Uttar Pradesh Government vs H.S. Gupta on 25 September, 1956

Equivalent citations: AIR1957SC202, AIR 1957 SUPREME COURT 202

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Bench: S.K. Das

JUDGMENT

Govinda Menon, J.

1. These to appeals arise out of the acquisition of "Dilkusha" Estate, situated outside the city of Lucknow. The State of Uttar Pradesh is the appellant in Appeal No. 186 of 1955, whereas the claimant H. S. Gupta is the appellant in Appeal No. 187 of 1955.

2. On the 3rd September 1947, the Land Acquisition Officer, Lucknow, made an award by which he held that the claimant was entitled to get compensation in the sum of Rs. 2,88,000 along with 15 per cent, for compulsory acquisition under Section 3(2) of the Land Acquisition Act, as well as damages to the extent of Rs. 350 per mensem resulting from the diminution of profits from 17-6-1947, i.e., the date of publication of declaration, under Section 6, till the date of taking over possession of the property, viz. 6th September 1947. Not being satisfied with the award, at the instance of the claimant a reference was made to the District Judge of Lucknow under Section 18 of the Land Acquisition Act and the learned District Judge, after an exhaustive consideration of the various points arising, came to the conclusion that as the net saleable area came to 4,09,952 square foot. Valuing the same at Rs. 1-2-0 per square foot, the compensation due to the claimant on that footing would be Rs. 4,61,196. The bungalow on the site, as well as other structures were separately valued, with the result that the total market-value of the property came to Rs. 5,28,413. The claimant was held entitled to 15 per cent, solatium on account of compulsory nature of acquisition and together with that the compensation under Clause (1) of Section 23 of the Land Acquisition Act came to Rs. 6,07,675. A sum of Rs. 983 was also awarded under Clause (6) of Section 23. The claimant was also allowed interest at 6 per cent. per annum on Rs. 2,76,583 being the excess amount allowed by the District Judge from the 6th September 1947, to the date of payment of the excess in Court. Against the decree and judgment of the District Judge of Lucknow, the Government of Uttar Pradesh filed an appeal in the High Court of Judicature, at Allahabad, Lucknow Branch, Lucknow, and the learned Judges (Agarwala and Hari Shankar JJ.) by their judgment dated the 22nd September 1953, reduced the compensation allowed by the District Judge. The present appeals are the outcome of the decision of the Allahabad High Court.

3. It is convenient to deal with the points arising in both the appeals together.

4. The gravamen of the complaint in the appeal by the Government of Uttar Pradesh is that the basis adopted by the High Court in fixing 0-14-0 per square foot as compensation is unjustified because the High Court has erred in rejecting the principle of belting. It is also argued that in fixing the value of the land, the High Court has failed to take into consideration the fact that the land falls outside the Municipal area and does not enjoy the amenities of water Supply, electricity, conservancy and transport which are enjoyed by lands within the Municipal area. It is further argued that the claimant had purchased the property as late as September, 1941, for a sum of Rs. 72,000 and, therefore, hardly five years had elapsed since that date before the notification under Section 6 of the Land Acquisition Act was made.

5. Apart from stating that the decision of the High Court is incorrect, there is nothing positive in the grounds of appeal by the U. P. Government to indicate the amount which the claimant is entitled to or the basis on which the valuation ought to have proceeded. Before us Mr. S. P. Sinha contended that the High Court should have set aside the decision of the District Judge and restored the award of the Land Acquisition Officer. The claimant in his appeal memorandum disputed the principle adopted by the High Court in the valuation and asserted that the High Court should have held that the market value of the land should be not less than Rs. 2 per square foot. Minor contentions were also raised with regard to not allowing a sum of Rs. 6,179 as compensation for the well, Rs. 11,191 for fuel, timber and fruit trees and at least Rs. 1,000 as compensation for electric service line as fixed by the District Judge. It was further contended that the High Court should have allowed Rs. 12,681 for out-houses as buildings instead of Rs. 2,000 as price of material only. In addition, the refusal by the High Court that the claimant is entitled to interest from the 8th July 1948, to the 8th September 1949, the period during Which the payment of money to the claimant was withheld, also formed one of the grounds of appeal. It may be stated in this connection that the High Court disallowed interest to the claimant at 6 per cent. per annum on account of the fact that the withholding was due to an order of the Court as a result of objection raised by the Government and the money was, therefore, invested in Government securities.

6. Mr. S. P. Sinha has not been able to persuade us that the compensation allowed by the High Court differing from the view expressed by the District Judge that the criterion for valuation should be on the basis of blocks, is unsound and unacceptable. The High Court has given valid and weighty reasons for adopting that the valuation should be on plot rate though there are certain advantages in computing the value at the block rate where vast area of land is acquired. In the present case as the learned District Judge has observed, the layout, according to the plan Exhibit 52, enables the claimant to get better value for the land than if the same had been disposed of without subdivision and dissection. We feel that in the circumstances of the case, the proper mode of valuation should be on plot basis. Mr. Sinha has not been able to substantiate any of the other specific points raised by him in his grounds of appeal.

