Union Of India vs Raj Kumar Baghal ... on 9 September, 2014

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7314-7365 of 2005

UNION OF INDIA ….. APPELLANT

VERSUS

RAJ KUMAR BAGHAL SINGH (DEAD)
TH. LRS. & ORS. ….. RESPONDENTS

WITH

Civil Appeal No.77-273 of 2006, Civil Appeal No.613-627 of 2006, Civil Appeal No.5058 of 2006, Civil Appeal No.4683 of 2006,
Civil Appeal No.4599 of 2006, Civil Appeal No.5059 of 2006,
Civil Appeal No.5237 of 2006, Civil Appeal No.5238 of 2006,
Civil Appeal No.4744 of 2006,
Civil Appeal No…8599 of 2014 @ SLP (C) No.21015 of 2006,
Civil Appeal No…8600 of 2014 @ SLP (C) No.21734 of 2006,
Civil Appeal No.118 of 2007, Civil Appeal No.3181 of 2007 and
Civil Appeal No.870 of 2007.

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. Leave granted in SLPs.

2. These appeals have been preferred against the judgment of the Punjab & Haryana High Court in a group of matters involving the issue of determination of compensation for the land acquired by the appellant-Union of India in two sets of acquisition.

2. One of the notifications under Section 4 of the Land Acquisition Act, 1894 (for short "the Act"), in question, was issued on 14th March, 1989 to acquire 72.9375 acres of land in villages Bir Kheri

Gujran, District Patiala, for development of military cantonment at Patiala in Punjab. The Collector vide award dated 13th August, 1991, assessed the market value of the acquired land at the rate of Rs.2 lakh per acre. The Reference Court enhanced the amount of compensation to Rs.9,05000/- per acre. A learned Single Judge of the High Court reduced the same to Rs.105.80 per square yard vide order dated 1st April, 1999, which has been affirmed by the Division Bench.

3. In the other set of acquisition, covered by notification under Section 4 of the Act dated 16th September, 1988, for the land measuring 498.03, the Collector vide award dated 27th March, 1991, awarded compensation at the rate of Rs.2 lakh per acre for the land in villages Kheri Gujran and Bir Kheri Gujran and for the land in villages Sher Majra, Haji Majra and Pasiana at the rate of Rs.1,50,000/- per acre. The Reference Court vide award dated 6th April, 1998 enhanced the compensation to Rs.2,75,000/- per acre for the land in villages Kheri Gujran and Bir Kheri Gujran. In respect of land in the revenue estate of village Haji Majra, for the land upto 500 meters on Patiala Sangrur Road, compensation was awarded at the same rate but for the rest of the land compensation was awarded at Rs.2,33,750/- per acre. For villages Pasiana and Sher Majra, the rate awarded was the same as for village Haji Majra. On further appeal, the learned Single Judge of the High Court enhanced the amount of compensation to Rs.4,48,159/- per acre which has been affirmed by the Division Bench with slight modification by way of enhancement.

4. Thus, the Division Bench has upheld the view of the learned Single Judge in reducing the compensation from Rs.9,05,000/- per acre, fixed by the Reference Court, to Rs.105.80 per square yard fixed by the learned Single Judge in respect of the land covered by notification dated 14th March, 1989 and for the land covered under notification dated 16th September, 1988, the compensation was marginally enhanced to Rs.4,54,662/- per acre.

5. Aggrieved by the judgment of the Division Bench, the Union of India has preferred these appeals. However, the land owners have accepted the compensation awarded by the Division Bench.

6. We have heard learned counsel for the parties.

7. Learned counsel for the appellant-Union of India submitted that enhancement of compensation beyond the award of the Collector by the Reference Court and the High Court was not justified as the sale transactions relied upon by the land owners could not be the basis for fixation of compensation. The said instances were of land nearer to the city which land, being better located, had higher value. It is for this reason that in respect of the land covered by notification dated 14th March, 1989, rate of compensation fixed by the Reference Court was reduced by the High Court. Plea that for taking into small instances cut of 60% should be applied was wrongly disregarded. Thus, methodology followed by the High Court was not appropriate. Reliance has been placed on law laid down in Basant Kumar and ors. vs. Union of India and Ors.[1], Smt. Indumati Chitaley vs. Union of India and Anr.[2] and Special Land Acquisition Officer vs. Karigowda and Ors.[3]. It was further submitted that the sale transactions Exp. P-21 and P-22 have been wrongly relied upon ignoring the objection of the appellant and on that basis the Division Bench erred in enhancing the compensation to Rs.4,54,662/- per acre in respect of the acquisition covered by notification dated 16th September, 1988.

