Suresh Kumar

Vs

Town Improvement Trust, Bhopal

Civil Appeal No. 2931 (N) of 1981

(G. L. Oza, K. N. Saikia JJ)

03.03.1989

JUDGMENT

K. N. SAIKIA, J. –

1. This civil appeal by special leave is from the order dated October 7, 1980 of the High Court of Madhya Pradesh, Jabalpur in Misc. (F) Appeal No. 78 of 1974, allowing the appeal and enhancing compensation for land acquired by the Improvement Trust, Bhopal.

2. The Improvement Trust, Bhopal, hereinafter referred to as 'the Trust', acquired 152 acres of land of Village Jamalpura by Notification dated April 30, 1965 issued under Section 68 of the Madhya Pradesh Town Improvement Trust Act, 1960, hereinafter referred to as 'the Act', and took possession of the land some time in June 1967. Out of these acquired land the instant appellant owned 12.62 acres whereupon stood a house, a well and a some trees. The whole of the acquired land including that of the appellant was within the limits of Bhopal Municipal Corporation. On March 25, 1966 notification under Section 71 of the Act was issued vesting the land in the Trust. The Trust offered compensation at the rate of Rs. 950 per acre (@ 14 paise per sq. ft.) amounting to Rs. 11,997; for the well Rs. 3108; and for the trees Rs. 815 and for compulsory acquisition 15 per cent amounting to Rs. 2400. The appellant made Reference No. 8 of 1970 to the Compensation Tribunal under Section 72(3) of the Act. The Tribunal awarded compensation at the rate of Rs. 6000 per acre (28 paise per sq. ft.) for the land, Rs. 5000 for the building, Rs. 3000 for the well and Rs. 815 for the trees. Thus the Tribunal by its award dated November 25, 1972 awarded a total sum of Rs. 1,20,060 inclusive of interest as compensation to the appellant, as against his claim at the rate of Rs. 20,000 per acre for the land, Rs. 20,000 for the building, Rs. 5000 for the well Rs. 2500 for the trees and Rs. 10,000 for loss of business and earnings, his total claim amounting to Rs. 13,39,560. On appeal, being Misc. (F) Appeal No. 78 of 1974, the High Court maintained the award in respect of the building, well and the trees, but enhanced the compensation in respect of the land determining the market value at Rs. 12,000 per acre and the total area being 12.62 acres the total compensation inclusive of that allowed for the house etc. and 15 per cent solatium worked out to Rs. 1,84,293. Dissatisfied, the appellant obtained leave and filed this appeal.

3. Dr. L. M. Singhvi learned counsel for the appellant submit, inter alia, that the house and the well were grossly undervalued; that both the Tribunal as well as the High Court misdirected themselves in treating the land as agricultural land but not as urbanised developed land on the erroneous ground that there was no building activity of substantial nature at the time of acquisition in spite of the fact that a part of the land was already converted to abadi; that both the Tribunal as well as the High Court failed to take into consideration the potential value of the land; and that evidence of sales of similar plots was not accepted on the ground that those pertained to small plots; and that the High

Court committed an error when it deducted the development charge from the agreed price instead of adding it to the agreed price while calculating the market value.

4. Mr. Krishnamurthi learned counsel for the respondent Trust submits that the house and the well were properly valued; that it was not correct that the Tribunal did not correctly consider the question of the nature of the land which it held to be agricultural because it did not find therein any building activity of substantial nature. At any rate, counsel submits, the High Court took into consideration the potential value of the land and as such there was no omission to consider any relevant material or misdirection in this regard. Counsel, however, fails to explain the reason of deducting the development charge from the agreed price, instead of adding it, while calculating market value of the lands on the basis of evidence produced by the claimant. This, however, according to counsel, is not a sufficient ground for our interference in this appeal under Article 136 of the Constitution of India.

5. In an appeal under Article 136 of the Constitution of India involving the question of valuation of acquired land, this Court will not interfere with the award unless some erroneous principle has been invoked or some important piece of evidence has been overlooked or misapplied, as was held in Atmaram Bhagwant Ghadgay v. Collector of Nagpur (AIR 1929 PC 29 : 1929 : 35 MLJ 81). In Dollar Company, Madras v. Collector of Madras ((1975) 2 SCC 730 : 1975 Supp SCR 403), the Land Acquisition Officer awarded Rs. 800 per ground as compensation and the city civil court on reference awarded at the rate of Rs. 1000 per ground, and the High Court on appeal awarded Rs. 1800 per ground. The appellant himself purchased the suit land about 10 months before the notification under Section 4 was made at a price of Rs. 410 per ground whereafter the appellant had spent a little money on filling up a pond. Dismissing the appeal it was observed that this Court interferes with the judgment of the High Court only if the High Court applies a principle wrongly or because some important point affecting valuation has been overlooked or misapplied. A court of appeal interferes not when the judgment under attack is not right, but only when it is shown to be wrong. As there was no error in principle in the High Court judgment nor had any of the limited grounds on which that court's jurisdiction could be legitimately exercised been made out, the appeal was dismissed. Therefore, it is for the appellant to show that there is ground for interference in this case.

