

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5738-5739 OF 2021

Ajai Pal Singh & Ors.

...Appellant(s)

Versus

State of Uttar Pradesh & Anr.

...Respondent(s)

WITH

CIVIL APPEAL NO. 5740 OF 2021

Smt. Barfi Devi (Dead) through L.R.s. & Ors.

...Appellant(s)

Versus

State of Uttar Pradesh & Anr.

...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 15.12.2016 passed by the High Court of judicature at Allahabad in First Appeal Nos. 195 of 1983 and 487 of 1984 by which the High Court has dismissed the said appeals and has confirmed the judgment and the order passed by the Reference Court awarding the compensation of the lands acquired @ Rs.4.628 per

square yard, original landowners have preferred the present appeals being Civil Appeal Nos. 5738-5739 of 2021. The appellants have also challenged the common order dated 02.11.2016 in Civil Misc. Application No.167571 of 2016 in First Appeal No. 487 of 1984 by which the High Court has dismissed the application for bringing on record certain additional documents filed under Order XLI Rule 27 of the Civil Procedure Code.

2. Civil Appeal No. 5740 of 2021 has arisen out of the impugned judgment and order passed by the High Court by which the High Court has dismissed the First Appeal No. 203 of 1983 and has confirmed the judgment and order passed by the learned Reference Court awarding the compensation for the lands acquired @ Rs.6/- per square yard.

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3. A notification under Section 4 of the Land Acquisition Act (hereinafter referred to as “Act”) was issued on 30.04.1976 proposing to acquire 589 bigha, 6 biswa and 14 biswansi land. The land was to be acquired for New Okhla Industrial Development Authority (hereinafter referred to as “NOIDA”) constituted under the provisions of U.P. Industrial Development Act, 1976 for the purpose of planned development of industries in the area within the jurisdiction of NOIDA.

Declaration under Section 6 was published on 01.05.1976. Possession of land was taken by the Collector on 31.07.1977. The Special Land Acquisition Officer declared the award for compensation on 28.03.1977 offering compensation @ Rs.10,200/- per bigha, i.e., Rs.2.38 per square yard. At the instance of the landowners, a Reference was made to the Reference Court under Section 18 of the Land Acquisition Act to enhance the amount of compensation. Before the Reference Court, landowners claimed compensation at the rate of Rs.10/- per square yard. However, after considering the material on record, the Reference Court enhanced the compensation to Rs.14,000/- per bigha (Rs.4.628 per square yard).

4. Feeling aggrieved and dissatisfied with the judgment and order passed by the Reference Court enhancing the compensation to Rs.14,000/- per bigha only (Rs.4.628 per square yard), the landowners preferred the First Appeal Nos. 195 of 1983 and 487 of 1984 before the High Court of judicature at Allahabad and by the impugned common judgment and order, the High Court has dismissed the said appeals. Before the High Court, an application under Order XLI Rule 27 was preferred to bring on record certain documents as additional evidence, which was also dismissed by the High Court by order dated 02.11.2016.

5. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court dismissing the appeals and confirming the order passed by the Reference Court enhancing the compensation to Rs.4.628 per square yard, the claimants - original landowners have preferred the present appeals.

Civil Appeal No. 5740 of 2021

6. So far as Civil Appeal No. 5740 of 2021 is concerned, a notification under Section 4 of the Land Acquisition Act was issued to acquire 154 bigha 9 biswa and 11 biswansi of land at Village Baraula, Pargana & District Ghaziabad also for the development of the NOIDA and for the said purpose, the notification under Section 4 was issued on 16.09.1976. Declaration under Section 6 was issued on 16.09.1976. At the instance of the original landowners, reference was made before the District Court under Section 18 of the Land Acquisition Act. The Reference Court – the learned Additional District Judge, Ghaziabad enhanced the compensation to Rs.18,150/- per bigha (Rs.6 per square yard). The High Court by the impugned judgment and order in First Appeal No.203 of 1983 has dismissed the said appeal for enhancing the compensation and confirmed the judgment and order passed by the Reference Court. Hence the present appeal.

