

A

STATE OF HARYANA

v.

RAM SINGH

JULY 25, 2001

B

[V.N. KHARE AND RUMA PAL, JJ.]

Land Acquisition:

C *Land Acquisition Act, 1894—Section 51-A—Compensation for land acquisition—Reliance on sale deed of similar lands without examination of parties to the document—Validity of—Held, certified copies of the sale deed can be relied upon without examination of the parties thereto—Remanded back to High Court for correct determination of market value after considering the sale deeds of similar lands—Evidence Act, 1872—Sections 74(2), 76 and 77.*

D

Land Acquisition—Award of further compensation towards potential value besides market value of the lands acquired—Validity of—Held, invalid as the market value takes into consideration potential future value of the land.

E

Words and Phrases :

'Market Value'—Meaning in the context of Land acquisition.

F

Appellant—State acquired land covering an area of about 180 acres and spread over four villages after issuing necessary notifications under the Land Acquisition Act, 1894. Compensation was awarded at an uniform rate for all the four villages depending upon the type of the lands, namely irrigated, non-irrigated and non-cultivable lands. On reference under the Act by the respondent-claimants, Trial court passed widely differing awards. The awards were challenged by the claimants before Single Judge of the High Court. The Single Judge adopted an uniform rate for all types of land in all the villages and directed the appellant-State to pay compensation at Rs. 1,72,000 per acre plus Rs. 30,000 per acre on account of potential value of the acquired land. The Division Bench of the High Court dismissed the appellant's appeal. Hence these cross appeals by the appellant and the claimants.

H

The appellant-State contended that the High Court was wrong in determining the value of the acquired land at Rs. 1,72,000 per acre; that the sale deeds of similar lands disclosed value at Rs. 29,000 and Rs. 37,000 per acre only; that an examination of the parties to the referred sale deeds by the State is not essential in view of the decision of this Court in *Land Acquisition Officer and Mandal Revenue Officer v. Narasaiah*, [2001] 3 SCC 530 that the sale deed referred to by the respondent-claimants disclosing a value of Rs. 2,40,000 per acre pertain to the land situated near a main road; that the acquired lands were situated at some distance from any habitation or road; and that the rate of Rs. 30,000 per acre on account of potential value of the land is entirely speculative.

The respondent-claimants contended that the sale deeds produced by the appellant were photostat copies of the original sale deeds, which could not be admitted in evidence by the Court; that the sale deed relied upon was executed prior to the issue of notification under the Land Acquisition Act; and that the sale deed correctly reflected the market value of the acquired land as it pertained to land of similar nature.

Disposing of the appeal of the appellant and dismissing the appeals of the claimants, the Court.

HELD : 1.1. It is not the law that a certified copy of a registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it. That would be contrary to what Section 77 read with Sections 74(2) and 76 of the Evidence Act, 1872 and more specifically Section 51-A of the Land Acquisition Act, 1894 provide. As far as the provisions of the Land Acquisition Act are concerned, a certified copy of the registered sale deed is admissible in evidence and does not need to be proved by calling a witness. It is open to the Court to accept the certified copy as reliable evidence, without examining parties to the documents. This does not however preclude the Court from rejecting the transaction itself as being *mala fide* or sham provided such a challenge is laid before the Court. There was no allegation by the claimants that the sale deeds produced by the appellant did not represent genuine transactions and the High Court was in error in refusing to consider the transactions evidenced therein merely because the parties to the documents were not examined.

[1182-H; 1183-A-C; G]

1.2. Although the references under Section 18 of the Land Acquisition Act had been decided on the basis of the sale deeds relied upon by the State,

A in the absence of any challenge on this score before the High Court by the claimants, the High Court did not address itself to this aspect of the matter at all. Therefore, the matter is remanded back to the High Court to take a decision on the market value of the acquired land taking into consideration the sale deeds relied upon by the State unless the claimants are permitted by the High Court to establish their inadmissibility. [1184-B]

B

Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah, [2001] 3 SCC 530 and *Ramappa v. Bojappa*, AIR (1963) SC 1633, relied on.

Baldev Singh & Ors. v. State of Punjab through Collector, AIR (1996) SC 3498, distinguished.

C

2.1. The Land Acquisition Act, 1894 does not allow for payment of any further amount on account of 'potential value' over and above the market value. Besides 'market value' means the price which the asset would or could be expected to fetch in the open market. Where a property has the potentiality of more profitable use, it will command a better price than property without such potential. In other words, potentiality forms part of the market value and a factor to be taken into account for the purpose of determining the market value. But once the market value is determined, there is no question of awarding any further amount in addition thereto by reason of any further potential. The High Court erred in grating an additional sum on account of 'potential value' in addition to the market value. [1184-D-H; 1185-A]

D

E

Hasanali Walimchand (Dead) by Lrs. v. State of Maharashtra, [1998] 2 SCC 388 and *The Collector, Raigarh v. Dr. Harsingh Thakur & Anr. & vice versa*, [1979] 1 SCC 236, referred to.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6016 of 1999.