6. As regards the value of the house, the Land Compensation Tribunal clearly observed that it visited the spot and found that the house 'was in extremely dilapidated condition having big cracks in foundation, walls and pillars. The foundation was getting loose. The roof of asbestos sheets was sagging, indicating that the wood rafters had been badly damaged. Doors and windows were in bad condition. The two verandahs of the house were temporary, with roof of asbestos sheets.'

7. The house, according to the Tribunal might be 20 to 25 years old and depreciation would be 5 per cent per year. Considering the above factors we are of the view that the compensation awarded, namely, Rs. 5000 is reasonable. Also from evidence we find that Rs. 3000 for the well was reasonable. There was no error of principle and hence there can be no grievance on these counts.

8. Regarding nature of the land the Tribunal noted that the claimants in most of the references asserted that the acquired land should be valued as urban house site because of alleged potential value and had claimed compensation between Rs. 3 to Re. 1 per sq. ft. The Trust disputed the claim and urged that the lands at the time of acquisition, were either agricultural or merely fallow land and they had absolutely no urban site value. The claimants also urged that the lands were situated within Corporation limits and lands of some of the claimants were already diverted (converted). We agree

with Mr. Krishnamurthy that though the Tribunal treated it as agricultural, the High Court proceeded on the principle of developed land.

9. It is true that the market value of the land acquired has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. Dr. Singhvi argues that failing to consider potential value is an error of principle. It is an accepted principle as was laid down in Vyricherla Narayana Gajapatiraju v. Rev. Divisional Officer (AIR 1939 PC 98 : 66 IA 104 : 41 PLR 394), that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded. Neither must be considered as acting under compulsion. The value of the land is not to be estimated at its value to the purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth. Any sentimental value for the vendor need not be taken into account. The vendor is to be treated as a vendor willing to sell at the market price. Section 23 of the Land Acquisition Act, 1894, enumerates the matters to be considered in determining compensation. The first to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Market value is that of a willing vendor and a willing purchaser. A willing vendor would naturally take into consideration such factors as would contribute to the value of his land including its unearned increment. A willing purchaser would also consider more or less the same factors. There may be many ponderable and imponderable factors in such estimation or guess work. Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining compensation. Section 25 provides that the amount of compensation awarded by the court shall not be less than the amount awarded by the Collector under Section 11. As observed in Gajapatiraju (AIR 1939 PC 98 : 66 IA 104 : 41 PLR 394) sometimes, it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentiality. In such a case the court had to ascertain as best as possible from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with that particular potentiality. In the instant case also the acquired land possesses some important features being located within the Corporation area and its potentiality for being developed as a residential area. In such a situation in determining its market value, where there was no sufficient direct evidence of market price, the court was required to ascertain as best as possible from the materials before it, what a willing vendor would reasonably have expected to obtain from a willing purchaser from (sic for) the land in this particular position and with this particular potentiality. It is an accepted principle that the land is not to be valued, merely by reference to the use to which it has been put at the time at which its value has to be determined that is, the date of the notification under Section 4, but also by reference to the use to which it is reasonably capable of being put in the future. A land which is certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or has been used for agricultural purposes, the owner, however willing a vendor he is, is not likely to be content to sell the land for its value as waste or agricultural land as the case may be. The possibility of its being used for building purposes would have to be taken into account. However, it must not be valued as though it had already been built upon. It is the possibilities of the land and not its realised possibilities that must be taken into consideration. In other words, the value of the land should be determined not necessarily accordingly to its present disposition but laid out in its lucrative and advantageous way in which the owner can dispose it of. It is well established that the special, though natural, adaptability of the land for the purpose for which it is taken, is an important element

to be taken into consideration in determining in determining the market value of the land. In such a situation the land might have already been valued at more than its value as agricultural land, if it had any other capabilities. However, only reasonable and fair capabilities but not far-fetched and hypothetical capabilities are to be taken into consideration. In sum, in estimating the market value of the land all of the capabilities of the land, and all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land; namely, its proximity to developed urbanised areas.

