

PETITIONER:
MEHARBAN & ORS. ETC. ETC.

Vs.

RESPONDENT:
THE STATE OF U.P. & ORS.

DATE OF JUDGMENT: 30/04/1997

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD, G. B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice S. Saghir Ahmed
Hon'ble Mr. Justice G.B. Pattanaik

V.R. Reddy, Additional Solicitor General, Shanti Bhushan, Raju Ramachandran, A.B. Rohtagi, S.S. Ray, Sr. Advs., Sunil Kr. Jain, J.K. Bhatia, Sanjeev Anand, A. Suhrawardy, Zaki Ahmad Khan, Shamamma Anis, Manoj Swarup, Jayant Bhushan, Dheer Singh, Ranjan Mukherjee, J.M. Sharma, S.S. Jauhar, Ms. Meenakshi Arora, S.S. Tiwari,.,', Sanjeev Anand, A.K. Goel, S. Markandeya, Ms. Chitra Markandeya, B. Dayal, M. Aggarwal, (S.K. Sinha) Adv. (NP), Prashant Kumar, Advs. with them for the appearing parties.

O R D E R

The following order of the Court was delivered:

WITH

4216-26, 4227, 4228, 4229-4243, 4244, 4245-48, 4249-50, 4251, 4252, 4253 & 4254 OF 1997

[Arising out of SLP (C) Nos. 14082-92/95, 3619, 1160/96, 27701-15/95, 327/96, 331-34, 336-37, 326, 1510/96, SLP (C) No..... /97 (CC-3695/95) and SLP (C) No..... /97. (CC-5753/96)]

AND

CIVIL APPEAL NOS.7746-48, 7754, 8870-9005, 9007-93, 9237-9258, 9292, 10540-43, 9646-54, 10318-19/950 AND 248-53/97

O R D E R

In case pertaining to the village Dantal, leave confined to the question of interest, stands revoked.

Delay condoned.

We have heard learned counsel on both sides.

Leave granted in all the matters except where the appeals are already on record.

The Notification in respect of the lands of an extent of 235.95 acres of lands situated in village Quasimpur Nagla Tashi was issued on August 14, 1987 under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') for planned development of Meerut City. The Land Acquisition officer awarded compensation. under section 11, on February 22, 1990 at the rate of Rs. 50/- per sq. yard. On reference under section 18, the Additional

District Judge passed the award and decree dated May 11, 1992 awarding compensation at the rate of Rs. 240/- per sq. yd.

Feeling aggrieved by the said judgment, when the Development Authority and the Government filed appeals followed by the cross appeals by the claimants, the High Court in the judgment dated January 12, 1995 reduced the compensation to Rs. 75/- per sq. yard. Thus, these appeals.

In respect of the lands situated in Mukarabpur Palhera admeasuring 416.5 acres, the notification under section 4(1) of the Act was published on February 12, 1980. The Land Acquisition officer in his award dated January 9, 1988 made a belting and awarded compensation for the first belt, i.e., land admeasuring 34.46 acres at the rate of Rs.30/- per sq. yard and for the second belt, i.e., land admeasuring 368.32 acres, at the rate of Rs. 11.25 per sq. yard. On reference, Additional District Judge award compensation for the land admeasuring 33.45 acres falling in first belt at the rate of Rs. 70/- per sq. yard by his award and decree dated May 7, 1990; for the land admeasuring 3.53 acres falling in second belt at the rate of Rs. 37.50 per sq. yard; and for land admeasuring 16.38 acres of the second belt he awarded compensation at the rate of Rs. 70/- per sq. yard. In his another award dated December 18, 1991 for the land admeasuring 1.99 acres covered in the second belt he awarded compensation at the rate of Rs. 100/- per sq. yard. On appeals, the High court reduced the compensation for the first belting to Rs.55/- per sq. yard by judgment and decree dated December 20, 1994 and for the second belting at the rate of Rs. 30/- per sq. yard. With regard to 1.99 acres of land falling in the second award compensation was reduced to Rs. 65/- per sq. yard by the judgment dated March 20, 1995.

