

Special Tehsildar, Land Acqn., Vishakapatnam

Vs

A. Mangala Gowri,

Civil Appeal No. 1351 OF 1976

(N. M. Kasliwal, K. Ramaswamy JJ)

09.08.1991

JUDGEMENT

K. RAMASWAMY, J.:-

1. This appeal by special leave arises against the Division Bench judgment dated November 24, 1975 in A. S. No. 691 of 1972 of the A.P. High Court fixing the market value @ Rs. 10 per square yard. The facts lie in a short compass are stated thereunder. By notification under S. 4(1) of the Land Acquisition Act 1894 (in short 'the Act') was published in the State Gazette on November 21, 1963 to acquire 5 acres - 589-1/3 sq. yards in T. S. No. 981, Block No. 34 of Waltair Ward, Vishakapatnam for a housing scheme. The Collector awarded at Rs. 1.58 per sq. yard and on reference, the Civil Court enhanced the compensation to Rs. 10 per sq. yard with solatium at 15 per cent and interest at 4 per cent. The respondent claimed @ Rs. 12 per sq. yard. On appeal and cross appeals the High Court confirmed the award and dismissed the appeal as well as cross objections for enhancement to Rs. 12 per sq. yard.

2. Two contentions have been raised by Shri Narsimahachari, the learned counsel for the appellant. Under Ex. B. 6 dated August 3, 1961; under Ex. B-7, dated Sept. 5, 1961 and Ex. B-8, dated Sept. 8, 1961 the respondent purchased one acre - 1936 sq. yards in each documents in the same T. S. No. 981 @ -0.42 p. per sq. yard. He sold on January 24, 1963 in an extent of one acre under Ex. B. 10 @ Rs. 5 per sq. yard. Therefore, the aforesaid sale deeds, Exs. B. 6, B. 7, B. 8 and B. 10 will reflect the prevailing market value of the land in question.

3. The trial Court and the High Court committed grievous error in placing reliance on a decision of the High Court in A. S. No. 191 of 1967 dated November 11, 1970 awarding @ Rs. 10 per sq. yard in respect of 6,209 sq. yards in T. S. No. 1008, Block No 39, Waltair Beach Road which was acquired under a notification dated March 19, 1961 for the purpose of Caltex Oil Refinery. The price fixed therein does not reflect the correct market value while the bonafide sale deed of purchase and sale by the respondents relating to the acquired land are available on records and form correct basis. The courts below committed grave error of law in completely excluding those sale transactions and relying upon that judgment.

4. We find force in the contention, though Shri Subba Rao, learned counsel for the respondent vehemently resisted it. It is settled law by catena of decisions that the market value postulated in S. 23(1) of the Act designed to award just and fair compensation for the lands acquired. The words "market value," would postulate price of the land prevailing on the date of the publication of the notification under section 4(1). This Court repeatedly laid the acid test that in determining the market value of the land, the price which a willing vendor might reasonably expect to obtain from a

willing purchaser would form the basis to fix the market value. For ascertaining the market rate, the Court can rely upon such transactions which would offer a reasonable basis to fix the price.

5. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. It is not necessary to cite all the decisions suffice to state that in a recent judgment in *Periya & Pareekanni Rubbers Ltd. v. State of Kerala*, Civil Appeals Nos. 543 to 570 of 1974 dated September 6, 1990 (reported. in AIR 1990 SC 2192), a Bench of this Court, to which one of us K. R. S., J., was a member surveyed all the relevant precedents touching the points.

6. In the light of the settled legal position let us consider whether the High Court and the Civil Court are justified in excluding the sale deeds completely and to place reliance on another judgment of the Division Bench of the High Court of A. P. Admittedly, the claimant is a vendee in Exs. B. 6 to B. 8 @ -0.42 paise. In a span of one year and four months, they sold @ Rs. 5 per sq. yard. It is common knowledge that proposal for acquisition would be known to everyone in the neighbourhood, in particular, to the owners of the property and it is not uncommon that sale transactions would be brought into existence before the publication of S. 4(1) notification so as to form the basis to lay higher claim for compensation. We do assume that Ex. B. 10 is a genuine and bona fide sale transaction. In respect of one acre of the land in the self-same land when sold at Rs. 5 per sq. yard, would it fetch in a short period of nine months, double the market value, namely, @ Rs. 10 per sq. yard. We have no doubt that it would not get that price for 5 acres and odd area. It is undoubted that in respect of a notification of 1961 in which another T. S. number in the locality, namely, T., S. No. 1008, (sic) ultimately, the High Court awarded @ Rs. 10 per sq. yard. Perhaps had there been no bona fide or genuine sale transaction relating to the self-same land, the reliance placed on that judgment may be justified but exclusion of bona fide and genuine sale transactions in respect of the same land under acquisition and to place reliance on the award of some other land is obviously illegal. When the claimants themselves sold as a willing seller of an acre of land @ Rs. 5 per sq. yard large extent of five acres and odd under acquisition, if it is offered to be sold as a block, it would not fetch higher rate but surely be negotiated for a lesser rate if not the same market value @ Rs. 5 due to time lag of nine months. No attempt was made by the respondent to explain under what circumstances they came to sell their lands @ Rs. 5 per sq. yard when they expect higher value @ Rs. 10 per sq. yard. May be the payment of Rs. 10 per sq. yard, be windfall to the owner of the land :- T 1008. Taking the totality of the facts and circumstances, we hold that the High Court committed grave error to completely ignore the sale transactions of the lands under acquisition. In view of the time lag we have no hesitation to conclude that the prevailing market value of the land as on the date of the notification would be Rs. 6 per sq. yard.

