

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on 23.11.2023
Pronounced on 30.12.2024

RFA NO. 05/2021

UT of J&K and Anr.

....Petitioner(s)/Appellant(s)

Through :- Mr. Ravinder Gupta, AAG

V/s

Vishal Chibber and Ors.

....Respondent(s)

Through :-

None

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

Judgment

01. This appeal has been filed against the judgment and decree dated 21.08.2020 passed by the Principal District Judge, Rajouri, in Reference File No. 21/L. A. Act under Section 18 of the Land Acquisition Act whereby the amount of compensation was enhanced to Rs. 8 Lac per kanal plus 15 % Jabrana in favour of respondent Nos. 1 to 5.

02. The said decree passed by the trial Court has been challenged in this appeal and decree is sought to be set aside precisely on the ground that judgment and decree which is contrary to the facts has been passed in violation of the provision of Land Acquisition Act and the trial Court has failed to appreciate that neither there

was any market at village Hanjana in Village Qasba Pain, Tehsil Nowshera nor there is any college, industry or hospital. Bazar of Nowshera and Bus Stand are situated at the distance of more than 1 KM from the land in question and it takes about half an hour to reach Nowshera Bazar and Bus Stand. The sale deed relied upon was regarding small piece of land measuring 10 Marlas and 01 Sarsai, and by no proportion, same could be taken as rate for huge chunk of land measuring 17 Kanals and 10 Marlas. The compensation to be awarded must be just and reasonable and neither should be windfall nor must be a pittance. The rate fixed by the trial Court on the basis of said sale deed and documents produced by the respondents is totally outcome of mis-appreciation of evidence and was based upon surmises and conjectures. The concept of just and reasonable compensation has been observed in breach.

03. The respondents have failed to examine any witness to prove relevant factor to determine the market value of the land acquired.

04. Brief facts are that the land measuring 17 Kanals and 10 Marlas in village Hanjana Qasba Pain, Tehsil Nowshera was acquired for the public purposes, for construction of roads/approach roads to motorable bridge at village Hanjana situated at Qasba Pain, Tehsil Nowshera under (CRF) by PWD and R&B). After completion of the acquisition proceedings, final award was passed by the Collector Land Acquisition on 01.12.2012 and compensation was awarded for the land measuring 6

Kanals and 8 marlas at the rate of Rs 5 Lakh per Kanal and for remaining 11 Kanals and 2 Marlas, compensation at the rate of Rs. 4 Lacs per Kanal and Jabarana 15 % of the land.

05. The respondents were not satisfied with the compensation so awarded, approached the Collector for making reference under Section 18 of the Land Acquisition Act and accordingly, reference was made.

06. The reference Court on the pleadings of the parties, framed following issues in the case which are as under:-

- (i) **Whether the Collector has failed to assess the market rate of the acquired land as per prevailing market value? OPP**
- (ii) **In case the issue No. 1 is proved in affirmative, what is the just and proper compensation to which the claimants are entitled to? OPP**
- (iii) **Relief OP parties.**

07. After recording the evidence, the trial Court while deciding the issues on the basis of evidence produced held that market value of the land acquired was Rs. 8 Lac per Kanals and, accordingly, enhanced the compensation awarded by the Collector to Rs. 8 Lacs per Kanal.

08. The question now arises as to whether the compensation awarded by the Collector which was at the rate of Rs. 5 Lac and Rs. 4 Lacs per Kanal and Jabarana is appropriate and just compensation or not and whether the reference Court has rightly held the market rate of land and enhanced it to Rs. 8,00,000/- from Rs. 5,00,000/- and

Rs. 4,00,000/-. The matter to be considered in determining compensation is given in Section 23 of Land Acquisition Act which is reproduced as under.

**23. Matter to be considered in determining compensation –
(1) in determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration –**

First, the market value of the land at the date of the publication of the declaration relating thereto under Section 6;

Secondly the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of serving such land from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property moveable or immovable in any other manner, or his earning;

Fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and .

Sixthly, the damage (if any) bona fide resulting from diminution of the Section, 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition.

09. It would be evident from the record of the file that the award passed by the Collector, that the Collector while passing the award of compensation has not taken note of the stipulation under section 23 of Act. The affect of acquiring the land would deprive the owners from their the land and would affect source of livelihood which fact has not been taken into consideration while passing the award in question. The right to property is constitutional right as provided under Section 300-A of the Constitution of India. The term compensation is interpreted as just, equivalent of

what the owner is deprived of. Hence the acquisition must pass the test of compensation being reasonable, just and fair.

