

Om Prakash (D) By Lrs. & Ors vs Union Of India & Anr on 5 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4135, 2004 (10) SCC 627, 2004 AIR SCW 4562, 2004 (6) SCALE 455, 2004 (7) SRJ 301, 2004 (3) LRI 599, (2004) 3 RECCIVR 716, (2004) 3 PUN LR 727, (2004) 2 CLR 387 (SC), 2004 (5) SLT 20, (2004) 5 ALLMR 1098 (SC), (2004) 6 JT 288 (SC), (2004) 3 LANDLR 383, (2004) 77 DRJ 248, (2004) 6 SUPREME 1, (2004) 3 RECCIVR 726, (2004) 6 SCALE 455, (2004) 4 JLJR 43, (2004) 3 LANDLR 1, (2004) 4 PAT LJR 121, (2004) 4 RAJ LW 506, (2005) 1 BLJ 32, (2004) 3 CURCC 149, (2004) 3 PUN LR 726, (2004) 2 LACC 580, (2004) 3 ALL WC 2726, (2004) 112 DLT 891, AIRONLINE 2004 SC 774

Bench: Shivaraj V. Patil, B. N. Srikrishna

CASE NO.:

Appeal (civil) 5708 of 2002

PETITIONER:

Om Prakash (D) by Lrs. & Ors.

RESPONDENT:

Union of India & Anr.

DATE OF JUDGMENT: 05/08/2004

BENCH:

Shivaraj V. Patil & B. N. Srikrishna.

JUDGMENT:

J U D G M E N T with Civil Appeal Nos. 5709 of 2002, 8591-8592 of 2003 and Civil Appeal No. 4986 of 2004 @ SLP (C) No. 21335 of 2002, Civil Appeal No. 4991 of 2004 @ SLP (C) No. 21342 of 2002, Civil Appeal No. 4990 of 2004 @ SLP (C) No. 23385 of 2002, Civil Appeal No. 4989 of 2004 @ SLP (C) No. 1632 of 2003, Civil Appeal No. 4987 of 2004 @ SLP (C) No. 12968 of 2003 and Civil Appeal No. 4988 of 2004 @ SLP (C) No. 21343 of 2002 SRIKRISHNA, J.

Leave granted in the special leave petitions.

These appeals are directed against the judgment of the High Court of Delhi in appeals filed under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') for determining the compensation payable for certain lands acquired under the provisions of the Act.

Villages Bhorgarh, Kureni and Mamurpur are located side by side and the lands situated in these villages were used for agricultural purposes or purposes subservient thereto. Under the provisions of Sections 22 and 23 of Delhi Land Reforms Act, 1954 there were certain restrictions on land usage due to which the lands could only be used for agriculture, horticulture, animal husbandry and allied uses. In the master plan the lands were shown in the green belt. By a Notification dated 8.12.1982, issued by the Government of India, Ministry of Works and Housing, the Central Government in exercise of its power under sub-section (2) of Section 11 A modified the master plan for Delhi. The modifications made were as under:

"(i) The land of an area measuring 21.043 hecets. (52 acres) located near Narela Town and situated on the west of Railway line to Ambala is changed from 'Agricultural Green Belt' to 'Commercial (Warehousing and storage depots)'

(ii) The land use of an area measuring about 21.043 hecets.

(52 acres) located near Village Ghevra and situated on the North of Railway line to Rohtak is changed from 'Agricultural Green Belt' to 'Commercial (Warehousing and storage depots)' ".

On 2.6.1983, a notification was issued under Section 4(1) of the Act, whereby the lands for certain parcels situated within the said area were sought to be acquired for the public purpose of construction of godowns for the Food Corporation of India. This was followed by a declaration under Section 6 of the Act made on 22.7.1983. Further proceedings under the Act ensued and on 5.9.1983, the Land Acquisition Collector made an award in each of the cases. The Collector categorized the lands falling for acquisition into three blocks, namely, 'A', 'B' and 'C'. He awarded a compensation of Rs.10,000/- per bigha for land in Block 'A', Rs. 8,000/- per bigha for land in Block 'B' and Rs. 5,000/- per bigha for land in block 'C'. He also awarded compensation for wells, trees and structures. Not being satisfied with the compensation awarded by the Collector, the claimants moved for references under Section 18 of the Act. The Reference Court by its judgment dated 12.3.1999 enhanced the market value of the acquired lands to a uniform rate of Rs.36,300/- per bigha as on the date of the notification under Section 4 of the Act. It also granted other reliefs available under the Act.

The claimants filed Regular First Appeals under Section 54 of the Act questioning the correctness of the judgment rendered by the Reference Court. The High Court assessed the market value of the lands of the claimants at Rs.82,255/- per bigha. It also directed solatium @ 30% on the enhanced amount of compensation and interest @ 9% per annum for a period of one year from the date of Collector taking possession and thereafter @ 15% per annum till payment of compensation and on additional amount @ 12% on the market value from the date of notification till the possession. It was also directed that if interest was held payable on solatium in the case pending before the Supreme Court, such interest will be paid to the claimants.