7. Shri Harshvir Pratap Sharma, learned senior counsel has appeared on behalf of the appellants in Civil Appeal Nos. 5738-5739 of 2021 and Dr. Rajeev Sharma, learned counsel has appeared on behalf of the appellants in Civil Appeal No.5740 of 2021. Shri Rachit Mittal, learned counsel has appeared on behalf of the respondent – NOIDA.

8. Learned counsel appearing on behalf of the respective appellants have prayed to enhance the compensation to Rs.297/- per square yard relying upon the judgment and order passed by the High Court in First Appeal No. 1100 of 2004 titled **Mangu and Ors. Vs. State of U.P.** It is submitted that while disposing of First Appeal No.1100 of 2004 by which the High Court enhanced the compensation to Rs.297/- per square yard, the High Court also disposed of the First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 with respect to the lands acquired in the year 1977. It is submitted that aforesaid four appeals were with regard to the acquisition held in the year 1977 and while passing a common judgment and order in First Appeal No. 1100 of 2004, i.e., in the case of **Mangu and Ors. (supra)**, the compensation was enhanced to Rs.297/- per square yard. It is submitted that therefore as the High Court enhanced the compensation to Rs.297/- per square yard in aforesaid First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 with regard to the land acquired in the year 1977, in the present case also, the claimants pray to enhance the compensation to

Rs.297/- per square yard, as in the present case, the lands had been acquired in the year 1976. It is submitted that this Hon'ble Court also vide order dated 27.01.2016 has dismissed the special leave petition challenging the judgment dated 03.12.2014 in the case of **Mangu and Ors. (supra)**.

8.1 It is further submitted by learned counsel appearing on behalf of the appellants - original claimants relying upon the map of District Gautam Budh Nagar that village Baraula (land acquired in the present case) and village Kakrala Khaspur (land acquired in the case of **Mangu and Ors. (supra)**) are adjoining to each other. It is submitted that appellants' land being similarly situated, the present appellants are also entitled to the compensation @ Rs.297/- per square yard on the basis of the principle of parity and equality.

8.2 Learned counsel appearing on behalf of the appellants of Civil Appeal No. 5740 of 2021 has submitted that alternatively the appellants are also claiming the enhanced compensation considering the compensation in the case of **Khazan and Ors. Vs. State of U.P. (First Appeal No.564 of 1997)**, where the acquisition proceedings commenced in the year 1983 and the compensation was enhanced to Rs.297/- per square yard. It is submitted that the appellants, whose land

was acquired in the year 1976 can be held entitled for the compensation by adopting the formula of deducting 10% depreciation each year and after deducting 10% depreciation for 07 years, the appellants can be provided with the enhanced compensation accordingly.

8.3 Dr. Rajeev Sharma, learned counsel appearing on behalf of the appellants in Civil Appeal No. 5740 of 2021 has also relied upon the decision of this Court in the case of **Savitri Devi Vs. State of Uttar Pradesh and Ors., (2015) 7 SCC 21**, a case related with acquisition of 65 villages of NOIDA, in which case, this Hon'ble Court not only granted enhanced compensation of 64.7% but also provided 105 developed abadi plot of the land acquired of each of the landowners to balance the equity between the landowners / farmers and the State. It is further submitted by the learned counsel appearing on behalf of the appellants that first appeals before the High Court have been pending for 34 years and the appellants - original landowners are struggling for enhanced compensation for last 45 years after losing their only source of livelihood, i.e., their agriculture land in above acquisition proceedings held in the year 1976. It is submitted, therefore, that the issue of enhancement of compensation may also be considered from that angle and considering the suffering of the land losers and the farmers.

9. All these appeals are vehemently opposed by Shri Mittal, learned counsel appearing on behalf of NOIDA.

9.1 Shri Mittal, learned counsel appearing on behalf of NOIDA has vehemently submitted that the judgment and order passed by the High Court in the case of **Mangu and Ors. (supra)** shall not be applicable to the present acquisition and the same cannot be said to be comparable at all. It is submitted that it is true that First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 with regard to the acquisition of the year 1977 also came to be disposed of alongwith First Appeal No. 1100 of 2004 in the case of **Mangu and Ors. (supra)** and the High Court enhanced the compensation to Rs.297/- per square yard, it is submitted that inadvertently and because of the fact that the High Court disposed of the batch of appeals alongwith First Appeal No. 1100 of 2004 with regard to the acquisition of the year 1991, neither it was noticed by the High Court nor it was noticed by the learned counsel for the NOIDA and of the State that First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 were with respect to the acquisition in the year 1977 and nothing was brought to the notice of the High Court that aforesaid four first appeals were related to the acquisition of 1977. It is submitted that without noticing that the aforesaid four first appeals were with regard to the acquisition of the year 1977, the aforesaid four first appeals came to be disposed of alongwith First Appeal No.1100 of 2004

