Kanta Devi & Ors vs State Of Haryana & Anr on 8 July, 2008

Equivalent citations: AIR 2008 SUPREME COURT 3107, 2008 (15) SCC 201, 2008 AIR SCW 5241, 2008 (7) SRJ 482, (2008) 5 ALLMR 969 (SC), 2008 (5) ALL MR 969, 2008 (10) SCALE 242, (2008) 10 SCALE 242, (2008) 3 UC 1417, (2008) 4 ALL WC 3752, (2009) 106 REVDEC 68

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Bench: Markandey Katju, Altamas Kabir

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.1330-1332 OF 2003

Kanta Devi & Ors. ...Appellant(s)

Vs.

State of Haryana & Anr. ...Respondents

With

CIVIL APPEAL No. of 2008
@ SLP(C) No.9486 of 2003

CIVIL APPEAL No. of 2008
@SLP(C) No.9380 of 2003

CIVIL APPEAL No. of 2008
@SLP(C) No.18028 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.3914 of 2002

CIVIL APPEAL No. of 2008
@SLP(C) No.18029 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.3793 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.15919 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.15925 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.15926 of 2001

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CIVIL APPEAL No. of 2008
@SLP(C) No.15922 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.15921 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.15923 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.16136 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.16137 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.18032 of 2001

CIVIL APPEAL No. of 2008
@SLP(C) No.9488 of 2003

CIVIL APPEAL No. of 2008
@SLP(C) No.9499 of 2003

AND

CIVIL APPEAL No. of 2008
@SLP(C) No.9531 of 2003

JUDGMENT

ALTAMAS KABIR,J.

1. Apart from Special Leave Petition (Civil) Nos.

9488, 9499 and 9531, all of 2003, leave is granted in respect of all the other Special Leave Petitions heard along with Civil Appeal Nos. 1330-1332 of 2003.

2. These appeals, have their genesis in a common award dated 14th March, 1989, made by the Land Acquisition Collector, Kurukshetra, whereby he awarded compensation in respect of the acquired lands at the rate of Rs.60,000/- per acre for land in the form of Chahi, Gair Mumkin Tubewell, etc. and at the rate of Rs. 40,000/- per acre in respect of Gair Mumkin Talab Land and Rasta Land.

3. Twenty seven References were made to the Land Acquisition Judge, Kurukshetra, under Section 18 of the Land Acquisition Act, 1894 and the same were disposed of by an Award dated 2nd January,

1993.

4. Being dissatisfied as to the extent of compensation awarded, the claimants filed Regular First Appeals before the High Court. Similarly, being aggrieved by the enhancement of the market value of the lands, the State also preferred 27 Regular First Appeals. In all, 51 Regular First Appeals, arising from the common Notification, Award, and Judgment of the Land Acquisition Judge, were taken up for hearing together and were disposed of by the learned Single Judge of the High Court by a common Judgment dated 10th August, 1999.

5. Aggrieved by the judgment of the learned Single Judge, the appellants herein filed Letters Patent Appeals (L.P.As) before the Division Bench of the High Court which were mostly dismissed in limine or on account of technicalities. All the appellants, however, are similarly circumstanced and having the same grievance. This batch of appeals have been preferred against the said judgment and order of the Division Bench of the High Court in the various Letters Patent Appeals.

6. Applications have been filed in SLP(C) Nos.

9488/2003, 9499/2003 and 9531/2003 for substitution and setting aside abatement and also permission to file Special Leave Petition. As they all arise out of the said common judgment of the High Court, they are allowed and leave is also granted in the connected Special Leave Petitions. As all the appeals relate to the same Notification under Section 4 of the Land Acquisition Act, and arise out of the same Award, they were taken up for hearing and final disposal together.

