

Court No. - 20

Case :- FIRST APPEAL No. - 28 of 2010

Appellant :- Krishna Kumar Kalra (Since Deceased) Through His Lr'S

Respondent :- U.P.Khadi And Village Industries Board Lko.Through Its

Counsel for Appellant :- V.N.Singh,Avinash Chandra

Counsel for Respondent :- Pankaj Patel

CONNECTED WITH

Court No. - 20

Case :- FIRST APPEAL No. - 4 of 2010

Appellant :- U.P. Khadi And Village Industries Board Lucknow Thru C.E.O.

Respondent :- Krishna Kumar Kalra S/O Late Thakur Das Kalra And Anr.

Counsel for Appellant :- Ashok Kumar Pandey,Pankaj Patel

Counsel for Respondent :- Avinash Chandra,Vishvanath Singh

Hon'ble Shekhar Kumar Yadav,J.

1. Heard Sri Avinash Chandra, Learned Counsel for the appellant and Sri Pankaj Patel, Learned Counsel for the respondent representing U.P. Khadi & Village Industries Board and Learned Counsel for the State.

2. The aforesaid two appeals have been filed against the order dated 15.10.2009, passed by the Presiding Officer, Municipal Tribunal, Lucknow in Misc. Case No. 11 of 2006 (Krishan Kumar Kalra Vs State of Uttar Pradesh & Others) under Section 18 of the Land Acquisition Act, 1894. First Appeal No. 4 of 2010 has been filed by U.P. Khadi & Village Industries Board, Lucknow through its Chief Executive Officer (U.P. Khadi & Village Industries Board Vs Krishna Kumar Kalra & Another), hereinafter referred as Respondents and First Appeal No. 28 of 2010 has been filed by Krishna Kumar Kalra (Krishan Kumar Kalra Vs U.P. Khadi & Village Industries Board & Another), hereinafter referred as Claimants. During pendency of the appeal, Krishna Kumar Kalra died and as such, his legal heirs are substituted on the record. Since both the Appeals have been filed against the same order dated 15.10.2009, hence the same are being decided by this common order.

3. The adumbrated facts of the case are that admittedly, a notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 was published on 14.01.2003 acquiring 5600 sq. ft. of land bearing Plot No. 3-B, situated at Peerpur House, 8, Tilak Marg, Lucknow. Thereafter a notification under Section 6 of the Land Acquisition Act, 1894 was published on 19.02.2004. The award was pronounced on 19.01.2006 whereby the Collector awarded Rs. 640/- per sq. ft. as price of the land on which 30% solatium was granted and in addition compensation @ 12% was awarded in the award dated 19.01.2006.

4. Being aggrieved with the award dated 19.01.2006, the claimant filed Reference under Section 18 of the Land Acquisition Act, 1894. In his Reference, the claimant claimed that the Land Acquisition Officer erred in arriving the market value of the land and the method of arriving at such price was also wrong. He claimed that out of total land only 5600 sq. ft. land has been acquired, and, therefore, he is also entitled to compensation for injuries due to severance. He stated that the appellant is entitled for compensation at market value as per the provision of Section 23 of the Land Acquisition Act, 1894. He further stated that because of location of the plot it has commercial value. The frontage of the land acquired is 70 sq. ft. Adjacent to the plot in question, Narmada Bhawan, which is office of Gujarat Narmada Fertilizer Corporation, is situated. He further claimed that after 2-3 plots, U.P. Ganna Sanasthan is established in which there is a huge Auditorium. Apart from the aforesaid the Branch of Oriental Bank of Commerce is also located in the compound of Ganna Sanasthan. From, one end to the other there are several important buildings of various offices such as M/s. Amadeus, M/s. Biotech & Pharmaceutical, M/s. Pritam Pharma, Jolly Star Tech, M/s. Aventis Pharma Limited etc. On the other side of the land various multistoried buildings and hospital are situated on the same road.

5. It has been informed by the Learned Counsel for the claimant during course of argument, which fact is not disputed by the respondent, that Butler Palace Colony, which is the official residence of State Government officials, Dalibagh Officers Colony, Vidhayak Niwas and VVIP (Nemisharan) Guest House, VIP Guest House, official resident of the Learned District Judge, Lucknow, office of Dainik Jagran the famous daily news, Times of India, Amar Ujala are located within 100 to 500 meters in the vicinity of the plot in question.

6. In the Reference the claimant claimed that the plot in question has a commercial value and is of very high potential and as such, he is entitled for commercial value of the plot in question and claimed that a compensation @ Rs.890/- per sq. ft. should have been awarded to him.

