

8

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : February 08, 2012

Pronounced on : March 14, 2012

+ LA.APP. 862/2010

UNION OF INDIA

..... Appellant

Through: Mr.Sanjay Poddar, Senior Advocate
with Mr.Sanjay Pathak, Ms.K.Kiran
Pathak, Mr.Surya Nath Pandey,
Mr.Yeeshu Jain and Ms.Navlin Swain,
Advocates for LAC/UI

versus

MUKESH KUMAR & ANR

..... Respondent

Through: Mr.B.D.Sharma, Mr.S.K.Rout,
Ms.Sukhda Dhamija and
Mr.B.K.Routray, Advocates

(Relating to Notification No. F.7/60/2001/L&B/LA/MRTS(S/W)/7674
of 05.08.2003 issued under Section 4 of the Land Acquisition Act, 1894
& Award No. 5/2005-06 of Village Masoodabad, Delhi)

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

14.03.2012

%

For orders see LA.APP.421/2010, titled as *Suresh Prasad*

alias Hari Kishan vs. Union of India & Anr.


(SUNIL GAUR)

JUDGE

Signature Not Verified

 **March 14, 2012**

Signing Date:03.10.2024 17:08:11
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : February 08, 2012

Pronounced on : March 14, 2012

LA.APP.421/2010 (VILLAGE MASOODABAD)

SURISH PRASAD alias HARI KISHAN Appellant

Through: Mr.B.D.Sharma, Mr.S.K.Rout,
Ms.Sukhda Dhamija and
Mr.B.K.Routray, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Sanjay Poddar, Senior Advocate
with Mr.Sanjay Pathak, Ms.K.Kiran
Pathak, Mr.Surya Nath Pandey,
Mr.Yeeshu Jain and Ms.Navlin Swain,
Advocates for LAC/IOI

AND

LA.App. No. 421/2010	LA.App. No. 441/2010	LA.App. No. 442/2010
LA.App. No. 443/2010	LA.App. No. 444/2010	LA.App. No. 446/2010
LA.App. No. 455/2010	LA.App. No. 456/2010	LA.App. No. 457/2010
LA.App. No. 458/2010	LA.App. No. 459/2010	LA.App. No. 460/2010
LA.App. No. 462/2010	LA.App. No. 463/2010	LA.App. No. 464/2010
LA.App. No. 465/2010	LA.App. No. 467/2010	LA.App. No. 468/2010
LA.App. No. 469/2010	LA.App. No. 470/2010	LA.App. No. 471/2010
LA.App. No. 478/2010	LA.App. No. 580/2010	LA.App. No. 583/2010
LA.App. No. 584/2010	LA.App. No. 585/2010	LA.App. No. 1011/2010
LA.App. No. 1012/2010	LA.App. No. 1013/2010	LA.App. No. 12/2012

AND

APPEALS FILED BY UNION OF INDIA

LA.App. No. 746/2010	LA.App. No. 59/2012	LA.App. No. 710/2011
LA.App. No. 747/2010	LA.App. No. 748/2010	LA.App. No. 749/2010
LA.App. No. 751/2010	LA.App. No. 753/2010	LA.App. No. 754/2010

10

LA.App. No. 755/2010	LA.App. No. 756/2010	LA.App. No. 858/2010
LA.App. No. 859/2010	LA.App. No. 860/2010	LA.App. No. 861/2010
<u>LA.App. No. 862/2010</u>	LA.App. No. 863/2010	LA.App. No. 865/2010
LA.App. No. 866/2010	LA.App. No. 867/2010	LA.App. No. 868/2010
LA.App. No. 869/2010	LA.App. No. 267/2011	LA.App. No. 752/2010
LA.App. No. 21/2012	LA.App. No. 56/2012	

(Relating to Notification No. F.7/60/2001/L&B/LA/MRTS(S/W)/7674 of 05.08.2003 issued under Section 4 of the Land Acquisition Act, 1894 & Award No. 5/2005-06 of Village Masoodabad, Delhi)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
14.03.2012

