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SUPREME COURT OF INDIA

Before : Justice A.K. Sikri and Justice Ashok Bhushan, JJ.

NARENDRA — Appellant
versus
STATE OF UTTAR PRADESH — Respondent

Civil Appeal Nos. 10429-10430 of 2017 (Arising Out of SLP (C) Nos. 2354-2355 of 2017)

11.09.2017

Land Acquisition Act, 1894 – Section 4(1), 28

(i) Land Acquisition Act, 1894, Section 28-A – Fair Compensation – Even in the absence of exemplars and other evidence, higher compensation can be allowed for *others* whose land was acquired under the same notification – In the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties – It was not their voluntary act to sell off their land – They were compelled to give the land to the *State* for public purpose – For this purpose, the consideration which is to be paid to them is also not of their choice – On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector – The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. – In order to ensure that the landowners are given proper compensation, the Act provides for "fair compensation" – Once such a fair compensation is determined judicially, all landowners whose land was taken away by the same notification should become the beneficiary thereof.[Para 7, 8]

Held,

The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those landowners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such

cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell off their land. They were compelled to give the land to the *State* for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. In order to ensure that the landowners are given proper compensation, the Act provides for “fair compensation”. Once such a fair compensation is determined judicially, all landowners whose land was taken away by the same notification should become the beneficiary thereof. [Para 8]

(ii) Judicial System – Adversarial form of adjudication – The judicial system that prevails is based on adversarial form of adjudication – At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision-making process, particularly, when it comes to administering justice to the marginalised section of the society – Traditionally, our justice delivery system is adversarial in nature – Of late, capabilities and method of this adversarial justice system are questioned and a feeling of disillusionment and frustration is witnessed among the people. After all, what is the purpose of having a judicial mechanism — it is to advance justice. [Para 9, 10]

(iii) Quote – Judicial system – “The obligation of the legal profession is… to serve as healers of human conflict…(we) should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”Warren Burger .

(iv) Judicial system – Social justice adjudication – Principle of fairness and equality – Problem solving approach – *Held,* Prof (Dr) N.R Madhava Menon explains the meaning and contour of social justice adjudication as the application of equality jurisprudence evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the socio-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the court has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. The courts, in such situations, generally invoke the principle of fairness and equality which are essential for dispensing justice. Purposive interpretation is given to subserve the ends of justice particularly when the cases of vulnerable groups are decided. The court has to keep in mind the “problem solving approach” by adopting therapeutic approaches to the maximum extent the law permits rather than “just deciding” cases, thereby bridging the gap between

law and life, between law and justice. The notion of access to justice is to be taken in a broader sense. The objective is to render justice to the needy and that means fair solutions to the conflict thereby providing real access to "justice". [Para 11]

(v) Judicial system – Justice is a core value of any judicial system. It is the ultimate aim in the decision-making process – When we combine notion of "Justice as Fairness" with the notions of "Distributive Justice", to which Noble Laureate Prof Amartya Sen has also subscribed, we get jurisprudential basis for achieving just results for doing justice to the weaker section of the society. [Para 12]

Held, Justice is a core value of any judicial system. It is the ultimate aim in the decision-making process. In post-traditional liberal democratic theories of justice, the background assumption is that all humans have equal value and should, therefore, be treated as equal, as well as by equal laws. This can be described as "Reflective Equilibrium". The method of Reflective Equilibrium was first introduced by Nelson Goodman in "Fact, Fiction and Forecast" (1955). However, it is John Rawls who elaborated this method of Reflective Equilibrium by introducing the concept of "Justice as Fairness". While on the one hand, we have the doctrine of 'justice as fairness', as propounded by John Rawls and elaborated by various jurists thereafter in the field of law and political philosophy, we also have the notion of "Distributive Justice" propounded by Hume which aims at achieving a society producing maximum happiness or net satisfaction. When we combine Rawls's notion of "Justice as Fairness" with the notions of "Distributive Justice", to which Noble Laureate Prof Amartya Sen has also subscribed, we get jurisprudential basis for achieving just results for doing justice to the weaker section of the society. [Para 12]

(vi) Judicial system – Human rights perspective – From the human rights perspective, persons belonging to the weaker sections are disadvantaged people who are unable to acquire and use their rights because of poverty, social or other constraints – They are not in a position to approach the courts even when their rights are violated; they are victimised or deprived of their legitimate due – Here lies the importance of access to justice for socially and economically disadvantaged people – When such people are denied the basic right of survival and access to justice, it further aggravates their poverty – Therefore, even in order to eliminate poverty, access to justice to the poor sections of the society becomes imperative. [Para 13]

(vii) Court fees – Simply because the appellants had paid court fee on the claim at the rate of Rs 115 per square yard could not be the reason to deny the compensation at a higher rate – This could be taken care of by directing the appellants to pay the difference in court fee after calculating the same at the rate of Rs 297 per square yard.

