

DADU YOGENDRENATH SINGH & ORS.

v.

THE COLLECTOR, SEONI

January 25, 1977

[H. R. KHANNA, R. S. SARKARIA AND JASWANT SINGH, JJ.]

The Land Acquisition Act, 1894, S. 23(1)—Considerations for determination of compensation, scope of.

Responding to a notice under s. 9 of the Land Acquisition Act, 1894, the appellants filed a claim for Rs. 1500/- per acre at which rate the adjoining lands were sold. The Collector awarded compensation at the rate of Rs. 450/- per acre. At the instance of the appellants under s. 18 of the Act, the matter was referred to the District Judge who enhanced the compensation to Rs. 11,000/- per acre. An appeal by the Collector was allowed by the High Court on the ground that the District Judge had acted contrary to the mandate contained in s. 25(1) of the Act, by awarding compensation in excess of the amount claimed. The appellants contended that their land had building potentiality and its value was substantially more than Rs. 500/- per acre, which had been paid by them to the Government as diversion charges for permission to use the adjoining land for building houses.

Allowing the appeal by certificate, the Court,

HELD : The circumstance that the appellants had voluntarily paid Rs. 500/- per acre as diversion charges, for laying out the adjoining land into plots as building sites, taken in conjunction with the other facts, namely, that the land in question is within the municipal limits and is located just on the edge of an inhabited locality of the town, having other buildings in the immediate vicinity, show that its potential value as building sites is much more than the rate of Rs. 450/- per acre, awarded by the Collector and the High Court. [760 C-D, 761 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2128 of 1969.

From the Judgment and Order dated 4th May, 1968 of the Madhya Pradesh High Court in First Appeal No. 88/67.

M. S. Gupta for the Appellants.

Ram Panjwani and *H. S. Parihar* for Respondent.

The Judgment of the Court was delivered by

SARKARIA, J. This appeal on certificate is directed against a judgment, dated May 4, 1968, of the High Court of Madhya Pradesh. It arises out of these facts :

The appellants were owners of 7.35 acres of land being a part of Khasra No. 47/1 in the area of village Manglipeth District Seoni, Madhya Pradesh. On November 4, 1963, a notification under s. 4 read with Sub-s. (1) of s. 17 of the Land Acquisition Act, 1894 (to be hereinafter referred to as the Act) was published in the Government Gazette stating that this land was needed by the State Government for implementation of Seoni Water Supply Scheme. The declaration under s. 6 of the Act was published on December 18, 1963, and notices under s. 9 of the Act were issued by the Collector on December 28, 1963. In response to that notice, the appellants filed a claim

A that they were willing to accept compensation in respect of this land at the rate of Rs. 1500/- per acre, "as the lands adjoining this land and situated in a lesser advantageous position are sold at this rate". The Collector made his award on August 17, 1964, whereby he awarded compensation for this land at the rate of Rs. 450/- per acre. B The total amount awarded for this piece of land after adding solatium at the rate of 15%, was Rs. 2,904/-. He also awarded interest at the rate of 4% from September 19, 1964, on which date, the Collector had taken over possession of the land.

C Dissatisfied with the Collector's award, the appellants made an application under s. 18 of the Act for reference to the District Court for enhancement of the compensation. The Collector accordingly made a reference. The Additional District Judge, Seoni, who heard the reference, enhanced the compensation to Rs. 11,000/- per acre. In this way, after adding solatium, he awarded to the appellants, herein, a total amount of Rs. 80,850/- together with interest at the rate of 6%.

D Against that judgment, dated May 2, 1967, of the Additional District Judge, an appeal was preferred by the Collector, to the High Court. The High Court accepted the appeal, set aside the award of the Additional District Judge and restored that of the Collector. The High Court however, granted a certificate under Art 133 of the Constitution.

E The first contention of Shri M. S. Gupta, appearing for the appellants, is that the appeal filed in the High Court against the award of the Additional District Judge was not an appeal in the eye of law inasmuch as the Collector, who filed it, was not competent to do so. It is stressed that no appeal was filed by the State as such, and consequently, the incompetent appeal filed by the Collector should have been dismissed summarily on this preliminary ground without entering upon the merits.

F This objection was raised before the High Court, also. The High Court fully considered it against the background of this case, and found no substance in it. In the interests of justice we are not disposed to interfere with that finding.

G On merits, we find, in agreement with the High Court, that the District Judge was palpably wrong inasmuch as he awarded compensation at a rate far higher than what had been claimed by the appellants themselves, pursuant to the notice under s. 9 of the Act. The learned Additional District Judge acted contrary to the legislative mandate contained in s. 25(1) of the Act, according to which, the Court "shall not award" compensation to an applicant in excess of the amount claimed by him pursuant to any notice under s. 9.

H The only question that remains for our decision is, whether the High Court was right in scaling down the compensation to Rs. 450/- per acre?

Mr. Gupta contends that the High Court was not right in holding that there was no evidence to show that the land in question had potential value as building sites. It is submitted that the High Court has simply ignored that evidence. In this connection Counsel has referred to the evidence on record showing that the appellants had before the acquisition, paid diversion charges to the Government, at the rate of Rs. 500/- per acre in respect of the adjoining land, for bringing it into use as building sites. Counsel has further referred to the evidence showing that the land in question is close to a built up quarter of the town, and is within the Municipal limits.