%

1. For '*Najafgarh Depot, MRTS Project*', 610 bighas and 13 biswas of land of Village Masoodabad was acquired vide Notification of 5th August, 2003 under Section 4 of the Land Acquisition Act, 1894 which was followed by Notification of 8th August, 2003 under Section 6 of the Land Acquisition Act, 1894 resulting in passing of Award No.5/2005-06 granting compensation at the rate of Rs.15.70 lacs per acre on the basis of indicative price fixed by the Government of NCT of Delhi for the agricultural lands in Delhi.
2. In the reference sought by the claimants, interest @10% per annum was granted by the Reference Court for the period of two years, i.e., from the date of fixing of the minimum agricultural price upto the date of Notification, i.e., compensation amount stood enhanced to Rs.18,84,000 per acre for the acquired land in question.
3. In the instant appeals, further enhancement of Rs.50 lacs per acre is sought by the claimants, whereas the respondent in their appeals have sought setting aside of the impugned order of the Reference Court and restoration of the Award. Since the grounds urged in these appeals is

7)

common, therefore, by this common order, these appeals are being disposed of.

4. On behalf of the appellants/claimants, it is urged that the learned Reference Court has wrongly treated acquired lands as agricultural land and did not appreciate the potentiality of the acquired land as building site and assessment of the compensation in respect of the acquired land ought to have been made on the basis of the average auction rate of residential and commercial plots in Dwarka and the rates charged by the DDA while allotting alternative plots is a valid basis to arrive at true market value of the acquired land in question.

5. During the course of hearing, it was pointed out by learned counsel for the appellants/claimants that Village Masoodabad was urbanized in the year 1963 and zonal development plan was prepared by Delhi Development Authority in the year 1974 and the acquisition of the land in question was for the proposed residential purpose. Much reliance was placed upon Award (Ex.PW-1/3) pertaining to Village Mangolpur Khurd and Award (Ex.PW-1/4) of Village Mohammadpur Munirka of the Land Acquisition Collector, wherein compensation was assessed while taking into consideration the L&DO rates. It is pointed out that some parcel of acquired land abuts the main Delhi-Najafgarh metalled road and in the adjoining Village Nangli Sakrawati, there are industries and Najafgarh Industrial Area is in the vicinity.

6. According to the learned counsel for the appellants/claimants, the best piece of evidence, i.e. allotment of land in Village Masoodabad and Najafgarh by DDA to Delhi Jal Board at the rate of Rs.20 lacs per acre in the year 1993 has been illegally discarded by the Reference Court. Reliance is placed upon the decisions reported in *Tindey & Ors. Vs. Union of India & Anr*, 2000(54)DRJ (DB) 384; *P.N.Singh vs. Union of*

India, 1997 I AD (Del) 83; *Hari Chand vs. Union of India*, 91 (2001) DLT 602; *Delhi Development Authority vs. Land Acquisition Collector & Ors.*, 130(2006) DT 1(DB); *Atma Singh (died) through LRs vs. State of Haryana & Anr.*, AIR 2008 SC 709; *Mahabir Prasad Santuka and Ors. Vs Collector, Cuttack and Ors.*, (1987) 1 SCC 587; *Thakur Kuldeep Singh (D) Thr. L.R. & Ors vs. Union of India & Ors.*, AIR 2010 SC 1272; *Om Prakash (D) by LRs & Ors. vs. Union of India & Anr.*, 2004 VIII AD (SC) 37; *Om Prakash vs. State of Haryana & Ors.*, 2011 IV AD (SC) 382; *Sagunthala (dead) through LRs vs. Special Tehsildar (L.A.) and ors.*, AIR 2010 SC 984; *Mahesh Dattatray Thirthkar vs. State of Maharashtra*, AIR 2009 SC 2238, to assert that the compensation claimed in these appeals is just and reasonable.

