

Atma Singh (Died) Through Lrs. & Ors vs State Of Haryana & Anr on 7 December, 2007

Equivalent citations: AIR 2008 SUPREME COURT 709, 2008 (2) SCC 568, 2007 AIR SCW 7835, (2008) 2 ALLMR 36 (SC), (2008) 63 ALLINDCAS 236 (SC), 2007 (14) SCALE 109, 2008 (2) ALL MR 36 NOC, (2008) 70 ALL LR 790, (2008) 1 ALL WC 81, (2007) 14 SCALE 109, (2008) 1 LANDLR 1, (2008) 3 MAD LJ 806, (2008) 2 MAD LW 857, (2007) 2 LACC 6, (2008) 1 RECCIVR 555

Author: G. P. Mathur

Bench: G.P. Mathur, D.K. Jain

CASE NO.:

Appeal (civil) 3148-3157 of 2000

PETITIONER:

Atma Singh (died) through LRs. & Ors

RESPONDENT:

State of Haryana & Anr

DATE OF JUDGMENT: 07/12/2007

BENCH:

G.P. Mathur & D.K. Jain

JUDGMENT:

J U D G M E N T CIVIL APPEAL NOS. 3148-3157 OF 2000 G. P. MATHUR, J.

1. These appeals, by special leave, have been preferred against the judgment and decree dated 4.1.1989 of High Court of Punjab and Haryana at Chandigarh, by which 17 appeals preferred by claimant- appellants (landowners) against the common judgment and award of the Additional District Judge, Kurukshetra, dated 31.8.1985 had been decided. The claimant-appellants had sought enhancement of the amount of compensation for acquisition of their land.

2. A notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was issued for acquisition of 89 acres and 3 marlas of land for construction of a cooperative sugar mill. The land was situate as one compact unit in four villages viz. Kankar Shahbad, Chhapra, Jandheri and Jhambara and belonged to 17 families. In response to the notice issued by the Collector under Section 9 of the Act, landowners filed objections claiming compensation for their land which had been acquired. The Land Acquisition Collector, after holding an enquiry, gave an award on 14.7.1983 under Section 11 of the Act. The Collector gave award on the basis of quality of

land, for which purpose he divided the acquired land in seven categories and the market value was assessed at Rs.6,000/- to Rs.35,000/- per acre for different types of lands. Feeling aggrieved by the award of the Collector, the appellants herein (landowners) sought reference to the Court under Section 18 of the Act. The learned Additional District Judge awarded compensation at a flat rate of Rs.43,000/- per acre by placing reliance on Ex. R-6 and R-7, two instances of sale deeds of village Chhapra. After taking average of these sale transactions, an addition of 25% was made for fixing the market value of the land. Against the award made by the learned Additional District Judge, the claimant-appellants (landowners) preferred 17 appeals before the High Court. The High Court after appraisal of evidence on record held that the market value of the land acquired was Rs.1,20,000/- per acre. It further held that the exemplars filed by the appellants were of small pieces of land and, therefore, a deduction of 33% had to be made and accordingly the market value of the land was assessed at Rs.80,000/- per acre. Besides the market value, the appellants were also held entitled to statutory sums under Section 23(1-A), 23(2) and 28 of the Act. The State of Haryana had also filed appeals against the award of the Additional District Judge, but the same were dismissed.

3. The appeals in this Court have only been filed by the landowners and the State of Haryana has not filed any appeal challenging the judgment and decree of the High Court. We have heard Shri M.L. Varma, learned Senior Advocate for the appellants and Shri Rakesh Dwivedi, learned Senior Advocate for the Shahabad Cooperative Sugar Mills Ltd., for whose benefit the land has been acquired.

4. In order to determine the compensation which the tenure- holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the Court has to take into consideration while Section 24 lays down what the Court shall not take into consideration and have to be neglected. The main object of the enquiry before the Court is to determine the market value of the land acquired. The expression 'market value' has been subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arms length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. See *Thakur Kanta Prasad v. State of Bihar*, AIR 1976 SC 2219; *Prithvi Raj Taneja v. State of M. P.*, AIR 1977 SC 1560; *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1988 SC 943 and *Periyar v. State of Kerala*, AIR 1990 SC 2192.

