The U.P. Jal Nigam, Lucknowthrough Its ... vs M/S. Kalra Properties (P) Ltd.,Lucknow ... on 17 January, 1996

Equivalent citations: 1996 AIR 1170, 1996 SCC (3) 124, AIR 1996 SUPREME COURT 1170, 1996 (3) SCC 124, 1996 AIR SCW 743, 1996 ALL. L. J. 523, 1996 (1) BOM CJ 615, 1996 (1) CURCC 133, 1996 (1) UJ (SC) 549, 1996 BOMCJ 1 615, (1996) 2 CTC 60 (SC), (1996) 1 JT 354 (SC), 1996 (1) JT 354, (1996) 1 SCR 683 (SC), 1996 UJ(SC) 1 549, (1996) 1 LANDLR 449, (1996) 2 CIVLJ 593, (1996) 1 RENTLR 539, (1996) 1 SCJ 554, (1996) 2 ICC 534, (1996) LACC 225, (1996) 2 ICC 30

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
THE U.P. JAL NIGAM, LUCKNOWTHROUGH ITS CHAIRMAN & ANR.

Vs.

RESPONDENT:
M/S. KALRA PROPERTIES (P) LTD.,LUCKNOW & ORS.

DATE OF JUDGMENT: 17/01/1996

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

CITATION:
1996 AIR 1170 1996 SCC (3) 124
JT 1996 (1) 354 1996 SCALE (1)389

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

We have heard the learned counsel on both sides in the Contempt Petition as well as in I.A. No. 3/94 to review order passed in dismissing the appeal with directions and also the order dated May 5, 1994 passed in the Review Petition. In view of the facts that have been brought to our notice, we directed that the main matter should be disposed of on merits. Accordingly the review petition, Interlocutory Application, contempt petition and the civil appeal have been posted together. After hearing the counsel on both sides, we are satisfied that manifest errors of law have been committed in this case. Consequently, all the orders passed by this Court are set aside; contempt petition and the interlocutory applications are dismissed; and the main appeal is revived.

We have heard the counsel on both sides on merits. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") and Section 17(4), dispensing with the enquiry under Section 5A was published on March 8, 1973 acquiring land measuring 0.23 acres for setting up a pumping station to drain out flood water from low lying areas of Buster Palace, Ziamou. The acquired lands bear plot Nos. 97 to 100. Declaration under Section 6 was published on October 9, 1973. Possession of the land was taken on July 5, 1973 and no award came to be passed. M/s. Karla Properties (P) Ltd., the respondent in the main case, had purchased the acquired land by sale deed dated February 3, 1989 for a total consideration of Rs. 60,000/-. He filed a writ petition in the High Court for mandamus commanding the appellants to pay compensation in respect of the lands in question on the basis of the market value fixed by the District Magistrate, Collector, Lucknow (Annexure No. 6) filed in the High Court. The Division Bench by order dated November 17, 1992, allowed the writ petition, issued mandamus and directed that the compensation should be paid to the respondents in accordance with the market value assessed by the Collector at the rate of Rs. 200/- per square foot with all consequential benefits of solatium and interest under the Act as amended by Amendment Act 68 of 1984.

The learned Attorney General for the appellants contended that after the judgment, it has come to light that in respect of the self-same lands, the market value as per the guidelines issued by the Government was determined for stamp duty at Rs. 80/- per square yard in Ziamou area and the respondent himself had purchased the land for Rs. 60,000/- in 1989. The determination of the compensation by the Collector @ Rs. 200/- per square foot is an obvious error apparent on the face of the record and the directions issued by the Division Bench are vitiated by manifest error of law. Shri Gopal Subramanyam, the learned senior counsel, who has sought for and granted 15 adjournments on the ground that matter is being settled, has informed the Court that the settlement has not been reached and it is under process. He has sought further extension of time. Since the case has been adjourned several times, we are not inclined to adjourn the case. In his usual fairness, he has stated that he does not stand on technicalities. The respondent has purchased the land in question. The acquisition covered about 10,000 square feet in addition, the respondent had purchased another 5,000/- square feet which was also taken possession of by the respondent under the notification but the same does not from part of the acquisition. He contended that since possession was taken before declaration under Section 6 was published, it was not validly taken. Admittedly, the award was not made even after two years of the coming into force of the Amendment Act. Therefore, the notification under Section 4(1) and the declaration under Section 6

shall stand lapsed by operation of Section 11A of the Act. Thereby, the respondent is entitled to the compensation on the basis of prevailing market value. The District Collector had assessed the market value at Rs.200/- per square foot and, therefore, there is no illegality in the order of the Division bench in directing payment of the compensation @ Rs. 200/- per square foot and also the consequential solatium and interest. Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property. In this case, notification under Section 4[1] was published on March 24, 1973, possession of the land admittedly was taken on July 5, 1973 and pumping station house was constructed. No doubt, declaration under Section 6 was published later on July 8, 1973. Admittedly power under Section 17(4) was exercised dispensing with the enquiry under Section 5A and on service of the notice under Section 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State under Section 17 [2] free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the Gazette withdrawing from the acquisition. Section 11A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published and the possession are surrendered pursuant thereto. That apart, since M/s. Kalra Properties, respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State and it acquired no right, title or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6 was published.