7. It is next contended by Shri Narsimahachari that when a large extent of land was acquired for a housing scheme, at least 1/3 of the land should be deducted towards laying the roads, setting up parks, drainage and other amenities. The High Court committed manifest error in omitting to deduct 1/3 of the land.

8. Shri Subba Rao, the learned counsel for the respondent contended that the High Court had noted this contention of the appellant and considered that the market value of the land would be Rs. 12 per sq. yard and after giving the deduction of 1/3 it would come to Rs. 10. The reasoning of the High Court is proper and warrants no interference. In support thereof he placed reliance in Spl. Tehsildar,

Vishakapatnam v. Rednam Dharma Rao & Ors., C. A. No. 4187 of 1982, dated July 17, 1990 wherein this Court had upheld the deduction of 1/5 from the market value towards developmental charges. It is settled law that the High Court and the Reference Court when made wrong application of a principle or important points effecting valuation has been overlooked or misapplied, this Court would under Art. 136 correct the same, vide *The Spl. Land Acquisition Officer, Bangalore v. T. Adinarayan Setty*, (1959) Suppl (1) SCR 404: (AIR 1959 SC 429), *Dattatrayaya Shankarbhat Ambalgi v. Collector of Sholapur*, AIR 1970 SC 850 : (1971) 3 SCC 43, *The Dollar Co., Madras v. Collector of Madras*, 1975 (Supp) SCR 403: (AIR 1975 SC 1670) and *Padma Uppal v. State of Punjab*, (1977) 1 SCR 329 : (AIR 1977 SC 580).

9. In *Tribeni Devi v. Collector of Ranchi*, (1972) 3 SCR 208 at p. 213 : (AIR 1972 SC 1417 at p. 1421), this Court held that "in order to develop that area at least the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities". On this basis the value of the land at Rs. 2,08,135.70 per acre would, after the deduction of 1/3 come to Rs. 1,38,757 per acre. In *Smt. Kaushalya Devi Bogra v. The Land Acquisition Officer, Aurangabad*, (1984) 2 SCR 900: (AIR 1984 SC 892). This Court held that deduction of 1/3 was held to be reasonable. In *Vijay Kumar Motilal v. State of Maharashtra*, (1981) 2 SCC 719: (AIR 1981 SC 1632) 1/3rd was deducted towards developmental charges in undeveloped area. In *Vijaysingh Liladhar v. Spl. Land Acquisition Officer*, (1988) 3 SCC 760 : (AIR 1988 SC 1652) the deduction of 1/4th by the High Court which was not challenged in this Court was upheld. In *Spl. Land Acquisition Officer, Bangalore v. T. Adinarayan Setty* (AIR 1959 SC 429) (supra), deduction of 25 per cent was held to be reasonable. It is to be noted that in building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve lay out for building colonies.

10. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections deduction of 1/4 may be justified. On that basis, this Court in *R. Dharma Rao's case* upheld deduction of 1/5 because the owner while obtaining the lay out had already set apart lands for road and drainage. Therefore, deduction of 1/3 would be reasonable. In fact in *The Tehsildar, Land Acquisition, Vishakapatnam v. P. Narasing Rao* (1985) 1 A P L J (HC) 99, a Division Bench of the High Court surveyed judgments of the High Court relating to housing schemes of Visakhapatnam upholding deduction of 1/3 to be reasonable. Accordingly we hold that 1/3 of the market value should be deducted for development of the lands. The High Court committed grievous error in giving a curious reasoning of valuing at Rs. 12 and upholding Rs. 10 to be the market value after deduction, though the market value was determined at Rs. 10. Accordingly the appeal is allowed. The market value is determined at Rs. 6 per sq. yard and after deducting 1/3 the market value is Rs. 4 per sq. yard. The respondents are entitled to 15 per cent solatium on market value and 4 per cent interest thereon from the date of dispossession. But in the circumstances parties are directed to pay and receive their own costs.

Appeal allowed.

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