HIGH COURT OF MADHYA PRADESH: BENCH:INDORE
(SINGE BENCH: HON.MR.JUSTICE PRAKASH SHRIVASTAVA

FIRST APPEAL NO.617/2000

State of MP & another ... Appellants

Vs.

Ramlal ... Respondent

FIRST APPEAL NO.613/2000

State of MP & another ... Appellants

Vs.

Bhagwantibai W/o Bhagirath ... Respondent

FIRST APPEAL NO.614/2000

State of MP & another ... Appellants

Vs.

Ambaram S/o Kashiram ... Respondent

FIRST APPEAL NO.500/2000

State of MP & another ... Appellants

Vs.

Manoharlal S/o Shivnarayan ... Respondent

For State : Shri Yogesh Mittal, learned counsel for State.

For land owners: Shri O.P. Arya with Shri Lokesh Arya, learned counsel.

Whether approved for reporting:-

O R D E R

(Passed on 18th December, 2015)

This order will govern the disposal of FA No.617/2000, 614/2000, 500/2000 and 613/2000 which are at the instance of the State as also the cross objection of the land owners in FA No.614/2000 and FA No.617/2000.

[2] All these appeals have been filed u/S.54 of the Land Acquisition Act, 1894 challenging the award of the Reference Court in respect of grant of compensation for acquisition of land for village Dakachia.

[3] The facts have been noted from the lead appeal FA No.617/2000 wherein the award of the Reference Court dated 15/3/2000 is under challenge.

[4] In brief, the notification dated 16/6/1989 was published u/S.4(1) of the Land Acquisition Act, 1894 (for short “the Act”) for acquiring the land for the purpose of National Highway No.3 and the declaration u/S.6 of the Act was published on 4/8/1989 and possession was taken on 6/1/1990. The land of the appellant/land owners was acquired in the land acquisition proceedings, award was

passed on 4/6/1991 by land acquisition officer determining the value of the land @ Rs.79,500/- per hectare for irrigated land, @ Rs.53,000/- per hectare for un-irrigated land, and @ Rs.40,000/- per hectare for uncultivated land. At the instance of the land owners, the Reference was made and the Additional District Judge, Indore has passed the award dated 15/3/2000 in Reference determining the market value of the un-irrigated and irrigated land as Rs.1,50,000/-. The Reference Court had further granted payment of additional amount @ 12% u/S.23(1)(a) of the Act from the date of Sec.4 Notification till the date of the award of the LAO or taking over the possession whichever is earlier and solatium @ 30% in terms of Sec.23(2) of the Act and interest u/S.28 on the enhanced amount @ 9% per annum from the date of taking over the possession till the payment with a further direction that if the amount is not paid within one year from the date of possession, then the interest @ 9% per annum will be paid in the first year and 15% for the subsequent years.

[5] The State has preferred the appeal questioning the enhancement of the amount by the Reference court and the land owners have filed the cross objections seeking

enhancement of the compensation amount.

[6] This Court at the earlier occasion by the common judgment dated 26th February, 2008 in FA No.520/2003 in the matter of **Kashiram Vs. State of MP and** and all other connected appeals relating to acquisition of land of village Peerkaradia, Budhi Barlai, Dakachaya, Raukhedi, Arjun Badoda of District Indore had determined the market value on the date of Sec.4 Notification at the flat rate of Rupees six lakhs per hectare to each land owner irrespective of the nature of the land and its use prior to the acquisition. The aforesaid order of this court was subject matter of Civil Appeal No.9915/2010 (arising out of SLP (Civil) No.4785/2009) ***State of MP and another Vs. Kashiram (Dead) by L.R. Gopilal*** and other connected Civil Appeals. Hon. Supreme Court by the order dated 23/11/2010 has set aside the judgment of this court dated 26th February, 2008 since several infirmities were found in the judgment. In the absence of any classification with reference to villages, nature of land and consideration of evidence with reference to the land in each village, the common judgment of this court awarding a uniform compensation was found to be

unsustainable, therefore, while setting aside the judgment and remanding the matter back to this court, a direction has been issued to assess the market value in accordance with the law keeping in view the observations made in the order. However, it has been clarified in the operative part that nothing stated in the order will be construed as expression of any final opinion in regard to the actual market value and this court is required to assess the market value with reference to the land.

