

PETITIONER:
BASANT KUMAR ETC.

Vs.

RESPONDENT:
UNION OF INDIA ETC.

DATE OF JUDGMENT: 12/09/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH
12566/86, 12567, 12569 & 12570/96
CIVIL APPEAL NO/ OF 1996

(Arising out of SLP (C) Nos. 14764, 17053-55 of 1992 and SLP
of 1991 (CC No. 14103/91) SLP (C) 19899/96)

O R D E R

These appeals by special leave arise from the judgment of the Division Bench of the High Court of Delhi made on July 8, 1996 in Letters Patent Appeal No.97/80 and other cases.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') was published on October 24, 1961 acquiring a large extent of 1669 bighas 18 biswas of land for the planned development of Delhi. The said lands are situated in revenue estate of Posangipur. The Land Acquisition Officer categorised the lands in to two blocks-Block A and Block B. He assessed the compensation at the rate of Rs.1400/-per bigha for Block A and Rs.1200/- per bigha for Block B. On reference under Section 18, the Additional District Judge by his award and decree dated March 8, 1968 enhanced the compensation to Rs.3050/-per bigha. On Regular First Appeal the learned single Judge dismissed the appeal confirming the award of the reference Court. When the LPA was filed, the Division Bench held that the LPA did not lie.

IN Balbir Singh vs. Union of India in RFA NO.214/68 by judgment dated May, 14 1980 the same was taken on merits in the appeal. Similar is the case in SLP(C) No.17055/92 relating to Chhajju in RFA NO.65/69 of the even number dated May 14, 1980. Thus, these appeals by special leave.

The extent of the land involved in Basant Kumar's case, viz., CA NO.4327/91 is not clear as no one is appearing for the appellant. But as regards the appeal of Chhajju, his lands are of an extent of 37 bighas 10 biswas in which his share is one-half. As regards Balbir Singh's lands, he has 66 bighas, 10 biswas in which he has 1/3rd share. The question for consideration is: what will be the reasonable compensation which the lands under acquisition were capable to secure as on the date of the notification.?

Shri N.C. Jain, the learned senior counsel appearing

for the appellants, contended that in RFA No.55/70 Raghubir Singh vs. Union of India arising out of the same notification, another Division Bench of the High Court had determined the compensation at the rate of Rs.8700/- per bigha and less Rs.500 per bigha for the notified lands; and similar was the view taken by another Bench of that Court in LPA No.137/80 and batch decided on April 19.1991 titled Chet Ram and Ors.vs.Union of India. All these lands being situated in the same village, the appellants are also entitled to the same rate of compensation. The Union of India had not filed any appeals against those cases. The lands are possessed of same potential value and, therefore, the appellants are entitled to the same compensation. We had adjourned the case on the last occasion, as no one appeared for the Union Of India; Since, even today, no one is appearing for the Union of India, we have taken assistance of Shri Jain and have waded through the entire material evidence. The question is: whether the appellants are entitled to the same compensation as was determined by the High Court in the appeals arising out of Raghubir Singh's case and Chet Ram's case? It has been firmly settled law by beed role of decisions of this Court that the Judge determining the compensation under Section 23(1) should sit in the arm chair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land, i.e., land possessing all the advantageous features and of same extent. This test should always be kept in view and answer affirmatively, taking in to consideration all relevant facts and circumstances. If feats of imagination are allowed to sway he out steps his domain of judicial decision and lands in misconduct amenable to disciplinary law. We have gone through the record and judgments in Chet Ram's case and Raghubir Singh's case decided by the two Division Benches. The learned judges have adopted the principal that the entire lands in the village shall be treated as one unit and the compensation shall uniformly be determined on that basis. The principal is wholly unsustainable in law and cannot be a valid ground for determination of compensation. It is common knowledge that even in the same village, no two lands command same market value. The lands abutting main road or national highway command higher market value and as the location goes Backward, market value of interior land would less even for same kind of land. It is a settled legal position that the lands possessed of only similar potentiality or the value with similar advantages offer comparable parity of the value; it is common knowledge that the lands in the village spread over the vast extent. In this case it is seen that land is as vast as admeasuring 1669 bighas, 18 biswas of land in the village. So, all lands cannot and should not be classified as possessed of same market value. Burden is always on the claimant to prove the market value and the Court should adopt realistic standards and progmatic approach in evaluation of the evidence. No doubt, each individual have different parcels of the land out of that vast land. If that principle is accepted as propounded by the High Court, irrespective of the quality of the land, all will be entitled to the same compensation. That principal is not the correct approach in law. The doctrine of equality in determination and payment of same compensation fro all claimants involved in the same notification is not good principal acceptable for the aforestated reasons when both the lands are proved to be possessed of same advantages, features etc, then only equal

compensation is permissible.

