



Reserved Judgment
IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No. 11/2009

Director,
Wildlife Institute of India,
Chandrabani, Dehradun

.....Appellant

Versus

Sri J.M. Kapoor,
Managing Director,
M/s Doon Housing Pvt. Limited.

....Respondent

Mr. Siddhartha Singh, Standing Counsel (Central Government),
for the appellant.
Mr. Siddhartha Sah, Advocate, holding brief of Mr. Ramji
Srivastava, Advocate, for the respondent.

October 27, 2015

Hon'ble Servesh Kumar Gupta, J.

By way of the instant appeal, the judgment and order dated 25.10.2008 and decree dated 4.11.2008, rendered by the learned District Judge, Dehradun in Land Acquisition Reference No. 240/1994, have been challenged.

2. In brief, shorn of unnecessary details, the facts are that in the outskirts of Dehradun city, way back in 1991, the Wildlife Institute of Central Government was already existing in its initial stage (though not fully established) and the events so happened that for its expansion, some more land was needed and that was pointed out in Village Arcadia Grant, Pargana Central Doon, bearing Khasra No. starting from 2070 to 2096. The total area of such land was 20.38 acres recorded as *Bhumidhari* land in the name of Doon Housing Society Private Limited having its office at 102, Joshi Road, New Delhi. Its Managing Director was one Mr. J.M. Kapoor. It appears that later on, somehow, its office shifted to T-725,



Faiz Road, Karolbagh, New Delhi. It transpires that since the society was Delhi based, hence with the passage of time, one Mr. Budh Singh and Mohan Singh and probably few other persons were in adverse possession for a long time on a portion of this land. They were found to be doing their agriculture on the respective portion of land occupied by them making their improvised dwelling units in the area, which was almost forest in nature. This total land of 20.38 acres was also the part of a very very big land which was in hundreds of acres in the name of Doon Housing Society Private Limited and, that is why, when such land was acquired by issuing the notification dated 8.10.1991 under Section 4(1) of the Land Acquisition Act, 1894 (for brevity, hereinafter called as the 'Act'), the notices were sent to Doon Housing Society (whose name was recorded as *Bhumidhari Class I*) at its Delhi address and also to Budh Singh and Mohan Singh, whose names were recorded as *Aasami Varg 9 Kastkar*. In the beginning, since the office could nowhere be traced in the name of Doon Housing Society, hence the Process Server reported that such society perhaps had come to an end. So, Mr. J.M. Kapoor could not make any objection under Section 9 of the Act before the Special Land Acquisition Officer (for short, SLAO) at the time of determining the compensation under Section 23 of the Act.

3. After the notification under Section 4(1) of the Act, as aforesaid, the Government issued the notification under Section 6 on 27.12.1991 and ultimately the possession was taken on 30.1.1993.

4. The SLAO passed an award on 31.1.1994 under Section 11 of the Act in Case No. 22 of 1987-88 determining the total compensation (including solatium &



interest as contemplated under the Act) to the tune of Rs. 23,88,654.75. In his said award, he had found that Khasra No. 2070, 2072, 2074, 2076, 2077, 2078, 2080, 2084, 2086, 2088, 2090, 2096, in all 14.68 acres, were undergoing the title dispute. That apart, rest of the area of 5.78 acres too, which was also in the name of Doon Housing Society, was facing the title dispute. However, taking into consideration the many exemplars of the sale deeds of the nearby land, he determined the market value to the tune of Rs. 78,947.35 per acre, making total value of the acquired land to the tune of Rs. 16,08,947.00. Somehow, Mr. Kapoor got the information and he moved application to the Collector on 16.3.1994 and then further on 2.7.1996 claiming himself to be the owner of the land and feeling his dissatisfaction on the quantum of compensation, he made the prayer to refer the matter to the District Judge under Section 18 of the Act. So, the Collector concerned referred the matter for determination of appropriate compensation.

