SUPREME COURT OF INDIA

M.S.N. Nadaf Since Dead Thr.Lrs.

Vs.

Special Land Acquisition Officer

C.A.Nos.6471-6475 of 1997

(S. N. Variava and H. K. Sema JJ.)

16.10.2003

ORDER

1. Delay condoned.

2. Applications for substitution are allowed.

3. These appeals are against the judgment of the High Court dated 28th January, 1997.

4. The land was acquired pursuant to a Notification under Section 28(1) of the Karnataka Industrial Area Development Act, 1966 and an award came to be passed fixing compensation Rs. 6,500/- per acre. Before the Reference Court, the claimants filed a sale example which was marked as "Ex-P3". That sale was in respect of 4.5 gunthas of land at Rs. 13,500/- and the sale had taken place on 13th December, 1973 i.e. few months prior to the Notification. The acquiring body had also filed sale instances which were marked as "Ex-D1 to D3". However, these were not considered in view of the then prevailing law that in the absence of the vendor or the vendee being examined the sale documents could not be looked into. The one Reference Court applied a deduction of 40% and awarded compensation @ Rs. 71,874 per acre in 5 cases. In 4 cases another Reference Court applied a duduction of 35% and awarded compensation @ Rs. 80,000/- per acre.

5. As the acquisition of land was under the same Notification, the High Court dealt with all these matters by the impugned judgment. It must be mentioned that the appeal had been filed only by the acquiring body. The claimants had not filed any appeal before the High Court. The High Court agreed with the Reference Court that Ex.-P3" was a comparable sale instance and that the Reference Court had correctly taken that into consideration. The High Court however relied on another case decided by it wherein it had been concluded that deduction could be upto 65% for development. The High Court noted that in some cases deduction of 63% had been granted by it.

6. The High Court then chose to deduct 60% on the following ground:-

". . . . . .but in the present case it will be sufficient if we give deductions to the extent of 60%."

7. This is the only reason given by the High Court for deducting up to 60%.

8. A number of authorities have been cited before us by both the parties wherein this Court has made deduction at different rates. In a recent decision of this Court in the case of *Kasturi and others v. State of Haryana reported in*[1], earlier case have been considered and it has been held that the normal rule is that the deduction should be 1/3rd. In this case also the adjoining lands were developed lands. Considering that they were developed lands, this Court held the normal rate of deduction should be 1/3rd. We are in full agreement with this view. It is only if there is material on record to show that a higher percentage is required to be deducted that there could be a higher deduction.

9. It was, however, argued that the Reference Court had deducted @ 40% in 5 cases and @ 35% in 4 cases and that the appellants (herein) had not gone in an appeal against the order of the Reference Court. It was submitted that therefore even though this Court may be inclined to interfere, deduction should not be allowed at a rate less than 40% and 35% in the respective cases.

10. Reliance was also placed upon the authority of this Court in the case of *Food Corporation of India v. Makhan Singh and another reported in*[2] wherein this Court has held as follows :

"15. This Court as the last Court of appeal, will ordinarily not interfere in an award granting compensation 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 reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Besides generally speaking, the appellate Court interferes not when the judgment under appeal is not right but only when it is shown to be wrong. See in this connection, *Dollar Company, Madras v. Collector of Madras*[3]. Added thereto are other rules of prudence that the Courts do not treat at par land situated in the anterier (sic interior) undeveloped area, or to compare smaller plots fetching better price with large tracts of land. See in this connection *Periyar and Pareekanni Rubbers Ltd. v. State of Kerala*[4]."

11. There can be no dispute with this proposition. However, if wrong principles have been applied or if the judgment in appeal is found to be not right then this Court can always interfere. As has been indicated herein above that the normal rule is 1/3rd should be deducted. The High Court while deducting up to 60% has given no reasons at all why and what was the circumstance which required such a large deduction. It is, therefore, clear that the High Court has applied wrong principles. The High Court has erred in deducting to the extent of 60%. Under these circumstances, we set aside the impugned judgment and restore those of the Reference Courts.

12. The other question which arises for consideration is whether interest on solatium is payable. This question has now been settled by this Court in the case of *Sunder v. Union of India reported in*[5]. Accordingly, it is held that interest is payable.

13. We further clarify that the claimants will also be entitled to all amounts payable to them under law.

14. The appeals stand disposed of accordingly. No order as to costs.

Order accordingly.

[1]*2003 (1) SCC 354*
[2]*1992 (3) SCC 67*
[3]*(1975) 2 SCC 730*
[4]*(1991) 4 SCC 195*
[5]*2001 (7) SCC 211*