

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 02.05.2013

+ LA. APP. 145/2007

PARTAP SINGH AND ORS.

..... Appellants

Through: Mr. I.S. Dahiya, Adv.

versus

UOI AND ORS.

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The land of the appellant situated in village Mundaka of Delhi was notified under Section 4 of Land Acquisition Act by way of notification dated 25.02.1997, followed by a declaration dated 09.04.1997 under Section 6 of the said Act. The award being Award being No. 2/DCW/1999/2000 came to be passed on 25.02.1997. The Land Acquisition Collector categorized the acquired land in two blocks, A& B. He fixed market value of the acquired land at Rs.8,96,640/- per acre or Rs 1,86,800/- per bigha in respect of the land falling in Block 'A' and at Rs 8,06,640/- per acre or Rs 1,68,050/- per bigha in respect of the lands falling in Block 'B'. For the purpose of categorization of land into categories 'A' and 'B',

the LAC considered the land from which earth had been removed and which had pits on them to be category 'B' land.

2. The land of the appellant comprised in the following Khasras was categorized as category 'B' land.

Rectangle No.	Khasra No.	Area
28	19/2	2-8
	20/2	2-8
	21	4-16
	22/1	3-4
29	24	4-16
	25	4-16

3. A perusal of the award would show that according to the LAC, there was digging up to 2-3 feet on the land which he had categorized as category 'B' land. He was of the view that since earth had been dug out from such land by giving the same on lease for making brick, etc, the land owners had already got some compensation and the land on account of removal of the earth, had become of inferior quality. For arriving at the amount by which deduction was made in respect of category 'B' land, the LAC, on local enquiry, came to know that the contracts for removing earth up to 2-3 feet were given at Rs 90,000 per acre and the deduction was made accordingly. Being dissatisfied with the compensation granted to them, the appellants sought reference under Section 18 of the Land

Acquisition Act. The learned Additional District Judge, to whom the reference was made, however, was of the view that the market value determined by the Land Acquisition Collector did not call for any interference.

4. I have carefully examined the award of the Land Acquisition. There is absolutely no indication in the award as to what was the basis of the LAC, including the land of the appellants in Block 'B', i.e., the land from which earth had been taken out. Mr Pathak, who appears for the respondents, submits that normally pre-award survey is carried out and this must have been gathered by the LAC from such a survey. He further submits that in fact, no notification under Section 4 of the Land Acquisition Act can be issued, without carrying out any such survey or any other material available to the LAC. However, the award contains absolutely no reference to any such survey.

5. The appellant, Mahabir Singh, in his affidavit by way of evidence before the Reference Court, *inter alia*, stated as under:-

“That, the LAC has wrongly categorized the land of the petitioner comprising in Khasra No. 28/19/2(2-8), 28/20/2(2-8), 21(4-16), 22/1(3-4), 29/24 (4-16), 25(4-16) situated in village Mundka, Delhi, in block 'B', stating that the aforesaid land in 'Gadha' having pits of 2-3 fits.. In fact there have been no 'Gadhas/pits over the aforesaid land. The land was being cultivated by the petitioner at the time of its notification and even time of drawing of Award. Certified copies of Khasra Girdawaries of the aforesaid land for the year 1995-96 & 1996-97 are

Ex. PW-1/1 & EX.PW-1/2. In the above Girdawaries, there is no mention that the land was Gadha land/having pits. That on the aforesaid land, the petitioner have been cultivating, the crops of Bajra, Dhancha, Mustered and Wheat at the relevant time apparently the land of Gadha can't be cultivated, and, therefore, there was no pits."

6. During cross-examination of Shri Mahabir Singh, no specific suggestion was given to him that earth to the extent of 2-3 feet had been dug out from the land in question, though it was suggested to him that the LAC had correctly categorized the acquired land into 'B' category due to the reason that the earth was removed from those Khasra numbers for the purpose of Bhatta (brick kiln). Admittedly, no evidence was led by the respondents before the Reference Court to prove that the earth had been dug out from land in question. Neither any survey report to this effect was produced nor was any witness examined to say that he had surveyed the aforesaid land and had found earth dug out from it. Therefore, the deposition of the appellant Mahabir Singh in this regard remained wholly unrebutted and uncontroverted.

