Ratan Kumar Tandon & Ors vs State Of Uttar Pradesh on 1 August, 1996

Equivalent citations: 1996 SCALE (6)176, AIR 1996 SUPREME COURT 2710, 1996 AIR SCW 3392, 1996 ALL. L. J. 1611, (1997) 10 JT 492 (SC), 1997 (2) SCC 161, (1997) 1 LACC 481, (1997) 1 LANDLR 407, (1998) 2 ALL WC 822, (1996) 3 CURCC 345

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
RATAN KUMAR TANDON & ORS.

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT: 01/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCALE (6)176

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard learned counsel for the parties in extenso.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') was published in the State Gazette on February 14, 1986 acquiring an extent of 4 acres 2 rods 21 poles equivalent to 22,528 sq. yd. situated in Allahabad city for public purpose, namely, planned development of the urban area. The Land Acquisition Officer determined by his award under Section 11 on October 28, 1987 a total compensation of Rs.4,57,750.88. Dissatisfied therewith, the appellants sought reference. The Additional District Judge by his award and decree dated July 20, 1989 determined compensation @ Rs.500/- per sq.yd. He also awarded Rs.50,000/- towards the value of trees, Rs.8,33,700/- towards the value of the building together with the statutory solatium and interest. On appeal, the High Court reversed the valuation of the trees and confirmed the award of the land Acquisition Officer, namely, Rs.23, 219.97. High Court also confirmed the value of the building as awarded by the reference Court but as regards the value of the land the High Court disagreed and determined market value @ Rs.423/- per sq. yd. by the impugned judgment dated October 22, 1992 in First Appeal No.149 of 1990. Thus, this appeal by special leave.

Shri Satish Chandra, learned senior counsel, contended that though the value of the trees given by the appellants was Rs.1,40,000/-, the reference Court on appreciation of evidence determined compensation therefor @ Rs.50,000/-. The Land Acquisition Officer relied upon the valuation report given by the Forest Department, OPW-I examined on behalf of the land Acquisition Officer admitted that the valuation report did not bear the seal of the office of Forest Department nor it was signed in his presence. None of the officers who prepared the valuation report was examined for its proof. Therefore, the valuation report is inadmissible. The High Court, therefore, was not right in reversing the decree of the reference Court in that behalf. He next contended that when the building consists of more than 17 rooms situated in a posh locality in the heart of Allahabad city, determination of the compensation @ Rs.500/- per sq. yd. by the reference Court is not arbitrary. The view of the High Court in determining compensation at Rs.423/- per sq. yd. is based on no evidence. Therefore, the High Court was not right in reversing the decree. As regards the value of the building, it is contended that the appellants had valued it at Rs.25,00,000/- (Rupees twenty five lacs only). The Land Acquisition Officer awarded Rs.3,18,429/-. The District Judge and the High Court were not right in confining the valuation to Rs.8 lacs and odd, as referred to earlier. The appellants, therefore, are entitled to higher compensation on proper consideration.

He further contended that the direction to the appellants given by the learned Judges to file returns under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (for short, the 'Ceiling Act') is illegal. Since the possession of the land was already taken from the appellants dispensing with the enquiry under Section 5-A, after their dispossession and vested in the Government free from all encumbrances, the appellants did not have possession of excess vacant land. The entire land having been acquired under the Act, the appellants are entitled to compensation @ Rs.500/-, as determined by the reference Court. Though the State pleaded in the written statement filed before the reference Court that the Ceiling Act would be applicable to the lands in question, neither an issue was raised nor a finding recorded by the reference Court nor there appears to be a ground taken in the grounds of appeal in the High Court nor the standing counsel for the State argued in that behalf. The High Court, therefore, was not right to go into that question.

He further contended that the Government having given the acquired land on lease on October 1, 1892 for 50 years and having renewed it in September 30, 1942 for a further period of to years on the same covenants as originally envisaged, the appellants are entitled to further renewal from time to time. Thus the lease is a perpetual one. The High Court was in error in restricting the apportionment of the compensation between the Government and the appellant in the ration of 75:25.