7. Written Objections were filed before the Mahanagar Palika Tribunal, Lucknow by the State as well as U.P. Khadi & Village Industries Board. Since the State has not filed any Appeal against the order dated 15.10.2009, passed by the Learned Tribunal, and, therefore, this Court is not inclined to discuss and deal with the objections, filed by the State.

8. The respondent/U.P. Khadi & Village Industries Board in First Appeal No. 4 of 2010 by filing Objections opposed the claim of the claimant and asserted that the award passed by the Special Land

Acquisition Officer is absolutely proper and adequate. The award represents the correct market value of the property in question. It has further been averred that the claimant is not entitled for any claim towards severance as the remaining portion of the land, which is 5600 sq. ft., was also acquired vide notification dated 01.12.2006 followed by Section 6 notification dated 02.03.2007. Thus, complete land has been acquired, as such, no severance is caused for which any compensation is to be paid. It has also been stated by the respondent that the land in question, is situated in residential area and not a commercial area. The land use has not been changed by the Lucknow Development Authority. Narmada Bhawan is the residential building and not a commercial building. Ganna Sansthan is an institution under office of the Cane Commissioner and is for promotion of cane farming in the State of Uttar Pradesh and the same has special purpose and is not a commercial institution. The other offices mentioned by the claimant are not situated on commercial plot. It has been asserted that U.P. Khadi & Village Industries Board's Headquarter office is situated next to the land in question. The land has been acquired for social purpose of establishing Self Employment Advice & Guidance Centre with a purpose of promoting the Khadi & Village Industries for unemployed youths, in the rural areas, which by no stretch of imagination can be termed as commercial activity.

9. It has further been asserted that the original claimant for the first time filed an application for impleadment in Execution Case No. 44 of 2001, which was filed by one Smt. Shakuntla Sood for execution of decree in Regular Suit No. 432 of 1989. Since neither the Trial Court nor any other Court has awarded any compensation in favour of the plaintiff of the Regular Suit, as such, no compensation can be awarded to the claimant, who came into picture on 27.09.2002.

10. It has further been stated in the Objection before the Tribunal that the land is not situated on 100 ft. wide road as claimed by the claimant. Thus while denying the claim of the claimant it has been stated that the Reference is liable to be dismissed and the compensation / award of Rs. 640/- per sq. ft. is appropriate and adequate and no higher compensation should be awarded.

11. The Tribunal after considering the submissions and averments of both the parties framed the following issues:-

- (i) Whether the compensation awarded by the Special Land Acquisition Officer with respect to the market value of the land in question, is inadequate and insufficient ?
- (ii) Whether the Reference of the claimant is maintainable ?

- (iii) Whether the referencer is entitled to claim benefit of protection of Land Acquisition Act ?
- (iv) Whether the Reference is time barred ?
- (v) Whether the referencer was owner of the land in question, at the time of acquisition, if yes, the affect thereof ?
- (vi) Relief, if any.

12. During hearing of Reference the Issue Nos. (ii), (iii), (iv) and (v) were neither pressed nor any evidence in this regard was submitted by the respondent, U.P. Khadi & Village Industries Board, as such, the same was decided against them.

13. The only Issue No.(i) and Issue No.(vi) with regard to the adequacy of compensation awarded by the Special Land Acquisition Officer as well as the relief claimed by the claimant, were agitated between the parties and both the parties have led their evidence in this regard. The Tribunal on the evidences and submissions made by the parties, enhanced the compensation awarded by the Special Land Acquisition Officer from Rs. 640/- per sq. ft. to Rs.768/- per sq. ft. giving 20% growth to the land value. The Tribunal further directed that as per the provision of Section 23 (2) of the Land Acquisition Act, 30% solatium will be payable to the claimant and interest of 9% shall be payable from 30.11.1987 i.e. the date on which the possession was taken for the first year and thereafter simple interest of 15 percent per annum shall be payable to the claimant.

14. Being aggrieved by the aforesaid order dated 15.10.2009, the claimant and the respondent have preferred their respective Appeals before this Court.

15. In the Appeal filed before this Court the claimant has substantively claimed that the Learned Tribunal while passing the Reference order could not appreciate the evidence submitted by him with regard to the fair market value and the commercial nature of the land in question. It is averred that the Court below failed to consider the evidence of the claimant that in the vicinity, the land was sold @ Rs.1150/- and as such, no compensation less than Rs.1150/- could have been awarded to him. The Tribunal without considering the market value has simply enhanced the rate with 20% growth, which is too less. Thus he prayed for modification of award of compensation to the claimant @ Rs.1150/- per sq. ft. instead of Rs.768/- per sq. ft. and has further prayed that the amount be directed to be paid to the claimant with interest and other statutory benefits.

