Mehta Ravindrarai Ajitrai (Deceased) Through his Heirs and Lrs and Others

Vs

State of Gujarat

Civil Appeal No. 2169 of 1970

(M. H. Kania, Kuldip Singh JJ)

08.08.1989

JUDGMENT

KANIA, J. -

1. This is an appeal by special leave granted by this Court under Article 136 of the Constitution. The appeal arises out of land acquisition proceedings.

2. The appellants before us are the heirs and legal representatives of the original claimants. Appellants 1(a) to 1(c) are the heirs and legal representatives of original claimant 1 and appellants 2(i) to 2(ii) are the heirs and legal representatives of original claimant 2.

3. The acquisition was in respect of an area admeasuring 15 acres and 1 guntha belonging claimant 1 (original) and area admeasuring 6 acres and 25 gunthas belonging to claimants 1 and 2 (original). The lands are situated in the Bhavnagar District and are on the outskirts of the Bhavnagar city and adjoining the Bhavnagar-Rajkot Road. The acquisition forms part of a larger acquisition for the construction of an industrial estate at Bhavnagar. The preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 was published on August 6, 1956. The claimants made their claims before the Land Acquisition Officer who classified the lands as superior of Bagayat type of agricultural land and awarded compensation at the rate of Rs. 2200 per acre which would come to about 0.48 p. per square yard. This award was not accepted by the claimants and they made a reference which came up for hearing before the learned Civil Judge, Senior Division, Bhavnagar. The evidence of some instances of sale was led before the learned Civil Judge by the respective parties but he did not rely upon any of the instances proved before him. He considered the general situation of the lands and held that on the evidence it was shown that the lands had a considerable building potentiality and the Land Acquisition Officer was in error insofar as he did not take potentiality into account. The learned Civil Judge considered the general situation of the land under acquisition and the potential value of the same for building purposes and fixed the rate of compensation at Rs. 4400 per acre which had come to about 0.90 p. per square yard. Being dissatisfied, the claimants preferred an appeal against the decision of the learned Civil Judge, Bhavnagar to the High Court of Gujarat. The Division Bench of the High Court, which disposed of the appeal, took the view that the valuation fixed by the learned Civil Judge was justified and dismissed the appeal. This appeal is directed against the said decision of the High Court.

4. We do not feel called upon to enter into a detailed scrutiny of the evidence led by the parties before the learned Civil Judge. The main instance relied upon by the claimants was by way of an agreement to sell dated January 21, 1957 and a sale deed dated April 2, 1957 in respect of the sale of 42,552 square yards of land out of survey No. 333/2 which is adjoining the land with which we

are concerned which forms part of survey No. 331. The land sold under this instance was known as "Kesarbagh" and was sold to Mahalaxmi Mills Limited by Price Nirmalkumarshinghji. The rate which it was sold works out to Rs. 3 per square yard. On the basis of this instance, the claimants had made their claim at Rs. 3 per square yard before the Land Acquisition Officer. The High Court inter alia rejected this instance on the basis that the contents of the sale deed were not properly proved. However, after an order for remand made by this Court on August 25, 1981 evidence has been led regarding this sale and the sale deed has been duly proved by the evidence of one Dharamdas, a director of Mahalaxmi Mills Limited, the purchaser, and the vendor Prince Nirmalkumarsinghji. It was marked originally as Ex. 87 and after the evidence on remand as Ex. 152. The evidence shows that this land was just adjacent to the land of the purchaser, Mahalakshmi Mills Limited. The agreement of sale is dated January 21, 1957 and the conveyance or sale deed is dated April 2, 1957 as aforestated. The price has been fixed under the agreement of sale. This agreement of sale was entered into about five months after the publication of Section 4 notification in the case before us. The High Court rejected the said instance on the ground that the contents of the sale deed were not proved although the execution thereof was duly proved. In view of the evidence led after remand, it cannot be disputed that this agreement of sale as well as the sale deed have been duly proved and they have been duly marked as exhibits. The High Court further took the view that in any event, no reliance could be placed on this instance of sale because the acquisition of the land in question before us was for the construction of an industrial estate at Bhavnagar and such construction was bound to have pushed up the prices of land in the surrounding area. There is, however, nothing in the evidence to show that there was any sharp or speculative rise in the price of the land after the acquisition and this has been noticed by the High Court. It appears that under these circumstances, the High Court was not justified in not taking this instance into account at all as it has done on the ground that it was a post-acquisition sale and could not be regarded as a comparable instance at all. The market value of a piece of property for purposes of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual and, indeed the best, evidence of market value. (See : Administrator General of W. B. v. Collector, Varanasi ((1988) 2 SCC 150, para 8).