7. Coming back to the facts of the case, it may be indicated that on 12th June, 1986, the State of Haryana issued a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter, referred to as the "LA Act") for the acquisition of 265 kanals and 19 Marlas of land in the revenue estate of village Ismailabad, District Kurukshetra for the establishment of a new grain market, construction of rest house, staff quarters and other connected purposes of the Market Committee, Ismailabad. Notification under Section 6 was thereafter issued on 9th June, 1987 and the Collector, Kurukshetra, by his Award dated 14th March, 1989 awarded compensation for 250 kanals and 17 marlas, comprising the first category of land referred to above, at the rate of Rs.60,000/- per acre. For 15 kanals and 2 marlas of land comprising the second category of lands, the compensation was awarded at the rate of Rs.40,000/- per acre. Solatium and interest were also awarded in terms of the provisions of the LA Act.

8. As indicated earlier, twenty seven References were made under Section 18 of the LA Act to the District Judge, Kurukshetra. All the said References were heard together and by his award dated 2nd January, 1993, the District Judge, Kurukshetra enhanced the compensation in respect of the first category of lands to Rs.1,28,000/- per acre and in respect of the second category of lands to Rs.80,000/- per acre.

9. In the Regular First Appeals filed both by the claimants and the State of Haryana, the High Court by a common Judgment dated 10th August, 1999, enhanced the compensation for the acquired lands to Rs.2,88,000/- per acre and it was indicated that all the claimants were entitled to uniform

compensation as the lands had been acquired for a common purpose. Consequently, the appeals preferred by the State of Haryana were dismissed and those of the claimants were allowed in part.

10. It may be relevant to mention at this stage that in enhancing the compensation payable to the claimants-appellants herein, the learned Single Judge took one exemplar (Ex. P-6) for the purpose of comparison vis-`-vis the land acquired. Ex. P-6 is a sale deed, whereby on 30th January, 1986, a plot of land measuring 148 square yards was sold for Rs.24,000/-, whereas the notification under Section 4 was issued six months after on 12th June, 1986. On the basis of the above, the price of the land in question works out to Rs.9,60,000/- per acre. The learned Single Judge, while accepting the aforesaid valuation, directed deduction of 70% of the value of the lands towards development charges to make the acquired land suitable for the purpose for which it had been acquired and also having regard to the nature of the lands on the date of publication of the notification under Section 4 of the LA Act. On the basis of such deduction, the learned Single Judge uniformly enhanced the compensation in respect of the lands acquired to Rs.2,88,000/- per acre. As indicated hereinbefore, most of the Letters Patent Appeals filed by the appellants were dismissed by the Division Bench in limine or on technical grounds.

11. These appeals have been preferred by the claimants where Letters Patent Appeals were disposed of by cryptic orders although they were aggrieved by the rate of deduction applied by the learned Single Judge of the High Court while disposing of the Regular First Appeals preferred by the appellants as also the respondents.

12. On behalf of the appellants, it was contended that the rate of deduction as applied by the learned Single Judge was highly excessive as the acquired lands were situated in an area which was already developed. It was submitted that the acquired lands were situated at Ambala Pehowa Road in Village Ismailabad and were adjacent to the Village abadi where there were houses and shelters, power house, telephone exchange and a factory.

13. It was also submitted that since the acquired lands were reserved for commercial and residential purposes, the claimants had demanded compensation at the rate of Rs.15,000/- per marla from the Collector and in support thereof Sale Deeds in respect of lands adjacent to the acquired land had been placed on record to show that the valuation of the said lands were between Rs.8,000/- to Rs.9,000/- per marla.

14. It was submitted that this Court had repeatedly held that in assessing the compensation payable in respect of agricultural land or undeveloped land which had potential value for housing or commercial purposes, normally 1/3 of the assessed value of the land is deducted depending on the nature of the land, its location, extent of expenditure involved for development, and the land required for roads and other civic amenities to make the land suitable for residential or commercial purposes. However, in the instant case, despite the location of the acquired land and its potential value, the compensation payable to the claimants was reduced drastically without proper reason for such drastic deduction.

15. In addition to the above, it was submitted that both the learned District Judge and the learned Single Judge of the High Court had erred in holding that the sale deed in respect of a small plot of land was not a proper indicator for the purpose of determining the value of a large tract of land. It was urged that even with regard to the said question, this Court had consistently indicated that such sale deeds or such exemplars should not be discarded in limini, but were to be taken into consideration while fixing the value of the lands acquired.