16. The respondents while challenging the judgement and award dated 15.10.2009 in its cross appeal has claimed that the Tribunal could not appreciate the documents and sale deeds filed by the appellant Khadi Board in correct prospective. It has further been asserted that no enhancement more than 10% could have been given. Respondents/ Khadi Board has also claimed that the Learned Tribunal could not consider the title of the claimant and he has stated that he is not entitled for any compensation and no award could have been passed in his favour. It has been stated that the claimant has purchased portion of the total property merely on 04.12.1999 and as such, interest could not have been awarded to him on 30.11.1987.

17. Since the title of the claimant Sri Krishan Kumar Kalra to claim compensation has neither been contested nor any evidence in this regard have been submitted before the Court below and therefore, the same cannot be agitated before this Court. Further it has not been disputed at any point of time nor any evidence contrary to it has been placed before the Court of Reference in order to dispute that the Khadi Board was not in possession over the land in question, since 30.11.1987.

18. As per record, it is an admitted position that the land in question, was purchased by the claimant prior to the issuance of notification under Section 4 of the Land Acquisition Act, 1894 and, therefore, all rights vested in the original owner will vest in the claimant and if the previous owner is entitled for any interest, compensation or otherwise damages for wrongful possession of the land, the claimant will automatically be entitled for the same. Thus the contention of the respondent U.P. Khadi & Village Industries Board that the claimant is not entitled for interest from 30.11.1987 and is entitled for interest on the compensation from 14.03.2005 i.e. the date of possession only, is misconceived and is liable to be rejected. It is also liable to be rejected as neither any pleading has been made nor any evidences have been shown to prove that occupation over the land in question, was not with U.P. Khadi & Village Industries Board from 30.11.1987 and the same is actually been taken only on 14.03.2005. Since as per record the Khadi Board have been in possession over the land in question, from 30.11.1987, and, therefore, damages for illegal occupation and use should have also been awarded by the Reference Court. However, since the claimant has not claimed damages for illegal occupation of land and as such, court is not inclined to grant any damages for illegal use and occupation.

19. From the records and pleadings it is apparent that virtually the only Issue, which has been contested before the Reference Court was

the appropriate value of the land in question and the appropriate compensation, which should have been awarded in favour of the claimant. Thus the only issue, which is to be adjudicated by this Court is:-

“whether the Special Land Acquisition Officer has determined the correct compensation as per the market value of the land and whether the compensation awarded by the Special Land Acquisition Officer in the award and subsequently enhanced by the Tribunal, is inadequate.

20. The Learned Counsel for the claimant relied on the case of **Mohd Ismail Vs Secretary of State reported at AIR 1936 Lahore 599**. He submitted that though the case is very old but the principle of law laid down in the said judgement still holds the field and is being continuously relied upon. On the basis of the aforesaid judgement he submits that the market value of the property should be determined not necessarily to its present disposition but it should be on the basis that out of several uses the most lucrative and advantageous way in which the owner could dispose it of. He further argued that the potential of the land should be judged not merely by the present use but also by reference to the use to which it is reasonably capable of being put in future.

21. While citing the judgement, passed by the Hon'ble Supreme Court in **Chiman Lal Hargovinddas Vs Special Land Acquisition Officer, Poone & Another reported at AIR 1988 Supreme Court 1652**, he argued that the comparative sale price of the land has an important role in determining the compensation for the land acquired.

22. It is further contended that the land in question, is situated in a posh area of Lucknow, which was considered as a VIP area at the time of acquisition and continue to be the same till date. The official residence of District Judge, Lucknow, VIP Guest House, official residence of Class-I Officers, Judges and Judicial Officials (Butler Palace Colony), Ganna Sansthan, Narmada Bhawan, which is the office of Gujarat Narmada Fertilizer Corporation (adjacent to the plot in question) and other several multistoried buildings including 'Vidhayak Niwas' were situated within a distance of 100 to 500 meters on the same road. Apart from the aforesaid, several Newspaper offices such as Times of India, Dainik Jagran, Amar Ujala are also situated in the vicinity.

23. It is an admitted position, which is also proved from the record that the land was acquired for the purpose of establishing Guidance Centre and Distribution Centre for various products of Village & Cottage Industries and also the office of U.P. Khadi & Village Industries Board.

