Smt. Kausalya Devi Bogra and Others

Vs

Land Acquisition Officer, Aurangabad and Another

Syed Yusufuddin Syed Ziauddin

Vs

State of Maharashtra

Civil Appeals Nos. 2458-2461 and 2462 of 1981

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

15.02.1984

JUDGMENT

RANGANATH MISRA, J. -

1. All these appeals are by special leave and seek to challenge two separate judgments of the Bombay High Court. A large tract of land located within the municipal limits of Aurangabad within the State of Maharashtra was notified for acquisition under Section 3(1) of the Land Acquisition Act prevailing in the State of Hyderabad (corresponding to section 4 of the land Acquisition Act, I of 1894), by notification dated November 28, 1957, for the purpose of locating a medical college and an attached hospital. These lands can be conveniently referred to as Navkhanda and Ahmandibag properties. Four of these appeals are by one group being Kausalya Devi Bogra and others and the other is by Syed Yusufuddin Syed Ziauddin. Since their lands were acquired under a common notification and as would be indicated later, the appeals were disposed of by the High Court by applying a common basis and these appeals at the request of the counsel have been heard together, they are being disposed of by a common judgment. The total acquisition was of about 150 acres of land. Out of it, the first group owned about 74 acres while the claim of Yusufuddin related to about 15 acres of land.

2. Insofar as the lands of kausalya Devi's group are concerned, the Land Acquisition Officer determined compensation at 4 paise per square yard for the Novakhanda land in the two blocks besides statutory solatium of 15 per cent. At the instance of the claimants reference was made to the Civil Judge who raised the compensation to 15 paise per square yard as against the claim laid at the rate of Rs. 2.50 per square yard. So far as Ahmandibag lands are concerned, the Land Acquisition Officer awarded compensation at the rate of 3 paise per square yard and on a reference to the Court, the learned Civil Judge raised the compensation to 12 paise per square yard beside the statutory solatium of 15 per cent while the claimants had asked for compensation at the rate of Rs. 1.50 per square yard. In both the cases the claimants as also the State preferred appeals - the State challenging the enhancement and the claimants asking for more. A Division Bench of the Bombay High Court by judgment dated April 27, 1971, divided that ahmandibag lands into three zones for the purpose of fixation of compensation; the first portion was on the east, the portion which abutted the road near the main gate up to an indicated depth was treated as the second block and the patch of

land which was to the north of the second portion was treated as the this block. The High Court fixed compensation at 12 paise per square yard for the middle portion and at 9 paise per square yard for the rest of the land. So far as Navkhands lands were concerned, the same was also divided into three zones and depending upon the location of these three blocks, compensation was fixed at 16 paise per square yard of the land in the zone abutting the road; 10 paise per square yard for the second zone and at 8 paise per square yard for the remaining lands forming the third zone. Being dissatisfied with the results obtained in the first appeals before the High Court, the claimants came before this Court by certificate under article 133 of the Constitution on the basis of valuation involved. Attempt was made to introduce additional evidence which mainly consisted of material to show that higher compensation had been given for similarly situated properties. By judgment dated March 23, 1979, in Civil appeals and. 1035 and 1038 of 1972, this Court directed :

> We, therefore, allow the appeals, set aside the judgment of the High Court and send the cases back to the High Court to be restored and direct the High Court to take the appeals on its file and dispose them of according to law in the light of the directions given above.

One of the considerations for remand was reference to two judgments of the Civil Judge where, in respect of lands covered by the same notification, compensation had been worked out at Rs. 4.50 per square yard. One of these judgments was the case of Yusufuddin's. As the Judgment of this Court show, it had been represented by the claimants before this Court that the decision of the Civil Judge in Yusufuddin's case had not been challenged in appeal and had become final. That was, however not a fact and First Appeal No. 628/72 had been taken to the High Court by the State.

