

SUPREME COURT OF INDIA)

V.Subrahmanya Rao

Vs.

Land Acquisition Zone Officer

C.A.No.979 of 2003

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

04.02.2004

JUDGMENT

1. These Appeals are against the common Judgment of the High Court dated 6th September, 2001.

2. Briefly stated, the facts (in C.A.No.979/2003), are as follows:-

3. The Appellant's land was acquired pursuant to Section 4 Notification dated 11th June, 1985. Not being satisfied with the Award, the Appellants claimed reference. In the reference proceedings, he gave evidence to the following effect:-

"..... My net income per year per acre of land was around Rs. 10, 000/-. I have claimed compensation by applying the multiplier theory for 16 years. In our area the land of similar nature had been sold at the rate of Rs. 80, 000/- in the year of acquisition. These are the certified copies of two sale deeds marked as Exts. 2 and 3. This is the certified copy of the order in L.A. Misc. Case No. 7/87 and the Hon'ble Court has awarded Rs. 1 lakh 50 thousand marked as Ext.4. This is the consolidation R.O.R. in respect of the land of my father marked as Ext.5. I claimed compensation be awarded at the rate of Rs. 80, 000/- per acre or on the basis of 16 years yield."

4. The Reference Court fixed the value of the land at Rs. 1, 50, 000/- per acre mainly relying upon the Judgment in L.A.Misc. Case No. 98/86. In that case land of one Bipin Bihari Pujari was acquired. Compensation at the rate of Rs.1.50 lakhs per acre was awarded. The Reference Court proceeded on the basis that both the acquisitions were under the same Notification. The Reference Court rejected an argument that the Award in L.A. No. 98/86 was in respect of lands in village Maneswar whereas the lands of the Appellant were situated in village Halipalli and that the lands were not similar. The Reference Court concluded that the Land Acquisition Collector had considered the potential value of land of same variety of 14 villages and that he had included village Maneswar and village Halipalli as having the same value.

5. The State filed an Appeal before the High Court. The High Court has, by the impugned Judgment, reduced the compensation to Rs. 80, 000/- per acre. The High Court has concluded that the Appellant had not led any evidence to show that the lands at Maneswar and his land were identical or similarly situated. The High Court has concluded that as the claimant himself had confined his claim to Rs. 80, 000/- per acre the Court below could not determine compensation at Rs. 1.50 lakhs per acre. prior to 1984 Section 25 of the Land Acquisition Act did not permit the Court to award an amount in excess of the amount claimed. However, after 1984, Section 25 does not preclude the Court from awarding an amount in excess of the amount claimed. Therefore, the High Court is not right when it concludes that claimant must be confined to his claim.

6. There is no doubt that what has to be paid is the market value of the land. As has been held by this Court in the case of Special Deputy Collector And Another vs. Kurra Sambasiva Rao And Others reported in 9, the best evidence of market value would be the sale transactions in respect of the acquired land to which the claimant himself is a party; the time at which the property came to be sold; the purpose for which it is sold; nature of the consideration and the manner in which the transaction came to be brought out. These are the relevant factors. If those are not available then the sale transactions relating to the neighbouring lands in the vicinity of the acquired land have to be taken into consideration. As seen from the deposition of Appellant, extracted herein above, certified copies of sale instances were tendered before the Reference Court. The Reference Court has not referred to or dealt with those sale instances and they do not appear to have been shown to the High Court. Even when we asked the Appellants' counsel what those sale instances were, he was not in a position to answer. It will therefore have to be presumed that they are not helpful to the Appellants. It was fairly admitted that the Appellant is now not relying on them.

7. The Appellant has placed strong reliance on the Report of the Land Acquisition Collector wherein he has valued the lands after classifying them into various categories as follows:-

1. Bahal Pani Rs. 30, 000/- per acre.
2. Bahal Sadharan Rs. 25, 000/- "
3. Berna Pani Rs. 25, 000/- "
4. Berna Sadharan Rs. 20, 000/- "
5. Mal Pani Rs. 20, 000/- "
6. Mal Sadharan Rs. 15, 000/- "
7. Atta Pani Rs. 15, 000/- "
8. Atta Sadharan Rs. 12, 000/- "

9. Gharbari Rs. 30, 000/- "

10 Patita Rs. 8, 000/- "

8. Thereafter, the Land Acquisition Collector holds that the above rates would apply even to lands of other villages. The other villages include both Maneswar and Halipalli. Maneswar is the village in which lands in L.A. Misc. Case No. 98/86 were situated whereas Halipalli is the village in which land of the Appellant is situated.

9. Reliance is placed upon the Judgment of this Court in the case of K. Periasami vs. Sub-Tehsildar (Land Acquisition) reported in wherein it has been held that where the Land Acquisition Officer himself awards a rate higher for the acquired land, it furnishes intrinsic evidence that the lands in question are situated in a more advantageous position than the lands in the other case. It is held that the party would be entitled to a parity of market value. There can be no dispute with this proposition.

10. However, even if the Report of the Land Acquisition Officer is taken into consideration, all that is shown is that the value of a certain category of land will be the same in all the villages. Thus, it would show for example that "Berna Pani" land in all villages is the same. It would also show that the land of the Appellants is better land than the "Mal Pani" land belonging to Bipin Bihari Pujari. However, this does not show market value. For arriving at a market value, the Court has to take into consideration various other factors like the proximity of the two lands, nearness of the land to habitation or public amenities or road etc.

11. In this case, the Appellant has chosen not to lead any evidence in order to show that his land was near to the other lands and/or that it was similarly situated. On the contrary, the Respondents, in their affidavit, have pointed out that the lands in Maneswar village are adjacent to the Municipal Area of Sambalpur Town. They have pointed out that Sambalpur Town has a business centre, markets and bazars. They have pointed out that Sambalpur is the Block Headquarter and an All India Radio Station, a College, High School, Primary Health Center and Mills are located at Maneswar. They pointed out that Village Halipalli is not close to Sambalpur town and that no facilities are available in village Halipalli. Thus in our view, the High Court was right in concluding that in the absence of any evidence to show that the two lands are similarly situated reliance could not have been placed upon the Judgment in L.A. Case No. 98/86.

12. It was next submitted that even in respect of lands in village Halipalli there have been a number of other Judgments wherein the value has been fixed at Rs. 1, 50, 000/- per acre. However, it was fairly admitted that none of those Judgments were produced before the High Court. They are sought to be produced for the first time in this Court. In our view, it is not open to parties to try and lead additional evidence in this Court. Parties must be confined to what evidence they have led before the lower Court. All the Judgments which are now sought to be relied upon were available at that time when the matter was argued before the

High Court. Had they been produced before the High Court, the other side would have had an opportunity of meeting those Judgments.

13. Even otherwise, in our view, market value has to be fixed on evidence led in each case. In this case the evidence is as extracted above. In our view, the evidence of the Appellant, as extracted above, clearly shows that according to the Appellant the market value of the land, at the appropriate time, was Rs.80, 000/- per acre. We are unable to accept the submission that the Appellant in his deposition is claiming either Rs. 80, 000/- or Rs. 1, 60, 000/- on the basis of 16 years yield. Evidence has to be read as a whole. If it is read as a whole it is clear that according to the Appellant the market value is Rs. 80, 000/- whether taken as market value or taken on the basis of 16 years yield. Thus, the evidence in this case is that the market value at the appropriate time was Rs. 80, 000/- per acre. This being the evidence of the Appellant himself the market value would have to be fixed at Rs. 80, 000/- per acre.

We, thus, see no reason to interfere. The Appeals stand dismissed with no order as to costs.