in the case of **Mangu and Ors. (supra)** mechanically and without noticing the difference between the dates of acquisition and inadvertently the compensation was enhanced to Rs.297/- per square yard alongwith First Appeal No. 1100 of 2004 in the case of **Mangu and Ors. (supra)**. It is submitted that having realized the aforesaid mistake immediately the review applications have been preferred before the High Court and the same are pending.

9.2 However, Shri Mittal, learned counsel appearing on behalf of NOIDA has fairly considered that in view of the decision of the High Court subsequently confirmed by this Court in the case of co-owner of the same piece of land as of the appellants by which the High Court awarded the compensation of Rs.28.12 paisa per square yard, to that extent, the appeals can be allowed and the impugned judgment and order passed by the High Court can be modified enhancing the compensation to Rs.28.12 paisa per square yard.

9.3 Shri Mittal, learned counsel appearing on behalf of NOIDA has also further pointed out that so far as the reliance placed on the judgment of the High Court in the case of **Jagmal Vs. State of U.P. – First Appeal No. 458 of 1984** dated 11.03.2015 is concerned, it is submitted that the said order has been subsequently reviewed by the High Court by order dated 27.05.2016 and the compensation has been

fixed at Rs.28.12 paisa per square yard. It is submitted that the order passed by the High Court in review determining the compensation @ Rs.28.12 paisa per square yard has been confirmed by this Court by order dated 30.09.2016.

9.4 Learned counsel appearing on behalf of NOIDA has also relied upon the following judgments and order passed by the High Court determining the compensation @ Rs.28.12 paisa per square yard with regard to the acquisition pertaining to the year 1976:-

S.No.	Particulars	Remarks
1.	Madan Lal Sharma Vs. State	Hon'ble High Court fixed the compensation @ Rs.28.12 paisa per sq. yard vide order dated 08.09.2009
2.	Bhola Vs. State of U.P.	Hon'ble High Court fixed the compensation @ Rs.28.12 paisa per sq. yard vide order dated 04.11.2016
3.	Gyan Chand Vs. State of U.P.	Hon'ble High Court fixed the compensation @ Rs.28.12 paisa per sq. yard vide order dated 14.12.2016.
4.	Daal Chand Vs. State of U.P.	Hon'ble High Court fixed the compensation @ Rs.28.12 paisa per sq. yard vide order dated 03.11.2016
5.	Jagdish Chand Vs. State of U.P.	Hon'ble High Court fixed the compensation @ Rs.28.12 paisa per sq. yard vide order dated 21.12.2016 the said order was challenged before this Hon'ble Court and the SLP was withdrawn vide order dated 19.01.2018

It is submitted therefore that consistently with regard to the acquisition pertaining to the year 1976-1977, the compensation has been fixed at Rs.28.12 paisa per square yard.

9.5 Now, so far as the alternative submission made by Dr. Rajeev Sharma, learned counsel appearing on behalf of the original landowners in Civil Appeal No. 5740 of 2021 to determine the compensation considering the decision in the case of **Khazan and Ors. Vs. State of U.P. (supra)** where the acquisition proceedings commenced in the year 1983 and the compensation was fixed at Rs.297/- per square yard and to determine the compensation by adopting a formula of deducting 10% depreciation each year and after deducting 10% depreciation for 07 years to determine the compensation accordingly, it is vehemently submitted that the decision in the judgment and order in the case of **Khazan and Ors. Vs. State of U.P. (supra)** cannot be relied upon firstly on the ground that the acquisition in the said case was of the year 1983, i.e., after approximately 07 years from the date of acquisition in the present case and secondly on the ground that there has been much development after 1980 with respect to the NOIDA area and the development plan was also sanctioned in the year 1983.