3. In Yusufuddin's case, as already indicated, the property acquired was around 15 acres. These lands were covered by two sectors; 10 acres and 16 gunthas appertained to Sej Nos. 3, 4 and 5 while 5 acrs 32 gunthas related to Sej No. 167, and all these lands were situated close to the road leading from Aurangabad City to panchakki. The Land Acquisition Officer had given an award of Rs. 5454.71 inclusive of solatium of 15 per cent for the first sector and sum of of Rs. 4614.11 inclusive of the Solatium in respect of 5 acres 32 gunthas in Sej 167. The appellant was aggrieved by the Award and laid claim of Rs. 40,350 in respect of first fist block and Rs. 2,26,512 in respect of the of the other. On the basis of the evidence placed on record, the learned Civil Judge came to hold that marker value of the property on the date of the preliminary notification was Rs. 4.50 per square yard but as the claimants had claimed a lesser amount, he confined the compensation to the amount claimed and fixed the compensation accordingly. The decision of the Civil Judge was challenged in appeal as already indicated. The High Court reassessed the evidence and came to hold that no acceptable material was on record to justify any enchancement of compensation and the Award of the Land Acquisition Officer should be sustained. Accordingly, the decision of the Civil Judge was vacated and if out of the enhanced compensation any amount had been paid, refund thereof was directed.

4. This first appeal of the State against Yusufuddin was disposed of by a Division Bench consisting of Deshmukh, C.J. and Deshpande, J. on October 15, 1979. Before the same Division Bench the other batch of first appeals remanded pursuant to the direction of this Court came up for hearing on the next day, viz., October 16, 1979. The High Court referred to these first appeals as once upon disposed of by a Division Bench of the Court and stated :

> Being dissatisfied with this common judgment disposing of the Court appeals, the claimants carried the matter to the Supreme Court on leave from this Court.

> According to the provisions of the law then existing, the leave granted was as a matter of course as the claim involved in each of the appeals was much more than Rs. 20,000 at all stages of the litigation. After obtaining a certificate of fitness for leave to appeal to the Supreme Court on December 17, 1971 from this Court, the petition of appeal was filed in the supreme Court on February 15, 1972. Certain statements were made in this petition of appeal with an allegation that steps were taken to produce additional evidence by a separate application as per rules. Accordingly, a separate application for production of additional evidence was made on February 27, 1972. Presumable a copy of the appeal memo as also a copy of this application was served upon the State Government of Maharashtra, who were the respondents, and we further presume that those copies were made available to the learned counsel who were engaged by the State to defend the said appeals. We are told that before the matter comes up for hearing, there is an intervening stage when a statement of case is required to be filed before the final hearing. The learned counsel is not aware whether in these appeals and such statement of case was filed by the parties. After a lapse of about seven years these appeals were called out for hearing before the Supreme Court on March 23, 1979. By a speaking order, the Supreme Court set aside the judgment of this Court and remanded the original four appeals for being further heard and disposed of on merits. It is only in this manner that we are hearing today the said four appeals over again.

For reasons which we will detail hereafter, we have not heard the parties on merits at all. It is true that the Supreme Court has set aside the judgment of this Court and remanded the appeals for further hearing and disposal according to law. That is what precisely we are doing but for reasons which we will record hereunder why we have not heard the parties on merits.

