

PETITIONER:
STATE OF J & K

Vs.

RESPONDENT:
MOHAMMED MATEEN WANI & ORS.

DATE OF JUDGMENT: 23/07/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

Leave granted,

(2) This Court vide its order dated 21.3.96 directed that LPA No.12/93 pending in the High Court of Jammu & Kashmir be transferred to this Court and the same be heard along with S.L.P. (C) No.1779 of 1994 since an identical question is involved in both the matters arising out of the Judgment dated 17.8.93 in Civil Appeal No.38 of 1992 and Civil Appeal No.42 of 1992 passed by the High Court of Jammu and Kashmir at Jammu. Few facts leading to the present proceedings may be summarised as under:-

(3) A chunk of land admeasuring 642 kanals and 12 marlas of village Punzgam, Distt. Pulwama belonging to the respondents was acquired by the Land Acquisition Collector Pulwama by invoking Section 17 of the Land Acquisition Act. This land was acquired at the instance of Union of India for public purpose. The Land Acquisition Collector on payment of compensation of Rs.57,34,621 to the various claimants, took possession of the land on December 11, 1986. After service of notice under Section 9 of the Land Acquisition Act the claimants filed their claims before the Collector who after taking into account the sale instances and the other material by his award dated June 29, 1989 awarded compensation of Rs. 1,06,55,150.00/- for land; Rs.33,70,781.00/- for fruit bearing trees and Rs.72,600/- for structure & tubewell. An amount of Rs.2114779.60 was awarded as Jabirana (solatium). Thus the total amount under award came to Rs.1,62,13,310.65. On this total amount under award came to Rs.1,62,13,310.65. On this total amount of compensation an interest was awarded @ 6% for one year from the date of taking over the possession of the land (possession was taken over on 11.12.1986) and 10% after expiry of one year. The total amount of interest awarded by the Collector came to Rs.7,87,632.45. It may be stated that the Collector divided the acquired land into three categories bearing in mind the nature and quality of land as recorded in the revenue records. He accordingly fixed the market value in respect of these three categories at Rs.17,000/-, Rs.15,000/- and Rs.14,000/- per kanal

respectively.

(4) The claimants being dissatisfied with the amount of compensation awarded by the Collector filed petitions under Section 18 of the Land Acquisition Act and sought a Reference to the civil court for determination of the market value. Before the Reference Court the claimants in their claim petitions stated that their lands should be valued not less than Rs.25,000/- and they should be paid not less than Rs.60,000/- per kanal (sic) and also claimed higher compensation on various other items. The claimants in support of their claim for enhancement of compensation, produced sale instances and the report was made by the Patwari, Tehsildar and recommendatory letter of a local MLA for increase in the compensation. The Union of India produced two witnesses but, however State of Jammu and Kashmir remained ex-parte.

(5) The District Judge, Jammu after hearing the parties and on appraisal of oral and documentary evidence on record by his Judgment and decree/ award dated 9.9.92 enhanced the compensation at the flat rate of Rs. 45,000/- per kanal rejecting the categorisation of land as done by the Collector and upheld the other claims granted under the award. In view of enhancement of compensation proportionately the amount of interest and solatium also stood enhanced. The District Judge awarded Rs.50,000/- towards cost to the claimants against the appellant.

(6) Being dissatisfied with the judgment and decree passed by the District Judge, the Union of India filed First Appeal No.42 of 1992 whereas the State of Jammu and Kashmir through Collector filed First Appeal No.38 of 1992 in the High Court of Jammu and Kashmir. Both these appeals were heard together by the then acting Chief Justice of Jammu and Kashmir who by his common Judgment and decree/award dated 17.8.1993 dismissed these appeals. Aggrieved by the judgment and decree/award the Union of India filed LPA No.14 of 1992 in the High Court of Jammu and Kashmir whereas State of Jammu and Kashmir through Collector filed SLP (C) No.1779 of 1994 in this Court. At the time of the preliminary hearing of the SLP, it was brought to the notice of this Court that the LPA No.12 of 1993 filed by the Union of India in the High Court of Jammu and Kashmir is pending for final hearing. In these circumstances this Court on 21.3.1996 passed an order transferring LPA No.12 of 1993 to this Court and directed that the same be heard along with SLP No.1779 of 1994. It is accordingly stood transferred and came to be numbered as T.C. (Civil) No. 43/96. This is how both these matters were heard together and they are being disposed by this common judgment.

(7) Mr. S.K. Dholakia, Learned Senior Counsel appearing for the State of Jammu and Kashmir and Mr. K.N. Shukla, Learned Senior Counsel appearing for the Union of India assailed the judgments of the courts below on various grounds. It was contended on behalf of the appellants that there was no legal evidence on record which would justify any enhancement in respect of value of the land. It was also contended that the claimants having been awarded the compensation treating the acquired land as an orchard land and therefore no separate compensation could be paid in respect of fruit bearing trees, tubewells and structures thereof. It was then urged that the District Judge as well as High Court has committed a serious error in exercising the discretion while awarding heavy costs to the claimants against the appellants. Learned counsel, therefore, urged that the Judgment and decree/award passed by the District Judge and on appeal confirmed by the High Court be set aside and the

award made by the Collector be restored.

