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49/1973-74

A W A R D No. 34-73-77

Place of acquisition: 5- Ratendon Road, New Delhi.
Nature of acquisition: Permanent.
Purpose of acquisition: Planned Development of Delhi.

A W A R D

These proceedings relate to the determination of compensation due for the damage sustained by the owner under sub-section 2 of section 48 of the Land Acquisition Act. The proceedings have been initiated on the petition of Dr.C.L.Katial, 5- Ratendon Road, New Delhi, in which he inter-alia stated that as the result of withdrawal from acquisition, the petitioner has suffered heavy damage and incurred heavy cost in the prosecution of the acquisition proceedings relating to the premises known as 5-Ratendon Road, New Delhi. It was further contended by the petitioner that an agreement for sale to the tune of rupees twelve lacs was going to be executed and a cheque drawn on the Oriental Bank of Commerce Ltd, Cannought Circus, New Delhi for rupees two lacs was to be handed over to the petitioner at the time of execution of the agreement. This could not materialize as the petitioner could not get the 'No Objection Certificate' and the acquisition proceedings were initiated in the meanwhile. The bargain was lost by the petitioner in view of the acquisition proceedings which has diminished the value of the property and rendered it to a value not exceeding rupees six lacs. The petitioner therefore, in all claimed damages to the extent of Rs.8,06,110/- as the result of loss in the value of the property, cost of plans of the property prepared by the Architect, legal expenses, cost of advertisement etc.

The petitioner in support of his claim filed a draft agreement which was to be executed by Dr.C.L.Katial and

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M/s Jayshree Chemical Industry India Ltd. A letter signed by the proprietor of M/s Tuli Property Dealer dated December 20, 1972 was also filed under which it was stated that there are no willing buyer to pay more than rupees six lacs for the aforesaid property. Shri K.L.Rathee, Advocate appeared on behalf of the petitioner and argued his case before me.

The facts of the case are that the property known as 5- Ratendon Road, New Delhi was notified U/s 4 of the L.A. Act vide notification No.F.7(68)/71-L&B dated November 24, 1971. In the proceedings U/s 5-A, Dr.C.L.Katial did not file any objection within the stipulated period of limitation. Subsequently, the Administration decided to withdraw from acquisition under sub-section(1) of section 48 vide notification No.F.7(68)/71-L&B dated February 15, 1972. The crux of the question is whether with reference to the language of section 48(2), the principles governing the assessment of compensation of compulsory acquisition should be applied, mutatis mutandis to cases of withdrawal from such acquisition. Since the effect of section 24 clause seventhly is to inhibit any outlay or improvement on the property subsequent to the issue of notification U/s 4, there is no doubt whatsoever that the loss due to the inability to execute any such plans should be legitimately included in the term "damages" occurring in section 48(2). It therefore, boils down that all effects which are clearly the off-shot of pending acquisition have to be taken into account and the remote consequences not directly related have to be discarded.

In the instant case, the draft agreement as brought on record by the petitioner has no evidentiary value whatsoever since the proposed deed was never executed.

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Even otherwise it cannot be treated as an offer since it merely accounts to an expression of opinion on the part of the offerer which could only be proved by the evidence of the offerer himself which was never done. Likewise the letter of M/s Tuli Property Dealer purported to be an expert opinion on the subject is of no avail since the expert opinion is not based upon any date and validity of the process by which the conclusion was reached. It follows that the opinion of an expert to be of any value must be based on definite facts and material carefully weighed. It is not evident from the expert opinion of M/s Tuli Property Dealer on whose behalf the negotiations for the purchase of this property were made by them and for that purpose the offers made by brokers on behalf of undisclosed principals carry no evidentiary value whatsoever. In A.I.R. 1961 Madras 59 (V 48 C 15) Express Newspaper Ltd Vs. State of Madras, the High Court held that the very fact that U/s 48 of the Act such withdrawal has to necessarily take place before possession is taken of the land, is sufficient to dispose of the argument that the damages should really be related to concret injuries. The court however, gave a note of caution that in applying the principle the claim must be founded upon realism, upon the hard core of fact though it may be inevitably conjunctural to a certain extent. As discussed earlier the evidence on record as filed by the petitioner is meagre and unsatisfactory and the expert opinion of M/s Tuli Property Dealer proved little or nothing in substantiation of the claim that the property has undergone sizable diminution in value. There is no evidence on record to show various amounts the petitioner expended in meeting legal and other costs. During the course of the proceedings U/s 5-A, the petitioner neither appeared

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before the Land Acquisition Collector nor engaged any counsel, except in the present proceedings in which the applicant alongwith his counsel appeared before me. To that extent the applicant is entitled to damages alongwith other contingent expenses for which an assessment of Rs.1000/- is made and hereby awarded.

SUMMARY OF THE AWARD:

Damages U/s 43(2)

Rs.1,000.00P

(Rupees one thousand only).

[Signature] 18/11/73

(G. BAHADUR)

LAND ACQUISITION COLLECTOR(ME):DELHI

Announced & file to LG

[Signature]
18/11/73.

21.11.73 29.11.73

*1. Mr. S.C.L. ...
S/o ...*

[Signature]
29.11.73.

[Signature]
29/11
LAC (ME)
29/11/73

of