10. The value of the potentiality has to be determined on such materials as are available and without indulgence in fits of the imagination. In Mahabir Prasad Santuka v. Collector, Cuttack ((1987) 1 SCC 587), the evidence on record was that the land was being used for agricultural purposes but it was fit for non-agricultural purposes and it had potentiality for future use as factory or building site and that on industrialisation of the neighbouring areas the prices increased tremendously, and that aspect, it was held, could not be ignored in determining compensation.

11. On the question as to whether the land was urbanised developed land or not we find that the Tribunal consolidated all the 15 references arising out of the acquisition for the purpose of recording evidence and, that is how it came to consider the Exs. P-1, P-2, P-3 and P-8 being agreements of sale executed by Phool Chand Gupta who was father of the claimant in Reference No. 1 of 1970 while the petitioner's reference was No. 8 of 1970. Similarly the Exs. D-1 to D-6 also pertained to small plots of land out of land in Reference No. 1 of 1970. The High Court rightly held that the Exs. P-1, P-2, P-3 and P-8 and the sale deeds Exs. D-1 to D-6 furnished a more reliable data for working out the market value. If those lands were the urban developed house site lands, their prices would have reflected the same. It cannot, therefore, be said that High Court was in error in taking the above exhibits into consideration. However, potential value was not separately considered. Exs. P-1, P-2, P-3 and P-8 were agreements of sale executed on July 29, 1961 in respect of small parcels of land wherein the vendor agreed to sell the land at that time at the rate of 14 annas per sq. ft. to Re. 1 per sq. ft. It was further agreed that the vendees would pay development charged at the rate 4 annas per sq. ft. The vendor and the respective vendees were examined. It should be noted that the exhibits were agreements to sell and not sales. The High Court observed that the idea behind those transactions was that the vendor would apply to the revenue authority for diversion and the town planning authority for sanction of lay-out plan and the sale deeds would be executed after the land was developed. The High Court also noted that there was nothing to show that the agreements were prepared only to be used later as evidence of market value. In December 1960 Phool Chand applied for diversion of his land to the Sub-Divisional Officer. In January 1961 application was also made to the Town Planning Authority for sanction of the lay-out plan but in the meantime the land was notified for acquisition under the Land Acquisition Act some time in 1962 and Phool Chand tried to extricate his land from acquisition which, however, did not materialise and, as already noted, on April 30, 1965 the instant notification to acquire under Section 68 of the Act was issued. Rejecting the contention that the agreements were spurious, the High Court observed that the very fact that applications were made for diversion and for sanction of lay-out plan went to show that the owner was interested in the development in the land and in selling it after dividing it into plots. Thus, the High Court, rightly took into consideration the above exhibits, which pertained to a part of the acquired land of 152 acres.

12. The High Court also considered the sale deeds Exs. D-1 to D-6 which pertained to small plots of lands out of land in Reference No. 1 of 1970. Those sale deeds were registered in 1966-67, but the

agreements to sale were entered into in 1959-62. The respective purchasers and the vendors were examined. The market value on the basis of Ex. D-2 made in the sale deed of 1962 selling only 12.50sq. ft. for Rs. 260 which worked out to Rs. 8712 per acre. The High Court did not say that these exhibits were rejected. By Exs. P-5, P-6 and P-32 small parcels of land, at Kumharpura were sold Kumharpura was noted to be two to three furlongs away from the acquired land. The market rate according to these exhibits range from Rs. 1.88 to Rs. 2.34 per sq. ft. The High Court observed that these sales could not be a useful guide for determining the market value of land acquired. We are of the view that compared to Exs. P-1, P-2, P-3 and P-8 Exs. P-5 and P-6 and P-32 were less indicative of the market value of the acquired land. We feel that the appellant should have no grievance for rejection of these sales of Kumharpura. We find force in the contention of Dr. Singhvi that potential value was not taken into account in this case to the extent it should have been done. From the award dated November 25, 1972 it appears that the acquired land was situated at Village Nissatpura, within corporation limits of Bhopal Town and consisting of Khasra Nos. 190/73, 136/74, 178/74, 135/75-76, the total area being 12.62 acres. The High Court found that the land was bounded on three sides by three roads; towards the eastern side by Berasia road : towards the western side by Sultania road; and towards the northern side by P.G.B.T. College Road Southern boundary of the land was a nala. The High Court also noticed that the land abutted to roads, namely, Berasia road and P.G.B.T. College road and the claimant had a house on the land and that the claimant had stated that he had obtained water and electricity connection from the Corporation and the Electricity Board. 7.60 acres of land out of 12.62 acres had been diverted and the land was even.

