

Krishi Utpadan Mandi Samiti Sahaswan ... vs Bipin Kumar & Anr on 7 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2895, 2004 (2) SCC 283, 2004 AIR SCW 533, 2004 ALL. L. J. 665, (2004) 1 JT 344 (SC), (2004) 1 CLR 194 (SC), (2004) 2 JCR 217 (SC), (2004) 14 ALLINDCAS 40 (SC), 2004 (1) LACC 316, 2004 (1) LANDLR 564, 2004 (1) RECCIVR 720, 2004 (1) ALL CJ 476, 2004 (2) PUN LR 70, 2004 (1) JT 344, 2004 (1) CIV LJ 826, 2004 (1) CLR 194, 2004 (2) ALL WC 1176, 2004 (1) CURCC 325, 2004 (3) ANDH LD 45, 2004 (73) DRJ 709, 2004 (1) ESC 114, 2004 (14) ALLINDCAS 40, 2004 (55) ALL LR 83, 2004 (1) SCALE 332, 2004 (109) DLT 356, 2004 (2) SRJ 38, 2004 (1) SUPREME 448, 2004 (1) SLT 422

Author: S. N. Variava

Bench: S. N. Variava, H. K. Sema

CASE NO.:

Appeal (civil) 7463 of 1997

PETITIONER:

Krishi Utpadan Mandi Samiti Sahaswan Distt.Badaun thr.Secretary

RESPONDENT:

Bipin Kumar & Anr.

DATE OF JUDGMENT: 07/01/2004

BENCH:

S. N. VARIAVA & H. K. Sema.

JUDGMENT:

J U D G M E N T S. N. Variava, J This Appeal is against the Judgment dated 14th July, 1997. Briefly stated the facts are as follows:

Section 4 Notification for acquisition of 6.9 acres of land were issued on 30th January, 1988. Section 6 Notification was issued on 30th July, 1988. The award was passed on 16th July, 1990. The Land Acquisition Officer had called for sale deed from the office of the Registrar of Documents. He received 12 sale deeds of which one was in respect of a land situated within the acquired land. The Land Acquisition Officer, therefore, considered that sale deed to be a relevant document and on the basis of that sale deed, awarded compensation at the rate of Rs. 15.37 per sq. yards. The respondent and other claimants whose land had been acquired filed references under

Section 18. Before the Reference Court it was proved that near the acquired land there was a cold storage and a petrol pump. It was shown that the high way passed near the acquired lands. It was proved that there was a lot of building constructions going on all around the acquired land. It was thus proved that the acquired land had high potential for building construction activity. The sale deed by which the respondent had himself purchased a portion of this land, in January, 1984 for Rs.4100/- was proved. However the respondent also relied on an order dated 28.5.1987 by which the Stamp Officer fixed the market value to be Rs.120 per sq. yards and levied stamp duty accordingly. The Reference Court relied on the fact that the District Magistrate, Badaun had fixed market rate of land, within the abadi at Rs.200 to 250 per sq. yard and that of land away from the abadi at Rs.150 to 170 per sq. yards. On this basis the Reference Court fixed compensation at the rate of Rs.150 per sq. yard.

The appellant filed an appeal to the High Court. The High Court by the impugned judgment had fixed compensation at the rate of Rs.170 per sq. yards on the following basis:

"Duly considered the submissions of both sides. The land was acquired on 30.1.80 by publication of notice under Sec.4 of the L.A.Act and the declaration was made on 13.8.86 under Sec.6 of the Land Acquisition Act on 13.8.86, the disputed land did not face Badaun Delhi Road. Be that as it may be, the registered sale deed by which this plaintiff-respondent purchased the land was a good exemplar for ascertainment of market price. It is the matter of common experience that the price of the land is soaring high due to developments of the country and also due to exploitation of population. If 15% per annum is accepted as rate of increase of the price of the land then there would 45% enhancement of the price of acquired land in dispute. Taking into consideration, that the development had just started at the time of acquisition of the land, I think Rs.170 per sq. yard should be proper market price of the acquired land at the time of acquisition and compensation be awarded accordingly."

We have heard the parties at great length. It is settled law that one of the methods on which market value can be ascertained, is on basis of comparable sale deeds. As has been noticed, the Land Acquisition Officer had taken note of a sale deed of a land situated within the acquired land. That was a comparable sale deed. Further, the respondent had himself purchased a small portion of the acquired land and had tendered his own sale deed as evidence. Of course, this sale deed was for only Rs.4100/- i.e. at the rate of Rs.15.40 per sq. yards. Therefore, reliance was placed by the respondent on the order passed by the Stamp Officer who valued for the purposes of stamp duty, at the rate of Rs.120 per sq. yard.

As noted above, the Reference Court has relied on the order of the Stamp Officer and on the fact that the District Magistrate, Badaun had fixed market value of land at Rs.200 to 250 per sq. yards for land within the abadi and at the rate of Rs.150 to 170 per sq. yard for land away from the abadi. The High Court has also taken note of the respondent's sale deed and given 45% increase. However the High Court has not taken the rate mentioned in the sale deed but has also taken the rate of Rs.120

per sq. yards i.e. the rate fixed by the Stamp Officer.

It has been held by this Court in the case of Jawajee Nagnatham vs. Revenue Divisional Officer, Adilabad, A. P. and Ors. [1994 (4) SCC 595] that market value under Section 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the Reference Court on the values of land fixed by the District Magistrate for stamp duty purposes is clearly erroneous. For the purposes of Land Acquisition Act the market value must be determined on the basis of sale deeds of comparable lands. In this case the Land Acquisition Officer had taken note of one such sale deed where the price was Rs.15.37 per sq. yard. The Reference Court also had before it the sale deed by which the respondent purchased a portion of the acquired land. As stated above the sale deed was for Rs.15.40 per sq. yard. Section 92 of the Evidence Act precludes a party from leading evidence contrary to the terms of a written document. It was, therefore, not open to the respondent to urge that, even though his sale deed showed a price Rs. 15.40 per sq. yard the real market value was Rs.120 per sq. yard. To permit a party to so urge would be to give a premium to dishonesty. Parties who undervalue their documents, for purpose of payment of stamp duty, cannot be allowed to then claim that their own documents does not reflect the correct market value. Therefore as per sale instances of the comparable lands the market value, on dates of sales, were in the region of Rs.15.37 to Rs.15.40 per sq. yard.

However there is evidence of high potentiality. The increase of 15% given by the High Court cannot therefore be said to be unreasonable. Of course, the 15% increase has to be on Rs.15.40 which is the figure shown in the sale deed. It cannot be on Rs.120 as wrongly taken by the High Court. The High Court also erred in considering only three years increase whereas in fact there is four years difference between the respondent's sale deed and the acquisition proceedings. Thus taking an increase of 60% over the price of Rs.15.40 per sq. yard the value comes to Rs.24.64 per sq. yard. We accordingly set aside the order of the Reference Court and the High Court and fix value at the rate of Rs.24.64 per sq. yard. The respondent will also to be entitled to solatium and other statutory benefits under the Land Acquisition Act, 1894.

The Appeal stands disposed of accordingly. There will be no order as to cost.