(2016) 03 SC CK 0142

SUPREME COURT OF INDIA

Case No: Civil Appeal Nos. 6398-99 of 2011

Dau Niranjan Lal Gupta (Dead) through Lrs.		APPELLANT
	Vs	
State of Chhattisgarh		RESPONDENT

Date of Decision: March 14, 2016

Citation: (2017) 2 RecentApexJudgments(RAJ) 345 : (2017) 1 Scale 432

Hon'ble Judges: A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench: Division Bench

Advocate: Rajiv Dhawan, Senior Advocate, Akshat Shrivastava, Anil Singh Rajput, S. Dutta, Ms. Manjeet Kirpal, Advocates, for the Appellants; Jugal Kishore Gilda, Pawan Shree Agrawal, Aniruddha P. Mayee, Advocates, for the Respondents

Final Decision: Allowed

Judgement

A.K. Sikri, J. - Appellants herein are the legal heirs (children) of Dau Niranjan Lal Gupta who was the co-owner of land of Survey No.967, 971, 975, 990/19 and 995/1 (total area comprising of 10.50 acres) in Village Kasaridih, Tehsil and District Durg, Chhattisgarh. On the enactment of M.P. Abolition of Property Right Act, 1951, the State Government declared that the above mentioned land is vested in the State and allotted the same to the Housing Board, in the year 1974, for construction of houses for lower income groups, middle income groups and higher income groups, as well as for some other construction. This was challenged by Dau Niranjan Lal Gupta and successors of his brother (hereinafter referred to as the ''plaintiffs''). They preferred a Civil Suit No. 144-A/1976 in the Court of First Civil Judge, Class II, Durg for declaration that such an allotment was illegal and they continued to be the owners of the land. This suit was decreed in their favour on 25.07.1977. However, in appeal filed by the State Government, the aforesaid decree was set aside by the First Appellate Court vide its judgment dated 18.07.1978. Feeling aggrieved by this judgment of the First Appellate Court, the plaintiffs preferred second appeal before the High Court of Madhya Pradesh which was allowed and the judgment and decree

passed by the trial court was restored. Further challenge by the State Government in the form of SLP failed as the said SLP was dismissed on 22.09.1986. In this manner, decree passed in favour of the plaintiffs attained finality. Mutual partition took place between the plaintiffs in which the father of the appellants received 3.62 acres of land out of total 10.52 acres. The dispute concerns this land in the present proceedings.

2. It would be pertinent to mention here that though the plaintiffs had succeeded in their suit in the manner mentioned above, the Housing Board in the meantime had constructed 82 quarters on the land which has fallen in the share of the father of the appellants and stood devolved upon the appellants after the demise of their father. Keeping in view this fact, their father had made a representation to the Housing Board to either vacate the house or pay compensation in respect of that land as it yielded no result. A writ petition No. 4388/1996 was filed in the High Court which was disposed by the High Court vide order dated 11.11.1998 directing the respondents to initiate proceedings for compensation to the predecessor in interest of the appellants by completing necessary formalities within six months and also pay compensation within that period. Ultimately, the State Government issued notification under Section 4 of the M.P. Land Acquisition Act on 28.05.1999 followed by notification under Section 6 on 30.07.1999, thereby acquiring an area in question which measured 2.81 acres. This was followed by the award passed by the Collector on 25.08.1999 fixing the compensation at Rs. 6,57,918/- as well as interest and solatium thereupon. Out of this amount, a sum of Rs. 5,92,126/- only was paid to the appellants after making some deductions towards income tax.

3. The appellants were not satisfied with this compensation and, therefore, sought reference under Section 18 of the Land Acquisition Act. Matter was referred to the Additional District Judge, Durg wherein the appellants claimed compensation to the tune of Rs. 3,52,82,121/- with 15% interest thereupon. The Reference Court partly allowed the claim by passing the award dated 09.05.2008 and fixing the compensation at Rs. 1,39,93,729/- along with interest @ 9% from 26.08.1999 with a default clause to the effect that if the amount is not paid within one year then interest would be admissible @ 15% from 26.08.1999. For arriving at this amount, he fixed the market value of the land @ Rs. 90/- per sq. ft.

4. According to the State, such a compensation was highly exaggerated and, therefore, it filed appeal before the High Court challenging the award passed by the learned Additional District Judge. Even the appellants were not satisfied with this compensation as it was much below than the compensation which was claimed by them before the Reference Court. Therefore, appellants also filed their cross-objections. By the impugned judgment, the High Court has partly allowed the appeal of the respondents/State, thereby reducing the compensation payable to the appellants in the sum of Rs. 50,70,542/-. Simple interest @ 9% p.a. from the date of notification till the date of realisation is also given, with similar default clause by

increasing the interest to 15% p.a. in case the amount is not paid within three months.

