BASANT KUMAR ETC. A

*v.*

UNION OF INDIA ETC.

SEPTEMBER 12, 1996

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.] B

*Land Acquisition Act, 1894 :*

*Compensation—Award—All lands cannot and should not be classified as possessed of same market value-Burden on claimant to prove market* C *value—Courts should adopt realistic standards and pragmatic approach in evaluation of the evidence—Doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not good principle—Deduction towards providing amenities like roads, parks, electricity, sewages water facilities etc.—High Court not justified in* D *adopting ad-hoc principle—Claimants entitled to enhanced compensation, interest on enhanced compensation at the rate of 6% per annum and 15% solatium on the enhanced compensation from the date of taking possession till the date of deposit into Court.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4327 of E 1991 Etc. Etc.

From the Judgment and Order dated 8.7.91 of the Delhi High Court in L.P.A. No. 97 of 1980.

P.C. Jain, N.K. Jain and Ms. Sheela Goal for the Appellants. F

The following Order of the Court was delivered :

These appeals by special leave arise from the judgment of the Division Bench of the High Court of Delhi made on July 8, 1996 in Letters Patent Appeal No. 97/80 and other cases. G

Notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') was published on October 24, 1961 acquiring a large extent of 1669 bighas 18 biswas of land for the planned development of Delhi. The said lands are situated in revenue estate of Posangipur. The H

A Land Acquisition Officer categorised the lands into two blocks - Block A and Block B. He assessed the compensation at the rate of Rs. 1400 per bigha for Block A and Rs. 1200 per bigha for Block B. On reference under Section 18, the Additional District Judge by his award and decree dated March 8, 1968 enhanced the compensation to Rs. 3050 per bigha. On B Regular First Appeal, the learned Single Judge dismissed the appeal confirming the award of the reference Court. When the LPA was filed, the Division Bench held that the LPA did not lie.

In *Balbir Singh* v. *Union of India,* in RFA No. 214/68 by judgment dated may 14, 1980, the same was taken on merits in the appeal. Similar C is the case in SLP (C) No. 17055/92 relating to Chhajju in RFA No. 65/69 of the even number dated May 14, 1980. Thus, these appeal by special leave.

The extent of the land involved in *Basant Kumar's* case, viz., CA No. D 4327/91 is not clear as no one is appearing for the appellant. But as regards the appeal of Chhajju, his lands are of an extent of 37 bighas 10 biswas in which his share is one-half. As regards Balbir Singh's lands, he has 66 bighas, 10 biswas in which he has 1/3rd share. The question for consideration is : what will be the reasonable compensation which the lands under E acquisition were capable to secure as on the date of the notification?

Shri N.C. Jain, the learned senior counsel appearing for the appellants, contended that in RFA No. 55/70 *Raghuvir Singh* v. *Union of India,* arising out of the same notification, another Division Bench of the High Court had determined the compensation at the rate of Rs. 8700 per bigha F and less Rs. 500 per bigha for the notified lands; and similar was the view taken by another Bench of that Court in LPA No. 137/80 and batch decided on April 19, 1991 titled *Chet Ram & Ors.* v. *Union of India,* all these lands being situated in the same village, the appellants are also entitled to the same rate of compensation. The Union of India has not filed any appeals G against those cases. The lands are possessed of same potential value and, therefore, the appellants are entitled to the same compensation. We had adjourned the case on the last occasion, as no one appeared for the Union of India; Since, even today, no one is appearing for the Union of India, we have taken assistance of Shri Jain and have waded through the entire H material evidence. The question is : whether the appellants are entitled to

the same compensation as was determined by the High Court in the appeals arising out of *Raghuvir Singh's* and *Chet Ram's* case? It has been firmly settled law by beed role of decisions of this Court that the Judge determining the compensation under Section 23(1) should sit in the arm chair of a willing prudent purchaser in an open market and see whether he would offer the same amount proposed to be fixed as market value as a willing and prudent buyer for the same or similar land, i.e., land possessing all the advantageous features and to the same extent. This test should always be kept in view and answered affirmatively, taking into consideration all relevant facts and circumstances. If feats of imagination are allowed to sway, he out steps his domain or judicial decision and lands in misconduct amenable to disciplinary law. We have gone through the record and judgment in *Chet Ram* case and *Raghuvir Singh* case decided by the two division Benches. The learned Judges have adopted the principle that the entire lands in the village shall be treated as one unit and the compensation shall uniformly be determined on that basis. The principle is wholly unsustainable in law and cannot be a valid ground for determination of compensation. It is common knowledge that even in the same village, no two lands command same market value. The lands abutting main road or national highway command higher market value and as the location goes backward, market value of interior land would be less even for same kind of lands. It is a settled legal position that the lands possessed of only similar potentiality or the value with similar advantages offer comparable parity of the value; It is common knowledge that the lands in the village spread over the vast extent. In this case, it is seen that land is as vast as admeasuring 1669 bighas, 18 biswas of land in the village. So, all lands cannot and should not be classified as possessed of same market value. Burden is always on the claimant to prove the market value and the Court should adopt realistic standards and pragmatic approach in evaluation of the evidence. No doubt, each individual had different parcels of the land out of the vast land. If that principle is accepted, as propounded by the High Court, irrespective of the quality of the land, all will be entitled to the same compensation. That principle is not the correct approach in law. The doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not good principle acceptable for the aforestated reasons. When both the lands are proved to be possessed of same advantages, features etc., the only equal compensation is permis-

A sible.