7. On behalf of the respondents, it was asserted by learned Senior Counsel for the respondents that adoption of the auction rates of DDA or L&DO rates in respect of agricultural land stands negated by the Apex Court in decision in *Lal Chand vs. Union of India and Anr.*, (2009) 15 SCC 769. It was also urged by learned counsel for the respondents that despite Village Masoodabad being declared to be urbanized, the acquired land in question continued to be used as agricultural land and therefore, instances of Village Mangolpur Khurd and Village Mohammadpur Munirka are of no avail and the instance of allotment of land by DDA in favour of Delhi Jal Board cannot be treated to be representative price of the lands in the vicinity as the evidence is lacking regarding said instances to be comparable for determining the market value of the land in question. Reliance was placed upon decision of the Apex Court in *Satpal & Ors. Vs. Union of India*, (1997) 11 SCC 423 to assert that if in a short period there is a sharp increase in price, than the usual prevalent trend in the market, such an instance cannot be taken as

realistic price unless and until the reasons for such sharp rise are explained and there is no explanation to justify the adoption of Delhi Jal Board instance to determine the market value of the acquired land in question.

8. As regards the potentiality of the acquired land in question is concerned, it is contended by learned Senior counsel for the respondents that no development activity took place in the vicinity nor any building activity had started in the adjoining areas despite Village Masoodabad being declared as urban and so the decisions relied upon by the appellants/claimants are distinguishable on facts.

9. In the appeals preferred by the respondents, enhancement in the compensation amount is assailed on the ground that the annual increase to be given is dependent upon the nature of evidence led and in the instant matters, there is no evidence showing increase in the market price of the land in question till its acquisition. It is asserted that doing away of classification of acquired lands in question by Reference Court is illogical and without any justification. Thus, setting aside of the impugned judgment and restoring of the Award of the Land Acquisition Collector is sought by the respondents.

10. Factors and test to determine the true market value of the acquired land have been restated by the Apex Court in its recent decision in ***Radha Mudaliyar vs. Special Tehsildar (Land Acquisition) Tamil Nadu Housing Board***, (2010) 13 SCC 384, in these words:-

“Comparable sales instances are the safest method for determining the market value of the acquired land and as laid down in Shaji Kuriakose v. Indian Oil Corpn. Ltd., (2001) 7 SCC 650, it should satisfy the factors, inter alia, (1) the sale must be a genuine transaction; (2) the sale deed must have been executed at the time proximate to the date of issuance of notification under Section 4 of the Act; (3)

14

the land covered by the sale must be in the vicinity of the acquired land; (4) the land covered by the sale must be similar to the acquired land; and (5) size of the plot of the land covered by the sale be comparable to the acquired land. The sales instances should preferably be closest to the date of the notification as then alone it would satisfy the touchstone of the principles contemplated under Section 23 of the Act, as held in Kanwar Singh v. Union of India, (1998)8 SCC 136."

11. Having heard learned counsel for the parties in these matters and upon perusal of the impugned judgment, evidence on record and the decisions cited, I proceed on the premise that the burden of proving inadequacy of the compensation amount is upon the appellants/claimants. Now it is to be seen as to whether the appellants/claimants have been successful in discharging this burden or not.

12. No doubt, purpose for which the acquisition is made is an important factor, but the question as to whether the acquired land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial or institutional area. The existing amenities like water, electricity, possibility of their further extension and the prospects of development in the area have to be taken into consideration. It has been so reiterated by the Apex Court in *Atma Singh* (supra). It is in this context, I have scrutinized the evidence on record and I find that there is hardly any evidence regarding the topography of the area adjoining the acquired land in question and the evidence led regarding the *aks shizra* (Ex.PW-2/1) of this village does not throw any light on this vital aspect, except that the evidence led to prove this document adversely reflects that on the eastern side of Village *Masoodabad*, there is Najafgarh drain, which

15

instead of enhancing the potentiality, rather diminishes it. The witness who was got examined to prove the *aks shizra* of Village *Nangli Sakrawati* (Ex.PW-4/1) concedes that the metalled road between Village *Nangli Sakrawati* and Village *Masoodabad* is not reflected in the *aks shizra*. Evidence of this witness (PW-4) instead of advancing the case of the appellants/claimants regarding the potentiality, reduces the potentiality of the acquired land in question.