7. The learned counsel for the appellant has drawn my attention to the certified copies of Khasra Girdawari which are available in the file of the Reference Court and have also been exhibited as Ex.PW-1/1 and Ex. PW-1/2. A perusal of the Khasra Girdawari in respect of the land comprised in rectangle No. 28, Khasra No. 20/2, measuring 2 bigha and 8 biswas would show that the name of the

appellants Partap Singh and Mahabir Singh had been recorded therein in Column No. 4. During Kharif season, crop of Dhancha has been recorded in respect of the aforesaid land on 21.09.1995. Wheat crop is recorded in Rabi season on 19.02.1996. The Khasra Girdawari for the year 1996-97 in respect of the land comprised in rectangle No. 28 and Khasra No. 19/2, measuring 2 bighas 8 biswas, 20/2 again measuring 2 bigha and 8 biswas, 21 measuring 4 bigha 16 biswas, 22/1, measuring 3 bigha 4 biswas would show entry of the crop of bajra in Khasra No. 19/2, Dhancha in Khasra No. 20/2, 21 and 221/1 during Kharif season on 12.09.1996 and wheat during rabi season on 17.02.1997. The same is the position in respect of the land comprised in Khasra No. 24 and 25 of rectangle No. 29, in the name of the appellants Partap Singh and Mahabir Singh.

8. The unrebutted deposition of the appellant Mahabir Singh before the Reference Court finds ample corroboration from the entries made in the Khasra Girdawari. In my view, land from which earth to the extent of 2-3 feet has been dug out cannot be used for cultivating the crop such as wheat. I, therefore, find no merit in the contention of Mr Pathak that no inference with respect to the land in question being even land can be drawn from the Khasra Girdawari relied upon by the appellant.

9. In my view, the unrebutted deposition of the appellant Mahabir Singh, corroborated by the entries made in the Khasra Girdawari, when examined in the

light of the fact that no evidence was led by the respondent to rebut his deposition either by way of producing same documentary evidence or by examining of a witness to prove digging out of earth from the land of the appellants was sufficient to prove that the land acquired from the appellants was cultivable land from which no earth was taken out.

10. The learned Additional District Judge rejected the oral deposition of Mr Mahabir Singh on the ground that the Patwari had not been produced by the appellants, without taking note of the fact that the aforesaid deposition found ample corroboration from the entries made in Khasra Girdawaris and also without appreciating the fact that no evidence had been led by the respondent to rebut the deposition of Shri Mahabir Singh. The learned Additional District Judge was of the view that the appellants ought to have examined the concerned Patwari to show that the earth had not been removed from the land in question. I, however, cannot agree with the reasoning adopted by the learned Additional District Judge. Once, evidence was led by the appellants in the form of affidavit of the appellant Mahabir Singh, who had personal knowledge in respect of the state of the land acquired from the appellants and his deposition also found corroboration from the Khasra Girdawaris, which are prepared none other than the Patwari of the village, it was not necessary for the appellants to examine the Patwari. If the respondents wanted to rebut the deposition of the appellant Mahabir Singh, it was for them to produce

the Patwari of the village to prove that earth had been dug out from the land acquired by the appellants.

11. Pointing out to Column 18 in the khasra girdawari, Mr Pathak contends that since the land in question has not been recorded as leveled, in Column 18 whiel describing the class of land, it would not be possible to say that the land acquired from the appellants was leveled land from which no earth had been taken out. I, however, cannot agree with Mr Pathak. A perusal of the heading of Columns 18 and 19 would show that it applies only to uncropped land and the details of uncropped land is rebutted to be given in Columns 18 and 19. Column No. 18 is meant to describe the class of such uncropped land, whereas Column No. 19 is to give the area of such uncropped land. Since the land acquired from the appellants is recorded as cropped land, obviously, Columns 18 and 19 of the Khasra Girdawari were not applicable and that is why there is no entry in these columns of Khasra Girdawari.

12. For the reasons stated hereinabove, I am of the considered view that the Land Acquisition Collect was not justified in categorizing the land acquired from the appellants as category 'B' land.

13. In view of the above, the award is modified to the extent that the following land acquired from the appellants is to be categories as category 'A' (Block 'A' land).

The appellants are entitled to compensation in respect of the above-referred land at the rate of Rs 8,96,640/- per acre. The appellants shall also get all such benefits to which they are entitled in law along with statutory interest, i.e., at the rate of 9% per annum for the first year from the date of dispossession and, thereafter, at the rate of 15% per annum till the date of payment.

V.K. JAIN, J

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