

State Of J&K vs Bashir Ahmed & Another on 26 April, 2022

Author: Tashi Rabstan

Bench: Tashi Rabstan

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

RFA No.31/2019
CM Nos.6808/2019, 8013/2020

Reserved on : 19.04.2022
Pronounced on : 26.04.2022

State of J&K Appellant(s)
Through: Mr. Ranjit Singh Jamwal, AAG
versus
Bashir Ahmed & another Respondent(s)
Through: Mr. G.S. Thakur, Advocate

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. This Civil First Appeal is filed by the appellant-State in terms of Section 52 of the Land Acquisition Act against the judgment dated 31.01.2019 passed by the learned 1st Additional District Judge, Jammu, whereby it has been held that the market value of the land-under-reference on the date when notification under Section 4(1) of the State Land Acquisition Act was issued, was Rs.7,70,000/- per kanal, as such the petitioner (respondent No.1 herein) was entitled to recover the same from appellant-State along with jabrana @ 15% on the excess amount of compensation and interest at the rate of 6% per annum.

2. The facts-in-brief, as gathered from the appeal file, are that Notification under Section 4(1) of the State Land Acquisition Act, 1990 (hereinafter, for short, the Act) came to be issued for acquisition of land situated at Village Surinsar. After following the acquisition process and getting the objections from the land owners, the committee of Collectors approved the rate of land at Rs.1,50,000/- per kanal for a total land of 30 kanals 02 marlas only. Respondent No.1 herein had 02 kanals 16 marlas of land under Khasra No.596, and 05 kanals 09 marlas of land under Khasra No.598 situated at Village Surinsar, Tehsil & District Jammu. Feeling dissatisfied with the award, respondent No.1 herein filed an application under Section 18 of the Act before the Collector Land Acquisition, Jammu for referring the case to Civil Court. The Collector, accordingly, referred the matter after making reference to the learned Principal District Judge, Jammu, who transferred the reference to learned 1st Additional District Judge, Jammu.

3. Learned 1st Additional District Judge after recording the evidence and hearing both the sides disposed of the reference vide judgment dated 31.01.2019 holding that the prevalent market rate in the area at the time of acquisition of respondent No.1's land was Rs.7,70,000/- per kanal, besides 15% jabrana was payable to respondent No.1. Learned District Judge, accordingly, passed the decree for payment of compensation in the said terms with 6% interest per annum in favour of respondent No.1.

4. Feeling aggrieved, the State has come in appeal on the ground that the award had been passed after considering all the relevant factors including the quality of land, whereas the impugned judgment holding the land as commercial in nature is against the facts. Further, the District Judge has failed to appreciate that the sale deed of merely two marlas of land cannot be a determining factor for calculating the price of big chunk of land.

5. I have heard learned counsel appearing for the parties, considered their rival contentions and also perused the file.

6. Although it is not the nature of land which alone is determinative of the market value of the land, yet in terms of Section 23 of the Act, the market value of the land on the date of publication of notification under Section 4(1) of the Act is the first and foremost of the six factors to be taken note of for determining the amount of compensation for the land acquired. It is the major component (and in most cases, the only component) of the compensation determined by the court under Section 23(1) of the Act. Besides the nature of land, the market value must be determined keeping in view the various factors including proximity to the developed area and the road etc.

7. Keeping in view the above factors and also for a just and fair disposal of the reference, the learned District Judge framed the following issues:

"1. Whether the compensation has not been assessed as per market rate for the acquired land? OPP

2. Whether landowner is entitled to announced rate of compensation, if so, what rate he is entitled to? OPP

3. Relief? (Parties)"

8. Accordingly, respondent-Bashir Ahmed was directed to lead evidence. In order to prove his case, respondent-Bashir Ahmed, besides appearing himself in the witness box, also examined PW Subash Chander, PW Bana Din and PW Firoz Din in support of his case.

9. Respondent-Bashir Ahmed in support of his case produced a copy of the sale deed dated 06.12.2006 showing that transaction of two marlas of land, adjacent to the land-in-question, had taken place for a total consideration of rupees two lacs. He, thus, claimed that in the year 2006 the market value of the land in the said area was rupees twenty lacs per kanal.

10. PW Subash Chander had deposed that the land-in-question is situated in a highly commercial area and in the year 2006 the market value of one kanal of land was rupees twenty lacs.

11. PW Bana Din had deposed that the land-in-question of respondent-Bashir Ahmed was having high commercial value and the same might have increased to rupees thirty lacs per kanal.

12. PW Feroz Din had deposed that in the year 2006 he had purchased two marlas of land, adjacent to the land-in-question of respondent-Bashir Ahmed, for a total sale consideration of rupees two lacs, because the said area being commercial was having high market price.

13. Thus, in order to prove his case, respondent-Bashir Ahmed besides leading evidence also produced on record documentary evidence in the shape of sale deed showing that in the year 2006 the market value of the land-in-question was rupees one lac per marla, whereas the notification-in-question for acquiring the land came to be issued in December, 2007, i.e., one year after the registration of sale deed regarding purchase of two marlas of land.