8. On the other hand, learned Counsel for the land owners supported the view taken in the impugned judgment. It was pointed out that the land was located adjacent to the municipal limits near Golf Course and residential area. Its distance was 3 kms. from Phagwara Chowk. The land had potential value for development into residential and commercial area.

9. We have considered the rival submissions. Before considering the merits of the rival contentions, we consider it appropriate to refer to the discussion on the issue by the High Court which is as follows:-

> "In the present case, situation is altogether different. While deciding issue regarding cut, referred to above, argument of counsel for the Union of India that cut imposed is required to be enhanced is also liable to be rejected. In view of situation the land under acquisition, as referred to above, cut imposed to the extent of 20% was perfectly justified. Counsel for the Union of India has tried to support his argument by citing various judgments but no benefit of those judgments can be extended to Union of India because at the time when matter was argued before Additional District Judge, no serious dispute was raised by Union of India regarding potential value of the land under acquisition. No evidence was led to show that the land acquired had no potential for developing it into residential or commercial area. Argument to impose higher cut was rightly rejected by the learned Single Judge, after taking note of evidence on record.
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> Argument of counsel for the Union of India that since the land was situated at a distance of 1 to 1-1/2 kms of municipal limits, as such, higher cut be imposed, is not justified, in view of evidence on record. It had come in evidence that the land under acquisition was situated next to the municipal limits and was situated very near to golf course. In view of this, no case is made out for further cut as prayed for.
>
> In the present case, learned Single Judge has rightly placed reliance to award compensation upon sale instance Ex. P-21 and Ex.P-22. While determining compensation, reliance has also been placed on statements PW 4, P27, PW10. It had come on record that land subject matter of sale instance, referred to above, was situated within a distance of 20 killas or less from the land under acquisition. Sale deed Ex. P23 was rightly ignored as it pertained to constructed house and there was no evidence on record to show that what was the value of land underneath the constructed portion of the house. Under these circumstances, this Court is of the opinion that award of compensation @ Rs.105.80 paisa per square yard to the claimants by the learned Single Judge was perfectly justified."

10. It is well settled in determining compensation for acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subject to such transaction being adjacent to acquired land, proximate to the date of acquisition and possessing similar advantages. Of course, there are other well known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account

transaction of nearest land around the date of notification under Section 4 of the Act by making a suitable allowance. There can be no fixed criteria as to what would be the suitable addition or subtraction from the value of the relied upon transaction. In Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and anr.[4], this Court summed up the principle as follows:-

> "4. The following factors must be etched on the mental screen:
>
> (1) .....
>
> [pic](2) .....
>
> (3) .....
>
> (4) .....
>
> (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).
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> (6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.
>
> (7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.
>
> (8) Only genuine instances have to be taken into account.

(Sometimes instances are rigged up in anticipation of acquisition of land.) (9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

> (i) proximity from time angle,
>
> (ii) proximity from situation angle.
>
> (11) Having identified the instances which provide the index of market [pic]value the price reflected therein may be taken as the norm and the market value of the land

under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. smallness of size	1. largeness of area
2. proximity to a road	2. situation in the interior at a distance from the road
3. frontage on a road	3. narrow strip of land with very small frontage compared to depth
4. nearness to developed area	4. lower level requiring the depressed portion to be filled up
5. regular shape	5. remoteness from developed locality
6. level vis-à-vis land under acquisition	6. some special disadvantageous factor which would deter a purchaser
7. special value for an owner of an adjoining property to whom it may have some very special advantage	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500

to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. 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 [pic]deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent 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.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense." Again in Viluben Jhalejar Contractor (D) by LRs. vs. State of Gujarat [5], it was observed:-

"24. The purpose for which acquisition is made is also a relevant factor for determining the market value. In Basavva v. Spl. Land Acquisition Officer, (1996) 6 SCC 640, deduction to the extent of 65% was made towards development charges.