From the Judgment and Order dated 19.1.1998 of the Punjab & Haryana High Court in LPA No. 40/98 in RFA No. 1423/91.

G

WITH

CIVIL APPEAL Nos. 6017-6032 of 1999.

Neeraj Kumar Jain for Mahabir Singh, Vinay Kumar Jain, Shakeel Ahmed and Ms. Amita Gupta, Advocates for the appearing parties.

H

The Judgment of the Court was delivered by

RUMA PAL, J. The issue involved in all these appeals relates to the compensation awarded in respect of land acquired under the Land Acquisition Act, 1894 (referred to briefly as the Act'). The acquisition was made by the State of Haryana for constructing the Shahbad feeder. The area acquired covered about 180 acres and cut through villages Garhi Banjaran, Telipura, Udhampur and Bhukri. For the purposes of the acquisition, a series of notifications under Section 4 followed by declarations under Section 6 of the Act were issued between 1986 to 1987. The Land Acquisition Collector awarded the same rate for all the four villages having regard to the nature of the land, namely, Rs. 29,000 for Chahi or irrigated land, Rs. 20,000 for Barani or non-irrigated land and Rs. 5,000 per acre for Gairmumkin or non-cultivable land. The References under Section 18 were disposed of by the District Judges by passing widely differing awards. These awards were subsequently challenged by the land owners from villages Telipura and Garhi Banjaran before the High Court of Punjab and Haryana. The Single Judge of the High Court adopting a uniform rate for all types of land in all the villages directed the State Government to pay each of the claimants compensation of Rs. 1,72,000 plus Rs. 30,000 per acre, the latter sum being on account of potential value of the acquired land. The Division Bench of the High Court dismissed the State's appeals without giving separate reasons for upholding the decision of the learned Single Judge.

The appeals before us have been preferred both by the State of Haryana and the claimants challenging the compensation granted by the High Court.

Mr. Neeraj Kumar Jain appearing for the State of Haryana has contended that the High Court was wrong in determining the value of the acquired land at Rs. 1,72,000 per acre. The State had produced two sale deeds Exhibits R/2 and R/3 pertaining to a total area of 23 kanals and 4 marlas. The two deeds showed that the rate of land similar to the acquired land was Rs. 29,000 and Rs.37,000 per acre. It was contended that the learned Single Judge had relying upon the decision of this Court in *Baldev Singh and Others v. State of Punjab through Collector*, AIR (1996) SC 3498 excluded Exhibits R/2 and R/3 produced by the State from consideration on the ground that neither the vendor nor the purchaser had been examined. It is pointed out that *Baldev Singh's* case is no longer good law in view of the subsequent decision of this Court in *Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah*, [2001] 3 SCC 530. Secondly, it was submitted by Mr. Jain that the learned Judge erred in relying upon Exhibit PC produced by the claimants which was a sale deed pertaining to an area of one kanal and 6-1/2 marlas only which was contiguous

A to a main road. It was argued that Exhibit PC could not be an exemplar relevant to the lands which had been acquired which not only covered a much larger area but were situated at some distance from any habitation or road. It was also submitted that in any event having determined the market value, the learned Judge erred in adding any further sum on account of the alleged potential value of the land and that the rate of Rs. 30,000 per acre fixed by B the learned Judge for determining such potential value was entirely speculative.

Mr. Vinay Kumar Garg, learned counsel appearing on behalf of the claimants, submitted that although the learned Judge may have rejected Exhibits R/2 and R/3 on a principle which was unsustainable, no prejudice was caused C to the State as both Exhibits were photostat copies of sale deeds and could never have been admitted in evidence. It was further submitted that the High Court had taken into consideration the fact that Exhibit PC relied upon by the claimants related to a small piece of land and that is why as against the stated price of over Rs. 2,40,000 per acre in Exhibit PC, the learned Judge had D deducted 30% from the stated price and determined the value for the acquired land at Rs. 1,72,000 per acre. It was emphasised that Exhibit PC was executed prior to the date of the notification under Section 4 of the Act and correctly reflected the market value of the acquired land as it pertained to land of similar nature. Our attention was drawn to one of the proceedings before the District E Judge under Section 18 where evidence had been led to the effect that the land acquired in village Telipura was within the municipal limits of Jagadhri, next to Bilaspur-Jagadhri road and as far as the land acquired in Garhi Bajaran was concerned, the evidence showed that the acquired land was about 1 K.M. from Jagadhri and that there were a poultry farm, petrol pump, octroi post, industries, hospital and banks near the land. The learned counsel then relied upon the decisions of this Court in *Hasanali Walimchand (Dead) by Lrs. v. F State of Maharashtra*, [1998] 2 SCC 388 as well as *The Collector, Raigarh v. Dr. Harsingh Thakur and another and vice versa*, [1979] 1 SCC 236 to sustain his argument that the High Court was correct in awarding an amount on account of potential value over and above the market value of the acquired land.