5. Keeping these factors in mind, we feel that although the instance reflected in the sale deed (Ex. 152) and the agreement for sale in connection with that land, pertains to a sale after the acquisition, it can be fairly regarded as reasonably proximate to the acquisition and, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the acquisition, the agreement to sell dated January 21, 1957 must be regarded as furnishing some light on the market value of the land on the date of publication of Section 4 notification. However, certain factors have to be taken into account and appropriate deductions made from the rate disclosed in the said agreement to sell in estimating the market value of the land with which we are concerned at the date of the acquisition. One of these factors is that there seems to have been some rise in the price of land on account of the acquisition of the land in question before us for purposes of constructing an industrial estate. Another factor is that the land proposed to be purchased under the said agreement to sell was adjoining the land of the purchaser and the purchaser might have paid some extra amount for the convenience of getting the neighbouring land.

6. We find that the High Court placed reliance on the evidence furnished by the instance at Ex. 112 relied on by the State. By Ex. 112 land admeasuring 4 acres (19,360 square yards) was sold from survey No. 384 for Rs. 8000. This sale deed is dated February 23, 1953, that is, over a year prior to the date of the Section 4 notification in the case before us. The purchaser stated in the witness box

that he, apart from Rs. 8000 mentioned as the consideration in the sale deed, had to pay an extra amount of Rs. 4000 Although the High Court has not relied upon this statement, it cannot be altogether ignored. The land was sold at a government auction which means that it was a distress sale. There were execution application pending against the vendor. Under these circumstances, there is little doubt that it was a distress sale and it hardly furnishes any reliable evidence for estimating the market value of the land. Therefore, although the price of the land appearing in that instance comes to about 0.62 p. per square yard, it furnishes no reliable guidance regarding the market price of the land. As far as the sale instance evidenced by Ex. 118 is concerned, it has been discarded by the High Court and, in our view, rightly so. In the trial court neither the vendor nor the purchaser nor any person conversant with the sale was examined. Not the original but only a certified copy of the sale deed was produced. After the remand the situation appears to be hardly any better. The State examined one Virbhadrasingh on whose behalf the land was purchased under the said deed. He was a minor at the time when the sale deed (Ex. 118) was executed. Virbhadrasingh's father had purchased the land in Virbhadrasingh's name as Virbhadrasingh was a minor only about 12 years old at that time.

7. The evidence of Virbhadrasingh has no evidentiary value as he has no personal information regarding the sale under Ex. 118. One Ratilal who prepared the said document gave evidence in court but he did not have any personal knowledge about the transaction either. Under these circumstances, no reliance can be placed on Ex. 118.

8. In our view, the only comparable instance on the basis of which the market value at the time of the Section 4 notification in respect of the acquired land can be determined is the sale proved by the sale deed (Ex. 152) and the preceding agreement for sale in respect of the land sold which was entered into about five months after the notification. The price thereunder is Rs. 3 per square yard. From that price certain deductions have to be made on account of the various factors which have been enumerated earlier such as the rise in the prices of land after the situation and so on. Taking into account all these factors including the situation and potentialities of the acquired land, it appears to us that it would be proper to fix the market value of the acquired land at Rs. 8800 per acre which comes to about Rs. 1.80 per square yard and we direct accordingly. The decree passed by the Civil Judge, Senior Division, Bhavnagar will be amended accordingly.

9. The respondent will pay to the appellants one half of the costs of the appeal in this Court. There will be no change as far as the rest of the order is concerned.

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