

Haridwar Development ... vs Raghubir Singh, Etc on 29 January, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1754, 2010 AIR SCW 1997, (2011) 2 LANDLR 737, (2010) 2 MAD LW 305, 2010 (2) SCALE 503, (2010) 2 CIVLJ 769, (2010) 110 REVDEC 151, (2010) 3 ANDHLD 123, (2010) 2 ALL WC 1974, (2010) 1 CAL LJ 284, (2010) 4 MAD LJ 546, (2010) 2 RECCIVR 301, (2010) 2 CIVILCOURTC 698, (2010) 2 SCALE 503, 2010 (80) ALR SOC 38 (SC)

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Bench: R.V. Raveendran, K.S. Radhakrishnan

HARIDWAR DEVELOPMENT AUTHORITY
v.
RAGHUBIR SINGH
(Civil Appeal No. 1150-1167 of 2010)
JANUARY 29, 2010
[R.V. Raveendran and K.S. Radhakrishnan, JJ.]
2010 (2) SCR 201

The Order of the Court was delivered by

ORDER

R.V.RAVEENDRAN, J. 1. Leave granted. Heard the parties.

2. The first batch of appeals is filed by the Haridwar Development Authority ('the Authority', for short), the beneficiary of an acquisition. The connected appeals are filed by the claimants-landowners whose lands measuring 38.6.8 Bighas (8,45,174 sq.ft.) in village Jwalapur, Tehsil and District Haridwar, were acquired for planned development of a housing colony, under preliminary notification dated 7.12.1991 and final notification dated 16.5.1992. As the ranks of parties in the appeals and counter-appeals vary, the appellant in the first batch (who is the second respondent in other appeals) will be referred to as the "Authority". The respondents in the first batch (who are the appellants in the other appeals) are referred to as the "claimants".

3. The Land Acquisition Collector made an award dated 9.5.1994. He divided the acquired lands into three belts and awarded compensation at the rate of Rs.26.25 per sq.ft. for the lands falling in the first belt, Rs.17.50 per sq.ft. for lands falling in second belt and Rs.13.12 per sq.ft. for the lands falling in the third belt. The Reference Court however limited the division of the acquired lands into only two categories, that is lands falling within 500 metres from the National Highway and lands falling beyond 500 metres from the National Highway. In regard to the first category, it awarded compensation at the rate of Rs.26.25 per sq.ft. and for the second category Rs.17.50 per sq.ft. Feeling aggrieved, both sides filed appeals. The High Court awarded a uniform rate of Rs.26.25 per

sq.ft. for all the acquired lands and rejected the belting system adopted by the collector and the categorization adopted by the Reference Court. The High Court also confirmed that claimants will be entitled to all statutory benefits, that is additional amount under section 23(1A), solatium under section 23(2) and interest under section 28 of the Land Acquisition Act, 1894 ('Ac' for short).

4. Neither the Reference Court nor the High Court increased the base 'rate' of compensation arrived at by the Collector, that is Rs.26/25. . While the collector divided the acquired lands into three belts and reduced the rates for lands in the second and third belts (interior lands), the Reference Court restricted the division of the acquired land into two belts and adopted the rates fixed by the Collector for the first and second belts. The High Court treated all the acquired lands uniformly and awarded the same compensation for all lands by adopting the base rate of Rs.26/25 fixed by the Collector. The Authority challenges the award on the following two grounds: (i) The High Court ought to have retained the three belt categorisation adopted by the collector instead of awarding a uniform rate for all the lands. (ii) The High Court ought not to have awarded interest under section 28 of the Act, when the Reference Court had not awarded any interest under the said section. On the other hand, the claimants in their appeals have contended that the compensation awarded was low and the Reference Court and High Court ought to have increased the compensation to at least Rs.40/00 per sq.ft. They also contend that the High Court was justified in awarding compensation at a uniform rate for all the acquired lands and in awarding interest under section 28 of the Act.

5. On the contentions urged, the following questions arise for consideration :

- (i) Whether the High Court ought to have adopted the belt method for award of compensation?
- (ii) Whether the compensation awarded requires to be increased?
- (iii) Whether the award of interest under section 28 of the Act is not sustainable?

Re : Question (i)

6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other relevant circumstances. We may illustrate :

- (A). When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.
- (B). If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometres away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.

7. The acquisition with which we are concerned relates to a comparatively small extent of village land measuring about 38 bighas of compact contiguous land. The High Court was of the view that the size and situation did not warrant any belting and all lands deserved the same rate of compensation. The Authority has not placed any material to show that any area was less advantageously situated. Therefore the view of the High Court that compensation should be awarded at an uniform rate does not call for interference.