13. There is no evidence to establish the comparability of the acquired lands under Award (Ex.PW-1/3) pertaining to Village *Mangolpur Khurd* and under Award (Ex.PW-1/4) of Village *Mohammadpur Munirka* with the acquired land in question. Rather, as per evidence of the concerned official (PW-10), Award (Ex.PW-10/1) pertained to West Patel Nagar for Metro Project. Thus, in the considered opinion of this Court, Reference Court has rightly excluded the aforesaid Awards (Ex.PW-1/3 & Ex.PW-1/4) to determine the fair market value of the acquired land in question. Self serving deposition of claimants regarding potentiality of acquired lands in question, in the absence of corroborative evidence, is not enough to return positive finding on this crucial aspect, particularly in view of the fact that evidence regarding industries being there in the vicinity of acquired lands is lacking.

14. So far as the *Delhi Jal Board* instance (Ex.PW-4/1) is concerned, I find that even its comparability with acquired land in question is not established as the witness (PW-5) who has deposed in respect of this transaction has conceded that he is not able to tell the distance from the said land to the land in question. Therefore, Reference Court has rightly not relied upon the *Delhi Jal Board* instance (Ex.PW-4/1).

15. It has come in evidence of the appellants/claimants that there is no Government hospital or college in Village *Masoodabad* and the evidence

regarding the acquired land in question being surrounded by developed colonies is lacking. In the face of such deficient evidence, there is no scope for enhancement of compensation in the instant appeals. Such a conclusion is being drawn while keeping in view the ratio of the precedents cited. Having failed to establish the potentiality of the acquired land in question, the appellants/claimants have to remain content with the assessment of compensation on the basis of the indicative price of the agricultural land by Government of NCT of Delhi as undisputedly, the acquired land in question were being used for agricultural purpose at the time of its acquisition.

16. Upon scrutiny of the evidence on record, it becomes quite apparent that despite Village *Masoodabad* being declared as urban, the acquired land in question were being used for agricultural purpose by the appellants/claimants and so, adoption of indicative price of agricultural lands by Government of NCT of Delhi appears to be a reasonable criteria for determining the market value of the acquired land in question, as on the date of Notification under Section 4 of the *Land Acquisition Act, 1894*. Such a view is being taken as the acquired land in question was admittedly undeveloped and therefore, adoption of *DDA auction rates or L&DO rates* is not permissible in view of the dictum of the Apex Court in *Lal Chand* (supra), which has been quoted with approval by the Apex Court in its latest decision in *Thakur Kuldeep Singh* (supra).

17. Regarding increase of 10% per annum over and above the minimum indicative price fixed by Government of NCT of Delhi, the same cannot be assailed by the respondent as the Reference Court has done so while relying upon decision of the Apex Court in *Union of India vs. Harpat*, (2009) 14 SCC 375. This Court finds that the

Reference Court was justified in granting the aforesaid increase of 10% per annum while relying upon the decision in *Harpal* (supra).

18. In the light of the fore-going narration, I find no infirmity in the impugned judgment in which fair compensation has been assessed in respect of the acquired land in question. Reference Court has rightly not classified the acquired land in question into 'A' category and 'B' category, as Land Acquisition Collector in the Award in question has unequivocally stated that no classification of the acquired land is required to be done as the acquired land is leveled.

19. Consequentially, the appeals of the appellants/claimants as well as appeals of Union of India are dismissed, while leaving the parties to bear their own costs. Registry is directed to remit the compensation amount, if any, deposited by either side with the Registrar General of this Court, to the concerned Reference Court.


(SUNIL GAUR)
JUDGE

March 14, 2012

pkb