

CASE NO.:
Appeal (civil) 2504 of 1999

PETITIONER:
Hans Raj Sharma (Dead) by Lrs.

RESPONDENT:
Collector Land Acquisition, Tehsil & District Doda

DATE OF JUDGMENT: 10/12/2004

BENCH:
Shivaraj V. Patil & (B.N. Srikrishna

JUDGMENT:
J U D G M E N T

Srikrishna, J.

The appellant whose land was acquired is aggrieved by the dismissal of his claim for increased compensation by the Division Bench of the High Court.

The appellant owned land measuring 137 Kanals and 19 marlas in Khasra No.804 (77 Kanals and 7 marlas) and Khasra No.805 (60 Kanals and 12 marlas) situated in Barshalla Tehsil, Doda (Jammu) in the State of Jammu & Kashmir. This land was acquired by a Notification under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') issued by the State Government for the purpose of establishing a base camp of Sheep Breeding Farm, Thathri. The declaration under section 6 of the Act and a direction under section 7 of the Act were issued on 10.12.1976 and possession of the land was taken on 16.1.1977. The petitioner claimed compensation at the rate of Rs.12,000/- per Kanal for the land and compensation for trees separately. The land acquisition collector made an award in respect of the land bearing Khasra nos. 804 and 805 and fixed compensation for the land at the rate of Rs.800 per Kanal for land in Khasra no. 804 and Rs.250/- per Kanal for land in Khasra no.805. He also awarded certain compensation for trees on the land. The petitioner accepted it under protest and sought a reference for increase in the compensation. On 27.4.1985 the petitioner made a written application before the land acquisition collector claiming that the market value of the land was not less than Rs.12,000/- per Kanal. He also specifically claimed that there were 350 trees standing on that land and claimed increased compensation in respect of the said trees also.

Upon a reference under Section 18, the reference court after recording evidence came to the conclusion that the comparable instances of sale cited by the appellant were in respect of very small pieces of land while the acquired land was a big chunk measuring about 137 Kanals. Consequently, the reference court was of the view that the instances cited could not be taken as comparable instances of sale of land. The reference court assessed the market value at Rs.800/- per Kanal in respect of land in Khasra no. 804 and increased the compensation only in respect of Khasra no.805 from Rs.250/- per Kanal to Rs.720/- per Kanal. The reference court also directed 4% per annum interest to be paid.

Being aggrieved by the decision of the reference court, the petitioner moved an appeal under section 54 of the Act before the High Court. The learned single Judge enhanced the compensation for land in Khasra no. 804 to Rs.1000/- per Kanal and the compensation for land in Khasra no.805 to Rs.900/- per Kanal. The single Judge

also increased the rate of interest to 6% per annum instead of 4% as directed by the District Judge. The appellant still being dissatisfied moved a Letters Patent Appeal before the High Court claiming compensation @ Rs.8000/- per Kanal in respect of land and Rs.75000/- for trees. The appeal was dismissed by the High Court and thus the appellant is in appeal before this Court.

The learned counsel for the appellant urged that the High Court and the District Judge have completely ignored the evidence, and that their judgments were perverse and liable to be interfered with. He contended that after the year 1971 there was no sale of land in the area concerned because of the coming into operation of the Agrarian Reforms Act, 1976. Consequently, there were no instances of registered sale deeds, though sales unofficially took place during the said period. Some of such sale deeds were actually registered after 1981.

In respect of one such sale deed, it was claimed by witness Girdhari Lal that he had sold three marlas of land in the year 1975 at the rate of Rs.500/- per marla, though the sale deed was registered in 1981 because of ban on sale of land in the interregnum. Another witness Tej Ram stated that he had also purchased land @ Rs.500 per marla in the year 1975. Witness Om Prakash, Assistant Engineer, NHIS sub Division Thethri stated in his evidence that 1 Kanal 3 marlas was acquired from one Shukar Din for Rs.15,870/- and the land was 1-1/4 kilometer away from Thathri on the National Highway. This rate comes to Rs.14,000 per Kanal. Patwari Ghandarb Singh has stated that the average market rate was about Rs.500/- per marla but was not able to cite an instance where any equivalent chunk of land was sold. Daya Krishan has stated that he had sold land measuring 4-1/2 marlas at the rate of Rs.12,000/- per Kanal.

The learned District Judge was of the opinion that the instances cited were of small pieces of land and it was not safe to rely on them because the land acquired was a large chunk of land admeasuring about 137 Kanals and 19 marlas.