Shri Ram Panjwani, appearing for the Respondent, submits that this evidence was much too insufficient to establish the potential value of the land as building sites, because the existing buildings in the vicinity of this land are old buildings, and the deposit of Rs. 500/- as diversion charges for the adjacent land made by the appellants, was only a speculative investment with an eye on the distant future. In support of his contention, Shri Panjwani has referred to the decision of this Court in *R. N. Singh v. U.P. Government*⁽¹⁾.

In our opinion, there is evidence on the record which unmistakably shows that from the view-point of a willing purchaser, at the relevant time, this land had potential value as building sites. Firstly, it was admitted even by Gokul Prasad who was examined by the Respondents as their Witness No. 1, that in front of the land in question there are buildings which are being used as the office of the Range Officer and as residential quarters for the employees of that Department. Adjoining the Range Office is the house of Dewan Najaf Ali in which the Additional District Judge was residing. The witness further admitted that the land in dispute abutts on Seoni-Chhindwara Road.

Dadu Yogendra Nath Singh, appellant, testified in the witness-stand that apart from the office and the quarters of the Forest Department, there were other buildings also, near this land. At a short distance was the bungalow of Shri Bhargava, Barrister. The Municipal Octroi Post was adjacent to this land. The land in question is within the Municipal limits of Seoni. The appellant further stated that he intended to parcel out this land into plots and sell the same as building sites and that was why for the adjacent land, he had obtained for that purpose, the permission of the Government by depositing diversion charges at the rate of Rs. 500/- per acre. He added that negotiations for the sale of two plots had already been completed at the rate of 12 annas per foot. He also cited other instances of sales of land in the vicinity at rates ranging from 4 annas per foot to 6 annas per foot.

The oral evidence of Dadu Yogendra Nath Singh with regard to the fact that the adjoining land had been laid out into plots for building purposes, receives full corroboration from unimpeachable documentary evidence on record, which shows that the appellants had

- A before this acquisition, in 1963, made an application to the Sub-Divisional Officer, Seoni, for permission to bring 6.16 acres of agricultural land out of Kh. No. 47/1, "in non-agricultural use viz., for construction of houses". The order of the officer concerned was that such permission was granted to him on depositing diversion charges in respect of that area at the rate of Rs. 500/- per acre. It is significant to note that this piece of 6.16 acres was also a part of Khasra No. 47/1, out of which Khasra, the land, admeasuring 7.35 acres, is in question. This circumstance unerringly indicates that the land in question was suitable for being used as building sites, and had for that purpose, a potential value substantially in excess of Rs. 500/- per acre. The High Court has not at all discussed this evidence.
- B

- C It is difficult to accept the argument advanced on behalf of the respondent that the appellant had paid Rs. 500/- per acre as diversion charges for the adjacent land, merely as speculative business in the hope of making money in the remote future. No prudent person would make such an investment if there was no reasonable chance of a good return over that investment in the present, or immediate future. In our opinion this circumstance coupled with the other facts, namely, that the land in question is within the Municipal limits and is located just on the edge of an inhabited locality of the town, having other buildings in the immediate vicinity, was sufficient to establish its potential value as building sites.
- D

- E The observations made by this Court in *R. N. Singh v. U.P. Government* (supra) do not advance the case of the respondent. In that case, Shelat J. quoted these observations from an earlier decision, in *N. B. Jeejabhoy v. The District Collector, Thana* (C.A. Nos. 313 to 315 of 1965 decided on August 30, 1965) :

- F "A vendor willing to sell his land at the market value will take into consideration a particular potentiality or special adaptability of the land in fixing the price. It is not the fancy or the obsession of the vendor that enters the market value, but the objective factor namely, whether the said potentiality can be turned to account within a reasonably near future. *The question therefore turns upon the facts of each case.* In the context of building potentiality many questions will have to be asked and answered, whether there is pressure on the land for building activity, whether the acquired land is suitable for building purposes, whether the extension of the said activity is towards the land acquired, what is the pace of the progress and how far the said activity has extended and within what time, whether buildings have been put up on lands purchased for building purposes, what is the distance between the built-in-land and the land acquired and similar other questions will have to be answered. It is the over-all picture drawn on the said relevant circumstances that affords the solution."
- G

- H What has been extracted above are broad guidelines and not immutable absolutes. The essence of the whole thing is in the sentence which has been underlined. It shows that in the ultimate

analysis, the question, whether or not a land has potential value as building site, is primarily one of fact. In the present case, the circumstance that the appellants had voluntarily paid Rs. 500/- per acre as diversion charges, for laying out the adjoining land into plots as building sites, was of a clinching character, and taken in conjunction with the other facts, noticed above, conclusively showed that its potential value as building sites was much more than the rate of Rs. 450/- per acre awarded by the Collector and the High Court.

In their application dated 17-10-1964, under s. 18 of the Act, the appellants stated that similar land in the immediate vicinity had been sold at the rate of Rs. 1,250/- per acre and another plot at the rate of Rs. 1,350/- per acre. These lands are close to the area for which they had paid the diversion charges at the rate of Rs. 500/- per acre. They filed a map also, showing the location of those lands. On an over-all view, after taking into account the potential value of the land, we think it will be reasonable to award compensation to the appellants at the rate of Rs. 1,250/- per acre with interest at 6% per annum till payment, from the date on which the possession was taken over by the Collector. The appellants shall also be entitled to solatium at 15% on the compensation amount awarded for the land.

Accordingly, we allow the appeal with proportionate costs and modify the decree of the High Court to the extent indicated above.

M.R.

Appeal allowed.