He also contended that the competent authority under the Ceiling Act had not determined the surplus land in accordance with the procedure prescribed under Sections 8, 9 and 10. It was decided only after the direction of the High Court. On appeal under Section 33 of the Ceiling Act, the District Judge had further calculated the land within the ceiling limit. According to the appellants, the entire land is not in excess of the ceiling limit under the Ceiling Act. The three writ petitions which came to be filed by the petitioners are pending. Therefore, as on date there is no surplus land. The State, therefore, cannot determine compensation in respect of the excess land under Section 11 (6) of the Ceiling Act. The claimants, therefore, are entitled to the entire compensation for entire land at Rs.500/- per sq.yd. Shri D.V. Sehgal, learned senior counsel appearing for the respondent, resisted the contentions.

Having regard to the rival contentions, the first question that arises for consideration is: whether the decree of reversal pertaining to the value of the trees is sustainable in law? It is seen that when OPW-I was examined on behalf of the Land Acquisition Officer. His statement that he was present at the time of inspection by the Forest Officer and taking measurement of existing trees and their height etc. was not disputed. It is true, as admitted by him, that the report does not bear the seal of the forest Office nor does it bear the name of the officer who prepared the report. It is seen from the evidence of the claimant, Rajesh Kumar Tandon examined on behalf of the claimants that he merely had given the estimate of Rs.1,40,000/- towards the value of the trees without any data. the Land Acquisition Officer relied upon the report given by the Forest Officer who admittedly inspected the trees etc. No dispute as regards the proof of the trees existing in the compound was raised. The report would indicate that the officer who estimated the value has given the details of the estimate of the trees, heirs age and size, girth and the value of each tree. It would have been prudent on behalf of the Land Acquisition Officer, to have officer examined but the estimate and details as such were not questioned in the cross-examination. Under these circumstances, the only inference that could be drawn is that when the forest officers who are the experts in this behalf, estimated the value of the trees, unless there is contra evidence in that behalf, it cannot be said that the award of compensation of Rs.23,000/- and odd given by the Collector's award was without any evidence. On the other hand, the claimant did not place any evidence to the contra. The burden is always on the claimant to establish the proper market value of the trees or land or building. Since they have not discharged their burden, the evidence is not sufficient to hold that the value of the trees would be Rs.50,000/-. The Additional District Judge accepted the ipse dixit of the claimant and gave arbitrary amount on mere asking. The High Court, therefore, was right, though for different reasons; in reversing the award of the reference Court in that behalf and confirming that of the Land Acquisition Officer.

The next question is: as to what would be the value of the building to which the appellants are entitled to? It is well settled law that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to the compensation on either of the two methods but not both. If the building is assessed, it is settled law that the measure of assessment be based on either the rent received from the property with suitable multiplier or the value of the building is the proper method of valuation. In this case, since the land is separately valued, the building cannot again be separately assessed and compensation awarded except the value of debris. However, since State has not come in appeal, we need not go into the legality of the award of the Additional District Judge and of the High Court in that behalf. It would, therefore, be unnecessary to go into that question and we confirm of the compensation in respect of building at Rs.8,33,000/- and odd.

The next question is: what would be the value of the land? It is seen that the appellants have relied upon a solitary sale deed dated January 1, 1985 with reference to an extent of Rs. 434/- per sq. yds. which worked out @ Rs.423/- per sq.yd. The appellants, on the basis of the report given by the valuation officer who was not examined, claimed @ Rs.500/- per sq. yd. They have also relied upon the paper cutting in respect of the prevailing prices notified in the newspapers. It is settled law that either the vendor or vendee of a sale deed should be examined in proof of the circumstances in which the sale deed came to be executed and the consideration passed thereunder and in respect of the value etc. The said sale deed is a free-hold small piece of land as compared to encumbered lease-hold land of 4 acres and odd. The vendor of the sale deed by name Jai Prakash Singh was not examined. Therefore, the sale deed cannot be relied upon as proof of valuation prevailing in the area. The High Court has relied upon that document and granted the compensation @ Rs.423/- per sq.yd. Since the State had not come up in appeal, nor filed cross-objections, we need not go into the correctness of the award of compensation on that rate. The paper cutting as to the publication of the prices in the local newspapers is not evidence and the reference Court, therefore, committed clear error in relying upon those transactions and in proof of document of the sale deed executed by Jai Prakash Singh. If those documents are excluded, there is no other evidence to further enhance the compensation. The High Court granted the maximum compensation as reflected in unproved solitary sale deed of small extent of land. Accordingly, we are constrained to uphold the valuation of the land @ Rs.423/- per sq. yd.