16. In support of the aforesaid submissions reliance was placed on the decision of this Court in Lucknow Development Authority vs. Krishna Gopal Lahoti and Ors. [2007 (12) Scale 685] where deduction for development charges at the rate of 1/3 of the amount of compensation was accepted to be normal. However, it was also indicated that there may be various factors which were required to be taken into consideration while deciding the amount of deduction to be made towards developmental charges. While in some cases, it could be more than 1/3, in other cases it could be less, having regard to the difference between a developed area or an area having potential value which is yet to be developed.

17. In the same decision, while observing that where a large area is the subject matter of acquisition the rate at which small plots are sold cannot be said to be a safe criteria, it was also observed that it could not be laid down as an absolute proposition that the rates fixed for small plots could not be the basis for fixation of the value of the acquired land. However, in such cases necessary deduction/adjustments have to be made while determining the value and in the said context it was held that a deduction of 1/3 of the compensation amount was considered to be normal.

18. It was also sought to be urged that apart from Exh. P.6 on which reliance had been placed by the High Court certain other exemplars were also produced on behalf of the claimants which were not relied upon on the ground that they had not been properly proved. It was submitted that with the incorporation of Section 51-A in the LA Act by way of amendment the degree of proof had been altered and although the previous legal position was that all sale deeds on which reliance was placed by the parties were required to be proved, after the amendment such proof was not strictly required and the various foras up to the stage of Regular First Appeal could rely on such documents, which included certified copies, as exemplars without having to prove the same. It was urged that having regard to the provisions of Section 51-A of the LA Act the different foras, including the High Court, had erred in not placing reliance on all sale deeds that had been produced on behalf of the claimants in assessing the amount of compensation payable in respect of the acquired land.

19. In support of the aforesaid submission reliance was placed on a Constitution Bench decision of this Court in Cement Corporation of India Ltd. vs. Purya and ors. (2004) 8 SCC 270 and Ranvir Singh Vs. Union of India (2005) 12 SCC 59, which supported such contention.

20. Since the grievance of the appellants was only with regard to the rate of deduction on account of the developmental charges and an attempt was made on behalf of the appellants to assert that 70% deduction was unwarranted as the lands sought to be acquired were already within or adjacent to a developed area, on behalf of the State-respondent such deduction was sought to be justified.

21. It was submitted on behalf of the State-

respondent that the observations made in the Lucknow Development Authority case was more by way of caution than laying down the general law which finds consistent expression in various other decisions of this Court, such as Union of India vs. Ram Phool and another (2003) 10 SCC 167 in which it had been held that an isolated deed of sale showing a very high price cannot be the sole basis for determining the market value.

22. It was submitted that the said view was reiterated in the case of Ranvir Singh (supra), which, in fact,had been relied upon by the appellants in relation to the submissions made with regard to Section 51-A of the LA Act.

23. It was urged that this Court has consistently held that small tracts of land purchased for a particular purpose may fetch fancy prices in terms of its location and the need for acquisition by the vendee, but the same basis could not be applied to each tract of land which were yet to be developed for public purposes such as housing or setting apart an area for a particular purpose such as education and/or industrialization. It was submitted that in such cases there could be no comparison with regard to the value of the lands covered by the sale deed and those proposed to be acquired, and that the sale price of such a small tract of land was not a safe basis for determining the value of a very large tract of land using the comparative method.

24. It was, however, fairly submitted that in Ravinder Narain vs. Union of India (2003) 4 SCC 481 it has been observed in paragraphs 6 and 7 as follows:

> "6. Where large area is the subject- matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to three decisions of this Court in Collector of Lakhimpur v. Bhuban Chandra Dutta (1972) 4 SCC 236, Prithvi Raj Taneja v. State of M.P.(1977)1 SCC 684 and Kausalya Devi Bogra v. Land Acquisition Officer, Aurangabad (1984) 2 SCC 324.
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> 7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."

