FAIR COMPENSATION AND NEED OF REHABILITATION IN LAND ACQUISITION

As per the prevailing laws, State/acquiring body is bound to pay to the land owners, compensation on the basis of the market value of the land acquired. The State Government must also do, "what is fair and just to The Citizen" and should not, as far as possible, take up a technical plea to defeat the legitimate and just claim of the citizen. The market value of land under acquisition is being determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant). The market value reflected in the most comparable instance which provides the index of market value. Only genuine instances have to be taken into account, because sometimes instances are rigged up in anticipation of Acquisition of land. Even post notification instances can be taken into account (1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

As per the prevailing laws the Section 23(1) of land acquisition act 1894, determines compensation. In addition to it Section 23(2) of the Act enjoins to award, in addition to the market value, 30% solatium in consideration of compulsory nature of acquisition. The Parliament having taken notice of the inordinate delay in making the award by the Land Acquisition Officer from the date of notification published under Section 4(1) till passing the award under Section 11, to offset the price pegged during that period, Section 23(1-A) was introduced to award an amount calculated @ 12% per annum on such market value, in addition to the market value of the land, for the period commencing on and from the date of the publication of Section 4(1) notification to the date of award of the Collector or date of taking possession of the land whichever is earlier. Under Section 28, interest was directed to be paid on the excess compensation at the rate specified therein from the date of taking possession of the land to the date of deposit into court of such excess compensation. These three components are in addition to the compensation determined under sub-section (1) of Section 23.

It is now a well-established principle of law that the land abutting the national highway will fetch far higher price than the land lying interior. It is also well-settled that for the purpose of determining the market value of the acquired lands, the comparable sales method i.e. the lands sought to be compared must be similar in potentiality and nature may be adopted. Every claimant is entitled to the benefit of enhanced compensation in case some other claimant establishes the case.

There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors Judicially recognised are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired.

In a decision of Supreme court in the State Of Kerala vs P. P. Hassan Koya reported in AIR 1968 SC 1201, it is held that "In determining compensation payable for in respect of land with building, the compensation cannot be determined by ascertaining the value of the land and the "breakup value" of the building separately. The land and the building constitute one unit, and the value of the entire unit must be determined with all its advantages and its potentialities. When the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification. Therefore the method which is generally resorted to in determining the value of the land with buildings especially those used for business purposes, is the method of capitalization of return actually received or which might reasonably be received from the land and the buildings."

It is worth to note the philosophical observation of Supreme court of India in K. Krishna Reddy & Ors. v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar, reported in AIR 1988 SC 2123, the Court expressed grave concern on the issue observing as under: " ...After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even half of it. It is a common experience that the purchasing power of rupee is dwindling with rising inflation.....The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated."

The Supreme court decision in Narmada Bachao Andolan Vs. State Of M.P. & Anr. Decided on 11 May, 2011 It is observed that "It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on terms settled with due regard to the price at which land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition.

The further observations of Supreme court in Narmada case "The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands. A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens. For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. ...... Mere payment of compensation to the oustees in such a case may not be enough. In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have the land at all.

Hence the courts are voicing their Judgements from Fair compensation principle to present trends of Rehabilitation. Both Governments at center and state has to frame policies in this regard and amend the act and rules to that effect.

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