

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT JAMMU**

MA No. 182/2003

Reserved on: 02.05.2023
Pronounced on: 11 .05.2023

UOI

...appellants

Through: - Mr.Sandeep Gupta CGSC.

Vs.

Madan Lal and others

Through: - Mr. F.S.Butt Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellant/Union of India has called in question the judgment and decree dated 30.03.2002 passed by the learned District Judge, Udhampur whereby, in a reference under Section 18 of the State Land Acquisition Act, Svt. 1990 (hereinafter referred to as the 'Act'), the learned District Judge has enhanced the compensation in respect of the acquired land from Rs.30,000/- per kanal to Rs. 50,000/- per kanal for cultivable land and from Rs.20,000/- per kanal to Rs.40,000/- per kanal for uncultivable land in favour of the respondents/land owners.

2) Briefly stated the facts as emerge from record of the case, are that, a Notification under Section 4 of the Act was issued by the Collector/ respondent No. 23 herein on 22.08.1983 inviting objections

from the owners/interested persons. The acquisition proceedings were initiated in respect of land measuring 1080 kanals, 16 marlas situated in village Kawa, land measuring 44 kanals, 4 marlas situated in village Chari, land measuring 21 kanals, 18 marlas situated in village Swail, land measuring 10 kanals, 03 marlas situated in village Nowah, land measuring 104 kanals, 17 marlas situated in village Kah, land measuring 13 kanals, 06 marlas situated in village Vishal Jattan, land measuring 198 kanals, 03 marlas situated in village Vishal Rajoulia and land measuring 7 kanals situated in village Mansoo (total 1480 kanals, 07 marlas).

3) The land was needed for the purpose of extension of Air Field for the Indian Air Force. The land owners, in response to the aforesaid Notification, submitted their objections. Declaration under Sections 6 and 7 of the Act was issued on 21.06.1989, whereafter, notices under Section 9 and Section 9A of the Act were issued on 11.09.1989. The final award came to be passed by the Collector on 10.03.1994 whereby the land owners were held entitled to compensation at the rate of Rs.30000/- per kanal in respect of cultivable land and Rs.20,000/- in respect of uncultivable land.

4) It appears that the compensation awarded by the Collector was accepted by the all the land owners except the land owners belonging to village Vishal Rajoulia who made an application before the Collector seeking a reference under Section 18 of the Act. Accordingly, the Collector made a reference to the District Judge Udhampur.

5) Before the District Judge, It was claimed by the respondents/land owners that the value of the acquired land is much more that what has been awarded by the Collector and it was claimed that the value of the land, at the relevant time, was more than Rs.1.00 lac per kanal. The District Jduge, on the basis of pleadings of the parties framed the following issues:

1. Whether the Collector did not pay the proper market rate for the land to the applicants if so what was the prevailing market rate of the land acquired on the relevant time ? OPP
2. To what relief the petitioners are entitled OPP.

6) In order to prove their case, the respondents/land owners examined the respondents, namely Parshotam Singh, Thakur Chand and Gopi Chand as witnesses in support of their case. Besides this, PWs Hans Raj, Rattan Bhushan, Prem Nath and Bansi Lal were also examined as witnesses by the respondents/land owners. On the other hand, the appellant/Union of India examined Rajinder Singh Kotwal, Collector as witness in support of its case.

7) The District Judge, after appreciating the evidence led by the parties, concluded that the value of the acquired land, at the relevant time, was much more than Rs.30,000/- per kanal for cultivable land and Rs. 20000/- per kanal for uncultivable land as was awarded by the Collector. The District Judge, on the basis of the material placed before him, came to the conclusion that the land owners are entitled to compensation at the enhanced rate of Rs.50000/- per kanal in respect of

cultivable land and Rs. 40000/- per kanal in respect of uncultivable land.

8) The appellant/Union has thrown challenge to the impugned judgment of the District Judge on the ground that the same is against the facts and law. It has been contended that the District Judge has relied upon the sale transactions pertaining to the years 1983, 1988 and 1991 in respect of small patches of land which is not permissible in law. It has been submitted that these sale transactions have taken place purely for residential purposes, as such, the District Judge could not have drawn support from these sale transactions to arrive at the figure of market value of the land at the relevant time. It has been contended that the price of small developed piece of land is not determinative of the price of large chunk of land and this principle has been totally ignored by the District Judge. It has been further contended that the rate of interest awarded by the District Judge is on a higher side and that the same should not have been beyond 6% per annum.