[7] The Hon. Supreme Court while noting the infirmities in the judgment of this court has made following observations:-

> **"On a perusal of the judgment of the High court, we find the following glaring infirmities:**
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> **(i)The lands acquired were situated in different villages. They did not form a contiguous compact block. On the other hand, the acquired lands were situated one after another, as the acquisitions were for laying a road. The lands acquired formed a thin strip spread over several villages. As a result, the lands acquired in the village at one end and the lands acquired in other village at other end, were far away from each other and could not be considered as contiguous lands with the same value. This is evident from the judgment of the Reference Court which awarded compensation at rates ranging from as little as Rs.75,000/- per hectare to**

Rs.3,45,800/- per hectare, depending upon their respective market value. There was no evidence that all the acquired lands were similarly situated or of similar value or had similar potential for development. Though the acquisitions related to six villages and though the Reference Court had determined different market values for lands in different villages, the High Court, without any acceptable or valid reason, has determined a uniform high rate of Rupees Six Lakhs per hectare. The market value with reference to Ex.P2 even if acceptable can obviously apply only to the nearby lands in that village and cannot be applied to six villages.

(ii)Most of the acquired lands were agricultural lands. Some lands were small plots with structures. The High Court has treated both agricultural lands and the non-agricultural plots with structure on the same footing and awarded the same compensation to all the acquired lands which is obviously erroneous.

(iii)The High Court has awarded compensation at a uniform rate of Rupees six lakhs per hectare based on a single sale transaction dated 9.3.1989 relating to a residential plot of 1506 sq.feet which was sold for Rs.10,000/- (which works out to Rs.7,14,285/- per hectare). It is now well settled that if the sale deed relating to a small developed plot of land is to be the basis for determining the market value or large undeveloped areas, appropriate deductions will have to be made towards development cost which may vary from 20% to 75% of the price of the developed plot (that is upto 40% of the land area for roads, drains, parks, civic amenities etc.,

and upto 35% towards the actual cost of development). The percentage of deduction will depend upon the situation of the lands, the nature of development, etc. (See Lal Chand Vs. Union of India – 2009(15) SCC 769 at paras 13 to 22). The Court cannot arbitrarily deduct a small lump sum from the value of a small developed plot, to arrive at the value of an undeveloped rural lands. The deduction that is made by the High Court is hardly 15% to 16% of the value of the small developed plot. Having regard to the situation of the lands in question and other circumstances, it would appear that the deduction should be in the range of about 40% to 50% from the value of the small and developed plot. Of course, the above percentage and the percentage of deduction require to be determined after consideration of the relevant evidence. The High court has not even referred to this aspect nor has it made an appropriate deduction towards the development.

(iv)Most of the land owners had claimed only about Rupees Four Lakhs per hectare (except some land owners in Peer Karadia and Rau Khedi who appear too have claimed Rupees Five Lakhs per hectare). They were permitted to amend the claim to Rs.6,17,000/- without proper consideration of the question as to such amendment was warranted.

(v)The parties had exhibited sale deeds relating to Peer Karadia and Dkachya. The appellants had also relied upon two sale deeds relating to sale of one acre of land each in Budhi Barlai (Ex D4 and D5 dated 14.12.1989) showing that the market value was only around Rs.38000/- to Rs.42000/-

per acre. These were not considered though referred by the High Court".

[8] In view of the aforesaid order of the Supreme Court, now the appeals in respect of each village are being decided separately in the light of the evidence which has come on record keeping in view the nature of land, the evidence about the market value and other relevant factors.

[9] As already noted by the Hon. Supreme Court, the land which has been acquired forms a thin strip spread over several villages. In the matters relating to village Dakachia, the date of publication of Sec.4 Notification is 16/6/1989.

[10] The original record reflects that the land holders had filed four sale deeds in respect of the sale of land in the proximity of time of Sec.4 Notification for the purpose of determining the market value of the acquired land. The details of these sale deeds are as under:-

Exhibit No	Dated	Village	Area	Price Rs.
P/1	22/5/1989	Dakachia	0.304 hectare un-irrigated single crop	46000
P/2	16/1/1989	-do-	0.050 hectare un-irrigated single crop	33000
P/3	21/11/1988	Peerkaradia	0.081 hectare un-irrigated single crop	28000

P/4	15/3/1990	-do-	0.015 hectare un-irrigated single crop	40000

[11] When there are several exemplars with reference to the similar land, then as a general rule, highest of the exemplar has to be considered and accepted if it represents bona-fide transaction. Where sale deeds pertaining to different transaction are relied upon, the transaction representing the highest value is required to be preferred as against others unless there are strong circumstances for taking a different course. In a series of judgments, now it has been settled that the averaging of various sale deeds for fixing the fair compensation is not the proper course of action. **(See Meharwal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others (2012) 5 SCC 432, Anjani Molu Desai Vs. State of Goa and others (2010)13 SCC 710, Bakhtavarsingh Vs. Union of India (1995)2 SCC 495, Sitabai and Others Vs. State of MP and others 2010(1) MANISHA 33(MP)**, judgment of this Court dated 30/1/2009 in FA No, 542/2002 **Kailash Chandra Vs. Executive Engineer and another** and the judgment of this court dated 12/1/2015 in FA No.901/2008

Hiralal (dead) through L.Rs Vs. State of MP and connected appeals.

