

Gafar & Ors vs Moradabad Development Authority & Anr on 17 August, 2007

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Bench: P.K. Balasubramanyan, D.K. Jain

CASE NO.:
Appeal (civil) 5355 of 2006

PETITIONER:
GAFAR & ORS

RESPONDENT:
MORADABAD DEVELOPMENT AUTHORITY & ANR

DATE OF JUDGMENT: 17/08/2007

BENCH:
P.K. BALASUBRAMANYAN & D.K. JAIN

JUDGMENT:

J U D G M E N T WITH [Civil Appeal Nos. 5356-81, 5383, 5390, 5392, 5393, 5396, 5398, 5399, 5400-11, 5413-16, 5418, 5420, 5422-25, 5427, 5430, 5431, 5433-35, 5437-43, 5447, 5449-51, 5453, 5454, 5456, 5458-91, 5497, 5498, 5503, 5505, 5509, 5510, 5512- 22, 5524, 5527, 5531, 5532, 5534-68, 5630, 5575, 5577-83, 5585-90 of 2006] P.K. BALASUBRAMANYAN, J.

1. These appeals involve the correctness of the determination of the compensation payable to the land owners in acquisitions under the Land Acquisition Act at the instance of the Moradabad Development Authority in respect of the lands comprised in three villages, Harthala, Mukkarrabpur and Sonakpur. The Notification under Section 4(1) of the Act in respect of most of the lands in Harthala village was issued in the month of March, 1990 and in respect of one block of lands on 13.9.1991. The Land Acquisition Officer while passing the award determined the compensation at Rs. 80 per square meter. This was enhanced to Rs. 270 per square meter on references made under Section 18 of the Act. On appeals, the High Court set aside the enhancement given by the Reference Court and restored the award made by the Land Acquisition Officer. Feeling aggrieved thereby, the

land owners have come up with most of these appeals.

2. In respect of village Mukkarrabpur, the Notifications were dated 18.9.1982, 18.7.1984 and 16.8.1991. Under Awards, Rs.17.05, Rs.117/-, Rs.170/- and Rs.92.59 per square meter were awarded, which were enhanced to Rs.192/-, Rs.350/- and Rs. 350 per square meter by the Reference Court. The High Court set aside the awards of the Reference Court and restored the awards of the Collector. Hence, the appeals relating to the acquisition of land in village Mukkarrabpur by some of the land owners.

3. In respect of village Sonakpur, the Notifications were dated 4.5.1982 and 13.3.1990. In the Award, lands valued at Rs.11.59 and Rs.22 per square meter were respectively awarded. These were enhanced to Rs.290 and to between Rs.350 to Rs.390 per square meter by the Reference Court. On appeal, the decision of the Reference Court was set aside and the awards of the Collector were restored. Hence, those appeals by land owners relating to the lands in village Sonakpur.

4. We shall first deal with the appeals relating to acquisitions of lands in village Harthala. In respect of these lands, as noticed, the award was at the rate of Rs.80 per square meter and the same was enhanced to Rs. 270 per square meter by the Reference Court. Taking the view that the claimants have not established a case for enhancement of compensation from that awarded by the Land Acquisition Officer, and that the award of the Land Acquisition Officer was itself at a higher rate than justified, the High Court set aside the decision of the Reference Court and restored the award made by the Land Acquisition Officer observing that in view of Section 25 of the Act, the State could not seek a reduction of the compensation below that awarded by the Awarding Officer. While passing the award, the Awarding Officer scrutinised the various sale deeds from the concerned Sub-Registry covering a period of three years upto the date of the notification under Section 4(1) of the Act. It was found that 19 sale deeds have been registered in respect of lands in that area. Of these, the sales were mostly in acres and not in square yards or square meters. In other words, the prices were reckoned on the basis of acres and not on the basis of square meters. The Awarding Officer found that the per square meter rate in 12 sale deeds were very less. Giving the reason that they relate to lands located at a distance, but without specifying how distant, the Land Acquisition Officer brushed aside these sale deeds on the ground that the lands were situated at quite a far distance from the acquired lands. Regarding certain other sale deeds which were proximate to the date of notification, the Awarding Officer found that the rates ranged between Rs. 1.83 per square meter to Rs. 28.39 per square meter and that in one sale deed, the value was shown at Rs. 17 per square meter. It was conceded that these lands were not at a far distance from the acquired lands. But it was stated by the Awarding Officer that it did not appear justifiable for him to adopt these rates. For what reason, it was not disclosed. We must say that the approach of the Awarding Officer in rejecting these sale instances is open to very serious criticism. The least that was expected of him, was for him to give cogent and sustainable reasons for discarding these sale instances. He thereafter proceeded to rely upon a sale deed dated 25.10.1989 under which one Ramshankar Tandon sold 100 square meters to one Usha Thama for Rs. 8,000/- From this, he found that the land value came to Rs. 80 per square meter. He only noticed that the sale was in respect of a piece of land which was near the lands acquired. He did not otherwise undertake a comparison of the lands. He thus based his award on this sale deed and adopted the rate therein even without making any deduction in view