Tags : Ashok Kumar Vs. State of Haryana (2016) 4 SCC 544, Bhag Singh Vs. Union Territory of Chandigarh (1985) 3 SCC 737, Bhimasha Vs. Special Land Acquisition Officer (2008) 10 SCC 797, Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal (2000) 7

SCC 756, NARENDRA v. STATE OF UTTAR PRADESH 2017 SCeJ 004

Rohit Kumar Singh, Advocate, for the Appellant; Rakesh Uttamchandra Upadhyay, Advocate, for the Respondent

Judgment

Dr A.K Sikri, J.— A very limited, but pertinent, question of law arises for consideration in these appeals. Land of the appellants was acquired by the Government of Uttar Pradesh vide Notification dated 12-9-1986 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). It was followed by the declaration dated 24-2-1988 issued under Section 6(1) of the Act. It may be mentioned that vide the aforesaid Notification, large tracts of land were acquired, belonging to various landowners/villagers of Village Makanpur Paragana Loni, Tehsil — Dadri, District Ghaziabad, Uttar Pradesh for planned development of Vaishali. After the acquisition of this land, it was handed over to Ghaziabad Development Authority (for short "GDA") for development.

2. The award dated 18-1-1990 was passed by the Special Land Acquisition Officer determining the market value of the acquired land at the rate of Rs 50 per square yard. The appellants as well as other villagers were not satisfied with the rates so fixed and, therefore, sought the reference under Section 18 of the Act. Matter was referred to the Additional District Judge, Ghaziabad for determination of market value of the acquired land. The Reference Court, vide its judgment and order dated 19-4-1999, increased the rate of compensation from Rs 50 per square yard to Rs 90 per square yard. Even this increase in the compensation was not to the satisfaction of the landowners. Various appeals came to be filed. Appeals were also filed by these appellants claiming that the compensation be enhanced to Rs 115 per square yard. Some of the other landowners whose lands were acquired, however, had claimed higher compensation. The first batch of appeals filed by *others* was decided by the High Court by judgment dated 13-11-20141. The High Court found merit in those appeals and fixed the compensation at the rate of Rs 297 per square yard. When the appeals of the appellants herein came up for hearing before the High Court, the High Court took note of its earlier judgment and accepted2 the fact that the land of the appellants was acquired by the same Notification vide which land of *others* was acquired wherein the High Court had awarded the compensation at the rate of Rs 297 per square yard. Notwithstanding the same, insofar as the appellants are concerned, the High Court has limited the compensation to Rs 115 per square yard because of the reasoning that the appellant had demanded compensation at that rate only and had paid the court fees also accordingly. Therefore, opined the High Court, it was difficult to allow compensation at a rate higher than the rate claimed by the appellants.

3. In this backdrop, the question that falls for consideration is as to whether the High Court was precluded from granting compensation at the rate of Rs 297 per square yard which was the rate of compensation awarded to other farmers of the said village whose lands were acquired under the same Notification and were similarly situated?

4. Before proceeding to discuss the aforesaid question, we may mention that insofar as the

order of the High Court fixing compensation at the rate of Rs 297 per square yard is concerned, special leave petition was filed by GDA which was dismissed3 by this Court. Review thereof was sought which was also dismissed4. Even the curative petition filed by GDA came to be dismissed5. Thus, the order of the High Court granting compensation at the rate of Rs 297 per square yard in respect of these acquisition proceedings has attained finality.

5. After hearing the counsel for the parties, we are of the opinion that the issue has already been settled by this Court in ***Ashok Kumar v. State of Haryana***, (2016) 4 SCC 544 wherein it is held that it is the duty of the court to award just and fair compensation taking into consideration true market value and other relevant factors, irrespective of claim made by the landowner and there is no cap on the maximum rate of compensation that can be awarded by the court and the courts are not restricted to awarding only that amount that has been claimed by the landowners/applicants in their application before it. The relevant paragraphs of this judgment are quoted as under: (SCC pp. 546-48, paras 6-7 & 10-11)

"6. Prior to Amendment Act 68 of 1984, the amount of compensation that could be awarded by the Court was limited to the amount claimed by the applicant. Section 25 read as under:

'25. Rules as to amount of compensation.— (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the court shall not be less than, and may exceed, the amount awarded by the Collector.'

The amended Section 25 reads as under:

'25. Amount of compensation awarded by court not to be lower than the amount awarded by the Collector.—The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.'

The amendment has come into effect on 24-9-1984.