The learned single judge took the view that it was not the fault of the claimant that there was no sale of big chunk of land during the relevant period. He further was of the view that Rs.800/- per Kanal was an unreasonably low amount of compensation as it would not even fetch a quintal of wheat. According to the learned single Judge, though comparable instances of sale of land were not available, the Reference Court should have gone on the average yield, in which event the market value of the land would have been fixed at a much higher price. Although the Reference Court had rejected an instance of sale of land which is about 400 to 500 yards away from the land acquired across the river @ Rs.1000/- per Kanal on the ground that it was across the river and adjacent to the National Highway, the single Judge was of the view that since the said piece of land had been acquired by the State Government itself, and inasmuch as the acquired land was hardly 400-500 yards away from the land for which Rs.1000/- per Kanal has been paid as compensation, no compensation less than Rs.1,000/- would be fair and just. The learned single Judge took the view that there was no need to go into other evidence in the light of the admission made by the State authorities that compensation of Rs.1000 has been paid for the land which was only 400-500 yards away from the land acquired. Since some of the land was partially earmarked and the other was not earmarked, the learned single Judge was of the view that the land in Khasra No.804 would have market value of Rs.1000 per Kanal and the market value in respect of land in Khasra No.805 should be fixed at Rs.900/- per Kanal. The learned single Judge awarded interest @ 6% per annum but made no reference whatsoever to the compensation in respect of the trees.

The Division Bench confirmed the judgment of the learned single Judge in respect of the compensation and interest. It also

rejected the claim in respect of compensation for trees on the ground that the judgment of the single Judge did not mention anything about compensation for trees which suggested that the said claim has not been argued before the single Judge. The Division Bench was of the view that the appropriate course would have been to approach the single Judge and draw his attention to the omission and it was not open to the Division Bench in appeal to deal with the question for the first time. In this view of the matter the Division Bench dismissed the appeal.

Though the learned counsel for the appellant cited a number of judgments, it appears to us that it is unnecessary to burden the record by reference to all the judgments. It would suffice to refer to two recent judgments which have taken notice of all the earlier judgments. In *Kasturi and others v. State of Haryana* (2003) 1 SCC 354 a Division Bench of this Court to which one of us (Shivaraj V. Patil, J.) was a party, surveyed the authorities on the point and came to the conclusion that generally instances of sale of small tracks of land could not form acceptable basis for determining the market value of large tracks of land, unless suitable deduction was made in respect of the developmental charges and land to be set apart. However, it was pointed out that the nature of the land acquired would be determinative of the issue as to how much of deductions are to be made in respect of developmental charges and other related expenses. This would of course depend on the nature of the land, its topography and special features, if any, and the state of its development so as to make it suitable for being adapted for immediate use.

In *Ravinder Narain and another v. Union of India* (2003) 4 SCC 481 it was held that where a large chunk of land is the subject-matter of acquisition, the rate at which small plots are sold cannot be said to be a safe criterion. Nevertheless, the Court was of the view "it cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may, in appropriate cases, be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices". It was recognized that although fixing of the market value involves a certain amount of intelligent guess work on the part of the court, the element of speculation could be reduced to minimum if the following principles are kept in mind with reference to comparable sales:

- (i) The sale is within a reasonable time of the date of notification under Section 4(1);
- (ii) It should be a bona fide transaction ;
- (iii) It should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) it should possess similar advantages.

The Division Bench of the High Court was of the view that although instances of sale of smaller chunks of land could not be always relied upon, there was no reason why the instance of acquisition by the State Government within a distance of about 500 yards from the present land for the purpose of setting up Sheep Breeding Farm could not be considered. In the instant case the land was situated across the river on Thethri on the right side and its market value was fixed at Rs.1000 per kanal. The High Court was, therefore, justified in taking this as reasonable comparable instance of sale and fixing the market value of the acquired land based thereupon.

Turning to the other question as to the valuation of trees, it appears that there has been an omission on the part of the Reference Court in

rejecting the claim on the ground that there was no specific reference made. It must be remembered that the Reference made under Section 18 was for determination of the amount of compensation payable to the appellant for the "land" acquired. The expression 'land' as defined in Section 3(a) of the Act is inclusive of benefits to arise out of the land and things attached to the earth or permanently fastened to anything attached to the earth. As a matter of fact, the land acquisition officer had worked out the compensation for 261 trees in Khasra No.804 determined as Rs.17,315/- and the cost of 96 trees in Khasra No.805 determined as Rs.6207/-.

Issue no.2 raised by the Reference Court was "whether the value of trees worth Rs.300/- per tree, has not been included in the award". While answering this issue, the Reference Court has taken the view that the Reference Court has no jurisdiction to determine the controversy as it has not been referred by the Collector. This, in our view, is erroneous. The Reference Court ought to have adjudicated the claim of the appellant for higher compensation in respect of trees. On account of the unduly restrictive view taken of its own jurisdiction, the Reference Court fell into error. The single Judge and the Division Bench also fell into the same error in totally rejecting this claim as beyond jurisdiction. In our opinion, the appellant is entitled to have his claim in respect of the trees on the land acquired adjudicated by the Reference Court.

In the result, we uphold the determination of market value of land in Khasra No.804 at Rs.1000/- per Kanal and in respect of land falling in Khasra No.805 at Rs.900/- per Kanal, as determined by the High Court. The Reference is remitted to the District Judge, Doda only for the purpose of adjudicating the claim for higher compensation in respect of trees standing on the acquired land.

The appeal is accordingly partly allowed with no order as to costs.