On considering in detail the long and able judgment delivered by the two Judges of this Court and after reading the Supreme Court order and noting the factual position, there is not much force in hearing the appeal afresh and further there is no necessity for the application of mind by another two Judges of this Court to the same evidence which is on record. The factual position that has come to our notice reveals a state of affairs which cannot be described as very commendable so far as the handling of the Government litigation is concerned .... What surprises us is that then copies of original appeal petition as well as civil application for additional evidence are served upon the Government no attempt is made to file a reply that these judgments need not be admitted as additional evidence as the High Court is already seized of the judgments in appeals which are admitted and they have not become final as alleged by the appellants in their memo of appeal to the Supreme court. Even after seven years when the matter was called our for final heading before the Supreme Court, we are surprised to find from the Supreme Court's order that the Government representative before the Supreme Court was on the defensive all the while and merely wanted to state that he should be heard further in the matter of additional evidence. We do not know whether any attempt was made to seek instructions from the State Government or in spite of query being made the information was wanting from this end. Whatever the reason may be for the Government's failure to provide instructions to the counsel appearing for the State in the Supreme Court or whatever may be the reason for the failure of the Government counsel in Delhi to seek information either of them is not a very commendable state of affairs. The Supreme Court should have been told at once that those judgments were subjected to appeals and the appeals are pending and almost ready for hearing. We are sure the Supreme Court would have adjourned the hearing until the decision by the High Court in First Appeal Nos. 628 of 1972 and 179 and 180 of 1972. That undoubtedly would have been the proper course for the Government to adopt and we have no doubt that the Supreme

Court would have valued that suggestion.

Then followed a long paragraph censuring the conduct of counsel for the claimants which closed with the following observation :

> The Supreme Court to cognizance of all this and thinking that that Court cannot go into such questions in detail as it may involve taking of evidence, the supreme Court passed the order and that is how this group of appeals has come back to us for further hearing.

A set of first appeals one of which related to Yusufuddin's matter being of the year 1972 first came up for hearing before the High Court. In course of hearing thereof, when the judgment of the Division Bench of 1971 in the case of Kausalya Devi's group was produced, it was pointed out that this Court had already vacated the judgment of the Division Bench and the matter had been remanded. The Division Bench hearing the appeals after remand, therefore, directed as stated in its order :

> We, therefore, said that the office may find out as to which are the groups of appeal which were remanded and issue notice fixing October 8, 1979 as the date of hearing along with those groups of appeals. That is how they came to be shown on our Board from that day onwards continuously until they reached the final hearing.

However, the very next day after September 18, 1979, Mr. Savant came to tell us that he would not be in a position to apply for additional evidence, as the very judgments of the Civil Judge in respect of which certain representations were made before the Supreme Court are those which are the subject-matters of First Appeals Nos. 179 and 180 of 1972 as also First Appeal No. 628 of 1972. Since we had already adjourned the matter, we decided to hear these appeals first and take up these remanded appeals.

The Division Bench continued to state :

> The first factual position which we note here is that neither the appellant has pressed for additional evidence nor the State could lend additional evidence, though the wording of the Supreme Court order says that both the parties will be at liberty to apply for additional evidence. None of the parties has any additional evidence to offer. In fact, in our humble view, remand seems to be a direct result of a rash statement, not being denied even at final hearing stage. If this is the position insofar as the appeal in the matter was concerned where two other Judges of this Court who were seized of the matter had given full hearing to the parties at an earlier stage we told Mr. Andhyarujina, Advocate, that there was no necessity for any further hearing in the matter and that we are not inclined to do so. Since there is no change in the record and no additional evidence is offered and the High Court judgment was pronounced on the evidence already recorded, we see no reason to differ in any way with the well considered earlier judgment of this Court. We, therefore, declare that a copy of that judgment, which will be our substantive judgment, be placed on record as the judgment of this Court after remand by the Supreme Court. We thus not only confirm the valuation and compensation awarded by the earlier Bench of this Court but also confirm their order as to costs.

5. Having read the judgment of the High Court and considering the manner in which the first appeals have been disposed of, we have no doubts in our mind that the High Court exceeded its jurisdiction in dealing with the first appeals. This Court in exercise of appellate powers vested in it under Article 136 (sic Article 133) of the Constitution had set aside the Bench decision of the High Court delivered in 1971 and that judgment for all intents and purposes had become non-existent. The present Division Bench of the High Court not entitled, by any process known to law, to resurrect that judgment into life.