5. It is also pertinent to mention that since Mr. Budh Singh and Mr. Mohan Singh were also claiming themselves to be *Aasami* on certain portion of the land, so they also got the matter referred to the District Judge. This way, three cases were before the learned District Judge for determination of appropriate compensation and those were LA Case No. 240/1994 initiated by Mr. J.M. Kapoor, LA Case No. 238/1994 initiated by Mr. Budh Singh and LA Case No. 237/1994 initiated by Mr. Mohan Singh. It cannot be overlooked that during the pendency of these references, a compromise entered between the legal heirs of Mohan Singh and Budh Singh on the one hand and M/s Doon Housing Society Private Limited on the other. It was settled



between them that the entire amount of compensation, which will be paid by the acquiring body, will be payable to the Doon Housing Society Private Limited and in lieu of waiving their claim, the said society paid rupees six lakhs to the legal heirs of Mr. Budh Singh for a total land of 4.776 acres @ Rs. 1,25,628.14 per acre and rupees sixty five thousand to the legal heirs of Mohan Singh for a total land of one acre @ Rs. 65,000/- per acre. So, now the only claimant remained before the District Judge was the Doon Housing Society.

6. Learned District Judge, accepting the market value of the acquired land as claimed by the claimant @ Rs. 5,50,000/- per acre, determined the rates of such land deducting 25 per cent of market value on the basis of law laid down by the Hon'ble Supreme Court in the case of *Deputy Collector v. Malla Atchinaidu*, reported in **AIR 2007 SC 740**, wherein it was held that on account of the largeness of the area, the maximum deduction of 25 per cent would be made. Learned District Judge was of the view that since the Collector of the District himself has determined the value of the residential land @ Rs. 5,50,000/- as circle rate in the area, *inter alia*, of village Arcadia Grant, so, the compensation should be determined at such rate. Thus, accepting the circle rate as Rs. 5,50,000/- per acre in the area, but subject to the deduction of 25 per cent on the basis of law laid down in *Malla Atchinaidu* case (supra), the learned District Judge determined the market value @ Rs. 4,12,500/- per acre.

7. It is obvious that evaluating the land at such rate and awarding the compensation thereon has not been disputed by the said society, but feeling aggrieved with the



decision rendered by the learned District Judge, the Wildlife Institute of India has come up in this appeal.

8. I have heard learned Counsels of both the parties and have gone through the relevant evidence available on the record.

9. I feel that the only dispute remains is whether the market value of the land should be accepted at the rate determined by the SLAO or at the rate awarded by the learned District Judge. Learned Counsel of the appellant, though has argued that the land was agricultural in nature at the time of its acquisition because no declaration about the nature of land use change under Section 143 of Zamindari Abolition Act was there. However, I feel that this is not the question to be considered herein because nature of land, as was recorded in the revenue registers, being agricultural is not in dispute and that is evident by the revenue records that in Khatauni, it was recorded in the name of Doon Housing Society as *Bhumidhari* land as well as it was recorded as *Aasami* land in the name of Budh Singh and Mohan Singh on certain portion of such land. Merely that it was adjacent to the developing Wildlife Institute does not make it in the nature of residential in character. Otherwise also, it has been on the record that it was low lying wet land, having no definite, systematic arrangement for its irrigation. So, obviously it was an unirrigated low lying wet land. Though it was having prospects of its conversion into residential character after expansion of the city in the coming decades, but at the time of acquisition it was not a developed land. It is also true that since the Doon Housing Society was having another vast land nearby, so it had started to sell it to certain persons in the form of small plots, but that was an attempt



on the part of the society in going against the law of land i.e. without getting it converted and taking the declaration under Section 143 of the ZA Act, the society was venturing out to execute the sale deeds. Even if this factor is considered for a moment that such sale deeds were pertaining to Khasra No. 2223 within which a plot of land @ Rs. 125 per square metre was sold, but the fact remains that such Khasra No. 2223 was not the part of acquired land, which runs beginning from the Khasra No. 2070 to 2096.

10. This fact cannot also be lost sight of that to remove Mr. Budh Singh and Mr. Mohan Singh from the way, the society entered into a compromise with the successors of these two persons and paid the compensation @ Rs. 1,25,628/- per acre and Rs. 65,000/- per acre to them respectively. So, would it not be unjustified that at the time of giving compensation to the persons coming in the way, the society paid maximum of Rs. 1,25,628/- per acre or even Rs. 65,000/- per Acre, while at the time of claiming the compensation from the Government, the rate was being claimed as Rs. 5,50,000/- per acre?