7. The pre-amended provision puts a cap on the maximum; the compensation by court should not be beyond the amount claimed. The amendment in 1984, on the contrary, puts a cap on the minimum; compensation cannot be less than what was awarded by the Land Acquisition Collector. The cap on maximum having been expressly omitted, and the cap that is put is only on minimum, it is clear that the amount of compensation that a court can award is no longer restricted to the amount claimed by the applicant. It is the duty of the court to award just and fair compensation taking into consideration the true market value

and other relevant factors, irrespective of the claim made by the owner.

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9. In **Bhag Singh *v*. UT of Chandigarh** (**Bhag Singh *v*. UT of Chandigarh**,(1985) 3 *SCC* 737), this Court held that there may be situations where the amount higher than the amount claimed may be awarded to the claimant. The Court observed: (***SCC p*. 741**, para 3)

'3. ... It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the *State* Government for compensation for acquisition of their land and under the law, the *State* was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned Single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the *State* Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value.'

10. In **Krishi Utpadan Mandi Samiti *v*. Kanhaiya Lal Krishi Utpadan Mandi Samiti *v*. Kanhaiya Lal, (2000) 7 *SCC* 756**, this Court held that under the amended provisions of Section 25 of the Act, the Court can grant a higher compensation than that claimed by the applicant in his pleadings....

11. Further, in **Bhimasha *v*. LAO** (**Bhimasha *v*. LAO**,(2008) 10 *SCC* 797, a three-Judge Bench reiterated the principle in Bhag Singh and rejected the contention that a higher compensation than that claimed by the owner in his pleadings cannot be awarded by the Court."

(emphasis supplied)

6. The matter can be looked into from another angle as well viz. in the light of the spirit contained in Section 28-A of the Act. This provision reads as under:

“28-A. Re-determination of the amount of compensation on the basis of the award of the court.—(1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:”

7. It transpires from the bare reading of the aforesaid provision that even in the absence of exemplars and other evidence, higher compensation can be allowed for *others* whose land was acquired under the same notification.

8. The purpose and objective behind the aforesaid provision is salutary in nature. It is kept in mind that those landowners who are agriculturist in most of the cases, and whose land is acquired for public purpose should get fair compensation. Once a particular rate of compensation is judicially determined, which becomes a fair compensation, benefit thereof is to be given even to those who could not approach the court. It is with this aim the aforesaid provision is incorporated by the legislature. Once we keep the aforesaid purpose in mind, the mere fact that the compensation which was claimed by some of the villagers was at lesser rate than the compensation which is ultimately determined to be fair compensation, should not be a ground to deny such persons appropriate and fair compensation on the ground that they claimed compensation at a lesser rate. In such cases, strict rule of pleadings are not be made applicable and rendering substantial justice to the parties has to be the paramount consideration. It is to be kept in mind that in the matter of compulsory acquisition of lands by the Government, the villagers whose land gets acquired are not willing parties. It was not their voluntary act to sell off their land. They were compelled to give the land to the *State* for public purpose. For this purpose, the consideration which is to be paid to them is also not of their choice. On the contrary, as per the scheme of the Act, the rate at which compensation should be paid to the persons divested of their land is determined by the Land Acquisition Collector. The Scheme further provides that his determination is subject to judicial scrutiny in the form of reference to the District Judge and appeal to the High Court, etc. In order to ensure that the landowners are given proper compensation, the Act provides for “fair compensation”. Once such a fair compensation is determined judicially, all landowners whose land was taken away by the same notification should become the beneficiary thereof. Not only it is an aspect of good governance, failing to do so would also amount to discrimination by giving different treatment to the persons though identically situated. On technical grounds, like the one adopted by the High Court in the impugned judgment, this fair treatment cannot be denied to them.

9. No doubt the judicial system that prevails is based on adversarial form of adjudication. At the same time, recognising the demerits and limitations of adversarial litigation, elements of social context adjudication are brought into the decision-making process, particularly, when it comes to administering justice to the marginalised section of the society.

10. History demonstrates that various forms of conflict resolution have been institutionalised from time to time. Presently, in almost all civil societies, disputes are resolved through courts, though the judicial system may be different in different jurisdictions. Traditionally, our justice delivery system is adversarial in nature. Of late, capabilities and method of this adversarial justice system are questioned and a feeling of disillusionment and frustration is witnessed among the people. After all, what is the purpose of having a judicial mechanism — it is to advance justice. Warren Burger once said:

“The obligation of the legal profession is... to serve as healers of human conflict...(we) should provide mechanisms that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”

11. Prof (Dr) N.R Madhava Menon explains the meaning and contour of social justice adjudication as the application of equality jurisprudence evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the socio-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the court has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. The courts, in such situations, generally invoke the principle of fairness and equality which are essential for dispensing justice. Purposive interpretation is given to subserve the ends of justice particularly when the cases of vulnerable groups are decided. The court has to keep in mind the “problem solving approach” by adopting therapeutic approaches to the maximum extent the law permits rather than “just deciding” cases, thereby bridging the gap between law and life, between law and justice. The notion of access to justice is to be taken in a broader sense. The objective is to render justice to the needy and that means fair solutions to the conflict thereby providing real access to “justice”.