5. Challenging the aforesaid order, present appeal has come up for hearing via SLP route.

6. Insofar as award of compensation amount is concerned, the necessary facts which need to be recapitulated are that the possession of 97 acres of land was handed over to the Board in the year 1974 including the disputed land; the suit filed by the plaintiff was finally decreed in the year 1986; the land acquisition proceedings were initiated in the year 1999 only after a direction was issued by the High Court in the writ petition filed by the plaintiffs. The learned Reference Court fixed the price of the land by taking into consideration the guidelines of the Collector issued for the year 1999 fixing the rates of plots for residential purposes. The market value has been determined by fixing the average value of the residential plots at the rate of Rs. 135/- per sq. ft. as per the guidelines of Ex. P/20 and Ex. P/21-A. 1/3rd deduction towards development expenditure has been made from the average value so fixed and accordingly, compensation has been fixed by considering the market value at the rate of Rs. 90/- per sq. ft.

7. The High Court noted that learned District Judge while determining the value of the land had relied upon the oral evidence of the plaintiff and his witnesses and the guidelines of the Collector fixing the market value for the year 1998-99 in Durg township/municipal area. However, the guidelines issued by the Collector had not been taken into consideration for determining the value.

8. On that basis, the High Court came to the conclusion that the learned District Judge ought to have fixed the price @ 40% of the average rate of the plots after making 1/3rd deduction towards development charges. It is on that basis the High Court fixed the amount of compensation at the rate of Rs. 36 per Sq. Ft. i.e. 40% of Rs. 90 and on that basis arrived at a figure of Rs. 44,06,508/- in respect of land of the appellants. To this, 30% solatium i.e. Rs. 13,21,952/- was added, thereby fixing the compensation at Rs. 57,28,460/-. From this, a sum of Rs. 6,57,918/- less income tax already paid to the appellants was deducted. In this manner, final figure payable to the appellants was arrived at Rs. 50,70,542/-.

9. After hearing learned counsel for the parties, we are of the opinion that the High Court has committed two fundamental errors in arriving at the market value of the land while fixing the compensation that is payable to the appellants. In the first instance, the High Court has taken into consideration the rate of Rs. 90 per sq.ft., which was the rate arrived at by the Reference Court. As pointed out above, even the appellants had filed cross-objections in the High Court questioning the fixation of the aforesaid rate of the land by the trial court. They had asked for a higher compensation and their submission was that even the rate of Rs. 90 per sq.ft., which was fixed as the value of the land, was on the lower side. In these circumstances, the

first exercise that was required to be done by the High Court was to ascertain the rate of the land. Second aspect which needs consideration is as to whether on the rate so fixed there has to be a cut @ 40% of the said rate, as done by the High Court.

10. Insofar as the first aspect is concerned, we find that the High Court has itself taken note of the market rates of pieces of agricultural land situated in urban/municipal bodies/Fera Pheri of Durg/Bhilai. It is mentioned that up to land area 10,000 sq.ft. it is according to the plot rates prescribed for that area. What is ignored is that the plot rates prescribed for the area by the municipal body itself was Rs. 175 per sq.ft. Therefore, there was no reason to adopt the rate of Rs. 90 per sq.ft. and it should have been Rs. 175 per sq.ft.

11. Coming to the second aspect, we find that the High Court has applied double cut on the aforesaid rate of Rs. 175/- per sq. ft., as prescribed by the Municipal Body. From the guidelines, it becomes clear that for areas from 22001 to 0.405 sq. ft., 40% of the plot rates prescribed for the said area are to be applied. This itself is because of the reason that the areas were developed and development charges were taken into consideration. Therefore, High Court could not have fixed the price at 40% of the average rate of plots, that too after making 1/3rd deduction towards development charges. We are of the opinion that 1/3rd deduction towards development charges would suffice and there cannot be further deduction on this basis.

12. On the aforesaid basis, we arrive at a conclusion that the rate of the land of the appellants in the year 1999 when the Notification under Section 4 of the Land Acquisition Act was issued was Rs. 175 per sq.ft. After making 1/3rd deduction towards development charges, the rate at which compensation is granted would come to Rs. 122.50 per dq.ft. We, accordingly, hold that the compensation is to be calculated at the aforesaid rate, plus other usual benefits, including interest @ 9% per annum. Difference of compensation shall be worked out and paid to the appellants within a period of three months from the date of receipt of a copy of this order, failing which the rate of interest payable would be 15% per annum.

13. We may record at this stage that Dr. Rajeev Dhawan, learned senior counsel appearing for the appellants, had made a fervent plea for grant of compensation for the period 1974 to 1999 as well. His submission was that the appellants were dispossessed illegally in the year 1974 and the land was actually acquired 25 years thereafter, i.e. only in the year 1999, that too at the directions of the High Court when writ petition was filed by the appellants. It was also pointed out that appellants had got a decree in their favour clearly establishing that the possession taken was illegal. We may only record that for the aforesaid period the appellants could have been entitled to mesne profits as in the said period land was illegally occupied by the respondents. However, in the suit filed by the appellants, no such claim was made. In the alternative, while seeking compensation the appellants could have made such a claim. However, in the present case, we find that no such

claim was ever made before any of the authorities/courts below. Even in the grounds raised in these appeals, this claim has not been made at all. Therefore, it would not be possible for this Court to award compensation on this ground.

14. These appeals are allowed in the aforesaid terms. The appellants shall also be entitled to costs.