It is then to be seen that the learned judges have further pointed out that when the amount claimed in the High Court in appeal under Section 54 was more than what was determined by the reference Court: to what extent of the said amount, as Claimed in appeal, could be granted was the test laid down. It is also obviously illegal principal. What has to be determined under Section 23(1) is the market value prevailing as on the date of notification published under Section 4(10) but not what was claimed by the parties even pursuant to notice under Section 18 or grounds of appeal under Section 54. Prior to Amendment Act 68/84 under Section 22(1), the Court had no power to grant higher than was claimed under notice in Section 9 and 10. But now it stood deleted. Even the estimate of the market value given by the claimant is not decisive. Therefore, the principle laid down by the Court in the said two cases is obviously illegal and cannot form a legal basis, though these judgments became final, we cannot repeat, on principal of parity, same illegality..

It is true as pointed out by the High Court and also stressed very vehemently by Shri Jain, that compensation cannot be determined on the basis of the face of the claimants or the status of the claimants Compensation requires to be determined for the land acquired and not on the basis of the status of the person from whom the land was acquired. In Raghbir Singh's Case as the lands acquired were developed ones, Rs.9,000/- and Rs.8700/- per bigha were determined. It is settled legal position that if the land is already developed then what has to be seen is the nature of development then what has to be seen is the nature of development and money expended by the developer and as to what was the market value prevailing on that basis as on the date of notification., and what was the situation of the acquired land on that date; all these and other relevant facts have to be taken in to consideration and then market value should be determined. Merely because a land is developing land, it would not to be that some compensation is to be adopted to determine the market value for the entire land as a developed land. If land is to be developed. It is settled legal position that at least 1/3rd of the compensation has to be deducted towards providing amenities, like roads, parks electricity, sewage water facilities etc. This Court had upheld deduction of even 60% towards development charges. The High Court, therefore, was also not right in adopting ad hoc principle.

The question then is ; what would be the reasonable compensation which the lands of appellants were capable to secure as on the date of notification? It is seen that the appellants have produced two sale transactions: in respect of land acquired in September 1961 the market price fetched was not more than Rs.3250/- per bigha; for land acquired in the year 1958 the market value fetched was about Rs.5000/- per bigha. We do not have any material indicating as to what were the reasons behind the sale and situation of that land. Under these circumstances, the reference Court rightly had not placed reliance on the 1958 sale transactions since the appellants have not produced any evidence on record to show whether the lands of the appellants were developed land fit for constructions of the houses. Therefore, what we have to consider is that the lands are agricultural lands and possess potential for being used for building purposed only in future which is not relevant. Therefore since the lands as on the date of notification were agricultural lands, the value has rightly been determined on the bigha basis instead

of yards basis. Since the appellants have produced sale deeds indicating the maximum which was secured, viz, Rs.3,250/- per bigha, necessarily the appellants would be entitled to the maximum rate of Rs.3,250/- per bigha.

The next question is : whether the LPA would lie against the judgment of the learned single judge? it is settled legal position that under Section 54 of the Land Acquisition Act, the appeal would lie to the High Court; when the appeal on the basis of the pecuniary value was decided by a signal judge necessarily, it being the judgment of the single judge, an appeal would lie to the same Court in the form of LPA to Division Bench. The Division Bench was not right in holding that the LPA would not lie to the High Court against the judgment of the single judge. To that extent, the view of the High Court is not correct. The judgment in cases of Chet Ram and Raghuvir Singh proceeded on wrong principles of law and determined the compensation. We do not approve of the views as correct and , therefore, we cannot base the same market value to be the market value for the lands under consideration.

The appellants are entitled to the enhanced compensation at the rate of Rs.3,250/- per bigha and interest on enhanced compensation at the rate of 6% per annum from the date of taking possession till the date of deposit in to court. They are also entitled to 15% solatium on the enhanced compensation from the date of taking possession till the date of deposit.

The appeals are accordingly allowed, but in the circumstances, without costs.