24. It is further submitted that during Reference a specific evidence in the form of oral statement of PW-1 Sri R.C. Nigam was placed before the Tribunal, who has stated in his testimony that he was interested to purchase a portion of the aforesaid plot and has offered Rs.1150/- per sq. ft. but the claimant has refused the same. It is important to note that Sri R.C. Nigam was a Retired District Judge and was a Chairman of Consumer Forum.

25. Further an oral testimony of one Sri Raghunandan Arora as PW-2, who was the Managing Director of a Real Estate company titled as M/s. Fairdeal was also placed before the Tribunal. In his testimony he has stated that he was interested to purchase the entire plot and has offered Rs.1,000/- per sq. ft. for total 11000 sq ft. as a bulk purchase but the same was also refused by the claimant.

26. Learned Counsel for the claimant argued that the Learned Tribunal has recorded a finding in the impugned judgement and order dated 15.10.2009 that the testimony of the aforesaid both witnesses were reliable and to be admitted in terms of the judgement of the Hon'ble Supreme Court in the case of **Raghubans Narain Singh Vs Government of Uttar Pradesh AIR 1967 Supreme Court Page 465**, however, failed to consider testimony of aforesaid two witnesses while determining the market value and compensation with respect to the land in question.

27. Learned Counsel for the claimant further submits that in order to establish the market value of the land, the claimant has produced various sale deeds in the form of exemplars to show the market value of the land. The claimant produced the sale deed dated 15.04.2005 with respect to the Plot No.3 B, Peerpur House, Tilak Marg as document C-27 (Ga27) wherein 1000 sq. ft. of land was sold for Rs.12 Lacs, which brings out the land value as Rs.1,200/- per sq. ft. Learned Counsel for the claimant emphasized that this is the same plot and, therefore, utmost consideration should have been given to the sale deed, which shows the correct and fair market value of the land.

28. Learned Counsel for the claimant thus claimed that the fair market value of the land as per the statements given by the witnesses and the exemplars submitted by him, is not less than Rs.1,150/- per sq. ft. and the Learned Tribunal below has failed to appreciate the evidence and law. He thus prayed for modification of the order dated 15.10.2009, passed by the Tribunal below and prayed for compensation @ Rs.1,150/- per sq. ft. along with other statutory benefits.

29. On the other hand, the Learned Counsel for the respondent U.P. Khadi & Village Industries Board, Sri Pankaj Patel, vehemently opposed the submissions made by the Learned Counsel for the claimant. He argued that the establishment of Guidance Centre and Distribution Centre for promotion of products of Village & Cottage Industries can in no stretch of imagination be considered as the commercial use. He further argues that the value of the land is to be judged by its recorded land use and not by mere use of the property for particular purpose.

30. Sri Pankaj Patel further argued that even in any case not more than 10% of appreciation can be given as per the law laid down by the Hon'ble Apex Court. He submits that the Board had also filed the exemplars to show the correct market value as document no. C-95 i.e. the sale deed dated 11.05.2007 wherein a property situated at Dalibagh admeasuring 269.516 sq. ft. was sold for Rs.2,90,000/-, which renders the land value as Rs.100 per sq. ft. Document No.C-96 i.e. the sale deed dated 19.10.2007 was also placed on record, which also shows the land value as Rs.100/- per sq. ft., Documents No.C-99 i.e. the sale deed dated 21.06.2006 was also filed wherein a land situated at Dalibagh admeasuring 185.87 sq. meter was sold for Rs.3 Lac, which comes out as land value of Rs.150/- per sq. ft. Thus the land value as claimed by the claimant is not correct and there is no infirmity in the award passed by the Special Land Acquisition Officer, as such, no enhancement of compensation could have been granted by the Learned Tribunal. Thus he prays for setting aside of the order dated 15.09.2009, passed by the Learned Tribunal below.

31. I have considered the submission made by the Learned Counsels of the respective parties.

32. The provision of Section 23 of the Land Acquisition Act, 1894, which provides for factors to be considered while determining the compensation is as under:-

“23. Matters to be considered in determining compensation:

(1)In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration

first , *the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)]**[Substituted by Act 38 of 1923, Section 7, for " 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 Collectors taking possession thereof;*

thirdly , *the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of severing such land from his other land;*

fourthly , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
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 profits of the land between the time of the publication of the declaration under section 6 and the time of the Collectors taking possession of the land.[(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.][Inserted by Act 68 of 1984, Section 15 (w.e.f. 24.9.1984).](2)In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum][Substituted by Act 68 of 1984, Section 15, for " fifteen per centum" (w.e.f. 24.9.1984).]on such market value, in consideration of compulsory nature of the acquisition."