6. The direction of the appellate court is certainly binding on the Courts subordinate thereto. That apart, in view of the provisions of Article 141 of the Constitution, all courts in India are bound to follow the decisions of this Court. Judicial discipline requires and decorum known to law warrants that appellate directions should be taken as binding and followed. It is appropriate to usefully recall certain observations of the House of Lords in Cassell & Co. Ltd. v. Broome ((1972) 1 All ER 801, 809, 835). Therein Lord Hailsham, L.C. observed :

> The fact is, and I hope it will never be necessary to say so again that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers ....

Lord Reid added :

> It seems to me obvious that the Court of Appeal failed to understand Lord Delvin's speech, but whether they did or not I would have expected them to know that they had to power to give any such direction and to realise the impossible position in which they were seeking to put those judges in advising or directing them to disregard a decision of this House ....

Lord Diplock observed at p. 874 of the Reports :

> It is inevitable in a hierarchical system of courts that there are decisions of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal I sometimes though the House of Lords was wrong in overruling me. Even since that time there have been occasions, of which the instant appeal itself is one, when alone or in company, I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted.

7. We refuse to accept the submission of Mr. Shanti Bhushan for the appellants that the High Court intended to disobey the direction given in the appellate order of remand. Nevertheless, the Division Bench of the High Court allowed itself to be swayed away and landed up in a situation which was wholly unwarranted. Some of the observations which we have extracted were uncalled for the greater restraint was expected. It was open to the High Court to require the parties to move this Court for modification of the direction. If necessary, a reference could have been made to the Registry of this Court so that this Court could have even taken suo motu action. Finally, if additional evidence was not forthcoming, the Division Bench could have applied its mind afresh to the materials already on record and the appeals should have been disposed of by an independent judgment and not by restoring to life a judgment which had, in exercise of appellate powers of this

Court, been rendered lifeless. We hope and believe that such an unfortunate situation will never recur and, therefore, we propose to say no more on this aspect of the matter.

8. As already indicated, the order of remand has not been operative on account of the High Court not giving effect to it. On the other hand, a judgment which had already been set aside has been brought on record and has been described as the judgment in the first appeals. In our opinion, that judgment is a nullity. The two options available before the Court, therefore are, a further remand to the High Court asking for a fresh disposal of the appeals or to dispose of the appeals in exercise of appellate powers by recording findings. Acquisition in this case is of the year 1957. Twenty-seven years have already passed. A remand at this stage would indeed be not in the interest of the parties nor in public interest. We have, therefor, decided to look into the materials ourselves and dispose of these appeals finally.

9. Aurangabad was in a develop part of the Nizam's State of Hyderabad and was a constituted municipality. Hyderabad had become a part of India by 1948. By the States Re-organisation Act of 1956, Aurangabad and certain other tracts of Hyderabad became part of the then State of Bombay. Aurangabad was of historical importance. Not far away from it are the famous caves of Ajanta and Ellora. Aurangabad, therefore, had been of tourist importance from before. A fort and a place of historical importance are in the vicinity of this town. There is evidence that the lands acquired in the instant appeals are located close to these spots. There is also evidence that these areas were developed and semi-developed portions of the town.

10. The learned Civil Judge did take into account certain documents for fixing up the valuation of the property on the date of the notification. In Yusufuddin's case a sale deed of October 18, 1957, was relied upon where the valuation was about Rs. 4.50 per square yard. This sale deed was of the year of the notification though the transaction happened to be a few months after the date. The learned Civil judge had found that the property was located to away form the acquired land. Exhibit 36 also the certified copy of a sale deed of 1957 but since it had a construction on the property and the separate valuation thereof could not be known in the absence of any substantive evidence, no reliance had actually been placed on this transaction. Exhibit 37 was a transaction of 1953 and the rate adopted there was about Rs. 5 per square yard. A party to the transaction was examined as a witness. As noticed by the learned Civil Judge, the property was located at a distance of about three furlongs from the acquired land. The learned Civil Judge stationed at Aurangabad was certainly in a better position to take judicial notice of the location of important landmarks within Aurangabad than the learned Judges of the Bombay High Court or even the Judges of this Court sitting at a long distance from the place where the lands are situated. Exhibit 42 is a sale deed of 1960 and keeping in view the extent of lands sold and the consideration per square yard, the rate worked our at Rs. 2.25. The purchaser had been examined as a witness and the land has been found to be about half a furlong away from the acquired land. The learned Civil Judge also relied upon a letter of the Collector of Aurangabad addressed to the Deputy Director of Excise Department wherein it was indicated that the price of land in the area was about Rs. 5 per square yard and that was stated with reference to some land near the railway Station. The acquired land is admittedly not far away from the Railway Station.