10. Making above submissions, it is prayed to reject the claim of the landowners to claim compensation @ Rs.297/- per square yard.

11. Learned counsel for the appellants have submitted that so far as filing of the review applications by the NOIDA authority in the aforesaid four First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 are concerned, it is submitted that these review applications have been filed only on 17.02.2019 and they are still defective and not yet listed before the High Court. It is submitted that these review applications have been filed by the NOIDA authority only when the appellants referred the aforesaid four first appeals in the additional documents. It is, therefore, requested not to consider the subsequent events after the filing of the review applications in the present appeals.

12. Heard the learned counsel appearing for the respective parties at length.

12.1 The only point for determination in these appeals is whether the present appellants – landowners/claimants are justified in claiming compensation @ Rs.297/- per square yard claiming parity of judgment dated 03.12.2014 passed in First Appeal No. 1100 of 2004 - **Mangu and Ors. (supra)** and the common judgment and order disposing of the First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 alongwith the First Appeal No. 1100 of 2004 - **Mangu and Ors. (supra)**

determining the compensation @ Rs.297/- per square yard?

13. Having heard the learned counsel for the respective parties and having perused the decision of the High Court in the case of **Mangu and Ors. (supra)**, which has been heavily relied upon by the claimants-landowners, it emerges that as such in the case of **Mangu and Ors. (supra)**, notification under Section 4 of the Act was issued in the year 1991, but in the present case the notification under Section 4 of the Act had been issued on 01.06.1976. Even the possession of the land in the case of **Mangu and Ors. (supra)** was taken over in 1992 and in the present case the possession of the land had been taken over in 1976. In the present case, the award was declared by the Special Land Acquisition Officer on 25.02.1978 whereas in the case of **Mangu and Ors. (supra)**, the award was declared by the Special Land Acquisition Officer on 20.09.1993 and, therefore, the said judgment and order passed by the High Court in the case of **Mangu and Ors. (supra)** cannot be said to be comparable at all because of the time gap of approximately 15 years between the dates of acquisition. However, it is the case on behalf of the appellants that while disposing of the First Appeal No.1100 of 2004 in the case of **Mangu and Ors. (supra)**, the High Court also disposed of the First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 with regard to the acquisition of the year 1977 and the High Court also enhanced the compensation to

Rs.297/- per square yard in the said first appeals with regard to the acquisition in the year 1977 and therefore on the ground of parity and equality, the claimants with regard to the acquisition of the year 1976 are entitled to the enhanced compensation of Rs.297/- per square yard.

The aforesaid seems to be very attractive but cannot be accepted for the following reasons:-

- (i) That High Court decided the batch of appeals alongwith First Appeal No. 1100 of 2004 in the case of **Mangu and Ors. (supra)**;
- (ii) It appears that inadvertently and without noticing that so far as the First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 are concerned, they were with regard to the acquisition of the year 1977, inadvertently and by mistake they were tagged alongwith First Appeal No. 1100 of 2004;
- (iii) Nobody specifically pointed out that First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 were with regard to the acquisition of 1977. Therefore, without noticing the aforesaid reference mechanically First Appeal (D) Nos. 21 of 1987; 52 of 1987; 162 of 1987 and 17 of 1987 with regard to the acquisition of year 1977 came to be disposed of along with First Appeal No.1100 of 2004 and mechanically

the compensation with regard to the acquisition of 1977 came to be enhanced to Rs.297/- per square yard;

- (iv) That as such it was a mistake on the part of the High Court in not noticing the difference with regard to the acquisition of the years 1977 and 1991;
- (v) Nobody can be permitted to take the benefit of the mistake either of the Court or of any party, which mistake has occurred inadvertently and without noticing the peculiar facts. As such it was the duty of the Advocate for the claimants to point out the correct facts;
- (vi) Even otherwise it is to be noted that immediately after noticing the above, the review applications have been preferred in the aforesaid first appeals and which are reported to be pending.