14. The appellant-State was also afforded opportunity to lead evidence, but it had failed to produce any evidence in rebuttal nor the appellant-State at any point of time produced any type of material to counter the claim of respondent- Bashir Ahmed, in absence of which the appellant-State is debarred from questioning the findings given by the learned District Judge.

15. Further, I am in agreement with the findings given by the learned District Judge that the compensation assessed by the appellant-State with regard to the land-in-question was not based on any rational and reasonable basis, more particularly when the Tehsildar concerned had reported the market value of land at Rs.2,50,000/-, however, the Collector slashed the same to a greater extent without any basis. In the present case, it has come on record that the land-in- question has high commercial value being on the road side and on the bank of Surinsar Lake.

16. What is held by the Apex Court in case, titled as, Shankarrao Bhagwantrao Patil vs The State of Maharashtra, in Civil Appeal Nos.5712-5713 of 2021 (arising out of SLP (Civil) Nos.33471-33472 of 2016), decided on 20.09.2021, in paragraphs 14, 15, 16 and 17, is reproduced hereunder:

"14. In the judgment reported as Lal Chand v. Union of India and anr., this Court held that deduction for development is to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development) the deduction varies from 20% to 75% of the price of such developed plots. This Court held as under:

"13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilise around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities) etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of levelling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civil amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the "deduction for development" and can account for as much as 75% of the cost of the developed plot.

xxx xxx xxx

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%."

15. This Court in the judgment reported as *Kasturi and Ors. v. State of Haryana*, held that there may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. This Court held as under:

"7 However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

16. Exhibit 30 is part of the same survey number whereby land was sold at the rate of Rs.137.76 square feet. In the present case, there is no evidence that the sale exemplar Exhibit 30 was a part of any developed layout but is an isolated instance of sale. Such sale of a small area as compared to the

acquisition of 9000 square meters can be taken into consideration after a suitable deduction is made on account of the development cost. The land in question was rocky and had a moorum soil. Such land is not cultivable. Still further, the State has taken possession of a part of the land in 1984 and another part in 1992 as is apparent from the reading of the two awards of the Special Land Acquisition Officer. The Bhoom town has a small population of 17150. The possession of the land was taken for construction of government quarters and a road. Since the use of the land for a government quarter was known, therefore, the smaller area was sold keeping in view the intended use of the land acquired for the residential purposes. The deduction of 50% is proper as the sale deed was executed after 11 years of possession of rocky land and moorum soil was taken. Therefore, we find that deduction towards the development cost at the rate of 50% is warranted in the facts of the present case. Thus, the compensation to be awarded is $(137.76/2 = 69)$ rounded off to Rs.70 per square feet) which was the market value assessed by the Reference Court as well.

17. We find that the order of the learned Reference Court is justified in law whereas the High Court has reduced the compensation drastically without any reasonable basis. Therefore, we find that the appellant is entitled to a compensation at the rate of Rs.70/- per square feet from the date of award by the Land Acquisition Collector. Apart from statutory benefits, such compensation has been arrived at keeping in view the development activity that has already taken place by the virtue of possession of the acquired land delivered to the State."

17. In the present case, the learned District Judge, after taking into account various factors, deducted 65% of the value of land-under-reference from the market value of Rs.22,00,000/- per kanal. Thus, the learned District Judge determined the market value of land-under-reference to Rs.7,70,000/- per kanal only from rupees twenty two lacs per kanal. As such, it cannot be said that the learned District Judge has assessed the rate of land-under-reference on higher side, rather the same has been assessed after taking into account local property values coupled with various other factors. The appellant-State, thus, cannot find fault with the findings given by the learned District Judge.

18. Thus, I am of the opinion that the course adopted by the learned District Judge was reasonable and practicable in the circumstances of the case. The evidence lead on behalf of respondent No. 1 herein was found convincing and creditworthy, more particularly when the appellant-State had miserably failed to lead any evidence in rebuttal. Appellant-State has utterly failed to show any manifest error of law or procedure in the impugned judgment. It has also not only failed to dislodge the evidence of respondent No.1, but also failed to put forth any material whereby it could have shown that the market value of the land-in-question at the relevant time was much less as compared to what has been held by the learned District Judge. The findings, thus, recorded by the learned District Judge does not seem to be perverse or erroneous on any count. The judgments, as such, referred to by the learned counsel for appellant-State have no applicability to the case in hand. I have minutely gone through the findings given by the learned District Judge and I am of the considered view that the learned District Judge had dealt with each and every issue in accordance with law and rightly acknowledged and allowed the claim of respondent-Bashir Ahmed while holding him entitled to enhanced amount of compensation.

19. Viewing the matter in the light of what is stated above, I am of the opinion that the appeal is liable for dismissal and is, accordingly, dismissed and the award and decree dated 31.01.2019 passed by the learned 1st Additional District Judge, Jammu is maintained.

Jammu :
26.04.2022
(Anil Sanhotra)

(Tashi Rabsta
Judge

Whether the order is reportable ?

Yes

Whether the order is speaking ?

Yes