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due

regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about Town is developing or has prospect of development have to be taken into consideration. See Collector Raigarh v. Hari Singh Thakur, AIR 1979 SC 472, Raghubans Narain v. State of U.P., AIR 1969 SC 465 and Administrator General, W. B. v. Collector Varanasi, AIR 1988 SC

943. It has been held in Kaushalya Devi v. L.A.O. Aurangabad, AIR 1984 SC 892 and Suresh Kumar v. T.I. Trust, AIR 1980 SC 1222 that failing to consider potential value of the acquired land is an error of principle.

6. As mentioned earlier, the learned Additional District Judge had awarded compensation at a flat rate of Rs.43,000/- per acre by placing reliance on Ex. R-6 and R-7, two instances of sale of village Chhapra. After taking an average of these two sale transactions, an addition of 25% was made while fixing the market value of the land. The High Court held that these two sale deeds were of 31.12.1980, while in the instant case, the notification under Section 4 of the Act was published much later on 9.2.1983. That apart, Ex.R-6 and R-7 were mutation orders and the corresponding sale deeds had not been brought on the record. In fact, the learned Additional District Judge, in the earlier part of the judgment, had himself discarded Ex. R-6 and R-7 as they were mutation orders and were inadmissible in evidence. The High Court, therefore, rightly held that no reliance could be placed upon Ex.R-6 and R-7 for determining the market value of the land.

7. The claimant-appellants (landowners) had filed copies of four sale deeds which are Exs.P-7, P-8, P-9 and P-10. In fact, Ex. P-7 is a copy of a sale deed by which Laxman Singh bought some land in village Chhapra on 28.7.1982, which itself became subject matter of acquisition. Laxman Singh had deposed that he had bought the land for construction of shops. All these four sale deeds related to sale transactions prior to the issuance of the notification under Section 4 of the Act on 9.2.1983. The High Court excluded Ex.P-8 from consideration as it related to a very small piece of land measuring 19 marlas only. The average price of the three sale deeds viz. Ex. P-7, P- 9 and P-10 came to little more than Rs.1,20,000/- per acre. Apart from these three sale deeds, no other exemplars were filed either by the State of Haryana or by the landowners. The High Court accepted the price exhibited by the aforesaid three sale transactions which came to little more than Rs.1,20,000/- per acre. It thus recorded a finding that the market value of the land was Rs.1,20,000/- per acre. In our opinion, there being no other documentary evidence, the view taken by the High Court that the market value of the land was Rs.1,20,000/- per acre is perfectly correct and calls for no interference.

8. Shri Rakesh Dwivedi, learned senior counsel for the sugar mill has submitted that the exemplars filed by the appellants were of very small pieces of land and, therefore, they are not safe guide to determine the market value of the land. It may be mentioned here that while determining the market value, the potentiality of the land acquired has also to be taken into consideration. The appellants have led evidence to show that the acquired land had the potentiality to be used for commercial, industrial and residential purposes. PW.1 Rakesh Kumar had prepared a site plan

which showed that the acquired land was adjacent to the abadi of Shahabad and abutted the Shahabad-Ladwa Road. The site plan also shows that there existed rice shellers, cold storage, shops, godowns, a college and houses etc. on both sides of Shahabad-Ladwa Road. PW.2 Baldev Singh was Patwari of village Chhapra in the year 1983. He deposed that all the four villages viz. Kankar Shahbad, Chhapra, Jandheri and Jhambara are adjacent to each other and the acquired land abutted the Shahabad- Ladwa Road. He further deposed that the acquired land was 2 kilometer from G.T. Road and there were buildings, godowns, a cinema hall, factories on both sides of the Shahabad-Ladwa Road. Therefore, there can be no manner of doubt that the acquired land had the potentiality for being used for commercial, industrial and residential purposes and there was fair possibility of increase in its market value in the near future. Therefore, the fact that the exemplars filed by the appellants were of the small pieces of land could not be a ground to discard them specially when exemplars of large pieces of land were not available. They could, therefore, be used as a safe guide for determining the market value of the land.