11. Learned Counsel of the appellant has rightly argued that the rates as paid by the Doon Housing Society to the successors of Budh Singh and Mohan Singh are nearer to the rates as settled by the SLAO, which denotes the exact market value of the land at the relevant time.

12. Even these arguments are kept aside and if the precedent of a Division Bench of this Court, rendered in the case of *Bhopenendra Singh & Others v. Awas Vikas Parishad and Others*, reported in **2005 (2) U.D. 295**, is taken into consideration, the law therein was laid down as under:



“It would be injustice to the owner of land if for realizing the stamp duty, we apply the circle rate and deny at-least the said rate in making payment of compensation on acquisition of his land. Circle rate is not always the correct market value of the land and parties are at liberty to show by means of exemplar sale deed, the market value to be higher than the circle rate, but simultaneously, it is true that the Government, on one hand cannot charge stamp duty treating particular market value at circle rates and deny the same for making the payment of compensation on acquisition of the land and therefore, market rates shown in the form of circle rate cannot be discarded while assessing the market value of the land for the purposes of calculating the compensation of the land acquired.”

This Division bench judgment was further relied upon by a coordinate Bench of this Court in case of *State of U.P. v. Kunwar Lal*, reported in **2006 (1) U.D. 479**.

13. So far as the market value is concerned, it was certainly nearer to the rate as determined by the SLAO, which was based on the exemplar sale deeds and that gets support from the payment of compensation made by the society itself to the legal heirs of Budh Singh and Mohan Singh, but relying on the precedent (supra), even if I consider the circle rate, then the circle rate has wrongly been taken by the learned District Judge for determining the compensation for the reason because Rs. 5,50,000/-



per acre was the rate when the **land, residential in nature, was to be purchased up to the limited area of 0.30 acre**. Otherwise for unirrigated agricultural land, it was Rs. 2,35,000/- per acre and on the principal laid down by the Hon'ble Apex Court in Malla Atchinaidu case (supra), deducting 25 per cent (Rs. 58,750/-) on the basis of largeness of the area, it comes to Rs. 1,76,250/- per acre. Thus, this Court determines the market value on the basis of circle rate, too, @ Rs. 1,76,250/- per acre. Total value of land measuring 20.38 acres at that time will be calculated accordingly.

14. Thirty per cent solatium and 12 per cent per annum as additional compensation from 8.10.1991 to 30.1.1993 (842 days) as per Section 23(1A) of the Act will also be payable to the Doon Housing Society.

15. Payment already made by the Government, as determined by the SLAO, will be deducted and after such deduction, the balance amount will be credited with interest of 9 per cent per annum from 31.1.1993 (date of possession) to 30.1.1994 (date of award). Thereafter 15 per cent per annum interest will be paid on the remaining amount as envisaged under Section 34 of the Act. The calculations will be made accordingly by the competent officer in this regard and payment (if any still due) shall be deposited in the Court of District Judge, Dehradun within two months from today and thereafter the said amount will be permitted to be withdrawn by the respondent Doon Housing Society after adjusting the payments of rupees ninety lakhs withdrawn by the society on 24.7.2009. The money, deposited by the appellant Wildlife Institute, which is lying in this High Court, shall be remitted back to the Court of District Judge, Dehradun for its disbursement. It



is further made clear that while calculating the interest of 15 per cent, the factor that the appellant institute had deposited Rs. 1,80,00000/- on 24.4.2009 in the High Court shall be taken into consideration.

16. Thus, the judgment under challenge is set aside. It is clarified that in case calculations reveal that surplus amount has already been deposited by Wild Life Institute in District Court Civil deposit as well as in High Court, the same so found surplus will be disbursed in favour of Appellant Institute.

17. The appeal is hereby allowed in the above terms. Let the lower court record be sent back.

(Servesh Kumar Gupta, J.)