In respect of an extent of 105.23 acres of the land situated in village Dantal, the notification under section 4(1) of the Act was published on June 11, 1985. Possession was taken on June 16, 1985, of an area of 53.5 acres and compensation was awarded for 1.03 acre of land in the first belt at the rate of Rs.37.5/- per sq. yard and for 52.45 acres of land falling in the second belting at the rate of Rs. 28.13 per sq. yard. On reference, the Additional District Judge granted compensation by award dated 31.10.1990 for 4.94 acres of land of the first belt at the rate of Rs. 75/- per sq. yard and for 20.85 acres of land of the second belt, at the rate of Rs.70/- per sq. yard by award dated August 28, 1991. By another award of the same date, for the second belt area of 9.66 acres, compensation was awarded at the rate of Rs.70/- per sq. yard. For the second belt area of 29.81 acres, by the award dated January 8, 1991 compensation was awarded at the rate of Rs. 70/- per sq. yard. For small portion of the second belt area of admeasuring 2.45 acres compensation at the rate of Rs. 56.25 per sq. yard was awarded by award dated 31.10.1990. On appeal, the High Court has reduced the compensation to Rs.70/- per sq. yard in respect of 48.44 acres by the judgment dated February 12, 1995. Thus, these appeals by special leave.

We have heard learned counsel on both sides.

We have perused the map produced before us and also the sale deeds filed by the parties and their location as well as the award of the reference court made pursuant to the notification published on April 5, 1980 for acquiring the similar lands for laying the Grand Turnk by-pass Road. The reference Court awarded compensation at the rate of Rs.

70/- per sq. yard which had become final. From this factual matrix, the question that arises for consideration is: whether the determination of the market value by the reference Court as well as the High Court is vitiated by any error of law and whether the appellants are entitled to higher compensation ? it is seen that the lands in all the village are abutting the national highway and are situated on either side of the National highway and are situated on either side of the National Highway. Some of the lands are in between the developed Meerut Cantonment and the National highway and some of the lands are on the either side of the National highway but at a closer proximity to the lands abutting the National highway. In view of this proximity of the lands of the developed area, the question arises: as to what would be the reasonable market value of the lands in question? Shri Shanti Bhushan, learned senior counsel, relied on the sale deeds which were filed in the reference Court but none connected with them was examined. Though the certified copies are admissible under section 51-A, examination of either vendor or vendee is mandatory. So, they are inadmissible in evidence. However, the award of compensation at the rate of Rs.70/- per sq. yard having become final, would form the basis to the compensation. In view of the gradual rise in prices, reasonable approximation. in view of the gradual rise in prices, reasonable approximation may be made. Though, it involves an amount of cost for developments, reasonable approximation should be made which, according to the appellants, it would be Rs. 240/- per sq. yard as determined by the reference Court. This was determined after deducting developmental charges. The High Court, therefore, is wrong in reducing the compensation from Rs. 240/- to Rs.75/- per sq. yard.

Shri S.S. Ray, learned senior counsel and Shri V.R. Reddy, learned Additional solicitor General, on the other hand, contended that the Meerut Development Authority filed an application under order XLI, Rule 27, CPC to take certain documents on record which are, admittedly negotiated rules in respect of the lands covered under the notification dated April 5, 1980 for extension of by-pass Grand Trunk Road. Therein, the parties by negotiation had agreed to sell their lands at the rate of Rs. 32.25 per sq. yard. That would form the basis. Though, in law they cannot go behind the award of Rs.50/- per sq. yard further enhancement is not warranted on the basis of the above unimpeachable evidence. The High court, therefore, is wrong in determining the compensation at the rate of Rs.75/- per sq. yard. Shri S.S. Ray further contended that the lands are situated in different village and near different fertility and are, therefore, not capable of securing the same market value. The reference court, though adopted the belting system did not properly consider the fixation of the market value on the rational basis. In the absence of adduction of evidence either of the vendor or of the vendee, sale deeds cannot be looked into. The Land Acquisition officer considered unimpeachable evidence and his award can be looked into. Necessarily, the award there was no need to increase further enhance the compensation.

Shri Raju Ramachandran, learned senior counsel appearing for the claimants in Mukarabpur Palhera, contends that though the notification is dated February 12, 1980, necessarily, there is a rise in prices and the reference court was not right in making the belting and fixing the compensation at Rs.70/- and Rs.37.50 per sq. yard etc. The High Court also committed same error of law. The learned counsel appearing for the claimants from the village

Dantal, contended that the lands are situated in between the development Meerut cantonment area and the by-pass road possessed of high potentiality for immediate use as building purpose. The fixation of the market value by the High Court and the reference Court, therefore, is wrong in law.

