

CASE NO.:  
Appeal (civil) 6331 of 2000

PETITIONER:  
U.P.S.I.D.C.

RESPONDENT:  
Shakti Bhatta Udyog & Ors.

DATE OF JUDGMENT: 19/08/2004

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

JUDGMENT:  
J U D G M E N T

WITH

[C.A. Nos. 6322/2000, 6323/2000, 6324/2000,  
6325/2000, 6326/2000, 6327/2000/, 6328/2000,  
6329/2000, 6330/2000, 7121/2000, 3959-3960/1998  
& 1122/2001]

Shivaraj V. Patil J.

These appeals are by the U.P. State Industrial Development Corporation (UPSIDC) questioning the validity and correctness of the impugned judgments of the High Court enhancing the amount of compensation and fixing the market value of the lands acquired at the rate of Rs.8/- or Rs.9/- per square yard, as the case may be. Large extent of land was notified for acquisition for UPSIDC for planned development of industries. In that regard notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was published on 25.4.1972. The Special Land Acquisition Officer passed award on 30.11.1976 fixing the market value of the lands at the rate of Rs.2/- per square yard. Some land owners, not being satisfied with the market value so fixed, made applications to the Collector under Section 18 of the Act for making reference. The reference court, by its judgment dated 2.9.1980, rejected six references Nos. 4, 5, 6, 8, 11 and 12 of 1977, upholding the market value of the lands fixed by the Land Acquisition Officer finding that there was no evidence to enhance the market value. The reference court in reference Nos. 7, 9, 45 and 100 of 1977 enhanced the market value of lands to Rs.8/- per square yard by its common judgment dated 18.12.1981. Reference court in reference Nos. 21, 25, 32 and 42 of 1977 rejected the references affirming the market value of the lands awarded by the Land Acquisition Officer. The High Court in First Appeal No. 808 of 1984, filed against the order made by the reference court in L.A.R. No. 32 of 1977, and in First Appeal No. 537 of 1980, arising out of the order passed in L.A.R. No. 21 of 1977, enhanced the market value of lands to Rs.9/- per square yard and in First Appeal No. 536 of 1980 and 548 of 1994 arising out of L.A.R Nos. 25 and 42 of 1977 enhanced the compensation to Rs.8/- per square yard. Hence these appeals as already stated above.

The learned counsel for the appellants urged that the High Court was not right and justified in enhancing the market value of the lands acquired at the rate of Rs.8/- or Rs.9/- per square yard, as the case may be, as against the rate of Rs.2/- per square yard fixed by the Land Acquisition Officer; 4(1) notification was issued on 25.4.1972 for acquiring the lands in

question and the Land Acquisition Officer was right in relying upon the relevant material, evidence contained in sale deed dated 28.5.1971 executed few months prior to issuance of 4(1) notification, that too executed by two of the claimants. According to the learned counsel on the basis of this sale deed the Land Acquisition Officer rightly fixed the market value of the lands in question at the rate of Rs.2/- per square yard; the High Court failed to notice that the lands in question were agricultural lands and in some of the lands there were deep pits; they could not have been valued on the basis of the developed lands for the purpose of industrial sites. The learned counsel also urged that the High Court relied on the judgment passed in First Appeal No. 808 of 1984. This judgment was followed in First Appeal Nos. 536-537 of 1980 in respect of some of the lands acquired under the very same 4(1) notification. But the correctness and validity of the judgment in First Appeal No. 808 of 1984 is itself under challenge in one of these appeals; although special leave petition filed against this judgment was rejected, later it was reviewed, leave was granted and the special leave petition is now registered as Civil Appeal No. 7121 of 2000.

On the other hand, learned counsel for the respondents argued in support of the impugned judgments. They urged that Special Land Acquisition Officer committed an error in taking the lands as agricultural lands in fixing the market value even after noticing their potentialities.

The High Court in the common impugned judgment dated 10.12.1999 in First Appeal No. 225 of 1982 and connected appeals pointed out to the following observations of the Land Acquisition Officer, made in the "Award" dated 13.11.1976: -

"The area under acquisition is on Howrah-Delhi main double line of the Northern Railway and some of the industries had already been established in its surroundings. This area is adjoining to the industrial areas of Ghaziabad and this area is being acquired for establishing more industrial units. In these circumstances, the disputed land has building potentiality and it is appropriate to award the market value on the special rate of per sq. area."

As to the sale deed dated 28.5.1971, referred to above in First Appeal No. 808 of 1984, infirmities were pointed out and reasons were recorded for rejecting it observing thus: -

"In the cross-examination, PW-1 Sri Rajendra Kumar, stated to have seen the land covered by the sale deed (Ex.A-1) filed by the State and he denied that such land was leveled and he stated that it entertained 10ft. deep pits. He, further denied the land covered by Ex.A-1 was very near to the land in question. On the contrary, it was stated to be at a distance. In the evidence adduced on behalf of the opposite parties, there is no whisper or assertion that the land covered by Ex.A-1 was leveled or was close to the appellant's land. In such circumstances, reliance upon the sale deed dated May 28, 1971, in respect of land, which was away from the land in question and which had pits of 10 ft. deep, cannot be upheld.

In this regard, one more patent error, committed by the reference court, is apparent. The reference court observed that "this is noteworthy that there is no highway near this

land. During the course of arguments, the counsel for the opposite party has, however, admitted that a bye pass was not in existence, when Section 4(1) was made, so the question that the value increased because of existence of this road in the year 1972, does not arise." Curiously enough, to draw the inference about the non-existence of the bye pass road, the reference court relied upon the argument of the counsel for the opposite parties, instead of the statement on oath of the PW-1, Sri Rajendra Kumar, who categorically stated that the disputed land abutted the Ghaziabad bye pass road. In cross-examination also, he reiterated this fact. To ignore the statement on oath and to rely on an argument, that too of the counsel for the opposite parties, cannot be said as legal. The abutment of the land in question to the Ghaziabad bye pass road on the basis of evidence on record, is evident."

It was further observed: -

"The reference court clearly erred in relying upon Ex.A-1 without considering the fact that it had 10 ft. deep pits; it was at a distance from the land in question and also it did not abut to the bye pass road, while the land in question abutted to the Ghaziabad bye pass road, surrounded by abadies and without pits. In view of proved superiority of the land in question, both in location and quality, it deserved a much higher rate, than Rs.2/- per sq. yard at which the land covered by Ex.A-1 was transacted."

The High Court, after re-appreciation of the entire material placed on record in the above said First Appeal No. 808 of 1984, concluded thus: -

"Keeping in view of the entirety of facts, circumstances and the attending features, I am satisfied that it would be just, proper and befitting, if the market value of the land in question is assessed at the rate of Rs.9/- per sq. yard."

Having regard to the facts found and reasons recorded by the High Court in First Appeal No. 808 of 1984 it cannot be said that the market value of the lands fixed by the High Court at the rate of Rs.9/- per square yard in the impugned judgment is either unreasonable or arbitrary. No fault can be found with in fixing the market value at the rate of Rs.8/- per square yard by the High Court in First Appeal Nos. 548 of 1994 and 536 of 1980 having regard to the location and other factors as stated in the judgment of the High Court.

Thus, having regard to all aspects of the matter and keeping in view the facts and circumstances and the reasons recorded by the High Court in the impugned judgments, we do not find any merit in these appeals. Consequently these appeals stand dismissed, but with no order as to costs.