(8) Mr. D.D. Thakur, Learned Senior Counsel appearing for the respondents/claimants supported the judgment and decree/award passed by the courts below and urged that having regard to the peculiar facts and circumstances of the case and also having regard to the paucity of the vacant land in the State, the courts below were justified in enhancing the compensation of the land. As regards the compensation for fruit bearing trees. Learned counsel urged that it is the practice in the State of Jammu and Kashmir which is based on the circulars issued by the State Government for awarding the compensation separately in respect of fruit bearing trees. he then urged that the acquired land is a plateau which is never affected by floods in the State. He further urged that the acquired land is situated in a prime locality having a building potentiality. The courts below in exercise of their discretion awarded costs to the claimants and therefore, this Court would be slow in interfering with the discretionary order. He, therefore, urged that both these appeals be dismissed.

(9) We were taken through the judgments of the courts below as also the oral and documentary evidence on record. From the material placed on record it appears that there was no justification to divide the acquired land into three groups and the courts below were, therefore, right in awarding compensation for the acquired land treating it as one compact block.

(10) Coming to the challenge as regards the enhanced compensation for the land we find that the sale instances relied upon by the claimants can hardly be treated as comparable instances. The sale instances relate to small parcels of lands not more than 3 to 4 marlas each. Only one sale instance was sought to be proved by the claimants through the evidence of Mohd. Shaban, who had stated that three marlas of land in the close vicinity of the acquired land was sold to a cooperative society @ Rs.33,000/- per kanal. Other sale instances although produced on record but the same were not proved by the claimants either by examining the vendor or the vendee. As stated earlier these sale instances are of a very smaller area and, therefore, they cannot be said to be comparable sale instances to determine the market price of such a big chunk of acquired land. The other evidence adduced by the claimants is consisted of the oral testimonies of lumbardars and local zamindars. Their oral evidence could hardly be accepted as a guide for determining the market price of the acquired land because they were not experts. The net result, therefore, is that the evidence of the claimants as regards the sale instances cannot be accepted as a measure to determine the market price of the acquired land. The only evidence which would have a bearing upon determination of the market price of the land is the report of local Tehsildar. It is not disputed that D.C. of Distt. Pulwama had asked the local tehsildar to inspect the acquired land and make a thorough enquiry as regards the price prevailing in the locality where acquired land is situated. Accordingly he submitted his report dated 14.5.1987 which is Annexure 5 annexed with Transfer Case (C) No.43/96. This report was relied upon by the land acquisition Collector and at the trial it is taken on record without being objected to by the State of Jammu and Kashmir and Union of India. No challenge to the said report was made by either of the appellants before the District Court as well as before the High Court. The Tehsildar in his capacity as a Government official in discharge of his duties submitted the report and in his

report he had stated that the market price of the acquired land would be Rs.30,000/- per kanal. No serious arguments were advanced before us on behalf of the Union of India or State of Jammu and Kashmir which could persuade us to reject the said report. In these circumstances we are of the considered view that the report dated 14.5.1987 furnished by the Tehsildar was rightly relied upon by the courts below for determining the market price of the acquired land. The District Judge and the High Court while enhancing the compensation to Rs.45,000/- per kanal for the acquired land mainly relied upon the sale instances which we have discarded as not being comparable. The other evidence which found favour with the District Judge and the High Court was the oral evidence of local Lambardars, zamindars and one of the claimants. Their evidence in our considered view would not furnish any basis for determining the market value. The courts below in our considered view have committed a serious error of law in relying upon the sale instances which were found by us not comparable while enhancing the market value of acquired land. In view of this factual position, we are of the view that the respondents/claimants would not be entitled for compensation in respect of their lands for more than Rs.30,000/- per kanal.

(11) As regards the compensation in respect of fruit bearing trees and tubewells the High Court had relied upon the Government circular which allows compensation in respect of fruit bearing trees and tubewell separately. Nothing contrary has been brought to our notice and, therefore, we do not think it proper to disturb the said finding.

(12) Coming to the cost awarded by the District Judge and the High Court we see no justification whatsoever to grant such a heavy cost to the claimants. The discretion as regards the imposition of cost needs to be exercised judicially and the orders regarding costs made by the District Judge as well as by the High Court are accordingly quashed and set aside. However claimants would be entitled for usual cost prescribed by law proportionately.

(13) For the reasons records hereinabove the appeals are partly allowed. The judgments and decrees/awards passed by the courts below are modified to the extent of valuation of the lands acquired. The respondents/claimants would be entitled to receive compensation in respect of their acquired land @ Rs.30,000/- per kanal and not Rs.45,000/- per kanal as awarded by the courts below. It is needless to add that the executing court will finally determine the amount of compensation payable to the respondents/ claimants in accordance with law and in terms of this judgment. If any excess payment is found to have been made to the respondents/claimants, the same be returned to the appellant with interest @ 10% per annum from the date of receipt of the amount till it is returned. The appellants as well as the respondents would be entitled the cost proportionately in all courts. The appeal and T.C. No. 43/96 to stand disposed of accordingly.