

A TEJUMAL BHOJWANI (DEAD) THROUGH LRS. AND ORS.

v.

STATE OF U.P.

AUGUST 26,2003

B

[V.N. KHARE, CJ, AND S.B. SINHA, J.]

*Land Acquisition:*

C U.P. Awas Evam Vikas Parishad Adhiniyam, 1965: ss.28 and 32—  
Acquisition of large tract of land alongwith structures and tubewell—  
Compensation—Solatium—Interest—Additional compensation—Deduction  
towards development of land—Land Acquisition Officer offering compensation  
at the rate of Rs. 2 and Rs. 3 per sq. ft.—Separate compensation for structure  
and Tubewell—Civil Court enhancing compensation to Rs. 12 and Rs. 15 per  
D sq. ft.—Also enhancing compensation for structure and Tubewell—High Court  
modifying compensation to Rs. 10 per sq. ft.—Declined separate compensation  
for structure and Tubewell—Ordered deduction @ 10% towards development  
of land—Held, claimants are entitled to 30% solatium, as also interest and  
additional compensation as the proceedings were pending in the year 1984—  
E Separate compensation for structure and Tubewell would be given as there  
was no capitalization of value of land and structure—It would be appropriate  
to deduct development charges @ 25%—Land Acquisition Act, 1894—ss.4,6,18  
and 23(1-A).

F Savitri Cairae v. U.P. Awas Evam Vikas Parishad and Anr., [2003] 6  
SCC 255, relied on.

Ratan Kumar Tandon and Ors. v. State of U.P., [1997] 2 SCC 161  
distinguished.

G Shimla Development Authority and Ors. v. Smt. Santosh Sharma and  
Anr., AIR (1997) SC 1791, referred to.

U.P. Awas Evam Vikas Parishad v. Jainul Islam and Anr., [1998] 2 SCC,  
467 cited.

H CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6365-6382  
1044

of 1999.

From the Judgment and Order dated 5.12.97 of the Allahabad High Court in F.A. Nos. 134, 129, 130, 131, 135, 136/87, 97/89, 199/90, 20/91 97/90, 14/94, 200, 178, 91, 205, 64, and 184 of 1990.

WITH

C.A. Nos. 6383-6398 of 1999.

S. Ganesh, R.K. Jain, Manoj Malhotra, Ganesh Bhojwani, Sanjiv Sen, S. Sukumaran for C.N. Sree Kumar, P.K. Jain, Shirish Kumar Misra, A.K. Srivastava, M/s. J.B.D. & Co., and Ramesh Babu M.R. for the Appearing parties.

The following Order of the Court was delivered

The appellants herein (in C.A. Nos. 6365-6382 of 1999) were the owners of large tract of land situate in village Chhauni Gora Barik and/or Chhauni Qadim, Pargana Khairabad, Tehsil and District Sitapur in the State of Uttar Pradesh. The respondent herein (in C.A. Nos. 6365-6382 of 1999) is the State of U.P., through the Collector, [Land Acquisition Officer, Avas Evam Vikas Parishad (hereinafter referred to as 'the Parishad')], established and constituted under the provisions of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (for short 'the Adhiniyam'). Under the Adhiniyam, the Parishad is entrusted with certain functions and duties for preparing and executing housing schemes. For the aforesaid purpose in mind, the Parishad issued a notification dated 1st of November, 1974 under Section 28 of the Adhiniyam, which is equivalent to Section 4 of the Land Acquisition Act, 1894. By the aforesaid Notification a large tract of land was sought to be acquired pursuant to a Housing Scheme for construction of houses for the public. The said notification was followed by a Notification dated 11th November, 1978, under Section 32 of the Adhiniyam, which is equivalent to Section 6 of the Notification.