The next question is: whether the respondent is entitled to compensation and, if so, from what date and at what rate? The original owner has the right to the compensation under Section 23(1) of the Act. Consequently, though the respondent acquired no title to the land, at best he would be entitled to step into the shoes of the owner and claim payment of the compensation, but according to the provisions of the Act. It is settled law that the price prevailing as on the date of the publication of the notification under Section 4(1) is the price to which the owner or person who has an interest in the land is entitled to. Therefore, the purchaser as a person interested in the compensation, since he steps into the shoes of erstwhile owner, is entitled to claim compensation.

This Court in Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A.P. & Ors. [(1994) 4 SCC 595], had considered whether market value of the acquired land would be determined on the basis of basic valuation register maintained by the Collector for the purpose of levy of stamp duty under the Stamps Act and the method of valuation on that basis is valid in law. This question was considered in extensor in the context of the power of the State under Section 47A of the Stamps Act to fix the basic valuation for stamp duty. After elaborate survey of the amendments made by the State legislature by local amendment to the Stamps Act under Section 47a, this Court had held that the market value shall be determined only on the basis of the evidence adduced by the claimant and

in rebuttal thereof by the State, as to the prevailing market value of that particular land. The basic valuation is only for the purpose of collecting the stamp duty and that, therefore, it cannot form foundation to determine the market value.

The finding of the Court that the concession that the market value determined by the Collector on the basis of basic valuation would be properly applied, is obviously illegal. Shri Gopal Subramaniam contended that the Government of U.P. had issued three different circulars accepting the position that the basic valuation would form basis for determination of the compensation under Section 23 [1] and that, therefore, the High Court was right in accepting the valuation made by the Collector and in directing to pay the compensation on that basis. After the judgment in Nagnathan's case [supra], the Division Bench of the High Court of Allahabad in State of U.P. & Ors. vs. Shau Singh [1995 HVD Vol. I 191] had held that the rates fixed for the collection of stamp duty cannot be relied upon to determine market value. Therefore, the instructions issued by the Government for determination of the market value on the basis of basic valuation register were held illegal. The Collector, therefore, was obviously wrong in determining the compensation under Section 23(1) on the basis of prevailing rates in 1992 as per basic valuation circulars.

In view of the settled legal position that the compensation should be determined on the basis of the market value of the acquired land prevailing as on March 1973, though the Attorney General repeatedly argued that the acquired land was not situated in a developed area, while Shri Gopal Subramaniam contended that it is at the corner of a developed area and that, therefore, the land commands higher market value. Even the contention of Gopal Subramaniam of the situation of the land is accepted. The admitted circumstance that can be taken into consideration, is that the land was acquired to establish pump station to drain out flood water in the low-lying area. In other words, as on 1973, the lands were not in a developed condition and that the lands are near the submerged area and the acquisition is to set up pump station to drain out flood water. It would be obvious that in course of time, there would be development and as in 1992, the area might have been fully developed. But by operation of Section 24 of the Act, the subsequent development is irrelevant for determination of the compensation. Though the Attorney General repeatedly referred to the statistical data of the market value in 1980-82 at Rs. 10/- to 15/- per square foot, it is equally settled law that the date is not evidence unless evidence is adduced. It is equally settled law that when a large extend of land is acquired, it cannot be determined on square foot basis. Therefore, it should be determined only on the basis of yardage. If the principle of determination of compensation on yardage basis is adopted, it is equally settled law that at least 1/3rd of the land required should be deduction towards developmental purposes, namely, providing roads, electricity, drainage facilities and other betterment developments. In 1989, when the respondent himself had purchased property, it had valued the market value at Rs. 60,000/-. Therefore, it is further settled law that the same would form basis, provided the sale is a bona fide sale between willing parties in normal market conditions and it was not intended to inflate the market value of the land under acquisition. As found earlier, in 1973 there was no development since the very acquisition was for draining out flood water in that area. It obviously does not command large market value but in due course, neighboring area might have developed. Considered from this perspective and in the facts and circumstances, we are of the considered view that no useful purpose would be served by remitting the case to the High Court or by directing the Land Acquisition Officer to determine compensation. We are of the view

that the respondents would be entitled to a total compensation of Rs. 25,000/-. The respondent is also entitled to interest @ 6% from the date of taking possession till the date of deposit of the amount in the Court. The respondent is also entitled to 15% solatium on Rs. 25,000/- determined as compensation. The appellant is directed to deposit the said amount within six months from the date of the receipt of this order. If possession of any land in excess of the land covered by Section 4 [1] has been taken, our order would not cover it and appropriate action according to law should be taken.

The appeal is accordingly allowed and the writ petition stands disposed of but, in the circumstances, without costs.