of the fact that the sale related only to a small extent of 100 square meters of land.

5. It appears that the acquisition was by invocation of the urgency clause under Section 17(1) of the Act and possession was taken. There was some delay in distributing the compensation. Some of the land owners whose lands had been acquired had agreed to receive Rs. 100 per square meter as compensation for their lands acquired under these notifications. The Awarding Officer took note of that fact also while making the award. He thus awarded for lands in class-I category, compensation at Rs. 80 per square meter and for class-III category at the rate of Rs.8 per square meter.

6. Before the Reference Court, certain sale deeds were produced at the instance of the claimants and one witness P.W. 1 was examined. On behalf of the State, D.W. 1 was examined and a group sketch was produced. From the evidence of P.W. 1, it became clear that the lands acquired were agricultural lands and that agricultural operations were being carried on in them. There was no electricity connection or pucca road in the land. Though certain sale deeds were produced, the Reference Court did not advert to the nature of the lands involved in them and examine whether they were bona fide transactions, whether they related to comparable lands and whether the prices indicated therein could form the basis for award of compensation in respect of the acquired lands. Though, he noticed that the burden was on the claimants to establish that they were entitled to enhancement of compensation and the quantum of such enhancement, the Reference Court did not indicate how in its view, the claimants had discharged that burden and how the sale deeds relied on provided a proper guide for enhancing the compensation. The Reference Court noticed that the sale instances produced before the Court related to developed lands with various facilities which the acquired lands lacked and it was stated that the values therein could not be adopted, and that a reduction of 35 to 60% from the values shown was justified. We would have expected the Reference Court to be more specific in dealing with such an aspect. It was expected to discuss each of those sale instances, compare the lands contained therein with those that were involved in the acquisition, with reference to the advantages and disadvantages, the extents, the nature of the land, the facilities available and other relevant matters before determining what would be the just compensation payable to the land owners in the present acquisition. We must say that no such attempt had been made by the Reference Court and its reasoning smacks of special pleading. The Reference Court concluded that Rs. 270 per square meter would be the compensation payable and enhanced the compensation to that extent.

7. The High Court referred to the decision of this Court which indicated that the burden was on the claimants to establish that the compensation awarded to them by the Award was not adequate and held that viewed from that angle, the claimants have failed to establish any claim for enhancement. In fact, the High Court was inclined to find that even the sum of Rs. 80 per square meter awarded by the Awarding Officer was on the high side or excessive, but since Section 25 of the Act precluded the State from questioning it, it was held that the argument of learned counsel on behalf of the State in that behalf could not be accepted. It was thus that the High Court set aside the decision of the Reference Court and restored the award made by the Awarding Officer. The question is whether this decision of the High Court calls for any interference.