The next question is: whether the appellants are entitled to the compensation in respect of the entire extent of the land? It is not in dispute that the lands are situated in the urban agglomaration and 1500 sq.meter is the urban vacant land ceiling limit in Allahabad to which the holder is entitled under the Ceiling Act. Admittedly, the declaration under Section 6 was made as early as on August 14, 1976. The procedure prescribed under Section 8 the preparation of the draft statement, inviting objections, consideration thereof and making the draft statement; under Section 9, publication thereof, inviting objections and publication; and determination of the surplus lands. Procedure under Section 10(1) of the Ceiling Act prescribed inviting objections, consideration thereof under sub-section (2) and making the final publication under Section 10(3) fixing a date of vesting are required to be followed and on and from that date the excess urban land stands vested in the State, The appellants have placed before us the order of the competent authority that determined the excess land and on appeal, confirmation by the District Judge declaring that the appellants are

entitled to retain 9585.14 sq. meter of land as permissible limit and 9157 sq. meters of land as vacant land which stands vested in the State. The details of the procedural steps taken are not on record. It appears that the appellants have filed three writ petitions in the High Court which are pending disposal on the question of surplus lands. It is, therefore, unnecessary for us to go into the question of the actual extent of the surplus land.

The contention of Shri Satish Chandra is that once the notification under Section 4(1) was published, the Land Acquisition Officer was enjoined to pass an award for entire land under Section 11. Since possession was already taken and it vested in the State free from all encumbrances, the acquired land is situated within agglomeration and is found to be in excess of the ceiling limit. The appellants are entitled to full compensation. In support thereof, he placed reliance on M/s. Majas Land Development Corporation & Ors. vs. State of Maharashtra & Ors. [AIR 1983 Bombay 188]; State of M.P. V. Surinder Kumar & Anr. [(1995) 2 SCC 627]; and The Govt. of Andhra Pradesh v. H.E.H., the Nizam, Hyderabad [JT 1996 (3) SC 629. The question, therefore, is: whether the Land Acquisition Officer is enjoined to pass award in respect of the excess land? This controversy was considered in H.E.H. Nizam's case after surveying the relevant provisions of the Ceiling Act. It is not necessary to traverse the ground once over. It was held that it is not necessary for the Government to determine the compensation under Section 23(1) of the Act in respect of the excess land found under the Ceiling Act since Ceiling Act is a special Act, notwithstanding any contrary law. In that case, it was noticed that the Government have exempted the acquired land from the purview of the Ceiling Act, the determination of the compensation in respect of that land by Civil Court was upheld with modification. Far from helping the appellants, the ratio therein is against the appellants. This question was also considered in another judgment of this Court in State of Gujarat & Ors. vs. Parshottamdas Ramdas Patel & Ors. [(1988) (1) SCR 997]. It was held therein that the provisions of the Ceiling Act have over-riding effect on all other lands. In Surinder Kumar's Case, the purchase of vacant land within ceiling limit pending determination by competent authority came up for consideration. Therein this Court had pointed out the procedure to be adopted in dealing with the situation. The Bombay case, with due respect, was not correctly decided. The principle of withdrawing notification under Section 48(1) of the Act need not be followed for the reason that compensation for the land within ceiling limit be determined under Section 23 and excess land is covered My Section 11(6) of the Ceiling Act. Until ceiling area and excess land are determined, it would be difficult to postulate as to what extent of excess vacant land would be available to pay compensation either under Section 23(1) of the Act or Section 11(6) of the Ceiling Act. The excess urban land covered under the Ceiling Act is not required to be de-notified as it statutorily stands vested in the Government land and Government cannot be compelled to acquire the excess urban vacant land covered under the provisions of the Ceiling Act, and compensation paid under the provisions contained in the Land Acquisition Act. Shri Satish Chandra also referred to us instructions issued by the Government of U.P. dated January 31, 1986. He placed reliance on paragraph 6 of the instructions. It is seen that the Government has given instructions to the respective authorities under Section 35 of the Ceiling Act that where the authorities were not able to dispose of the matter under the Ceiling Act and land is required for public purpose, it would be necessary to drop the proceedings under the Ceiling Act and to proceed under the Land Acquisition Act. These are only administrative instructions. They do not have any statutory effect on the operation of law. In case of yearning gaps, they may guide the officers. In view of the law laid down

