

ITEM NO.15

COURT NO.11

SECTION XI

S U P R E M E      C O U R T   O F   I N D I A  
R E C O R D   O F   P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2010  
CC 15161/2010

(From the judgement and order dated 01/04/2010 in      FA No. 19/1999  
of The HIGH COURT OF ALLAHABAD, LUCKNOW BENCH AT LUCKNOW)

U.P.AVAS EVAM VIKAS PARISHAD LUCKNOW      Petitioner(s)

VERSUS

JOGINDRA SINGH MALIK & ANR      Respondent(s)

IA NO.1(c/delay in filing SLP)

Date: 04/10/2010      This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)      Mr. Vishwajit Singh,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R  
Delay condoned.

The petitioner is aggrieved by the refusal of the Allahabad High Court to interfere with the order passed by Nagar Mahapalika/Awas Evam Vikas Parishad Tribunal, Lucknow (for short, 'the Tribunal') which had fixed market value of the acquired land at Rs.4.65 per square feet.

The land owned by respondent No.1 was acquired for Kursi Road Bhoomi Vikas Evam Grihsthan Yojna, Lucknow.

For this purpose, notification under Section 28 of the U.P.

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Avas Evam Vikas Parishad Adhiniyam, 1965 (for short, 'the Act') and declaration under Section 32 of the Act was published on 20.7.1980. The Special Land Acquisition Officer passed award dated 25.5.1982 whereby he fixed market value of the acquired land at Rs.1.13 per square feet.

On a reference made to it, the Tribunal, after threadbare analysis of the facts of the case and evidence produced by the parties, directed that respondent No.1 be paid compensation at the rate of Rs.4.65 per square feet along with other statutory benefits. The Tribunal noted that after purchasing the land for setting up a residential colony, respondent No.1 had taken various steps necessary for raising construction and spent substantial amount at various stages. The tribunal also noted that amenities like water, electricity, transportation, bank, school, post office, police station, etc. were available at the site, which was near a developed colony, namely, Aliganj Colony of Lucknow Development Authority and there existed a fully developed colony, namely, Vishnupuri at a distance of 1 furlong. The Tribunal then referred to order dated 1.11.1984 passed in Misc. Case No.17/1982 by which market value of the acquired land was fixed at Rs.5.81 per square feet and observed:

"The first judgment is market as paper no. Ga15 which was passed in misc. Case no.,. 17/82 by my predecessor on 11.5.84. This judgment clearly

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indicates that my Ld. Predecessor determined market rate of the foresaid land @ Rs.5.81 per sq. ft. and after making a deduction of 40%, the market rate of the aforesaid land was fixed at Rs.3.50 per sq.ft. From judgment paper no.Ga15, it is evident that the land which was the subject matter of the aforesaid judgment was acquired under the same Notification, for same Scheme and on the same date to that of the present land in question. Under the circumstance, Judgment paper no. Ga15 is a relevant document for determining the market rate of acquired land. Keeping this paper in view, it would be just and proper to decide the market rate. The Ld. Counsel for the claimant contended that the quality, location and housing potentiality of the land in the present case was comparatively better than the land covered under the aforesaid judgment in Misc. Case no.17/82, as the claimant got the land fully developed and thereafter duly got its site map and layout map approved from the Authorities. The Ld. Counsel further contended that the market rate of the land covered under the judgment in Misc. Case no.17/82 was determined by the Court after making a deduction of 40% from the prevalent market rate at Rs.5.81. Since the land under the present case was got developed by the

claimant and the respondent did not spend any money in its development, therefore, at the time of determining its market rate, it would be inappropriate to make a deduction of 40% and the claimant may be allowed to get compensation @ Rs.5.81 per sq. ft for his acquired land. It is true that the suit land of Misc. Case no. 17/81 was an undeveloped land and at the time of

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determining its market rate, the Ltd. Tribunal made a deduction of 40% from Rs.5.81 per sq. ft. The reason of deduction is that some part of the land becomes useless while carrying out developmental work on it. Land, which is already in the form of developed land, costs much less in its development work and less land becomes worthless. PW-1 Joginder Singh Malik has clarified that he got the land fully developed at his own cost. In para 9 of his evidence, he has clarified that facilities like sewer, road, etc. were available there and his land was situated on 150 ft. wide road. It appears that the layout plan and the site plan of the land was approved by the Lucknow Development Authority on the basis of the fact that it was a developed land. Keeping the aforementioned facts in mind, it would be appropriate to make deduction of 20% instead of 40% from Rs.5.81 per sq. ft. as it is likely that the respondents had also carried out some developmental work on the land after acquiring the same and may have spent some money on that. Thus, it would be correct to determine the market rate of the acquired land at Rs.4.65 per sq. ft. (after making deduction of 20% on the rate of Rs.5.81 per sq. ft) as on the date of publication of Notification u/s. 28 of the Act."

The learned Single Judge dismissed the cross-appeals filed by the petitioner and respondent No.1 and held that determination of market value made by the Tribunal was just and proper.

In our view, the reasons assigned by the Tribunal

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for fixing market value of the acquired land at Rs.4.65 per square feet were correct and the High Court did not commit any error by declining to interfere with the same. It was neither the pleaded case of the petitioner nor it was argued on its behalf that in respect of the land acquired for the same scheme, the Tribunal had not fixed market value at Rs.5.81 and applied deduction at the rate of 40%. Since, respondent No.1 had already developed the land, the

Tribunal rightly applied deduction of 20% instead of 40% in respect of the land which was subject matter of Misc. Case No.17/1982 because development had not been carried out on that land.

With the above observations, the special leave petition is dismissed.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master