

Prabhu Dayal And Others vs Union Of India on 20 April, 1993

Equivalent citations: AIR1994SC1451, 1995SUPP(4)SCC221, AIR 1994 SUPREME COURT 1451, 1994 AIR SCW 891, 1995 (4) SCC(SUPP) 221, 1995 SCC (SUPP) 4 221

Bench: K. Ramaswamy, R.M. Sahai

JUDGMENT

1. The appellants are owners of 3/4th share in Khasra Nos. 1012/341 (3-16), 1011/594 (1-13), 1334/1009/594 (62.01) Bighas situated in Sadhora Khurd, Delhi. Initially, the lands were requisitioned under Defence of India Rules for defence purpose. On May 15, 1945, a notification was issued under Defence of India Rules acquiring the lands. The Collector by his proceedings dated October 30, 1961 offered at the rate of 0.38 paise to 0.92 paise per square yard with interest at the rate of 6% payable between May 15, 1945 to January 14, 1962. The offer was rejected as a consequence in exercise of the power under Section 23(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952 for short the Act, the Arbitrator was appointed on September 22, 1966. On enquiry, the Arbitrator awarded by his award D/-May 13, 1968 at the rate of Rs. 5/- per square yard and also awarded interest at the rate of 6%. Dissatisfied therewith, the appellants carried the matter in appeal. The learned single Judge by judgment D/-November 5, 1971 relying upon Ex P-7 and award D/-May 3, 1941 in which the market value was determined at the rate of Rs. 6/- per square yard enhanced the market value at the rate of Rs. 6/- per square yard. The appellants filed appeal before the Division Bench. The Division Bench confirmed the award; of the learned single Judge and dismissed the appeals. Thus these appeals by special leave of this Court.

2. Though the appeals have been filed against the lands covered in Khasra No. 662/364 to an extent of 22.9 Bighas, they are situated far away from the lands referred to earlier. This Court in similar circumstances refused leave and dismissed the special leave Petitions Nos. 4589-99 etc. of 1981 by order dated October 24, 1983. Therefore, the lands in Khasra No. 662/ 364 stand on the same footing. Accordingly the appeal arises against Khasra No. 662/ 364 also stands dismissed.

3. Mr. U.R. Lalit, learned senior counsel for the appellants has contended that the learned single Judge and the Division Bench had noted that there is an upward rise in the prices in Delhi from 1939 onwards and that the lands are situated on the main roads but, however, rejected the claim of the appellants for increasing the market value on the grounds that the lands are interior to the Rohtak Road and therefore the rise in prices set off to the situation is clearly erroneous in law. We find force in the contention. It is admitted that Ex. P-7 is an award in respect of the lands notified in 1941 for widening the Rohtak Road and award was made at the rate of Rs. 6/- per square yard. The lands in these Khasra numbers are situated near about the Rohtak Road and in between two roads were laid between 1941 to 1945. Thus it could be seen that by the date of notification there existed facilities of roads as access to the lands. Ex. P-7 award lands were acquired for widening the Rohtak Road since the lands in acquisition are also situated between the roads subsequently laid they

acquired potency for future development. In view of the finding by both the learned single Judge and also the Division Bench that there was a constant rise in prices, we consider that the rise in prices could be around Rs. 6/- to Rs. 8/-between 1941-45. Accordingly, the appellants are entitled to the enhancement of the market value at the rate of Rs. 8/- per square yard. The State did not file appeal against enhancement to Rs. 6/-per square yard. Since we found that the lands had potential value for housing purpose 1/3 should be deducted towards developmental charges so the appellants are entitled to Rs. 750/ - per square yard.

4. It is next contended that the appellants are entitled to the solatium though in law they are not entitled but in equity they are entitled to the solatium for the reason that for 22 years Arbitrator was not appointed to determine the market value. In support they relied upon the judgment of this Court in *Union of India v. Hari Krishan Khosla (dead) by Lrs.* reported in (1992) 5 JT (SC) 574 at p. 595 paragraph 78 : 1993 AIR SCW 105 at p. 124, para 78. Therein this Court relied upon another judgment in *Harbans Singh Shanni Devi v. Union of India (C. A. Nos. 470 and 471 of 1985, disposed of by this Court on 11th February, 1985)*. In that judgment this Court said that having regard to the peculiar facts and circumstances of the present case and in view of the fact that the appointment of the Arbitrator was not made by the Union of India for period of 16 years, this Court considered in equity to give solatium at the rate of 30% of the amount of compensation and interest at the rate of 9% per annum should be awarded to the appellants therein. In this case, the question of appointing the Arbitrator would arise only when the market value offered was rejected by the claimants. The offer was made and rejected on October 13, 1961 and the Arbitrator came to appoint on September 22, 1966 after five years. Under these circumstances, the claimants are entitled to solatium at the rate of 15% on the market value. The appellants did not challenge the rate of interest granted at 6%. Accordingly they are also entitled to the interest at the rate of 6% per annum. The appeals are accordingly allowed. The appellants are entitled to the relief as stated above. No costs.