[12] It is also settled that for determining the market value of larger area, the sale deed of smaller area can also be considered if there is no other cogent material available, but while relying on the sale deed for a smaller area, a suitable percentage is to be deducted for determining the market value of the larger area. See **Ahsanul Hoda Vs. State of Bihar AIR 2013 SC 3463**, **Ravinder Narain and another Vs. Union of India (2003)4 SCC 481** and **Aatmasingh (Dead) through L.Rs Vs. State of Haryana AIR 2008 SC 709**, the judgment of this Court dated 9/11/2001 passed in FA No.360/2000 in the matter of **Laxminarayan deceased through L.Rs and others Vs. Union of India** as also the judgment dated 19th December, 2014 in FA No.497/2012 in the matter of **Subhash Vs. State of MP and another** and connected bunch of appeals.

[13] Examining the sale deeds in the present case in the light of the above position in law, it is found that the sale deeds Ex.P/3 and P/4 are for different village namely Peerkaradia, therefore, they cannot form the basis for

assessing the market value of the land at village Dakachia especially in view of the fact that the lands acquired from a thin strip spread over several villages and the observation of the supreme court in the order dated 23/11/2010 that land acquired in the village at one end and the land acquired in another village at the other end are far away from each other and cannot be considered as contiguous block of land with the same sale value. Hence, the sale deed Ex.P/3 and P/4 are excluded from consideration.

[14] So far as sale deeds Ex.P/1 and P/2 are concerned both are relating to the same village and both are prior to the issuance of Sec.4 Notification but Ex.P/1 is for very small piece of land and the price of per hectare of land in Ex.P/1 is Rs.1,52,868/- whereas Ex.P/2 is for relatively larger piece of land and the price of per hectare in Ex.P/2 is Rs.7,00,680/-. Reference court by assigning due and cogent reasons has accepted sale deed Ex.P-2 as basis for determining market value. Considering the circumstances of the case this Court also finds Ex.P/2 to be the best exemplar which should form the basis for calculating the market value of the land under acquisition and the said exemplar has rightly been accepted by the reference Court.

[15] Considering the fact that the sale deed Ex.P/2 is prior to the issuance of Sec.4 Notification and the common knowledge that the price of land are rising on account of various factors such as development, population pressure etc, hence the suitable adjustment is required to be made to calculate the value of land on the date of Sec.4 Notification.

[16] In the matter of **Krishi Upaj Mandi Samiti Vs. Bipin Kumar and another** reported in **(2004) 2 SCC 283**, the supreme court has accepted 15% per annum as the rate of increase in the price of land.

[17] This Court also in the matter of **Sitabai and others Vs. State of MP and others** reported in **2010(1) MANISHA 33(MP)** had followed the same principle and enhanced 15% per annum as appreciation of the rate of land for a period of one year six months and 12 days which was the period between the date of best exemplar and the date of Sec.4 Notification.

[18] Following the aforesaid principle and the potentiality of the land and the rising price, I am of the opinion that 15% is required to be added in the price mentioned in Ex.P/2 from the date of the sale deed Ex.P/2 ie. 16/1/1989 till the

date of Section 4 notification 16/6/1989, ie. for a period of 150 days which comes to Rs.2034/-. Vide Ex.P/2, 0.050 hectare of un-irrigated single crop land of village Dokachia is sold for consideration of Rs.33,000/-. Hence, the value of the un-irrigated land of 0.050 hectare on the date of Sec.4 Notification comes to Rs.35,034/-, accordingly which comes to Rs.7,00,680/- per hectare on the date of Section 4 notification. Since Ex.P/2 represents the value of un-irrigated land, therefore, by multiplying it with 1.5, the value of the irrigated land which is under acquisition is calculated as Rs.10,51,020/- per hectare.

[19] Since the aforesaid value has been calculated on the basis of the sale deed relating to the small piece of land ad-measuring 0.050 hectare, therefore, suitable deduction is required to be made in this regard to arrive at a fair market value in terms of the judgments which have been noted above.

[20] The supreme Court in the order dated 23/11/2010 has observed that having regard to the situation of land in question and other circumstances, the deduction should be in the range of 40-50% from the value of the small land and developed plot, but it has been left for determination of the

percentage of deduction after considering all relevant evidence.