7. The result is that Appeal No. 186 of 1955 is dismissed with costs.

8. Mr. S. K. Dar, counsel for the appellant in Appeal No. 187 confined his arguments to two matters, the first of them being that the learned Judges of the High Court erred in fixing 0-14-0 per square foot as the price of the land and not at least Rs. 1-2-0 per square foot after agreeing with the District

Judge that the compensation ought to be awarded on the plot system and not on the footing of the block system.

The other point is that interest should have been awarded at the rate of 6 per cent. per annum from the 6-9-1947, till the date on which the excess amount was made available to the claimant.

What is urged is that the learned Judges of the High Court should have accepted the price of land as seen from transactions regarding building sites under similar conditions in and around Lucknow and especially with regard to what was known as the Mahanager scheme which dealt with an area lying in close proximity to the Faizabad road which was being developed by the P. W. D. This locality is situated about 2 1/2 miles from the Council House and with regard to that sale-deeds, Exhibits 138 and 139, demonstrate the fact that in May and June, 1947, the price per square foot in the one case was Rs. 1-10-6, and in the other it was Rs. 1-13-0 per square foot. The plan attached to Exhibit 138 shows the alignment of property where plots designated as 18, 21, 22, 26 and 27 fetched Rs. 1-10-0 per square foot, whereas other plots fetched Rs. 1-13-0 per square foot.

The learned counsel further argued that on the evidence of P. W. 1 it is clear that the land in dispute is worth between Rs. 2-3-0 and Rs. 2-8,0 per square foot. Various portions of the deposition of P. W. 1 were read out by the learned counsel. The claimant himself examined as P. W. 8 asserted that in April, 1947, the value of the land was Rs. 2-8-0 to Rs. 3 per square foot on the basis of demand and supply. In cross-examination he stated that small plots are sold at higher rate than bigger plots and the price paid for bigger plots cannot be compared with the price paid for smaller plots and if the entire Dilkusha Estate is sold, it would fetch 1 or 2 annas per square foot less than if it were sold in plots. The learned Judges of the High Court based their decision on this statement by the claimant for reducing the value of the plot to 0-14-0 per square foot.

Having perused the deposition of P. W. 8, we do not think that the construction put upon a stray statement like the one in question should have weighed with the Judges in reducing the price per square foot. That the scheme adumbrated in Exhibit 52 is a feasible and workable one, designed and set-forth some years anterior to the time when the compulsory acquisition was decided upon, cannot be disputed and as the learned Judges of the High Court in concurrence with the District Judge have held that there can be no difficulty in finding purchasers for all the plots in accordance with the lay out in Exhibit 52, we do not find any justification for any reduction in the value per square foot. The conditions which appertain, to the Dilkhusha estate resemble to a considerable extent those obtained with regard to Mahanager scheme and it will not be inappropriate to base a conclusion on a comparison of the factual details of Mahanager scheme. Having rightly agreed with the District Judge that Rs. 1-2-0 per square foot should be taken as the average rate for valuing the land if the criterion to be adopted is plotwise, we do not find any justification in the learned Judges of the High Court falling back upon the method of block-wise sale, especially when we see from the evidence that there is no doubt whatever that there are willing, if not anxious, purchasers for all the plots delineated in Exhibit 52. The application of the principle that if the land has to be sold in one block consisting of a large area, the rate per square foot likely to be fetched would be smaller than if an equal extent of land is parcelled out into smaller bits and sold to different purchasers, cannot be reasonably applied to the circumstances in the present case. The High Court should have, in our

view concentrated its attention on the price fetched for smaller extent of land similarly situated with the same kind of advantages and drawbacks and then applied that test to the facts in the present case. Viewed in that light, it would be proper to consider the Mahanager scheme as the nearest approach. In our view, the learned District Judge was right in thinking that Rs. 1-2-0 per square foot should be the price of the various plots as delineated in Exhibit 52. We do not, therefore, think that the reduction of a sum of Rs. 53,366 from the amount awarded by the District Judge is justified. Basing our conclusion on the reasons set-forth above, the order of the High Court has to be modified in this respect and that of the District Judge restored.

9. The second point urged by Mr. Dar is in regard to the disallowing of interest. On the 8th of July, 1948, the Land Acquisition Officer wrote Exhibit 64 to the District Judge of Lucknow, stating that since the question of filing an appeal against the order of the District Judge was under consideration, the additional compensation should not be paid to the claimant till the matter was settled and, therefore, though the amount was in deposit and could have been withdrawn by the claimant on that date, he was not paid the money Afterwards while the appeal was pending before the High Court, an application was made on the 18th August 1948, under order 41, Rule 5, Civil Procedure Code, for the stay of the delivery of the amount to the claimant and on the 28th August 1948, an ad-interim stay order was made by that Court. On the 4th April 1949, the High Court passed the final order that the application cannot be granted unless the U. P. Government agreed to pay the claimant interest at the rate of 4 per cent. per annum up to the date of payment; on this the learned Government Advocate undertook to obtain instructions and inform the Court within a week what attitude the Government took. On the 12th May 1949, the application for stay was dismissed as not pressed. The result of these proceedings amounted to the deprivation to the claimant of the additional sum awarded to him by the District Judge and which we have restored to him now. In these circumstances, the appellant is entitled to interest on the additional amount awarded to him at the rate of 6 per cent., as provided in the Land Acquisition Act. from the 8th July 1948, till the 12th May 1949.

10. To the extent mentioned above, Appeal No. 187 is allowed with costs.