. 168/- per sq. yard. Besides, it has also allowed 30 per cent solatium on the amount of compensation under Section 23(2) and interest for various periods as per the provisions of Act, 1894.

2. The dispute before this Court raised by appellant is confined to the rate of market value determined by Reference Court. Following the procedure under Act, 1894, notification

under Section 4(1) was published on 30.4.1990 and notification under Section 6 was published on 30.6.1990/1.7.1990. The appellants sought to acquire land for purpose of raising residential construction etc. for use of Central Industrial Security Force. The land sought to be acquired situate in Village Lalpur and Chhajarsi, Pargana Loni, Tehsil Dadri, District Ghaziabad.

3. The land holders submitted their objections before Special Land Acquisition Officer (hereinafter referred to as "S.L.A.O.") claiming compensation at the rate of Rs. 1200/- per sq. yard but S.L.A.O., vide award dated 13.5.1992, determined market value at the rate of Rs. 113.34 per sq. yard. Dissatisfied therewith Tenure-holders moved application for reference under Section 18 of Act 1894 to District Judge, Ghaziabad for determination of market value and pursuant thereto about 30 L.A.Rs. including those, which are subject-matter of appeals before this Court have been decided by Court below, vide impugned award. The details of various L.A.Rs. giving rise to the respective appeals are given in the following chart:

4. The S.L.A. O. relied on the sale-deed exemplar dated 12.5.1989 to make its award. Before Reference Court, the land owners supported their case for claiming higher rate of compensation on the ground that the acquired land is for the purpose of raising construction of unit of Central Industrial Security Force. The land on the western side is connected with Indrapuram Residential Scheme and Vaishali Residential Scheme of Ghaziabad Development Authority and on the other side of bye pass, southern side, there is already developed area of NOIDA. Delhi-Ghaziabad Border is just one to two kilo meter away from acquired land and Connaught Place, New Delhi is just at 15 minutes" distance from the acquired land. There is a lot of development potential in the land and looking to already existing development in the vicinity, the market value ought to have been determined at Rs. 1200/- per sq. yard.

5. The above appellants per contra sought to support the award of S. L. A.O. and contended that it has rightly determined on the basis of a sale-deed which was quite near to the date of the acquisition notification under Section 4 .

6. The land owners relied on 7 documents filed as Paper No. 9 (c) to 16 (c) which included paper No. 10 (c), an agreement dated 14.12.1990 where under the consideration agreed between parties was Rs. 175/- per sq. yard. It has been rejected by Reference Court holding that it is only an agreement to sell and has been executed after eight months from the date of notification published under Section 4(1) , hence, not reliable. There was another exemplar paper No. 16 (c) whereby Har Bhajan Singh and Gyan Singh transferred land at Khasra No. 67 area 0-8 bishwa 6 biswansi at Village Lalpur in favour of Sardar Jagjeet Singh at a consideration of Rs. 150/- per sq. yard. However, this exemplar was relied by Reference Court in the light of other relevant factors like existing developed location of the area etc.

7. With respect to development in the vicinity, Court below found that it was admitted to both the parties, and recorded finding as under:

"This fact is also undisputed that adjacent to land in question towards west, there is already residential scheme of G.D.A., namely, Indirapuram Residential Scheme and Vaishali Residential Scheme and on the other side of bye pass towards south, already developed area of Noida exists and the disputed land is situated at a distance of 1-2 kilometer away from Delhi border and there from distance of Connaught Place can be covered maximum in fifteen minutes.

(12) Plaintiff P.W. 1 has stated in his statement that land of Lalpur and Chhajarasi has been acquired simultaneously. Acquisition of land of Makanpur and Mahiuddinpur had already taken place before acquisition of our land where colonies of Ghaziabad Awas Vikas and Ghaziabad Development Authority had already been developed. In Villages Chhajarasi and Lalpur also, the land was being sold in small pieces. The acquired land lies on the one side of Highway-24 and on the other side developed sectors of NOIDA exist. The acquired land is situated only 5-6 kilometers away from the capital of India...

(13).....If the award related to references in question is perused, it would be clear that utility of the land in question has been admitted by S.L.A.O himself at page 7 of the award that the land acquired by Collector is situated in developed area having potentiality of residential purpose...."