25. In Bhagwathula Samanna, (1991) 4 SCC 506, it has been held: (SCC pp.

510-11, para 11) "11. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle 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. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity 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."

26. In L. Kamalamma, (1998) 2 SCC 385, this Court held: (SCC p. 387, para

6) "Ext. B-30 is a sale deed dated 9-8-1976, the transaction having taken place prior to eight months from the issue of the preliminary notification for acquisition of land in the present case. Having found that the piece of land referred in Ext. B-30 is situated very close to the lands that are acquired under the notification in question the Reference Court and the High Court relied upon the said document and, in our view, rightly. Further when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making

appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lump sum payment as also the waiting period required for selling the sites that would be formed."

27. In Administrator General of W.B. v. Collector, (1988) 2 SCC 150, deduction to the extent of 53% was allowed.

28. In K.S. Shivadevamma v. Asstt. Commr. and Land Acquisition Officer, (1996) 2 SCC 62, it was held: (SCC p. 65, para 10) "10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, [pic]appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33- 1/3%, as ordered by the High Court, was not illegal."

29. In Hasanali Khanbhai & Sons v. State of Gujarat (1995) 5 SCC 422 and Land Acquisition Officer v. Nookala Rajamallu, (2003) 12 SCC 334 : (2003) 10 Scale 307, it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

30. We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. (See Kasturi v. State of Haryana, (2003) 1 SCC 354, Tejumal Bhojwani v. State of U.P., (2003) 10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer & Mandal R. Officer, (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi, (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority, (2004) 10 SCC 745.)

31. In Registrar, University of Agricultural Sciences5 whereupon Mr Ranjit Kumar placed strong reliance, the Court noticed that if the acquisition is made for agricultural purpose, question of development thereof would not arise; but if the sale instance was in respect of a small piece of land whereas the acquisition is for a large piece of land, although development cost may not be deducted, there has to be deduction for largeness of the land and also for the fact that these are agricultural lands. In that view of the matter, deduction at the rate of 33% made by the High Court was upheld. It may not, therefore, be correct to contend, as has been submitted by Mr. Ranjit Kumar, that there cannot be different deductions, one for the largeness of the land and another for development costs."

11. As regards the judgments relied upon by the appellant, the same are distinguishable. In Indumati Chitaley case (supra), it was noticed that the land in question was agricultural land which could not be valued at par with the value of the non-agricultural land as was sought to be claimed on behalf of the appellant. In the said case, unlike the present case, there was no finding that the land had immediate potential for residential/commercial use. In Basant Kumar case (supra), it was observed that while considering an instance of developed land as the basis for determining the value of the agricultural land, one third of the value has to be deducted towards providing amenities like roads, parks, electricity, sewage etc. We have already noted the law laid down by this Court that extent of cut depends on individual fact situations. In Karigowda case (supra), it was observed that the existing potentiality alone has to be taken into consideration while determining the compensation. Remote beneficial factors cannot be made the basis for determining the compensation. It was further observed that comparable sales method is a preferred method over the other methods for determining the compensation. There is no dispute with these propositions but in the facts and circumstances of the case, we are unable to hold that the view taken by the High Court is vitiated by any error of principle propounded in the relied upon judgment or otherwise.

12. We, thus, do not find any ground to interfere with the impugned judgment.

13. The appeals are dismissed with no order as to costs.

….……J.
[V. GOPALA GOWDA]

….……..J.
[ADARSH KUMAR GOEL]

NEW DELHI
September 9, 2014

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[1] (1996) 11 SCC 542
[2] (1995) Suppl. 4 SCC 219
[3] (2010) 5 SCC 708
[4] (1988) 3 SCC 751
[5] (2005) 4 SCC 789