25. It was also submitted that in the instant case excluding all the other exemplars, the High Court had chosen to rely on Ex. P.6, where a small tract of land (148 sq. yards) had been sold at the rate of Rs.9,60,000/- per acre and the compensation had been worked out on such basis after applying deduction of 70% of the market value towards developmental charges, since the lands acquired were agricultural and huge investment was required to be made by the State to make the same suitable for the purpose for which they had been acquired, namely, the setting up of a new grain market with all the ancillary infrastructure needed by the Market Committee, Ismailabad.

26. It was submitted that the deduction of 70%, which had been applied by the High Court, was quite reasonable as the sale deed relied upon by the appellants related to lands sold for shops etc. and Ex. P.6 and other sale instances had been relied upon by the appellants for smaller areas. It was urged that in Viluben Jhalejar Contractor (Dead) by Lrs. Vs. State of Gujarat, (2005) 4 SCC 789, this Court had held that there can be different deductions depending upon various factors. It was submitted that in various other decisions and in particular in K.S.Shivadevamma vs. Assistant Commissioner of Land Acquisition Officer, (1996) 2 SCC 262, it was held that although as a general rule 33- 1/2 per cent is required to be deducted for laying of roads and other amenities, deduction to the extent of 53% was not improper and the extent of deduction depends upon the development need in each case. In Vasavva (Smt) and others vs. Special Land Acquisition Officer and others, (1996) 9 SCC 640, this Court upheld a deduction of 65%.

27. As an alternative argument it was urged on behalf of the State-respondent that since the High Court had relied only on Ex. P.6 which related to the sale of only 4 marlas of land, the matter could be remanded to the High Court for consideration of all the various sale deeds which were produced on behalf of the parties, to arrive at a fresh valuation for the acquired lands.

28. It was submitted that in view of the above the submissions made on behalf the claimants under Section 51-A of the LA Act was not relevant for determination of the point raised in these appeals.

29. Having carefully considered the submissions made on behalf of the respective parties we see no reason to interfere with the decision of the High Court.

30. The learned Single Judge of the High Court has taken into consideration the nature of the land sought to be acquired in relying on Ex.P.6 in assessing the market value thereof and has applied a deduction of 70% in arriving at the compensation to be awarded to the claimants in respect of the said lands. The various other documents which were produced on behalf of the claimants were in respect of the lands which were similar to the lands forming the subject matter of Ex.P.6. The learned Single Judge has given reasons for not relying on all the other exemplars in choosing to rely on Ex.P.6 alone. But the rate of deduction applied appears to be on the high side in relation to the developmental work involved in making the acquired land suitable for the purposes for which they were so acquired. The acquired lands are adjacent to the village abadi which is already developed. Having regard to the consistent view that a deduction of 1/3rd of the market value is normal, though a higher deduction is permissible, we are of the view that deduction of 60% would meet the expenditure towards developmental charges considering the proximity of the acquired lands to the areas already developed.

31. In our view, the Division Bench of the High Court while dismissing the Letters Patent Appeal filed by the claimants could have given proper reasons before dismissing the same in limine. However, since the decision of the Division Bench endorses that of the learned single Judge, with which we have dealt with in detail, and with which we agree, save for the amount of deduction applied towards developmental charges, these appeals against the decision of the Division Bench in dismissing the appeal filed by the appellant in C.A.Nos.1330-1332 of 2003, and all the other connected appeals have to be allowed in part. As far as the alternative submissions made on behalf

of the State regarding remand of these appeals to the High Court is concerned, we are not inclined to accept the same, since we are not convinced that such a course of action needs to be adopted.

32. The appeals are accordingly allowed in part only to the extent that the deduction of 70% applied by the learned Single Judge and endorsed by the High Court is reduced to 60%.

33. Having regard to the facts of the case there will be no order as to costs.

.....J. (ALTAMAS KABIR) .....J. (MARKANDEY KATJU) New Delhi Dated: July 8, 2008