9) I have heard learned counsel for the parties and perused the impugned judgment, the grounds of appeal and the record of the Reference Court.

10) Before dealing with the grounds of challenge, it would be apt to refer to the relevant provisions of the State Land Acquisition Act, 1990 which provide guidelines for determination of the market value of

acquired land. Sections 23 and 24 of the Act are relevant in this regard and the same are reproduced as under:

“23.-Matters 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 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 the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land;

fourthly, the damage (if any) sustained nu 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 movable 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 profits of the land between the time of the publication of the declaration, under 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.

24. Matters to be neglected in determining compensation- But the Court shall not take into consideration-

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any out-lay or improvements on, or disposal of the land acquired, commenced. made or effected, without the sanction of the Collector, after the date of the publication of the declaration under section 6; and

eighthly, any increase to the value of the land on account on its being put to any use which is forbidden by law or opposed to public policy

11) From a conjoint reading of the aforesaid provisions, it is clear that the crucial date for determining the market value of the acquired land is the date of publication of declaration relating thereto under Section 6 of the Act. It is also to be noted that any potential increase in the value of the acquired land that may accrue on account of the use to which such land will be put when acquired, has to be ignored. So, the main consideration for determining the amount of compensation of acquired land is its market value as on date of issuance of declaration under Section 6 of the Act. In the instant case, as already noted, the declaration under Section 6 of the Act has been issued on 21.06.1989.

12) If we go to the award passed by the Collector, it is indicated therein that the Tehsildar, Udhampur was asked to intimate the sale rates for the last three years and the present market rate in respect of the land under acquisition, but, the Tehsildar reported back that no sale/purchase had taken place in villages Vishal Jattan, Vishal Rajoulia and Mansoo during the preceding three years. It was also reported by the Tehsildar that, in village Swail, the Railway Department has acquired the land at the rate of Rs.30000/- and Rs.20000/- per kanal for

cultivable and uncultivable land respectively. In the award, it is further observed that the acquired land is on the eastern side of Air Field and adjacent to the proposed Railway Station and due to the construction of proposed Railway Station, the market value of the land is increasing day by day. After noting all these factors, the Collector has calculated the market value of cultivable land at Rs.30000/- and Rs.20000/- per kanal for uncultivable land.

13) From the above, it is crystal clear that, so far as the acquired land located in village Vishal Rajoulia is concerned, there were no details of sale transactions during the previous three years available with the Collector. It is also crystal clear that the said land is located adjacent to the Railway Station and the Air Field. The Collector admits that, in view of the situation of the acquired land, its market value is increasing day by day. However, on what basis, the Collector has proposed the market value of the land at Rs.30000/Rs.20000/- per kanal is not discernible from perusal of the award.

14) Before the Reference Court, the respondents/land owners have placed on record three Sale Deeds. The first one is dated 14.05.1983. As per this sale deed, five marlas of land have been sold for Rs.12000/- i.e at the rate of Rs.48000/- per kanal. The other sale deed is dated 30.05.1988. The said deed provides that three marlass of land have been sold for Rs.40000/-, meaning thereby at the rate of about Rs. 95000/- per kanal. The third sale deed is dated 19.07.1991. As per this sale deed, 10 marlas of land have been sold for Rs.60,000/- (at the rate

of Rs.1,20000/- per kanal). The witnesses, who have proved these sale deeds, have also stated that the aforesaid land, which is subject matter of these sale deeds, is located adjacent to the acquired land.

15) The question that arises for determination is, whether the rates of adjacent land reflected in these sale deeds can be a determinative factor for assessing the market value of the acquired land. Learned counsel for the appellant is right in contending that the rates of small parcels of land cannot be a determinative factor for assessing the market value of a big chunk of land that has been acquired. There can be no quarrel with the said proposition of law, but then, in the instant case, there was no material before the Collector, on the basis of which, he could assess the market value of the land on the crucial date of issuance of declaration under Section 6 of the Act. The Collector has, on the basis of his own discretion and judgment, proposed that the market value of the acquired land at the relevant time was Rs.30000/Rs.20000/- per kanal without there being any material before him to support this assessment.

