

PETITIONER:
TEK CHAND (DEAD) BY L.RS. AND ORS.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS. ETC.

DATE OF JUDGMENT 31/08/1990

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
SAIKIA, K.N. (J)
RAMASWAMY, K.

CITATION:
1990 SCR Supl. (1) 126 1990 SCC (4) 495
JT 1990 (2) 68 1990 SCALE (2) 479

ACT:

Land Acquisition Act, 1894: Section 4--Acquisition of land--Determining compensation thereof--Relevant factors and circumstances --High Court placing reliance on circumstances not relevant--Matter remanded to High Court.

HEADNOTE:

Notification under section 4 of the Land Acquisition Act, 1894 was issued in respect of the appellant's lands in 1959 and the lands were acquired. The Land Acquisition Collector awarded compensation at the rate of Rs.2,000 per bigha, as also solatium and interest.

The appellants approached the District Court which enhanced the compensation from Rs.2,000 per bigha to Rs.4,000/5,000 per bigha. The appellants preferred appeals before the High Court. Taking into account a comparable sale in the area few months before the Notification, the High Court enhanced the compensation to Rs.7,000 per bigha and also awarded solatium and interest. The plea for higher compensation on the ground that some developed plots were sold by a real estate company at a higher rate was negatived since according to the High Court that company was in a better position to develop the land and that the potentiality of the land in its hands was greater.

These appeals, by special leave, are against the said orders of the High Court.

Allowing the appeals,

HELD: 1. In land acquisition proceedings compensation has to be fixed on the basis of a hypothetical sale at or about the time of the notification under section 4 of the Land Acquisition Act of similar land by a willing seller to a willing buyer, there being no other factors like urgent need of money or urgent need of the land for a special purpose and so on which might depress or augment the price. In determining this compensation the ability of a particular party or his lack of ability to develop the land and to realise its potential, cannot be regarded as a relevant circumstance. The High Court, therefore, was in error in

127

placing great reliance of the aforesaid circumstance in determining the value of the land for fixing the compensa-

tion. [128F-H]

2. The appellants have failed to furnish any material on record of this Court on which this Court could fix the proper compensation nor have any arguments been advanced in that regard. In these circumstances, the impugned judgments and orders are set aside and the appeals remanded to the High Court for determination of the proper compensation for the lands acquired in accordance with law. and in the light of our judgment. [129A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1334 and 1335 of 1982.

From the Judgment and Order dated 9.11.1979 and 8.5.1979 of Delhi High Court in L.P.A. No. 192 of 1979 and R.F.A. No. 245 of 1969.

Sasidharan and P.K. Pillai for the Appellants.

Tapas Ray, A.K. Srivastava and Ms. A. Subhashini for the Respondents.

The following Order of the Court was delivered:

KANIA, J. Lands comprising a few bighas belonging to the claimants (appellants) and situated in the area now known as 'Nehru Place' in Delhi were notified for acquisition by the Government of India by a Notification dated November 13, 1959, issued under Section 4 of the Land Acquisition Act, 1894. The said lands were duly acquired under the said Act. In compensation proceedings the Land Acquisition Collector awarded to the claimants (appellants) compensation at the rate of Rs.2,000 per bigha and further awarded solatium and interest as provided by law. In two references under section 18 of the Land Acquisition Act at the instance of the appellants, the Additional District Judge enhanced the compensation from Rs.2,000 per bigha to Rs.4,000/5,000 per bigha. From the orders of the Additional District Judge. the appellants filed appeals in Delhi High Court. The Delhi High Court enhanced the compensation to Rs.7,000 per bigha and also awarded solatium and interest. Compensation was determined at the aforesaid rate largely on the footing of a sale of comparable land by

128

one Puran to the Delhi Finance Company Private Limited (hereinafter referred to as the DLF Co.). That sale took place a few months prior to the date of the Notification and rate at which the land was sold was Rs.6,000 per bigha. In view of the period of few months which had gone-by and the rise in land values, the High Court determined the compensation at Rs.7,000 per bigha. The claimants strongly relied on the instances of 'sales of small developed plots by the DLF Co. and pointed out that it was on the basis of the sales that the High Court had awarded compensation at the rate of Rs.11 per sq. yard to the DLF Co. in respect of similar lands of the said company acquired by the government. This amount was arrived at by taking the price of developed plots sold by DLF Co. and deducting therefrom the cost of development. It was alleged by the claimants that this land was contiguous to the land of the claimants acquired as aforesaid and the acquisition was at almost the same time as in the case of the claimants. It was submitted by them that the principal reason given by learned District Judge as well as the High Court for not accepting the instance of the compensation awarded to DLF Co. was not tenable in law. It was submitted by them that compensation should also have been awarded to them on the basis of the said instance. The High

Court has taken the view that the instance of compensation awarded to DLF Co. was not acceptable mainly because that company was in a position to develop the land and to realise its potentiality and had been able to sell certain developed plots at a very much higher rates. The High Court took the view that the higher compensation was liable to be awarded to the DLF Co. because that organisation was in a better position to develop the land and hence. the potentiality of the land in its hands was greater.

With respect to learned Judges of the High Court who delivered the impugned judgment, in our opinion, the view taken by them cannot be sustained. In land acquisition proceedings compensation has to be fixed on the basis of a hypothetical sale at or about the time of the notification under section 4 of the Land Acquisition Act of similar land by a willing seller to a willing buyer. there being no other factors like urgent need of money or urgent need of the land for a special purpose and so on which might depress or augment the price. In determining this compensation the ability of a particular party or his lack of ability to develop the land and to realise its potential. cannot be regarded as a relevant circumstances. The High Court. therefore, was in error in placing great reliance of the afore-said circumstances in determining the value of the land for fixing the compensation.

129

We would have proceeded to determine the compensation ourselves but for the fact that the appellants have failed to furnish any material on record of this Court on which we can fix the proper compensation nor have any arguments been advanced before us in that regard. In these circumstances, we set aside the impugned judgments and orders and remand the appeals to the Delhi High Court for determination of the proper compensation for the lands acquired in accordance with law. The appeals are accordingly allowed. There will be no order as to costs.

G.N.

Appeals allowed.

130