11. The learned Civil Judge did in fact state in his order that the lands of Yusufuddin were situated by the side of the road lending from Panchakki to Bhadkal gate. The historical monument of Panchakki has been stated to be located by the side of the acquired land. A State hotel has come up not far away from the land. The Court took judicial notice of the fact that Aurangabad city had developed rapidly following police action which brought about accession of the Nizam's State of

India. Aurangabad had become the regional headquarters of a zone of the State. The city had been industrially developing. Therefore, the lands in question had potential value which had to be kept in view in the matter of fixing the compensation under the Land Acquisition Act.

12. Admittedly, the lands of Yusufuddin and the lands belonging to Kausalya devi group are in one adjacent tract. Therefore, it would not be improper to assume, particularly in the absence of any contrary evidence from the side of the State that there was no great disparity in the quality of lands and that all these lands were substantially of similar type.

13. Two principles relating to the matter of fixation of compensation relevant for the present purpose may be kept in view. When large tracts are acquired, the transactions in respect of small properties do not offer a proper guideline. Therefore the valuation in transaction in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property (See Prithvi Raj Taneja v. State of M. P. ((1977) 2 SCR 633 : (1977) 1 SCC 684 : AIR 1977 SC 1560); Padma Uppal v. State of Punjab ((1977) 1 SCR 329 : (1977) 1 SCC 330 : AIR 1977 SC 580)). In certain other case this Court indicated that for determining the market value of a large property on the basis of sale transaction for smaller property a deduction should be given. In special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty (1959 Supp 1 SCR 404 : AIR 1959 SC 429), a reduction of 25 per cent was indicated while there are certain other cases where the view is that the reduction should be to the extent of 1/3. Again, in the very scheme for fixation of compensation provided by the Land Acquisition Act there is bound to be some amount of arbitrariness. The acquisition is deemed to be a statutory purchase and on the basis of evidence the law requires an assumed consideration to be determined. Keeping in view the fact that acquisition is of compulsory nature, a solatium of 15 per cent on the valuation is provided. Bearing these considerations in view and taking into account that fact that the lands in question were located in a developed part of Aurangabad and had considerable potential value we proceed to fix the market value of the property. One acre of land is equal to 4840 square yards. The learned Civil Judge had maintained a distinction between the two classes of lands. We take note of that fact also in the matter of determining the compensation. We, however, do not propose to indicate separate valuations for the two classes of lands. Taking an overall picture of the matter, we direct compensation to be fixed at the rate of Rs. 1.50 per square yard or Rs. 7260 per acre for all the lands of the present appellants acquired by the notification in question. Over and above this amount the appellants shall be entitled to statutory solatium of 15 per cent as also interest at the rate of 6 per cent per annum on the additional compensation from the date of dispossession till payment thereof. We direct the Collector to work out the compensation on the basis indicated above within two months from today. If the amount so determined is not paid within three months thereafter, the interest on the additional compensation shall be at the rate of 12 per annum till payment is made.

14. Ordinarily, the appellants should have been entitled to costs. Keeping in view the history of the litigation and the manner in which the Kausalya Devi group of appellants had conducted themselves on the earlier occasion before this Court, we do not award costs to them. In Civil Appeal No. 2462/81 appeal Syed Yusufuddin Syed Ziauddin will be entitled to his costs in this Court and hearing fee of Rs. 1000.

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