

Dattatrayaya Shankarbhat Ambalgi and Others

Vs

The Collector of Sholapur and Another

Civil Appeals Nos. 2343 and 2344 of 1966

(J.C. Shah, K.S. Hegde JJ)

17.10.1969

JUDGMENT

SHAH, J. -

1. The appellant is the owner of Final Plot No. 22 in Town Planning Scheme No. III, Sholapur. The land is within the limits of the Sholapur Municipality and admeasures 71 acres. A part of the land measuring 31 acres, 7 Gunthas, and 65 2/9 sq. yards was notified on January 23, 1958, under Section 4 of the Land Acquisition Act for compulsory acquisition for a public purpose, viz., a Polytechnic Institute. The Land Acquisition officer awarded the appellant compensation for the land at the rate of Rs. 2,000/- per acre. In a reference made under Section 18 of the Land Acquisition Act, the Civil Judge, Senior Division, Sholapur, enhanced the compensation to Rs. 3,500/- per acre. The land Acquisition Officer and the appellant appealed to the High Court of Bombay. In appeal the High Court awarded compensation at the rate of Rs. 2,600/- per acre. With certificate granted by the High Court these two appeals are preferred by the appellant.

2. Normally in an appeal under the Land Acquisition Act, this Court does not interfere with the valuation by the High Court unless the judgment suffers from an error of principle or other substantial ground for interference is disclosed. This Court in the Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty, (1959) Supp (1) SCR 404 : AIR 1959 SC 429 observed that the Supreme Court will not interfere with the valuation made by the High Court unless there is something to show, not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by a reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied.

3. In valuating the land the High Court failed to appreciate the full significance of a very important piece of evidence which, in our judgment, is practically conclusive. The Government of Bombay desired to acquire the land of the appellant by private agreement. In the view of the Consulting Surveyor to the Government the value of the land could not be less than Rs. 6,000/- per acre. The Sub-Divisional officer of Sholapur wrote on July 27, 1957, to the City Survey Officer that the land may be purchased from the appellant at the rate of Rs. 6,000/- per acre and an agreement may be obtained from him. Negotiations were then started and on November 20, 1957, a formal agreement was executed by the appellant and the Collector for sale of the land to the Government of Bombay at the rate of Rs. 5,000/- per acre for the Polytechnic Institute. Possession of the land was delivered pursuant to the agreement. But this agreement was not executed in the manner required by Article 299(1) of the Constitution and was on that account not enforceable against the Government. The State authorities apparently sought to take advantage of this infirmity.

4. The Deputy Secretary to the Government of Bombay, Education Department, wrote to the Collector of Sholapur on March 7, 1958, the following letter :

"Subject :- District Polytechnic, Sholapur - Acquisition of land of locating of the -

Reference :- Your letter No. X/337, dated the February 15, 1958, on the subject mentioned above.

2. The private property enforcement agreement executed between you and the owners of the land 'proposed to be acquired for locating the District Polytechnic, Sholapur, is not expressed to be made by the Governor as required by Article 299(1) of the Constitution and is not binding on Government. In view of this you are requested to direct the Land Acquisition Officer as under :

(1) In case the amount under the award would be less than the amount of agreement, he should not recognise the agreement and recommend to Government or sanctioning authority the lower amount, i.e., the amount under the award.

(2) In case the amount under the award is higher than the amount of the agreement he should accept the lower amount and recommend to Government or sanctioning authority the lower amount under the agreement.

(3)

Sd/- Dy. Secy. to the Govt. of Bombay, Education Department."

A copy of the letter was forwarded to the Prant Officer, Sholapur Division, for "immediate necessary action" and it was intimated that the instructions given by Government should be very rigidly followed and compliance reported early.

5. Execution of the agreement to purchase the property is admitted in the letter. The Collector was asked to "direct" the Land Acquisition Officer not to "recognise the agreement" if the amount of compensation payable under the award was less than the rate stipulated in the agreement, and to hold the appellant bound by the agreement if in his view the amount of compensation was "higher" than the stipulated rate. This letter establishes that on behalf of the Government of Bombay the Collector had agreed to purchase acre. This agreement was executed only a few months before the date of the notification under Section 4. The agreement related to the land itself and was strongly probative of the value of the land at Rs. 5,000/- per acre. It is clear from the record that the Collector acted with authority. The Government of Bombay was informed of the agreement, and it never protested against the agreement. If the appellant claimed compensation at a rate higher than the agreed rate is claim would obviously not have been entertained. We fail to see why the rate at which the Government agreed through its Collector to purchase the land is not good and strong evidence of the value of the land. A suit instituted for enforcement of the agreement may not have been enforceable, because the agreement was not executed in the manner required by Article 299(1) of the Constitution, but the agreement furnished strong evidence of the offer made by the Collector to purchase the land on behalf of the Government at the rate of Rs. 5,000/- per acre.

6. Unfortunately the Trial Court as well as the High Court failed to appreciate the full significance of the letter dated March 7, 1958, which the Deputy Secretary to the Government of Bombay, Education Department, wrote to the Collector. It was undoubtedly open to the Land Acquisition

Officer to establish that the Collector had with a view to benefit the claimant entered into an agreement at an inflated rate. But no such attempt was made. We see no reason to hold that evidence furnished by the letter, dated March 7, 1958, of the value of the land under acquisition should be ignored and the value of the land should be determined on the basis of transactions relating to other pieces of land far removed from the date on which the notification under Section 4 of the Land Acquisition Act was issued.

7. The appeals are allowed. The appellant is entitled to compensation at the rate of Rs. 5,000/- per acre, inclusive of 15% solatium. The appellant will be entitled to interest on the amount of compensation at the rate of 4% per annum from the date on which possession was taken. The State will pay the cost of the appellant in this Court as well as in the High Court. One hearing fee.

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