

Neutral Citation No. - 2024:AHC-LKO:6443

Court No. - 4

Case :- FIRST APPEAL No. - 42 of 2011

Appellant :- Krishi Utpadan Mandi Samiti Gonda Through Its Sabhapati

Respondent :- Ashfaq And Ors.

Counsel for Appellant :- Ravi Nath Tilhari, Naresh Chandra Mehrotra

Counsel for Respondent :- G.P.Mishra, Dharm Raj Mishra

Hon'ble Rajnish Kumar,J.

1. Heard Shri Naresh Chandra Mehrotra, learned counsel for the appellant and Shri Dharm Raj Mishra, learned counsel for the respondents. Learned Additional Chief Standing Counsel is present for the respondents no. 6 and 7.

2. The present First Appeal has been filed under Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure, 1908 against the judgement and award/decreed dated 01.04.2011 passed by the Additional District Judge, Court No. 2, Gonda in Land Acquisition Reference No. 5 of 2007 (Tahir Mohammad @ Dularey (deceased) and others vs. Land Acquisition Officer Gonda and others) whereby partly allowing the reference in favour of the claimants/respondents no. 1 to 5 and modifying the award of the Special Land Acquisition Officer, Gonda passed in Case No. 13/14 dated 14.2.2007 to the effect that the compensation shall be paid @ Rs. 26,00,000/- per acre (residential) for the entire acquired land of the claimants.

3. There is consensus among the learned counsel for the parties that the case in hand is covered by the judgement and order dated 10.1.2017 passed in a bunch of appeals, the leading of which is First Appeal No. 7 of 2011 (Krishi Utpadan Mandi Samiti Gonda vs. Mohammad Naeem and others) in regard to the same acquisition proceedings. It is also not disputed that the Khata No. 663 involved in the present case is also involved in the said bunch of appeals in First Appeal No. 8 of 2011.

4. The judgement and order dated 10.01.2017 passed in bunch of appeals, leading of which is First Appeal No. 7 of 2011, on reproduction reads as under:-

"1. All these appeals under Section 54 of Land Acquisition Act, 1894 (hereinafter referred to as "Act, 1894") read with Section 96 of Code of Civil Procedure have arisen from the judgment and award dated 20.10.2010 passed by Sri Shyam Bihari Shrama, Additional District Judge, Court No.2, Gonda in Land Acquisition Reference (hereinafter referred to as "LAR")No. 10 of 2007 (Mohammad Naeem and another Vs. Land Acquisition Officer Gonda and others); LAR No. 04 of 2007 (Mubarak Ali Vs. Land Acquisition Officer Gonda and others); LAR No. 08 of 2007: Mohammad Haneef Vs. Land Acquisition Officer Gonda and others) and LAR No. 02 of 2007 (Mohammad Haleem Vs. Land Acquisition Officer Gonda and others) respectively.

2. As requested and agreed by learned Counsel for the parties, these appeals could have been decided without any formal preparation of paper-book, we hereby dispense with requirement preparation of paper book and proceed to decide these appeals on the basis of record of appeals.

3. Heard learned counsel for the appellant and perused record.

4. These are 04 appeals. A Chart giving details of names of land owners, Khasra No., Area, LAR No., date of award and village, is given as under:

<i>SL. No.</i>	<i>First Appeal No.</i>	<i>LAR No.</i>	<i>Date of Award</i>	<i>Khata No./Gata No.</i>	<i>Area in Acre</i>	<i>First Name of tenure holder</i>	<i>Village</i>
<i>I</i>	<i>2</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>
<i>1.</i>	<i>07 of 2011</i>	<i>10 of 2007</i>	<i>20.10.2010</i>	<i>76,77 and 95</i>	<i>0.68</i>	<i>Mohammad Naeem</i>	<i>Laxmanpur</i>
<i>2.</i>	<i>08 of 2011</i>	<i>04 Of 2007</i>	<i>20.10.2010</i>	<i>663</i>	<i>0.81</i>	<i>Mubarak Ali</i>	<i>Gird Gonda</i>
<i>3.</i>	<i>09 of 2011</i>	<i>08 of 2007</i>	<i>20.10.2010</i>	<i>663, 664, 652, 563, 654, 655 & 658</i>	<i>2.93</i>	<i>Mohammad Haneef</i>	<i>Gird Gonda</i>
<i>4.</i>	<i>12 of 2011</i>	<i>02 of 2007</i>	<i>20.10.2010</i>	<i>652, 657 & 658</i>	<i>0.20</i>	<i>Mohammad Haleem</i>	<i>Gird Gonda</i>

5. For construction of "Naveen Mandi for Fruits and Vegetables" at Gonda, appellant sought acquisition of 26.837 acres (10.86 Hectares) of land at Villages Gird Gonda (Rural) and Laxmanpur, Pargana, Tahsil and District Gonda.

6. The State of U.P. consequently issued notification under Section 4 (1) read with Section 17 of Act, 1894 in U.P. Gazette dated 12.08.2005. Declaration under Section 6 (1) read with Section in U.P. was published in Gazette dated 02.12.2005.

7. The possession of acquired land was taken by Collector on 21.01.2006. Special Land Acquisition Officer (herein after referred to as "SLAO") made award dated

14.02.2007 under Section 11 of 1894 determining compensation in respect of land acquired at village Laxmanpur at the rate of Rs. 1,79,323.31 per acres relying on sale deed No.05 besides other dues like consortium, additional compensation and interest as per various provisions of Act, 1894.