It is then to be seen that the learned Judges have further pointed out that when the amount claimed in the High Court in appeal under Section 54 was more them what was determined by the reference Court; to what extent of the said amount, as claimed in appeal, could be granted was the B test laid down. It is also obviously on illegal principal. What has to be determined under Section 23(1) is the market value prevailing as on the date of notification published under Section 4(1) but not what was claimed by the parties even pursuant to notice under Section 10 or its reference under Section 18 or grounds of appeal under Section 54. Prior to Amend- C ment Act 68/84 under Section 22(1), the Court had no power to grant higher than was claimed under notice in Section 9 and 10. But now it stood deleted. Even the estimate of the market value given by the claimant is not decisive. Therefore, the principle laid down by the Court in the said two cases is obviously illegal and cannot form a legal basis. Though these D judgments became final, we cannot repeat, on principle of parity, the same illegality.

It is true, as pointed out by the High Court and also stressed very vehemently by Shri Jain, that compensation cannot be determined on the E basis of the face of the claimants or the status of the claimants. Compensation requires to be determined for the land acquired and not on the basis of the status of the person from whom the land was acquired. In *Raghbir Singh's* case as the lands acquired were developed ones, Rs. 9,000 and Rs. 8700 per bigha were determined. It is settled legal position that if the land is already developed then what has to be seen is the nature of development F and money expanded by the developer and as to what was the market value prevailing on that basis as on the date of notification, and what was the situation of the acquired land on that date; all these and other relevant facts have to be taken into consideration and then market value should be determined. Merely because a land is developed or developing land, it G would not be that some compensation is to be adopted to determine the market value for the entire land as a developed land. If it is to be developed, it is settled legal position that at least 1/3rd of the compensation has to be deducted towards providing amenities, like roads, parks, electricity, sewage, water facilities etc. This Court had upheld deduction of H even 60% towards development charges. The High Court, therefore, was

also not right in adopting *ad hoc* principle. A

The question then is : what would be the reasonable compensation which the lands of appellants were capable to secure as on the date of notification? It is seen that the appellants have produced two sale transactions; in respect of land acquired in September 1961 the market B price fetched was not more than Rs. 3250 per bigha; for land acquired in the year 1958 the market value fetched was about Rs. 5000 per bigha. We do not have any material indicating as to what were the reasons behind the sale in respect of those sale deeds and the nature and situation of that land. Under these circumstances, the reference Court rightly had C not placed reliance on the 1958 sale transactions since the appellants have not produced any evidence on record to show whether the lands of the appellants were developed and fit for construction of the houses. Therefore, what we have to consider is that the lands are agricultural lands and possess potential for being used for building purposes only in future D which is not relevant. Therefore, since the lands as on the date of notification were agricultural lands, the value has rightly been determined on the bigha basis instead of yards basis. Since the appellants have produced sale deeds indicating the maximum which was secured, viz., Rs. 3,250 per bigha, necessarily, the appellants would be entitled to the E maximum rate of Rs. 3, 250 per bigha.

The next question is : whether the LPA would lie against the judgment of the learned single Judge? It is settled legal position that under F Section 54 of the Land Acquisition Act, the appeal would lie to the High Court; when the appeal on the basis of the pecuniary value was decided by a single Judge necessarily, it being the judgment of the single Judge, an appeal would lie to the same Court in the form of LPA to Division Bench. The Division Bench was not right in holding that the LPA would not lie to the High Court against the judgment of the single Judge. To that extent, G the view of the High Court is not correct. The judgment in cases of Chet Ram and Raghbir Singh proceeded on wrong principles of law and determined the compensation. We do not approve of the views as correct and, therefore, we cannot base the same market value to be the market value for the lands under consideration. H

A The appellants are entitled to the enhanced compensation at the rate of Rs. 3,250 per bigha and interest on enhanced compensation at the rate of 6% per annum from the date of taking possession till the date of deposit into court. They are also entitled to 15% solatium on the enhanced compensation from the date of taking possession till the date of deposit.

B The appeals are accordingly allowed, but in the circumstances, without costs.

G.N. Appeals allowed.