"Disputed land is situated in Lalpur and Chajarasi. Both the villages exist in same settlement circle. The disputed lands of both the villages are adjacent with continuity. This entire area falls under Ghaziabad Development Authority which is meant for residential use. Towards the west of both of the villages, the construction work under the large Indrapuram Residential Scheme of Ghaziabad Development Authority is in progress, is in progress. Village Lalpur is uninhabited village which is included in Gram Sabha Chhajarasi. National Highway 24 passes through midst of both the villages. The land on both the sides is even and is 10-12 feet below the road level. Main effect of Indrapuram Colony has been on the northern side of the road. Specialties of disputed land has also been described. And this has also been described that towards the west, large Indrapuram Residential Scheme of Ghaziabad Development Authority is being developed. On account of this, towards the far east, the potentiality of land has become residential. On account of master plan road of the Authority, the acquired area would be divided into two two equal parts and in between the two parts, there would be developed road. 45 meter wide National High Way-24 is towards the south of acquired land. There had already been Cooperative Housing Society in Village Lalpur and, therefore, the potentiality of acquired land besides being wide has mainly residential capacity. The land of village Lalpur is extended alongwith the main road towards north limit. Despite

continuity in the land of both the villages, the land of Lalpur is better from the location point of view. The disputed land of village Lalpur being closer to the land of Indrapuram Housing scheme is comparatively more valuable. Accordingly, from the point of view of location, utility and quality of the land, the land of Lalpur is more valuable than that of Chhajarasi. Thus, even by S.L.A.O., there has been categorical finding about the quality of the disputed land from which it is clear that the disputed land is situated in developed area."

(English Translation by the Court)

8. Having said so, the Court below found that the exemplar sale-deed was almost an year old and, therefore, there was a justification of allowing 12 per cent annual increase in the price and that is how the rate was determined at Rs. 168/- per sq. yard.

9. Counsel for the appellants contended that increase of rate at 12 per cent per annum where the exemplar is old is highly excessive and not justified. The determination of market value by Reference Court at Rs. 168/- per sq. yard has been assailed by appellant before this Court only on the ground that the increase by 12 per cent per annum is on higher side since it ought to be 7.5 per cent to 10 per cent. The learned counsel for the appellants contended that the Court below has increased rate instead of applying deduction and that is how it has committed manifest error of law. That is the only objection which has been taken at the instance of appellant to assail the impugned awards.

10. Thus, the only question we have to consider is, "whether 12 per cent annual increase followed by Court below is palpably erroneous and unreasonable so as to warrant our interference."

11. In this regard, we may refer to the decision in [The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another](#), wherein the Court in paragraph 8 has said:

"8. Having gone through the aforesaid judgment, we find that the Court has not laid down any rule of thumb that in all circumstances, the increase can be only 10 to 15% in urban or semi-urban area, on the contrary, in para 13 and 14, Court said as under:

"13. Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during

the nineties.

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."

12. If the developmental activities, as also the construction activities in a particular area are on a great pace, escalation in market price can be at much higher rate and in big cities it has been found to the extent of 13 to 15% or more per year during nineties. Regarding development and construction activities in Ghaziabad, the learned counsel for appellant did not dispute that pace of developmental activities therein was very fast in nineties and there was a multi-fold increase in the price within a very short time. It has continued even thereafter. These facts are also noticed in the award/judgment of Reference Court, still it has taken increase to a reasonable lower side of only 12%.

13. It is not in dispute that the facts stated by Reference Court in the impugned award relating to already developed nearby area are correct. It is also not disputed that acquired land falls in an area, which is already well developed. Thus, there is no justification for any deduction as held in [Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality](#). It is also not disputed that there was no error in relying on the sale-deed dated 12.5.1989 which was almost an year old than the date of notification under Section 4(1) .

14. In our view, looking to the entire facts and circumstances, neither the approach adopted by Court below nor the market value determined by it, can be said to be excessive, unreasonable or unjustified. We, therefore, find no reason to interfere with the impugned award.

15. We answer the question regarding rate of market value in favour of claimant-respondents and against appellants holding that Reference Court has rightly determined market value at the rate of Rs. 168/- per sq. yard. No other point has been argued. The appeals, therefore, are devoid of merit and are dismissed with costs throughout.