13. At paragraph 14 of the special leave petition it is stated that the land is approachable from two different and important localities of Bhopal Town. From Bajaria Chowk Shahjahanabad, a road, called Sultania Infantry road, proceeds Military Lines called Sultania Infantry lines. On both sides of this road, there is the thickly habited locality of Shahjanabad, till about two furlongs. Slightly ahead is the entrance porch gate of the Military lines. Just before the gate, a tarred road bifurcates on the right hand side and it enters the acquired land of Swtantra Kumar Ref. No. 1/70. This tarred road was constructed by the Trust after acquisition of the lands. It goes on all sides of village Jamalpura, which is surrounded on all sides by the lands of Ref. No. 1/70. A part of land of Ref. No. 1/70 was developed after acquisition, and the tarred road reaches the developed plots. We have to note that such detail evidence was not there before the Tribunal and no benefit of development pursuant to and after the acquisition can be taken into consideration. Even so, from the map and juxtaposition we have no doubt that the acquired land had potentialities which deserved to be counted.

14. In U. P. Government v. H. S. Gupta (AIR 1957 SC 202), where in computing compensation for acquisition of an estate outside the Municipal area the High Court had given valid and weighty reasons for adopting the principle that the valuation should be plotwise though there was certain advantages in computing the value at the block rate where vast area of land was acquired, this Court held that in the circumstances of that case the proper mode of valuation was plot rate basis. In the instant case the application of the principle that if the land has to be sold in one block consisting of a large area, the rate likely to be fixed per sq. ft. would be lower than if an equal extent of land is parcelled out into smaller bits and sold to different purchasers could not be found fault with. The price fetched for smaller extent of land similarly situated with the same kind of advantages and drawbacks can also be applied to a large area valued plotwise instead of blockwise.

15. In the instant case relying on Exs. P-1, P-2, P-3, and P-8 and considering the fact that applications were made for diversion and for sanction of a lay-out plan the High Court found that it went to show that the owner was interested in developing the land and in selling it by dividing it

into plots. The lowest rate of price in these agreements was 14 annas per sq. ft. and the agreements mentioned that 4 annas per sq. ft. would be needed for developing the land. This charge was to be paid by the purchaser. So the price of developed land would be Rs. 1/2/- per sq. ft. The evidence of M. P. Jain (DW 9), Senior Draftsman of the Improvement Trust went to show that expenses for improvement of land ranged from Rs. 1.50 to Rs. 2 per sq. ft. The statement of Shri Jain was recorded in 1972. Making some allowance for the increase in the rate the High Court considered it proper to hold that in 1965 when this land was acquired the charged for improvement would have worked at 75 paise (12 annas) per sq. ft. It had also come in the evidence of Shri Jain that 50 to 60 per cent of the land had to be left for roads, drainage, gardens, school etc. and it was only then that the lay-out plan was sanctioned. High Court accordingly, deducted improvement charges at the rate of 12 annas per sq. ft., and the market rate for unimproved land in the light of these agreements worked out to 6 annas per sq. ft. As 50 per cent of the land at least had to be left out for roads etc., so the market rate of 3 annas per sq. ft. was applied for the entire undeveloped land. Market rate thus worked out to Rs. 8000 per acre approximately. However, the High Court awarded Rs. 12,000 per acre. There was an additional factor in the calculation. Mr. Krishnamurthy therefore submitted that the High Court took into consideration the potential value of the land as a developed area but while making calculations it may have committed mistake. To our mind the error was in wholly overlooking the basic price agreed to be paid by the purchaser and the standard of development they visualised. The whole of the basic price could not be expected to be eaten up by the development of the land to the standard contemplated by the vendor and purchaser. When the willing vendor has agreed to sell land at 14 annas per sq. ft. after development and the development charge was to be paid by the willing purchaser, it could be reasonable to deduct only 50 per cent on account of the land to be set apart for roads, drains, etc. and not beyond that. Considering this aspect of the matter and the potential value of the land as urban developed area we are of the view that the compensation may justly be enhanced by one-sixth to Rs. 14,000 per acre and we do so. We maintain 15 per cent solatium but raise the rate of interest to 9 per cent on the enhanced compensation from today till payment. We leave it open for the appellant to move for higher interest and solatium if entitled by virtue of subsequent judgment of this Court it any.

16. In the result, this appeal is allowed as above. We make no order as to costs.

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