8. Learned Senior Counsel and other learned counsel appearing in the appeals relating to the lands in Harthala argued that the High Court has misdirected itself into thinking that sale instances of small plots had no evidentiary value or are not relevant in determining the compensation due for larger extents of lands. It was also pointed out that though the extent as a whole may be large, the ownership was several and that fact also could not be forgotten especially when the test is to see what a willing buyer was willing to give and willing purchaser was willing to receive. Various decisions were brought to our notice and particular emphasis was placed on the decision in Ravinder Narain & Anr. Vs. Union of India [(2003) 4 S.C.C. 481], wherein it was held that there was no absolute prohibition in taking note of the rates fixed for sale of smaller plots and making it the basis for fixation of compensation for larger extents. There cannot be any quarrel with the proposition that there is no absolute prohibition. But the fact remains that normally, when larger extents are involved in an acquisition, it will be more prudent to rely on sale deeds of larger extents and not to base the assessment of the compensation on values fetched at sales of small extents. In this case, transactions involving sales of land in acres or of larger extents were simply ignored by the Awarding Officer without giving adequate reasons for such exclusion except vaguely stating that they were distantly located. Even those sale instances would have provided a basis for assessing the compensation due in respect of the acquired lands subject to adjustments for the distance or other disadvantages or advantages compared to the acquired lands. The basic sale deed relied on by the Awarding Officer was in respect of sale of a portion of his property by a seller which had an extent of only 100 square meters and even there, the price fetched was only Rs. 80 per square meter. The evidence of P.W.1 shows that the lands involved were agricultural lands and did not have any electricity or other facilities available. In fact, some of the sale instances indicate that the prices were only at the range of Rs. 11 per square meter up to Rs.27 per square meter. On the facts of this case, we are of the view that the contention that it is not as if sale instances of small extents had to be completely ignored, does not lead the claimants far. In any event, it cannot be held that the High Court was in error in not relying on sale instances of small extents in assessing the compensation payable.

9. As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award. The Reference Court, in our view, could not give any adequate or tenable reasons for adopting the value it did. No evidence was clearly or properly discussed to justify a finding that the claimants had made out a case for enhancement of compensation. As observed by the High Court, it appears that on the materials available, even the amount awarded by the Awarding Officer was on the high side since he adopted the sale instance of a small extent of land and applied it to the larger extents that had been acquired under these notifications even without any deduction.

10. The sale instances referred to by the Reference Court are all instances of sale of developed lands and the further discussion is about the use to which the authority intended to put the land that was being acquired, which obviously was an element which had to be discarded while determining the compensation for the lands acquired. It is therefore clear on the facts of this case that the Reference Court was not justified in granting the enhancement of land value to the claimants.

11. Then the question is whether we should still interfere with the decision of the High Court holding that the amount awarded by the Awarding Officer itself is more than adequate compensation. Though not conclusive, the fact remains that some of the similarly situated land owners were content to receive Rs. 100 per square meter towards compensation by filing affidavits in that behalf before the concerned authority. Considerable time was spent by learned Senior Counsel on arguing whether that came under Section 11(2) or Section 11(3) of the Act. We find that it is not necessary to undertake the exercise of deciding that aspect in these appeals. But what is relevant is to notice that at least a set of claimants similarly situated whose lands were covered by the same notification were content to receive Rs. 100 per square meter towards compensation. No attempt was made to show by the claimants that they received those amounts not under their free will but under coercion or in view of any other circumstance, which compelled them to receive compensation at that rate. The normal inference would be that they received the amounts since they found it proper compensation for their lands. Surely, that fact would furnish some evidentiary value regarding the market value of the lands in the locality. It must be remembered that some of the sale deeds at the approximate point of time relating to agricultural lands indicated sales even at Rs. 11 per square meter.