10. Hon'ble Supreme Court in **Mohammad Yusuf and others. V. State of Haryana and others had held that** "Compensation should be adequate and there must be no injustice with the landowners since they stand deprived from their right to property. At the same time, it is also to be kept in mind that no hypothetical view shall be taken as it may be harmful to the public exchequer in case of acquisition for public purposes. Hence, courts must maintain balance between both parties. In Case of land acquisitions, generally courts are confronted with the short but important question that what ought to be ideal market value for the acquired land".

11. The market rate of the land in question has fixed by the Government was Rs. 8 Lacs per Kanal which fact has not been taken into consideration by the Collector while the determining the market value of the land in question for determining the compensation the collector has awarded the compensation at the rate of 5 Lacs per Kanal and 4 Lac per kanal with 15 % Jabrana. When the market value fixed was Rs. 8 Lacs per kanal it is s not know of what basis the Collector has fixed the market value of the land in question at Rs. 5 lacs and Rs. 4 lacs per kanal the market rate of fixed by the Government can be taken into consideration and taken to be market of the land in question in the absence of any other evidence determining the same, in the event claims market rate more than the rate fixed by the Government it is for 07.31. seem to establish that the rate has fixed less than the actual market rate of the land acquired otherwise in the absence of such evidence which prove the market rate fixed by the Government it would be proper to take the said rate fixed by the Government rate as a market in order to determine just and fair compensation to be awarded to the land owners whose land has been taken away for any public

purpose there is no evidence at all collected by the Collector while passing award showing that the market value was less than the market rate determined fixed by the Government.

12. The market rate of the land in question as fixed by the Government is Rs. 8 Lacs per kanal and this fact has not been taken into consideration by the Collector while passing the award in question. In case the market rate would be more than the rate fixed by the Government, in that event, the owner has to prove that the market value is more than the rate fixed by the Government, who claims its price or market rate more than that or if the market rate is claimed to be lesser than it by the opposite side, then it is that party, who claimed that the market rate is lesser than the rate fixed by the Government. To prove the same, none of the parties, had in this case produced any evidence to establish that market rate was either more than the rate fixed by the Government or less than the rate fixed by the Government, therefore, in such circumstances when there is no other evidence available on record, it would be just and proper to take market rate fixed by the Government as market rate of the land in acquisition.

13. It is true that the Sale Deeds with regard to small parcel of the land cannot be the basis for determining the market value of larger chunk of land, but in the absence of any evidence, the sale consideration in those Sale Deeds could be taken into account as same can be guideline for determining appropriate compensation. The rate in such sales cannot be the market value but could help in determining appropriate cost of the land.

14. It is also not clear from the record that what were the basis on which the Collector had determined the market value at the rate of Rs. 5 Lacs and Rs. 4 Lacs per Kanal when there was no such evidence to that effect. The award would also

show that Collector had admitted in the award that Tehsildar Nowshera had reported vide his communication No. OQ/772 dated 30.02.2011 that the sale and purchase rate of the land from the last 3 years was 9685/- per Marla but the market rate was Rs. 10 Lac and 8 Lac per Kanal for commercial and residential purpose respectively, but the Collector appears to have not considered the report of the Tehsildar which has given the rate between 8 to 10 lacs per kanal during the last three proceeding years. In the Collector's meeting held on 08.08.2011 under the Chairmanship of District Collector Rajouri, the rate of Rs. 10 Lakh per kanal plus 15% Jabrana was decided to be adopted and in this case but later on, the Collector visited the spot and submitted report in the Collector's meeting held on 09.04.2012 in which rate of Rs. 5 lac per kanal and Rs. 4 lac per kanal for the rest of the land was approved, therefore, the rates which were adopted by the Collector was without any basis and without any evidence having been produced before him.

15. Having regard and what has been stated above while going to the judgment passed by the trial Court deciding the issue with the regard to the market rate of the land in question. It is found that the trial Court has properly appreciated the evidence and findings returned by the trial Court with regard to the rate of the land acquired Rs. 8 lac per kanal cannot be faulted with therefore, no good is made out for interference with the impugned judgment passed by the trial Court and award of compensation at the rate of Rs. 8 Lacs has upheld, therefore, this appeal is, accordingly, **dismissed**.

(Vinod Chatterji Koul)
Judge

Jammu:
30.12.2024.
Javid Iqbal