by this Court, the instructions do not have any over-riding effect oh the operation of the Ceiling Act and the law declared by this Court under Article 141. Therefore, it is not necessary for the State to proceed with the determination of the compensation under Section 23(1) of the Act to the extent of the excess land found under the Ceiling Act. Compensation shall be paid only as per Section 116 of the Ceiling Act.

The question then is: what is the proportion in which the appellants and the State are entitled to the compensation for the land within ceiling limit. As stated earlier, the main contention of Shri Satish Chandra is reference under Section 18(3), as amended by the State Legislature of U.P. is available to the State claiming apportionment in a particular proportion but was not availed of. The reference Court has recorded finding only with regard to the apportionment not under the Ceiling Act but with regard to the determination of the value of the land. In the grounds cf appeal filed in the High Court, no arguments were addressed by the counsel for the State. Therefore, the High Court was not right in going into that question. We find no force in the contention. It is seen that sub-section (3) of Section 18 of the Act as amended by the Land Acquisition (Uttar Pradesh Amendment) Act 22 of 1954 reads as under:

> "(3) Without prejudice to the provisions of sub-section (1) the Land Reforms Commissioner may, where he considers the amount of compensation allowed by the award under Section 11 to be excessive, require the Collector that the matter be referred to by him to the Court for determination of the amount of compensation.

Explanation.- In any case of land under Chapter VII the requisition under this sub-section may be made by the Land Reforms Commissioner at the request of the Company on its undertaking to pay all the cost consequent upon such requisition.

(4) The requisition shall state the grounds on which objection to the award is taken and shall be made within six months from the date of the award."

A reading of sub-section would indicate that without prejudice to the provisions in sub-section (1), the Land Reforms Commissioner where he considers the amount of compensation allowed by the award under Section 11 to be excessive, may require the Collector that the matter may be referred to the Court for determination of the amount of compensation. It is settled law that the award of the Collector is an offer and it binds the Government without objections thereto. The State Legislature felt that where the Collector under Section 11 made excess award of compensation for the land which was not capable of fetching that value, the Land Reforms Commissioner has been empowered to seek a reference to the Court for determination of the compensation. The limited right given to the State is only in respect of excess compensation awarded by the Collector. Therefore, in respect of the apportionment of the compensation covered under the Ceiling Act, there is no need for reference under Section 18(3). Moreover, it could be seen that on a reference made under Section 18(1) to the Court, as required under Section 20 (c) of the Act, the Court is enjoined to give notice to the Collector when the objection relates to the area of the land or Section 21 restricts the scope of the proceedings envisaging that "the Court shall restrict the scope" ok consideration of "interests of the persons affected by the objection". Thus, it could be seen that the Court is enjoined to go into the