[21] At this stage, it would be appropriate to mention that another set of appeals being FA No.194/1996 in the matter of **Akhtar Vs. State of MP** and batch of similar appeals were decided by this court by judgment dated 24th July, 2009 in respect of the acquisition of land for 15 villages namely Raukhedi, Mangliya Village, Arandia, Mayakhedi, Nipaniya, Khajrana, Bicholi Hapsi, Bicholi Mardana, Devguradia, Mundala Nayata, Rala Mandal, Mirjapur, Kelod Kartal, Nihalpur Mundi & Rau Jagir of District Indore which are nearer to Indore city and where the acquisition was for the purpose of construction of Indore By-pass and the Notification u/S.4(1) was issued on 1/8/1988 has determined the compensation @ 5.5 lakhs per hectare and the said order has been affirmed by the supreme court by order dated 20/2/2014 passed in Civil Appeal No.2583/2014.

[22] Having regard to the remand order of the Supreme Court dated 23/11/2010 and situation of land and considering the size of the land sold by Ex.P/2 and the other circumstances of the case, I am of the opinion that the deduction to the extent of 50% should be made. Hence,

after deducting 50%, the market value of the irrigated land which has been acquired comes to Rs.5,25,010/- and unirrigated land comes to Rs.3,50,340/-.

[23] In some of the appeals the Notification u/S.4 was published on 26/6/1989, hence, the 15% increase for 160 days from the date of sale deed Ex.P/2 to the date of Sec.4 Notification comes to Rs.2170/-. Hence, the value of unirrigated land of 0.050 hectare on the date of Sec.4 Notification comes to Rs.35,170/-, accordingly which comes to Rs.7,03,400/- per hectare on the date of Sec.4 Notification. Since Ex.P/2 represents the value of unirrigated land, therefore, by multiplying it with 1.5, the value of irrigated land which is under acquisition is calculated as Rs.10,55,100/- per hectare and after deducting 50% from this, on account of factors mentioned above, the fair market value of irrigated land on 26/6/1998 ie. on the date of Sec.4 Notification comes to Rs.5,27,550/-.

[24] In addition to the compensation of the land which has been determined by this court as above, the appellants/land holders will also be entitled to the further amount which has been awarded by the Reference Court under different heads at the same rate.

[25] So far as issue of amendment and enhancement of claim by the appellant is concerned, the supreme court in the matter of **Ambya Kalya Mhatre (dead) through L.Rs. Vs. State of Maharashtra** reported in **(2012) 1 MPLJ 19** has held that under the Scheme of the Act, it is for the court to determine the market value and the compensation depends upon the market value established by the evidence and it is not depend upon what the land owner thinks about the value of his land and if the land owner out of ignorance claims lesser amount and that cannot be held against him to award an amount which is lesser than the market value.

[26] The Supreme Court in the matter of **Ambya Kalya Mhatre (dead) through L.Rs.** (supra) has held as under:-

> **"A landowner, particularly a rural agriculturist, when he loses the land may not know the exact value of his land as on the date of the notification under section 4(1) of the Act. When he seeks reference he may be dissatisfied with the quantum of compensation but may not really know the actual market value. Many a time there may not be comparable sales, and even the Court faces difficulty in assessing the compensation. There is no reason why a landowner who has lost his land, should not get the real market value of the land and should be restricted by technicalities to some provisional amount he had indicated while seeking the reference. As**

noticed above, the Act does not require him to specify the quantum and all that he is required to say is that he is not satisfied with the compensation awarded and specify generally the grounds of objection to the award. Under the scheme of the Act, it is for the Court to determine the market value. The compensation depends upon the market value established by evidence and does not depend upon what the landlower thinks is the value of his land. If he has an exaggerated notion of the value of the land, he is not going to get such amount, but is going to get the actual market value. Similarly if the landowner is under an erroneous low opinion about the market value of his land and out of ignorance claims lesser amount, that cannot be held against him to award an amount which is lesser than the market value. When the Act does not require the landowner to specify the amount of compensation, but he voluntarily mentions some amounts, and subsequently, if the market value is found to be more than what was claimed, the landowner should get the actual market value. We fail to see why the landowner should get an amount less than the market value, as compensation. Consequently, it follows that if the landowner seeks amendment of his claim, he should be permitted to amend the claim as and when he comes to know about the true market value. When the Act is silent in regard to these matters, to impose any condition to the detriment of an innocent and ignorant landowner who has lost his land, would be wholly unjust".

[27] In view of the above position in law, the claimants are awarded the amount of compensation on the basis of market

price of land as determined in the foregoing paragraphs.

[28] The cross objections of the respondents/land holders in FA No. 614/2000 and 617/2000 are accordingly allowed and appeals of the State Government being FA No.617/2000, 614/2000, 500/2000 and 613/2000 are found to be devoid of any merit and are accordingly dismissed.

[29] Signed copy of this judgment is kept in the file of FA No.617/2000 and a copy whereof is placed in the record of connected First Appeals.

(Prakash Shrivastava)
JUDGE

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