13.1 Assuming for the time being that as the review applications are pending, this Court may not take note of the subsequent events of filing the review applications, which are yet to be decided by the High Court, in that case also and for the reasons stated above and considering the obvious mistake referred to herein above, the claimants in the present case cannot claim the compensation @ Rs.297/- per square yard relying upon the decision in the case of **Mangu and Ors. (supra)** with regard to the acquisition of the year 1991.

13.2 At this stage, it is also required to be noted that the claimants have also heavily relied upon the judgment of the High Court in the case of **Jagmal Vs. State of U.P. in First Appeal No. 458 of 1984** determining the compensation @ Rs. 297/- per square yard with respect to the lands acquired by notification dated 16.09.1976. However, it is required to be noted that the judgment and order dated 11.03.2015 passed in First Appeal No.458 of 1984 in the case of **Jagmal Vs. State of U.P. (supra)** came to be subsequently reviewed by the High Court allowing the Civil Misc. Review Application No.174702 of 2015 in which the High Court subsequently noted and determined the compensation @ Rs.28.12 paisa per square yard by observing in paragraph 31 as under:-

“31. Since in the matter of same acquisition and of the same village and also in acquisitions of land adjoining or nearby villages by notifications of Section 4(1) of the Act of the years 1976 and 1977, this court determined the compensation @ Rs.28.12 per square yard and also since the claimants appellants or the respondents have failed to point out any distinguishing feature in the present set of facts and as such I have no hesitation to hold that the claimants appellants are entitled to compensation of their acquired land @ Rs.28.12 per square yard.”

It is reiterated that decision in I.A. No. 116578 of 2021 reducing the compensation to Rs.28.12 paisa per square yard for the lands acquired in the year 1976 has been confirmed by this Court vide order dated

30.09.2016.

13.3 From the table reproduced hereinabove, it can also be seen that with regard to the acquisition pertaining to the year 1976-1977 consistently the High Court has determined the compensation @ Rs.28.12 paisa per square yard. Even in one case, i.e., in the case of **Jagdish Chand Vs. State of U.P. (supra)** where the High Court determined the compensation @ Rs.28.12 paisa per square yard with regard to the acquisition pertaining to the year 1976-1977, the special leave petition has been dismissed as withdrawn by this Court. Therefore, as such at the most, the claimants can be said to be entitled to compensation @ Rs.28.12 paisa per square yard with regard to the lands acquired in the year 1976-1977.

14. Now, so far as the alternative submission made on behalf of the claimants in Civil Appeal No. 5740 of 2021 to determine the compensation on the basis of the judgment of the High Court in the case of **Khazan and Ors. Vs. State of U.P. (supra)** where the acquisition proceedings commenced in the year 1983 and the compensation was determined @ Rs.297/- per square yard is concerned, the aforesaid cannot be accepted. The appellants are claiming that in the case of the appellants, the land was acquired in the year 1976 and in the case of **Khazan and Ors. Vs. State of U.P. (supra)** the land was acquired in the

year 1983, by adopting a formula of deducting 10% depreciation each year and after deducting 10% depreciation for 07 years, the compensation may be determined, the aforesaid cannot be accepted.

As per the settled preposition of law, the compensation determined for the lands acquired subsequently cannot be said to be comparable at all. Even otherwise in the facts and circumstances, the same cannot be said to be comparable because of the fact that it has come on record that in the year 1976 when the lands in question were acquired, there was no development at all, however, subsequently, after 1980 the development had taken place and even the development plan has been sanctioned at the time when the land was acquired in the year 1983, therefore, the aforesaid request cannot be accepted.

15. In view of the above and for the reasons stated above, the appeals are partly allowed. It is held that the original landowners – claimants – appellants herein are entitled to the compensation @ Rs.28.12 paisa per square yard with respect to the lands acquired in the year 1976. The impugned judgment and order passed by the High Court are modified to the above extent. It goes without saying that the claimants shall be entitled to the statutory benefits as may be available under the provisions of the Land Acquisition Act on the enhanced amount of compensation @ Rs.28.12 paisa per square yard.

All the appeals are partly allowed to the aforesaid extent, however,
there shall be no order as to costs.

.....J.
[M.R. SHAH]

NEW DELHI;
SEPTEMBER 23, 2021.

.....J.
[A.S. BOPANNA]