33. The Act of 1894 does not provide any specific definition of the term 'market value' and the same has been left to the wisdom and decision primarily of the Collector and ultimately of the Court. During framing of the Act, 1894 it was understood that the market value simply be the price, which a willing buyer would give to a willing seller.

34. The cardinal principle, which is fundamental rule for the Law of Land Acquisition is 'what one takes must be paid'. Certain factors, which ought to be taken at the time of actual assessment of compensation are nature of land, present use and capacity for a higher potential, its present location in relation to the adjoining land, the use for which neighbouring land has been put, the impact of such use on the land acquired and the purpose for which the land has been acquired.

35. The Hon'ble Supreme Court in **Administrator General of West Bengal Vs Collector (1988) 2 SCC Page 150** and thereafter in **Ram Kanwar Vs State of Haryana (2020) 17 SCC 232** has held that given the statutory intention behind the term market value the natural chronology is that the sale exemplar reflecting the price paid by the

willing buyer to a willing seller would be the most relevant piece of facts for determination of such value.

36. In the case of **V.Subrahmanya Rao Vs. Land Acquisition Zone Officer (2004) 10 SCC 640** the Hon'ble Supreme Court has held that the sale transaction in which the claimant himself is the party, is the best evidence for determination of value for compensation.

37. The Hon'ble Supreme Court in **Viluben Jhalejar Contractor Vs State of Gujarat 2005 AIR (SC) Page 2214** has held that in comparable instances of land for determination of market value there should be proximity from time and situation angle. No mathematical accuracy is required. Further purpose for which acquisition is made is also relevant factor for determination of market value and must be taken into consideration.

38. In the instant case the exemplars of sale filed by the respondent U.P. Khadi & Village Industries Board shows the value of the land, which is even less than the price awarded by the Collector, and, therefore, neither admissible nor relevant for adjudication of the issue.

39. The exemplars of sale deeds filed by the claimant wherein portion of the same land, which has been acquired has been placed on record and the same has not been disputed by the respondent nor any collusiveness has been alleged or argued before this Court or before the Court of Reference regarding the sale deed dated 15.04.2005. The Reference Court had itself recorded the finding that the land is situated in a special zone wherein the residential and commercial value of the land cannot be denied.

40. Further the Reference Court has also recorded a finding that offers received by the claimant to the tune of Rs.1150/- per sq. ft. by Sri R.C. Nigam and Rs.1000/- per sq. ft by PW-2 Sri Raghunandan Arora were genuine and are admissible in evidence.

41. It is also not disputed that the land in question was not acquired for any residential purpose and the same was acquired for establishment of office of U.P. Khadi & Village Industries Board so that it may fulfills its aims and objects and therefore, it cannot be said that the land was acquired for any residential use.

42. The land in question is admittedly situated in a special zone and was having potential for being used for commercial purpose. Therefore, it cannot be said that Rs. 640/- awarded as compensation for the land

on the basis of sale deed dated 01.08.2002 whereby the claimant purchased 4480 sq. ft. of the share from Sri Daljeet Singh with respect to the plot in question @ Rs.640/- was an appropriate compensation.

43. The Reference Court also did not consider the relevant exemplars and the testimony of the witnesses and other factors and merely granted 20% growth to the land, which was not proper.

44. In view of the evidences and exemplars filed by the claimant, the fair market value of the plot in question, cannot be less than Rs.1,000/- per sq. ft. In view of the above the claimant is entitled for compensation at the rate of Rs.1,000/- per sq. ft. The award passed by the Reference Court is modified to the aforesaid extent. Needless to mention that the solatium @ of 30% and interest @ 9 percent for the first year from the date of taking possession and 15% thereafter till the date of actual payment as well as the additional compensation @ 12% as awarded by the Special Land Acquisition Officer as well as by the Reference Court shall also be payable on enhanced amount, as directed by Court below will be payable to the claimant. However, if any, amount has already paid to the claimant the same shall be adjusted at the time of making final payment.

45. Since the claimant is deprived of his lawful rights since 2003 and is compelled to face the litigation for more than a decade, as such, it is pertinent to direct that the necessary compliance shall be made within a period of three months from the date the certified copy of the order is produced before the authorities concerned.

46. Accordingly, the First Appeal No.28 of 2010 is **partly allowed** and the First Appeal No.4 of 2010 is hereby **dismissed**.

Order Date :- 12.7.2024

RKS/Krishna*