16) The Supreme Court has, in a catena of judgments, held that, though, the rate, at which small plots are sold, cannot be said to be a safe criteria for determining the market value of a large chunk of land, yet, the same cannot be an absolute proposition. It has been held that, where there is no other material available on record, it may, in appropriate cases, be open to the adjudicating Court to make comparison of prices paid for small plots of land. However, in such

cases, necessary deductions/adjustments have to be made while determining the prices. In my aforesaid view, I am support by the judgments of the Supreme Court in the cases of **Land Acquisition Officer Revenue Divisional Officer, Chittor vs. L. Kamamma K. Krishnamachari, (1988) 2 SCC 385, Land Acquisition Officer, Kammarapally village, Nizamabad District vs. Nookala Rajamallu, (2003) 12 SCC 334, Ravinder Narain vs. Union of India, (2003) 3 SCC 481 Rishi Pal Singh vs. Meerut Development Authority, (2006) 3 SCC 205 and Lucknow Development Authority vs. Krishna Gopal Lahoti, (2008) 1 SCC 554,**

17) Thus, it is clear that, in a case where there is no other material available to assess the market value of acquired land at the relevant time, a cue can be taken by the adjudicating Court from the sale transactions of small parcels of land in the vicinity of the acquired land after making appropriate deductions while assessing the market value of the said land.

18) The next question which is required to be considered as to what should be the measure of deduction that is required to be made while assessing the compensation of acquired land on the basis of sale price of small patches of land. While undertaking such an exercise, the Court has to take into account the situation of the land, its advantages and potentialities, its proximity to residential, commercial, industrial or other institutions, the existing amenities , the possibility of their further extension, the prospects of development in near future and such like

factors. The Supreme Court in the case of **Atma Singh vs. State of Haryana, (2008) 2 SCC 568** has observed that deduction for determining the market value of a big chunk of land on the basis of comparable sale price of small patches of land should range from 20% to 50% or in appropriate cases, even more. The Supreme Court in the case of **Jai Parkash Etc Etc vs Union Territory, Chandigarh Etc** AIR 2022 SC 1370 has applied a deduction of 40%.

19) Coming to the facts of the instant case, as already noted, as per the sale deeds relating to small patches of land located in the vicinity of the acquired land, the sale transactions have taken place at the rate of Rs.48000/- per kanal, Rs 95,0000/- per kanal and Rs. 1,20,000/- per kanal in the years 1983, 1988 and 1991 respectively. It has also come in the evidence on record that the acquired land is located within the vicinity of the Air Field and Railway Station, meaning thereby that there are extremely high chances that the land in question has the potential of being developed into a preferred residential area and its market value has the potential of jumping by leaps and bounds as has been noted by the Collector in its award.

20) Having regard to all these factors, the market value of the acquired land assessed by the District Judge by making appropriate deduction which is within the range of about 40% to 50% of the value of small patches of land in the vicinity of the acquired land, appears to be reasonable. The same, therefore, does not call for any interference by this Court.

21) Apart from the above, during the pendency of the instant appeal, the connected appeals bearing MA No. 215/2003 and MA No. 33/2004 relating to different portions of the acquire land, stand dismissed for non prosecution in terms of order dated 22.07.2016 passed by this Court, whereafter, the appellant has paid the compensation in terms of the judgment of the Reference Court at the enhanced rates to the land owners, who were respondents in those appeals. In this regard, the learned counsel for respondents/land owners has placed on record certified copies of documents and the appellants have not disputed the aforesaid fact. Thus, there is no reason for the appellant not to satisfy the judgment of the learned District Judge by paying enhanced compensation to the respondents/ land owners in the instant case.

22) So far as the contention of the appellant that the rate of interest awarded by the District Judge is on a higher side is concerned, there appears to be substance in the said contention. Section 28 of the Act provides for payment of interest at the rate of 6% per annum at the enhanced rate of compensation, but, in the instant case, the District has awarded interest at the rate of 8% which is on a higher side. Therefore, the impugned judgment of the District Judge is required to be modified to the extent that, instead of, paying the interest at the rate of 8% per annum by the appellant, it shall be liable to pay interest at the rate of 6% per annum on the enhanced amount of compensation from the date, the possession of the land was taken from the land owners till the

enhanced amount of compensation is deposited in the reference Court.

Ordered accordingly.

23) The appeal is partly allowed and the judgment of the Reference Court is modified to the aforesaid extent.

Record of the Reference Court along with a copy of this judgment be sent back.

**(Sanjay Dhar)
Judge**

Jammu
11 .05.2023
"Sanjeev, PS"

Whether the order is speaking: Yes
Whether the order is reportable: Yes