12. Justice is a core value of any judicial system. It is the ultimate aim in the decision-making process. In post-traditional liberal democratic theories of justice, the background assumption is that all humans have equal value and should, therefore, be treated as equal, as well as by equal laws. This can be described as “Reflective Equilibrium”. The method of Reflective Equilibrium was first introduced by Nelson Goodman in “Fact, Fiction and Forecast” (1955). However, it is John Rawls who elaborated this method of Reflective Equilibrium by introducing the concept of “Justice as Fairness”. While on the one hand, we have the doctrine of ‘justice as fairness’, as propounded by John Rawls and elaborated by various jurists thereafter in the field of law and political philosophy, we also have the notion of “Distributive Justice” propounded by Hume which aims at achieving a society producing maximum happiness or net satisfaction. When we combine Rawls’s notion of “Justice as Fairness” with the notions of “Distributive Justice”, to which Noble Laureate Prof Amartya Sen has also subscribed, we get jurisprudential basis for achieving just results for doing justice to the weaker section of the society.

13. From the human rights perspective, persons belonging to the weaker sections are disadvantaged people who are unable to acquire and use their rights because of poverty, social or other constraints. They are not in a position to approach the courts even when their rights are violated; they are victimised or deprived of their legitimate due. Here lies the importance of access to justice for socially and economically disadvantaged people. When such people are denied the basic right of survival and access to justice, it further aggravates their poverty. Therefore, even in order to eliminate poverty, access to justice to the poor sections of the society becomes imperative. In the instant case, it is the poverty which compelled the appellants to restrict the claim to Rs 115 per square yard, as they were not in a position to pay the court fee on a higher amount.

14. It is the aforesaid weighty consideration which justify award of compensation to the appellants at the rate of Rs 297 per square yard. Though, the aforesaid reasons are enough to allow the appeals, in the present case, there is yet another additional circumstance which justifies this outcome.

15. This Court in **Pradeep Kumar *v.* *State* of U.P** (**Pradeep Kumar *v.* *State* of U.P**,(2016) 6 *SCC* 308) which pertains to subsequent acquisition proceeding in the same Village Makanpur, but falling under Noida Authority, had on 16-2-2016 set aside the order passed by the High Court of Judicature at Allahabad and remanded the matter back to the High Court for reconsideration in view of the judgments passed by the coordinate Benches of the same High Court in Kashi Ram case as well as other cases. The High Court, after the remand vide its judgment dated 21-4-2016 in **Pradeep Kumar *v.* *State* of U.P** awarded the same enhanced compensation at the rate of Rs 297 per square yard even in the same case also. The High Court while awarding the compensation at the same rate held:

“27. Therefore, one of the questions which needs to be examined by us is, can the appellants be denied the same rate of compensation only because the claim filed by them before the Reference Court did not disclose the rate which they seek now in terms of the judgment of the High Court in Ghaziabad Development Authority.

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29. It is settled law that the compensation under the 1894 Act had to be fair and just. Fairness requires that all those similarly situate are treated similarly. Technicalities qua rate as per exemplars filed by poor farmers, who are illiterate, has to be given only such importance as may not defeat their right of fair and just compensation qua compulsory acquisition of landholdings.

30. ... The determination of compensation at the rate of Rs 297 per square yard in Ghaziabad Development Authority, has therefore, to be taken as the fair rate determined for the land situated in Village Makanpur with regard to the Notification issued on 12-9-1986 as well as under Notification dated 15-3-1988.”

16. The High Court, in the process, also took aid of Section 28 of the Act. Thus, even those villagers whose land was acquired subsequently, are given compensation at the rate of Rs 297 per square yard. Depriving this rate to the appellants herein would be nothing but

travesty of justice.

17. Simply because the appellants had paid court fee on the claim at the rate of Rs 115 per square yard could not be the reason to deny the compensation at a higher rate. This could be taken care of by directing the appellants to pay the difference in court fee after calculating the same at the rate of Rs 297 per square yard.

18. In fine, the judgment of the High Court is set aside and these appeals are allowed holding that appellants are also entitled to compensation at the rate of Rs 297 per square yard. The difference in compensation along with other statutory benefits under the Act shall be calculated and paid to the appellants within a period of three months from today. It is also directed that the appellants shall make good in deficiency of court fee before the High Court. The appellants shall also be entitled to costs of these appeals.