G Counsel for the State was right when he submitted that the High Court erred in rejecting Exhibits R/2 and R/3 as inadmissible only on the ground that the parties to the documents had not been examined by the State. It is not the law that a certified copy of a registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it. That H would be contrary to what Sections 77 read with Sections 74(2) and 76 of the

Evidence Act, 1872 and more specifically Section 51A of the Act provide. As far as the provisions of the Evidence Act are concerned, a certified copy of the registered sale deed is admissible in evidence and does not need to be proved by calling a witness. (See *Ramappa v. Bojappa*, AIR (1963) SC 1633, 1637). A

Section 51A of the Act is to the same effect. In *Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah*, (supra), it was held that by virtue of Section 51-A, a certified copy of a document registered under the Registration Act, 1908 including a copy under Section 57 of the Act may be accepted as evidence of the transaction recorded in such documents. It is open to the Court to accept the certified copy as reliable evidence and without examining parties to the documents. This does not however preclude the Court from rejecting the transaction itself as being *malafide* or sham provided such a challenge is laid before the Court. B C

In *Baldev Singh v. State of Punjab* (supra), the sale deeds produced by the claimants were challenged as collusive. It was alleged that the sale transactions had been entered into only for the purpose of inflating the market value in anticipation of acquisition proceedings. It was in this context that the learned Judges of this Court held: D

“.....There is no proof of passing of the consideration thereunder or the circumstances in which the documents came to be executed. Under these circumstances, all the documents are inadmissible in evidence and cannot be looked into.” E

The decision is not an authority for the proposition that the certified copy of a registered sale deed is inadmissible in evidence without proof of the execution of the documents by the vendor/purchaser or any other witness. F

In the present case, there was no allegation by the claimants that Exhibits R/2 and R/3 did not represent genuine transactions and the High Court was in error in refusing to consider the transactions evidenced therein merely because the parties to the documents were not examined. G

The submission of the learned counsel for the claimants that Exhibits R/2 and R/3 were in any event inadmissible because they were merely photostat copies of sale deeds was not a ground of appeal raised by the claimants in any of the appeals preferred by them from the decision of the District Judge. The original records are not before us and it is not possible to state with any H

A certainty whether the original certified copies of Exhibits R/2 and R/3 had or had not been produced by the State in any of the proceedings under Section 18. Although the references under Section 18 had been decided on the basis of Exhibits R/2 and R/3, in the absence of any challenge on this score before the High Court by the claimants, the High Court did not address itself to this aspect of the matter at all. Therefore, the matter will have to be remanded to the High Court to take a decision on the market value of the acquired land taking into consideration Exhibits R/2 and R/3 unless the claimants are permitted by the High Court to establish their inadmissibility.

C We are left with the question whether the High Court could have granted a further amount on account of potential value over and above the market value by way of compensation. Under Section 23(1) of the Act, in determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration the market value of the land at the date of publication of the notification under Section 4, sub-section (1). The statute does not allow for payment of any further amount on account of 'potential value' over and above the market value. Besides 'market value' means exactly what it says viz. the price which the asset would or could be expected to fetch in the open market. Where a property has the potentiality of more profitable use, it will command a better price than property without such potential. In other words, potentiality forms part of the market value and may be a factor to be taken into account for the purpose of determining the market value. But once the market value is determined, there is no question of awarding any further amount in addition thereto by reason of any further future potential. The decision relied upon by the claimants do not hold to the contrary.

F In *The Collector, Raigarh v. Dr. Harisingh Thakur* (supra), agricultural land had been acquired. There was evidence to show that the lands were potentially building sites. The finding was supported by the fact that the acquired land had in fact been used for construction of staff quarters. This Court held that it would be wrong to assess the market value only on the basis of its use at the time of acquisition and that the market value should be determined not only with reference to the actual condition of the property at the time of acquisition but also on its future potentiality.

H Similarly, in *Hasanali Walimchand v. State of Maharashtra*, (supra), when the High Court had calculated the market value of the land only on its existing use without taking into consideration its future potential, this Court

set aside the judgment of the High Court. Neither of the decisions cited held that the Court could award any amount on account of potential value over and above the market value. The High Court, therefore, erred in granting an additional sum on account of 'potential value' in addition to the market value. A

For the aforesaid reasons, we set aside the decision of the High Court and remand the issue as to the market value of the land to be re-determined by the High Court in the light of the observations in this judgment. B

All the appeals preferred by the claimants are accordingly dismissed and the appeals preferred by the State are disposed of accordingly. There will be no order as to costs. C

B.S.

Appeals dismissed.