Having regard to the respective contentions, the question that arises for consideration is: whether the determination of the compensation by the reference Court and the high court is correct in law? It is settled legal position that the Court, while determining the compensation must sit in the arm chair of a willing and prudent vendee and put a question whether the market value sought to be determined would be capable to fetch the price that hypothetic he should determine just and adequate compensation for the land acquired. Since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence though certified copies marked under Section 51-A are available. So, all the sale deeds stands excluded. It is the duty of the Court to take all the relevant factors into account before determination of the compensation. Applying the above acid test, in view of the paucity of evidence, instead of remitting the matter to the reference Court and prolonging the agony of the claimants, we think that the appropriate course would be to base the award of the reference court in respect of the notification dated April 5, 1980 in which the compensation was determined at the rate of Rs.70/- per sq. yard and which has become final, That would form the foundation and base to determine the compensation treating that area as a block. That was determined after giving necessary deductions towards developmental charges, as required under law. The belting in this case is not reasonable for the entire lands are situated in well defined and developed blocks. The lands are possessed of immediate potential value as building sites. Having regard to that base, the question is: whether the claimants are entitled to higher compensation then was determined? In view of the fact that Meerut City is a fast growing industrial and commercial city and in many a part it is already developed area, there is pressure on the land for the developmental activities, viz. for building and commercial purposes. In fact, under these circumstances, we think that we should take into account reasonable rise in prices, particularly in view of the gap of several years, we think that the approximate net market value would be Rs. 175/- per sq. yard after giving deduction for developmental charges for the lands situated in Quasimpur Nagla Tashi and the claimants are entitled to the solatium at 30% on enhanced compensation. They are also entitled to interest at the rate of 95 per annum of one year and 15% per annum on enhanced compensation from the date of the taking possession till date of deposit in the court. In case the land owners are still in possession, they are not entitled to the payment of the interest. Similarly, they are entitled to additional amount under section 23(1-A) from the date of the notification till date of the award or date of the taking possession, whichever is earlier.

The appeal of claimants in respect of the aforesaid village stands disposed of. The judgment and decree of the High Court stand set aside. The judgment and decree of the reference Court stand modified accordingly.

In respect of the Mukarabpur Palhera, it is seen that the notification is dated July 12, 1980. In view of the fact that this land also is in very close proximity to the

developed Meerut city and the lands also were possessed of potential value for building purposes as on the date of the notification, we think that approximate market value would be Rs.85/- per sq. yard. The claimants are entitled to solatium on the enhanced compensation at the rate of Rs. 30%. They are also entitled to interest in case the possession was delivered by them with effect from the date of taking possession for one year at 9% and thereafter at the rate of 15% till the date of the deposit in the Court. If possession was not so taken, no interest is payable. They are also entitled to additional amount at 12% per annum under section 23(1-A) till date of passing of the award. Equally, in Dantal village, the lands are situated very close to the developed Meerut city and they also possessed of same potential value as other areas on the date of the notification. Therefore, they are entitled to compensation at the rate of Rs.85/- per sq. yard. They are entitled to solatium at the rate of 30% in case delivery of the possession had taken place; in fact possession was taken in respect of the extent of 53.5 acres. The claimants are entitled to the interest at the rate of 9% from June 16, 1985 for one year and at the rate of 15% thereafter till date of deposit. They are entitled to additional amount under Section 23(1) from the date of notification till date of passing of the award or delivery of the possession at the rate of 12% per annum, whichever is earlier.

The appeals are, accordingly allowed. The judgment of the High Court stands set aside. The award and decree of the reference Court in respect of villages stand modified. In view of the facts and circumstance of the case, parties are directed to bear their own costs. If the amount has already been deposited as per the award of the reference Court to the extent of variation, the Meerut Development Authority is entitled to restitution. It is open to the Meerut Development Authority to enforce the award for seeking restitution. In view of the increase in the case of valuation of the lands, necessarily, enhanced compensation would form a component for charging the said amount from the purchaser in respect of the respective plots or buildings, as the case may be, towards the developmental expenses.