8. Dissatisfied with the aforesaid market value determined by SLAO, land owners/claimant-respondents made applications under Section 18 of Act, 1894 to Collector, Gonda for making reference to District Judge, Gonda for determination of market value applying principles laid down under Section 23 of Act, 1894. Reference Court has partly accepted claim of land owners and determined market value of acquired land as 26,000,00/- per acres.

9. The only point for determination in these appeals is "whether market value determined by Reference Court is justified or excessive as claimed by appellant".

10. SLAO in fact determined different rates for land which was in village Gird Gonda and Laxmanpur. In respect to the land at Gird Gonda, he determined market value of land which was on the road side considering it as "residential", and which was at the back side by applying rates of agricultural land. It determined market rate of residential land at Rs. 43,33,333.33 per acre, but depending on the quality of land it further reduced market value as under:

	किस्म जमीन	सकि० रेट	दर प्रति एकड	अर्जित क्षे० एकड
आवासीय भूमि का बैनामा संख्या 101 के आधार पर	-	-	4333333.33	0.154 प्रथम बेल्ट
20% कटौती के बाद			3466666.66	0.306 प्रथम बेल्ट
मूल दर में 33 1/3% कटौती के बाद			2888888.89	0.317 द्वितीय बेल्ट
20% कटौती के बाद			2311111.11	0.203 द्वितीय बेल्ट
मूल दर में 50% कटौती के बाद			2166666.66	0.507 तृतीय बेल्ट
20% कटौती के बाद			1733333.33	0.023 तृतीय बेल्ट
कृषि भूमि बैनामा संख्या - 147 के आधार पर	मटियार 1	5.8	3,11,270.12	2.96
	दोमट 3	5.3	2,84,436.49	1.59
	योग	-	-	6.052 एकड

	Type of Land	Circle Rate	Rate per Acre	Acquired Area in Acre
Of Residential Land on the basis of Sale-deed Number-101	-	-	4333333.33	0.154 First Belt
After 20% deduction			3466666.66	0.306 First Belt
After 33-1/3% deduction in original rate			2888888.89	0.317 Second Belt
After 20 % deduction			2311111.11	0.203 Second Belt
After 50% deduction in original rate			2166666.66	0.507 Third Belt
After 20 % deuction			1733333.33	0.023 Third Belt
Of Agricultural Land on the basis of Sale deed Number-147	Matiyar I (Clayey 1)	5.80	3,11,270.12	2.957
	Domat 3 (Loam Soal 3)	5.30	2,84,436.49	1.590
	Total	-	-	6.052 Acre

(English Translation by Court)

11. However; in respect of land at Village Laxmanpur, he determined market value at Rs. 1,79,323.31 per acre on the ground that entire land was agricultural and no part thereof was on "main road" or "sub road", hence market value is to be determined at the rates admissible to agricultural land.

12. Reference Court held that market value determined by treating land as "residential" at Rs. 43,33,333.33 per acre was justified to be applied in all cases except LAR No. 02 of 2007. Applying 40 % deduction on the aforesaid market rate to 43,33,333.33, Reference Court determined market value at Rs. 26,000,00/- per acre (Rs. 642.47 per square meter).

13. In LAR No. 02 of 2007 it has determined compensation at Rs. 700/- per square meter by applying 50 % deduction on the circle rate determined by Collector, Gonda. For applying a slightly higher rate of Rs. 700/- per square meter in LAR No. 02 of 2007, Reference Court has observed that acquired land of claimant/land owner was very small piece of land i.e. 808.20 square meter only, while in respect of other land owners, area of acquired land was much bigger.

14. Therefore, so far as First Appeals 08 and 09 of 2011 are concerned, we find that in effect market value determined by Reference Court has not resulted any noticeable increase or enhancement than market value determined by SLAO while in First Appeal No. 07 of 2011, market value has substantially increased.

15. Reference Court has found that out of total acquired land i.e. 26.837 acres, 6.052 acres land was in village Gird Gonda and 20.78 acres was in village Laxmanpur. Land in both the villages were adjacent and acquired under the same acquisition notifications having similar nature of land advantages, potential etc. Therefore, there was no justification for applying different rates in the land comprising in two villages.

16. Learned counsel for appellant did not dispute before us that entire land is a conjoint piece of land though falls in two villages and was acquired for same purpose under same acquisition notification. It is also not disputed that acquired land was situated in an area which was considerably developed and has commercial and other establishments in vicinity. The land was also being sold for residential purposes. School, College, Factory, Petrol Pump and Aabadi were all in the vicinity of acquired land. That being so, the reason assigned by Court below for applying same rate in both the villages is wholly justified and it cannot be said that Reference Court has erred in applying same rate in respect of land in dispute, which was in two villages.

17. Moreover, deduction applied by SLAO was 20 to 50 % while Reference Court has applied an uniform single deduction at 40%. When called upon learned counsel for appellant could not show as to why land in Laxmanpur ought to have been valued at a different rate, when it was also acquired under the same acquisition notification and had similar characteristic as the land in Gird Gonda. As we have also pointed out that determination of market value by Reference Court is based on objective consideration in as much as SLAO divided land on the basis of nature of soil in different categories and applied deduction of 20 to 50 % while entire land had similar potential and nature of soil etc had no substantial bearing to determining potential of land in question, hence there was no justification to apply different rates. Reference Court, therefore, rightly applied a single and uniform deduction of 40% and determined market value accordingly.

18. In view thereof, we answer the question formulated above against appellant and in favour of claimant-respondent.

19. Dismissed.”

5. In view of above and consensus among learned counsel for the parties, the present appeal is **dismissed** in terms of the aforesaid judgement and order dated 10.01.2017. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 23.1.2024

Shravan