The Land Acquisition Officer gave three different Awards on three different dates. In the case of appellants herein, the Land Acquisition Officer offered compensation for the acquired land @ Rs. 2 per square foot in first two Awards and Rs. 3 per square foot in the last Award. It is pertinent to mention here that the Land Acquisition Officer offered separate compensation for the structure standing on the land as well as to the existing Tube Well. The claimants were not satisfied by the compensation and, therefore, they sought compensation before the Civil Court. The Civil Court enhanced the

A compensation to Rs. 7.75, Rs. 12 and Rs. 15 per square foot respectively and also enhanced the compensation awarded for the Tube Well as well as the structure standing on the land. Aggrieved, the parties preferred appeals and cross appeals before the High Court.

B The High Court after considering the matters, modified the judgment of the Reference Court awarding compensation @ Rs. 10 per square foot. However, it declined to award separate compensation for the Tube Well and the structure standing on the Land. The High Court, however, held that there would be further deduction @ 10% towards the development of the land. The claimants, (appellants in C.A. Nos. 6365-6382 of 1999 and the U.P. Avas Evam Vikas Parishad and appellants in C.A. Nos. 6383-6398 of 1999) not satisfied, preferred separate appeals by way of special leave petition.

C This Court, while entertaining the special leave petitions, restricted the notice on the following three questions:

- D (1) Whether solatium and interest should have been awarded as per the Land Acquisition (Amendment) Act, 1984 as laid down by this Court in *U.P. Avas Evam Vikas Parishad v. Jainul Islam and Anr.*, [1998] 2 SCC 467;
- E (2) Whether appropriate compensation should have been awarded for structures and tube wells situated on the land concerned; and
- (3) Whether the offer regarding payment of compensation for trees given by the Land Acquisition Officer could be withdrawn in Section 18 proceedings.

F So far Civil Appeal Nos. 6365-6382 of 1999 are concerned, the grounds challenged were limited as indicated above.

G Mr. S Ganesh, learned senior counsel appearing for the appellants, urged that in view of the latest decision of this Court in the case of *Savitri Cairae v. U.P. Avas Evam Vikas Parishad and Anr.*, reported in [2003] 6 SCC 255, the claimants whose land were acquired by the Parishad and whose proceedings are pending in the year 1984, are entitled to solatium as provided under the Land Acquisition (Amendment) Act, 1984. We find merit in the submission. In view of the decision in *Savitri Cairae's* case supra, it must be held that each of the appellants are entitled to solatium @ 30% interest and additional compensation.

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Next submission of learned senior counsel is that the claimants were entitled to separate compensation for the Tube Well as well as for the structure standing on the land and the High Court committed error while denying compensation for the above items, although the land Acquisition Officer has granted compensation for those items. We find substance in the argument. However, learned counsel appearing for the Parishad argued that the claimants were not entitled to compensation for value of Land and building separately and for that purpose cited a decision of this Court in *Ratan Kumar Tandon and Ors. v. State of U.P.*, reported in [1997] 2 SCC 161. We find that the said decision is distinguishable. In that case we find that there was capitalisation of the value of land and structure and, therefore, the claimants were not given separate compensation for land and building. Here we find that there was no capitalisation of value of land and structure by the Land Acquisition Officer in his award. On the other hand, Land Acquisition Officer has given compensation separately for the land, building and Tube Well. In that view of the matter claimants are entitled to separate compensation for land, Tube Well and structure.

Learned counsel appearing in C.A. Nos. 6383-6398 of 1999 urged that the High Court, while deducting the development charges @ 10% from compensation, acted erroneously, and in fact the deduction ought to have been between 30 to 40% and for that purpose he relied on the decision in *Shimla Development Authority and Ors. v. Smt. Santosh Sharma and Anr.*, reported in AIR (1997) SC 1791. It is true that the deduction for development charges ought to be adequately provided for, but it varies from place to place, area to area and amount of developments which are required to be carried out and thus there cannot be any fixed amount of deduction towards development charges. In the present case, we find that the total land acquired was about 27 acres. We are, therefore, of the view that it would be appropriate if the development charges @ 25% is deducted from the compensation awarded to the claimants.

For the aforesaid reasons, the orders and judgment under challenge are modified and the appeals are disposed of in the aforesaid terms. No costs.

R.P.

Appeals disposed of.