Re : Question (ii)

8. The collector has referred to several sale transactions but relied upon only one document, that is sale deed dated 19.12.1990 relating to an extent of 11,550 sq.ft. of land sold for Rs.4,04,250/-, which works out to a price of Rs.35 per sq.ft. The collector deducted 25% from the said price, as the relied upon sale transaction related to a small extent of 11,550 sq.ft. and the acquired area was a larger extent 8,45,174 sq.ft. By making such deduction, he arrived at the rate as Rs.26.25 per sq. ft. The Reference Court and the High Court have also adopted the said sale transaction and valuation.

9. The claimants do not dispute the appropriateness of the said sale transaction taken as the basis for determination of compensation. Their grievance is that no deduction or cut should have been effected in the price disclosed by the sale deed, for arriving at the market value, in view of the following factors: (i) that the acquired lands were near to the main Bye-pass Road and had road access on two sides; (ii) that many residential houses had already come up in the surrounding areas, and the entire area was already fast developing; and (iii) that the acquired land had the potential to be used an urban residential area. When the value of a large extent of agricultural land has to be determined with reference to the price fetched by sale of a small residential plot, it is necessary to make an appropriate deduction towards the development cost, to arrive at the value of the large tract of land. The deduction towards development cost may vary from 20% to 75% depending upon various factors (see : Lal Chand vs. Union of India - 2009 (15) SCC 769). Even if the acquired lands have situational advantages, the minimum deduction from the market value of a small presidential

plot, to arrive at the market value of a larger agricultural land, is in the usual course, will be in the range of 20% to 25%. In this case, the Collector has himself adopted a 25% deduction which has been affirmed by the Reference Court and High Court. We therefore do not propose to alter it.

10. Only one grievance of the claimants remains to be addressed. The claimants pointed out that the relied upon sale transaction is dated 19.12.1990, whereas the notification under section 4(1) of the Act in this case was of 7.12.1991; and as there is a gap of nearly one year, an appropriate increase in the market value should have been provided keeping in view the steady increase in prices. It is well settled that an increase in market value by about 10% to 12% per year can be provided, in regard to lands situated near urban areas having potential for non-agricultural development. (See : Sardar Jogendra Singh vs. State of UP - 2008 (17) SCC 133).

11. we are therefore of the view that the value arrived at by the Collector, and accepted by the Reference Court and the High Court requires to be increased by 12% in view of the fact that the preliminary notification was one year after the relied upon sale transaction. Accordingly by increasing the value of Rs.26/25 by 12%, we arrive at the market value as on 7.12.1991 as Rs.29/40, rounded off to Rs.29/50 per sq.ft.

Re : Question (iii)

12. The Authority points out that the Land Acquisition Collector had awarded interest under section 34 of the Act, but the Reference Court did not award any interest under section 28 of the Act. It is contended that when the Reference Court chose not to award any interest, the High court erred in awarding interest under section 28 of the Act, in addition to the interest awarded by the Collector under section 34 of the Act.

13. The collector awarded interest under section 34 of the Act, on the compensation offered, at the rate of 9% per annum for a period of one year from the date of taking possession and thereafter at the rate of 15% per annum. The reference court did not specifically award any interest, because it did not 'increase' the market value, but merely reclassified the acquired land into two categories instead of three categories and adopted the first and second rates awarded by the collector for the two categories. However the High Court deleted the belting/ categorisation and awarded a uniform rate of Rs.26.25 per sq.ft. Therefore, there was in fact an increase in the compensation awarded for lands which were earlier classified by the Collector as second and third belt lands. Therefore, interest under section 28 of the Act had to be granted. The scheme of the Act is that in regard to compensation amount, interest is payable at the rate of 9% per annum for a period of one year from the date of taking possession and thereafter at 15% per annum until deposit is made. In regard to the compensation that is offered by the Land Acquisition Collector, the interest is payable under section 34 of the Act. In regard to the increase in such compensation, which is awarded by the Reference Court or any appellate court, such interest is awarded under section 28 of the Act. Sections 34 and 28 of the Act do not duplicate the award of interest, but together cover the entire amount of compensation awarded. The award of interest on the enhanced amount under section 28 of the Act is the normal rule. The refusal of interest should be by assigning special or specific reasons. The contention of the Authority that the High Court ought not to have awarded interest under section 28

is therefore untenable.

14. In view of the above, the appeals filed by the Authority are dismissed. The appeals filed by the claimants - landowners are allowed and the compensation is increased from Rs.26.25 per sq.ft. to Rs.29.50 per sq.ft. We reiterate that the claimants will be entitled to all the statutory benefits, that is additional amount under section 23(1A), solatium under section 23(2) and interest under section 28 of the Act. Parties to bear their respective costs.