In civil appeals Nos. 5708/2002 and 5709/2002, the claimants- appellants have impugned the judgment of the High Court while the Union of India is in appeal in civil appeal Nos. 8591-8592/2003 and civil appeals arising out of S.L.P. Nos. 21335/2002, 21342/2002, 21343/2002,

23385/2002, 1632/2003, and 12968/2003.

The only question argued before us was the assessment of the market value of the acquired lands as on the date of the notification under Section 4 of the Act. No other issue was canvassed. The High Court has correctly found that the topography, potentiality and advantages attached to and available to the lands in the five adjoining villages, namely, Bhorgarh, Kureni, Mamurpur, Narela and Tikri Khurd were almost the same on the date when the notification under Section 4 was issued. It also referred to the fact that in its judgment in R.F.A. 554/92 (Dharambir & Ors. vs. Union of India, decided on 23.9.1996) the market value of the land had been assessed at Rs.25,000/- per bigha as against the assessment made by the Reference Court @ Rs.17,500/- per bigha. An appeal therefrom was carried to this Court and is the subject matter of the decision of this Court in civil appeal No. 4405/1997 (Union of India vs. Dharambir & Ors). While allowing the appeal of the State Government, this Court held that Rs.16,750/- per bigha was the fair market value of all categories of land situate at village Mamurpur as on the date of the notification under Section 4 of the Act, i.e., on 30.10.1963.

While the claimants-appellants urged that after the notification issued on 8.12.1982 the lands in question had acquired great commercial potentiality and that this fact had been lost sight of by the High Court in assessing the fair market value as on the date of the notification under Section 4 of the Act, the learned counsel for the Union of India contends that, despite the change in the master plan, there was hardly any change in the land use between 8.12.1982 and 2.6.1983 when the notification under Section 4 of the Act was issued. The land had been continued to be used for agricultural and allied purposes and there was no commercial exploitation of the land at all despite it being allowed as a result of change in the master plan.

Interestingly, a perusal of the appeal memorandum of the Union of India shows that, even according to the Union of India the ascertainment of the fair market value of the lands in question should have proceeded on the basis of Rs.16,750/- per bigha as on 30.10.1963 with 12% escalation per year. If this method is adopted, according to the Union of India, the fair market value of the land as on the date of the notification under Section 4 of the Act would come to Rs.56,112/- per bigha. [See ground (e) in the appeals arising out of SLP) Nos. 21335/2002, 21343/2002, 23385/2002, and 12968/2003, and ground (d) in the appeal arising out of SLP) No.1632/2003 and civil appeal Nos.8591-8592/2003] The High Court noticed that the Government had not filed appeals in most of the cases except a few and further that even the claimants-appellants had not produced any evidence in support of their case for increase in the amount of compensation. Apart from urging that there was increase in the potentiality of the land in question, no material was placed before the Reference Courts to show as to what would have been the market value of the lands in question as on the date of the notification under Section 4 of the Act, had the property been sold for the purpose of construction of a warehouse or godown.

In the circumstances, the High Court was justified in working out the fair market value of the lands in question on the basis of Rs.16,750/- per bigha as on 30.10.1963. The High Court noticed that in several judgments of this Court escalation at different and varying rates i.e. 6% per annum from 1959 to 1965, @ 10% per annum for every year from 1966 to 1973 and @ 12% per annum from 1975

had been considered to be reasonable increase to arrive at the fair market value, assuming that the pace of escalation during this period was normal for the entire period from 1959 onwards. Since no material was placed on record to show that there was any abnormality during the period, the High Court applied the same principle to the facts and circumstances before it, and accepted increase of 10% every year progressively from 1963 to 1973 and thereafter @ 12% every year progressively upto the date of acquisition. The High Court noticed in the judgment that if escalation is allowed on this basis, the fair market value would be Rs.1,28,889/- per bigha. In case progressive increase is allowed @ 10% for the entire period, the amount will work out to Rs.1,08,397/- per bigha. Allowing appreciation @ 12% for every year, not cumulatively, but at a flat rate of 12% per annum from 1963 to 1983, the amount would work out to Rs.56,112/- per bigha. The High Court in its judgment under appeal pointed out that the market value of Rs.16,750/- per bigha fixed in the case of Dharambir & Ors. vs. Union of India was not in respect of commercial land but only of agricultural land. That the market value of agricultural land is much lower than that of land suitable for commercial purposes, is trite. After having worked out the market value of the lands on various bases and keeping in view the fact that between 8.12.1982 and 2.6.1983, the lands in question had at least some commercial potentiality, the High Court decided that the fair market value of all categories of lands situated in the villages in question as on the date of acquisition should be fixed at Rs.82,255/- per bigha.

Having heard the learned counsel and perused the judgment, we find it difficult to disagree with the exercise carried out by the High Court. We think that the High Court was justified in assessing the market value at a higher rate on account of some increased potentiality of the lands. If at all, the High Court has erred on the safer side in fixing the market value at Rs.82,255/- per bigha. In the circumstances, we are unable to accept the contention advanced by the claimants-appellants and the Union of India in their respective appeals. Taking an overall view of the matter, we are satisfied that the judgment of the High Court requires no interference under Article 136 of the Constitution of India.

In the result, we dismiss all the appeals. However, in the circumstances, there shall be no order as to costs.