acquisition of the land of the persons entitled to the compensation. On a reference made, the compensation would be restricted to the interest in the land held by the claimant and the court should enquire as to the extent to which the claimant will be entitled to get compensation under Section 23(1) of the Act towards his interest in the acquired land. The interest consists of right and title to the compensation. Admittedly, the appellants had lease of Government land for 50 years on October 1,1892 obviously under Crown Grands Act with a right to a renewal for further period of 50 years. Admittedly, further renewal was granted on September 30, 1942 for a further period of 50 years which stood expired on 30th September, 1992. It would, therefore, be clear that the term of the lease as granted by the Government was upto September 30, 1992. It is then contended by Shri Satish Chandra that it was a licence since the appellants were permitted to construct permanent building under the lease and, therefore, it is in perpetuity by operation of Section 60 of the Easement Act. We find no force in the contention. The lease itself expressly mentions demising the vacant land to the appellants with exclusive possession but subject to construction of the building within the specified period and be in peaceful exclusive possession and enjoyment thereof subject to paying the lease amount to the Government under the Act. Therefore, it cannot be treated to be a licence but a lease.

Lease having been given for a specified period upto September 30, 1992, the question is: whether the appellants are entitled to full compensation? In this behalf, the contention of Shri Satish Chandra is that since the first renewal contained the same covenant as contained in the first lease, the appellant are entitled to further renewal of lease of in property. In support thereof, he placed reliance on the judgment of the Division Bench of the Allahabad High Court as confirmed by this Court in the special leave petition, namely, Purshottam Dass Tandon & Ors. vs. State of U.P. Lucknow & Ors. [AIR 1987 Allahabad 561]. It seems that Tandons are having large extent of lease-hold lands from the Government and one such lease-hold land is under acquisition. We are not concerned with regard to the legality of the mandamus or directions issued in the above case. Suffice it to state that since the State had acquired the property before the expiry of the first renewal, we are constrained to go into the language used in the first lease. It expressly mentions that lease initially was granted for a period of 50 years and a right of another renewal for another 50 years, i.e., upto September 30, 1992. Before its expiry, the Government have already acquired the lands for public purpose and taken possession. The question of further renewal would not arise in this case. Under these circumstances, residuary period of lease is hardly 7 years.

The question, therefore, is: whether the appellants are entitled to the entire compensation in respect of the land within the ceiling limit under the Ceiling Act. In support thereof, Shri Satish Chandra placed reliance on two judgments of this Court in India Parshad vs. Union of India & Ors [(1994) 5 SCC 239] and Sri Piedade Fernandes vs. Union of India [(1994) 3 SCALE 860]. In Inder Parshad's case, land was sought to be acquired for public purpose but the Land Acquisition Officer was unable to decide the proportion in which the lease-holders and the Union of India are entitled to the compensation. On reference under Section 30, the reference Court had determined the compensation at a particular rate ultimately the High Court determined the proportion at 75% and 25%. Since the Union of India had not filed appeal, this Court upheld the proportion to the lease-holders and the Government of India. It was a perpetual lease. In that back-drop, this Court had upheld the view of the High Court granting apportionment in the ratio of 75:25 to the lessee and the

Government. In Sri Piedade Fernandes case, the covenant expressly gave power to the Government to get the land for a public purpose without payment of the compensation. That was not covered under the Ceiling Act. Instead of invoking the clause thereunder, proceedings under Land Acquisition Act were initiated. It was, therefore, held that the State is enjoined to pay full compensation for the land acquired. The ratio of either case does not help the appellants in this case. As seen, the appellants have got hardly 7 years lease-hold right in the land and thereafter the lands would stand revested to the State. Thereafter, the State would be entitled to resume the land after ejectment of the appellants. Under those circumstances, they are not entitled to the full compensation. The High Court directed that compensation should be apportioned for the extent of land within the limit in the ration of 50:50 to the State and the appellants. It is also to be seen that the State has not questioned at least the apportionment granted by the High Court. Considered from this perspective, we hold that it is not a fit case to reserve the judgment.

The appeal is dismissed but in the circumstances without costs. The State is directed to pay the compensation in respect of the extent of excess vacant land as now found by the District Judge under Section 11(6) of the Ceiling Act and the Land within ceiling limit in the proportion now upheld within a period of 3 months from today. Since we have stated that we are not concerned with regard to the extent of the excess vacant land under the Ceiling Act, our finding may not be construed to have been given as conclusive finding on the excess land under the Ceiling Act.