12. We find that the Awarding Officer had taken note of a sale deed, which was at a time proximate to the date of notifications in these cases and it related to a piece of land, though a small extent, which was not distant from the acquired lands, to borrow the language of the Awarding Officer. We are inclined to see some force in the stand adopted by the High Court that the Awarding Officer himself had been generous in his award. Since he has adopted such a rate, the question is whether this Court should interfere with the decision of the High Court restoring that Award or award any further compensation. The scope of interference by this Court was delineated by the decision in *Thakur Kanta Prasad Singh (dead) by L.Rs. Vs. State of Bihar* [A.I.R. 1976 S.C. 2219], wherein this Court held that there was an element of guess work inherent in most cases involving determination of the market value of the acquired land. If the judgment of the High Court revealed that it had taken into consideration the relevant factors prescribed by the Act, in appeal under Article 133 of the Constitution of India, assessment of market value thus made should not be disturbed by the Supreme Court. For the purpose of deciding whether we should interfere, we have taken note of the position adopted by the Awarding Officer, the stand adopted by the Reference Court and the relevant aspects discussed by the High Court. On such appreciation of the facts and circumstances of the case as a whole, we are of the view that the sum of Rs. 80 per square meter awarded as compensation in these cases is just compensation paid to the land owners. Once we have thus found the compensation to be just, there arises no occasion for this Court to interfere with the decision of the High Court restoring the award of the Land Acquisition Officer.

13. In view of our conclusion as above, all the appeals relating to Harthala have only to be dismissed.

14. In respect of the lands at Mukkarrabpur, the claim for enhancement was allowed by the Reference Court in spite of the finding that the evidence of P.Ws. 1 and 2 adduced on behalf of the claimants was unreliable. It also found that the two sale deeds relied on by the claimant in support of the claim for enhancement were also not comparable or reliable in the light of the evidence of the claimant himself and that it has not been shown that the lands involved therein were comparable to the lands acquired. In spite of it, the Reference Court granted an enhancement only based on its

award in L.A.R. No. 134 of 1988 and on that basis the award was made at Rs. 192/- per square meter. Obviously, the award in L.A.R. No. 134 of 1988 was set aside by the High Court. Hence, the award of the Reference Court in the case on hand became untenable. Once no reliance could be placed on that award to enhance the compensation, it is clear that even on the finding of the Reference Court, no claim for enhancement has been made out by the claimants. In that situation, the High Court was fully justified in setting aside the award of the Reference Court and in restoring the award of the Land Acquisition Officer. We may incidentally notice that the lands were agricultural lands being used for cultivation and even the method of valuing it on the basis of price per square meter does not appear to be justified. All the same, the award has adopted that method and the State cannot go back on it. In the absence of any acceptable legal evidence to support the claim for enhancement, no grounds are made out for interference with the decision of the High Court in the appeals relating to village Mukkarrabpur.

15. Same is the position regarding the acquisition of lands in Village Sonakpur. The award was at Rs. 11.59 and Rs.22 per square meter respectively. They were enhanced to Rs. 290 per square meter and to Rs.350/- to Rs.390/- by the Reference Court. In spite of the lands being recorded as agricultural lands, the Reference Court proceeded to award compensation on the basis that the lands are Abadi lands. Other than the oral evidence of certain witnesses, which, according to us, cannot form the foundation for any enhancement, what was relied on was the awards made in some other cases. The documents produced were not shown to be sale of lands comparable to the lands acquired. The Reference Court proceeded to enhance the compensation to Rs. 290/- per square meter without any acceptable legal evidence in support. The High Court found that there was no basis for enhancement and that the claimants had not been able to show that the Land Acquisition Officer did not award the proper compensation. The High Court was obviously right in proceeding on the basis that the burden was on the claimants to prove their claim for enhancement. The High Court thus took the view based on the materials, that it was a fit case where the award of the Land Acquisition Officer should be restored.

16. We find on a scrutiny of the relevant materials in the light of the arguments raised that it cannot be said that the High Court has either made an erroneous approach to the claim for enhancement of compensation or that it has so erred as to warrant our interference under Article 136 of the Constitution of India. Normally, in an appeal against the award of compensation by the High Court, this Court interferes only if there has been a misapplication of any principle of assessing compensation. In the case before us regarding the lands in Sonakpur, we are not satisfied that any error in principle has been committed by the High Court justifying our interference.

17. After all, assessment of compensation for lands acquired involves an amount of guess work, no doubt, based on the evidence available regarding comparable sale of lands in the locality and so on. Viewed from that angle, we are in agreement with the finding that the Awarding Officer has been generous in his award of compensation in all these cases.

18. In the light of our above conclusion, no interference is called for with the decisions of the High Court in these cases. We confirm the decisions of the High Court and dismiss these appeals. We make no order as to costs.