(2012) 3 MPLJ 552

Madhya Pradesh High Court (Indore Bench)

Case No: F.A. No. 86 of 2010

Sukhdev — APPELLANT

Vs

Government of M.P. and Others — RESPONDENT

Date of Decision: April 26, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 23, 23(1A), 24, 4

Citation: (2012) 3 MPLJ 552

Hon'ble Judges: S.K. Seth, J

Bench: Single Bench

Judgement

S.K. Seth, J.
This judgment shall also govern disposal of connected First Appeal Nos. 90/2010; 91/2010; 93/2010; 94/2010 and 95/2010 as they involve common questions of fact and law and are directed against the Award of even date 27-10-2009 passed by the 1st Additional District Judge, West Nimar, Mandleshwar in Reference Cases. The principal question that arises for decision in these appeals is as to the market value of appellant''s land acquired under the provisions of the Land Acquisition Act, 1894.

2. About the following facts there is no dispute. On 21-4-2006 a notification u/s 4 of the Act was published in the gazette. It was followed by the Declaration u/s 6 which was published in the gazette on 23-6-2006 and in all 10.992 hectares of agriculture land of village Javada Tehsil Kasrawad, District Khargoan were acquired for public purpose i.e. construction of main canal of Indira Sagar Project.

3. Land Acquisition Officer by the Award dated 9-1-2007 determined the following rates per hectare on actual land revenue in absence of reliable material like contemporaneous sale deed

and on that basis worked out the market value of the land acquired; added 30% solatium thereon with statutory interest u/s 23 (1A) @ 12% from 21-4-2006 to 9-1-2007 i.e. from the date of notification u/s 4 to the date of Award. Besides this, the LAO also awarded costs of the pipe-line; trees, etc. wherever applicable. Admittedly amount of compensation as determined by the LAO was paid to the appellants on 26-2-2007 at the time of taking possession of the acquired land.

4. Not satisfied with the Award and compensation determined by the LAO, therefore, at their instant the question of compensation was referred to the District Judge u/s 18 of the Act. The 1st Additional District Judge Mandleshwar tried all the references. The Court below on due consideration of the evidence found that the compensation determined was slightly on the lower side therefore, it allowed the references and accordingly modified the Award with costs. Appellant is still unsatisfied, therefore, he has preferred this appeal.

5. As mentioned earlier the only question arising for decision is as regards the market value of the acquired land for determining true compensation that is payable to appellant.

6. Admittedly lands were acquired for construction of Main Canal of Indira Sagar Project. Before the Reference Court, Appellants claimed compensation @ 40 per-square feet stating that acquired lands were in close proximity of Dhamnod-Khargoan Road. They claimed that after deducting all expenses annual net profit from the yield was approximately Rs. 15,00,000/-. They therefore, claimed compensation @ Rs. 50,00,000/- per hectare for the irrigated land and Rs. 25,00,000/- per hectare for unirrigated land.

7. According to the general principles set out in sections 23 and 24 of the Land Acquisition Act, 1894, for determining compensation, the compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser; but since it may not be possible to ascertain this with any amount of precision the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired, has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act, but its potential value also must be taken into account. This Court has laid down the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification u/s 4, which are : (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transactions of the purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstance into consideration, the requirement being always to arrive as near as possible an estimate of the market value. In arriving at a reasonable correct market value it may be necessary to take even two or all these methods into account inasmuch as the exact valuation is not always possible as no two lands may be same either in respect of the situation or the extent or the potentiality, nor is it possible in all cases to have reliable material from which that

valuation can be accurately determined.

8. The Court below after taking into account the evidence adduced by the parties, including the Mortgage deed relied upon the appellant, determined following market rate on the date of Notification u/s 4 :

and held that the appellants are not entitled to get compensation at the exaggerated rates but were entitled to get compensation at the rate as mentioned above for the land acquired. Thus, the reference Court, in this appeal, raised the compensation from Rs. 2,74,136/- to Rs. 3,06,500/-. On the excess amount (Rs. 32,364/-), reference Court also allowed interest @ 8% p.a. from the date of Notification u/s 4 (21-4-2006). It also awarded Rs. 9709/- as solatium being 30% of enhanced amount and interest thereon @ 8% from 16-6-2008 i.e. from the date of reference petition.

9. Learned Reference Court on due consideration of evidence found appellant''s claim was highly exaggerated and in absence of any definite and clinching evidence about the potential value of the land acquired, it was unsafe to rely upon the self serving statement of appellant for the purposes of fixing the market value of the land acquired. We find that in absence of contemporaneous sale deeds, the LAO took in account the earlier sale-deeds which took place in the command area and thereafter determined the market value on the basis of actual land revenue. In our opinion by adopting criteria of actual land revenue LAO or the Reference Court committed no error. Moreover this was a fair criterion which was based on official records. In assessing the value to be attached to the oral evidence, as a Judge of fact, it was open for the Reference Court to test the evidence on the basis of probabilities. It is a matter of common knowledge that prices are artificially jacked-up to get higher amount of compensation. Evidence also shows that land acquired was situated at quite a distance towards the interior and after construction of canal, fertility rate of appellant''s remaining lands have in fact gone up.

10. Thus considering all facts and circumstances of the case in the light of material available on record, we do not find any infirmity in the market rate determined by the Reference Court. However, the Reference Court went wrong in awarding 8% interest u/s 23(1A) from the date of Notification u/s 4. To this extent impugned judgment and decree require modification. We, therefore, direct that appellant in each appeal shall get 12% on the excess amount awarded by the Reference Court from the date of Notification u/s 4 to the date of payment at the time of taking possession i.e. 26-2-2007. All appeals are partly allowed and the impugned judgment and decree are modified to this extent as indicated above. There shall be no orders as to costs of this appeal. Let a copy of the judgment be kept in record of the connected appeal.