9. Learned counsel for the appellants has seriously challenged the finding of the High Court that the market value of the land determined on the basis of the exemplars filed by the parties should be reduced by one-third on account of the fact that the exemplars relied upon for ascertaining the market value related to sale of small pieces of land. According to Shri M.L. Verma, learned senior counsel for the appellants, there is no uniform principle that if a large area has been acquired and the exemplars are of small pieces of land, the market value exhibited by the exemplars must necessarily be reduced by one- third. Shri Verma has placed strong reliance on *Bhagwathula Samanna & Ors. v. Special Tehsildar & Land Acquisition Officer, Visakhapatnam Municipality* (1991) 4 SCC 506, wherein it was held as under :-

"In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. However, in applying this principle of deduction it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. If smaller area within the large tract is already developed and situated in an advantageous position suitable for building purposes and have all amenities such as roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

In the present cases the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the Town Planning Trust road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and having stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Therefore,

the High Court erred in making a deduction of one third of the value of the comparable sale and thus reducing the fair market value of land from Rs. 10 per sq. yard to Rs.6.50 per sq. yard."

Shri Verma has also referred to *Kasturi & Ors. v. State of Haryana* (2003) 1 SCC 354, wherein it was observed that in cases of those land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the development charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards development charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. Therefore, in this case taking into consideration the potentiality of the acquired land for construction of residential and commercial buildings, the deduction made was only 20%.

10. Shri Rakesh Dwivedi, learned senior counsel for the sugar mill has, on the other hand, strenuously urged that the evidence of market value shown by sale of small plots is not a safe guide in valuing large areas of land and the prices fetched for small plots cannot be directly adopted in valuing large extent of land as has been acquired in the present case. He has thus contended that a deduction of 30% had rightly been made by the High Court on account of acquisition of a large area. In support of his contention, Shri Dwivedi has placed reliance upon several decisions of this Court. In order to appreciate the principle laid down therein, it will be useful to refer to them in some detail. In *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1988 SC 943, it was held as follows in para 6 of the report:-

"The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay out could with justification be adopted, then in valuing such small laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the prices; the profits on the venture etc. are to be made."

11. In *Chimanlal v. Special Land Acquisition Officer*, AIR 1988 SC 1652 it was held as follows in para 4 (15) of the reports.

"Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx,

between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards".

12. Shri Dwivedi has also referred to *Basant Kumar & Ors. v. Union of India & Ors.* (1996) 11 SCC 542, *K. Vasundara Devi v. Revenue Divisional Officer (LAO)* (1995) 5 SCC 426, *H.P. Housing Board v. Bharat S. Negi & Ors.* (2004) 2 SCC 184. In the first cited case land was acquired for planned development of Delhi and in the other two cases for Housing Boards and a deduction of 33% was applied.

13. The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracks of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward, depending upon the facts of each case, is made.

14. The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a Housing Colony or Government Office or an Institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-product in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by-product begasse is now used for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope for earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year. The return from the land acquired for the purpose of Housing Colony, or Offices, or Institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions

of this Court are not applicable in the case under consideration.

15. Having regard to the entire facts and circumstances of the case, we are of the opinion that a deduction of 10% from the market value of the land, which has been arrived at by the High Court would meet the ends of justice. Therefore, the market value of the acquired land for the purpose of payment of compensation to the land owners has to be assessed at Rs.1,08,000/- per acre.

16. In the result, the appeals are partly allowed. The claimant- appellants will be entitled to compensation at the rate of Rs.1,08,000/- per acre. Besides the above amount, they will also be entitled to the statutory sum in accordance with Section 23(1-A) and solatium at the rate of 30% on the market value of the land in accordance with Section 23(2) of the Act. They will also be entitled to interest as provided in Section 28 of the Act. The appellants will be entitled to their costs.