

SUPREME COURT OF INDIA

Mummidi Apparao (D) Through Lrs.

Vs.

Nagarjuna Fertilizers & Chemicals Ltd.

(S.L.P) (C) No.3635 of 2007

(Tarun Chatterjee and Aftab Alam JJ.)

21.11.2008

JUDGMENT

Aftab Alam, J.

1. This batch of three special leave petitions arises from land acquisition proceedings and the matter in dispute is the rate of compensation for the acquired lands as determined by the Andhra Pradesh High Court. SLP (Civil) Nos. 3635 and 3711 of 2007 were filed on behalf of claimants/landholders and SLP (Civil) No. 4177 of 2007 at the instance of Nagarjuna Fertilizers and Chemicals Ltd. for whose benefit the lands were taken in acquisition. In course of hearing, counsel appearing for the claimants/landholders stated that they accepted the compensation fixed by the High Court and did not wish to challenge the High Court judgment any longer; hence, SLP (Civil) Nos. 3635 and 3711 of 2007 are dismissed as not pressed. This leaves us to consider SLP (Civil) No. 4177 of 2007 filed by the industrial establishment for which the acquisition was made.

2. The Government of Andhra Pradesh acquired altogether about 600 acres of land for the petitioner, Nagarjuna Fertilizers and Chemical Ltd. For creation of ree-belt around the industrial unit and for laying down pipes for supply of water etc The present SLP is in regard to lands measuring to an area of 41.05 acres out of the total acquisition. The area of 41.05 acres, forming the subject matter of dispute, was acquired in two proceedings. For the area of 6.11 acres the notification under Section 4 of the Land Acquisition Act was issued on 25 January 1991 and the acquisition proceeding was concluded in award no.1/92. Another notification under Section 4 of the Act was issued on 2 December 1991 for the area of 34.94 acres and the second proceeding concluded in award no.2 of 1992. For the purpose of fixing the rate of compensation the Land Acquisition Officer classified the lands covered by award no.1/92 in two categories. For category one lands he fixed the market value @ Rs.42, 000/- Per acre and for category two lands @ Rs.35, 200/- Per acre. The market value for the lands covered under award no.2/1992 was fixed at the uniform rate of Rs.37, 000/- Per Acre. The Land Acquisition Officer fixed the market value as indicated above by firmly holding that the lands in question were purely agricultural in nature. He also referred to an earlier acquisition under award no.10 of 1988, dated 19 October 1988. In the earlier case the matter

had gone up to the High Court and the High Court had determined the amount of compensation @ Rs.82, 600/- per acre. The Land Acquisition Officer observed that there was no distinction between the lands covered by award no.10 of 1988 and the present lands and hence, the rate of compensation fixed for the earlier acquisition would be a good basis for fixing compensation in the present proceeding. (See award of the Land Acquisition Officer at Pp.30, 31 and 34 of the SLP brief).

3. Aggrieved by the awards made by the Land Acquisition Officer the landholders took the matter to the reference court under Sec.18 of the Act. Before the reference court it was strongly urged on behalf of the claimants/landholders that the Land Acquisition Officer grossly erred in treating the acquired lands as merely agricultural lands. The claimants/landholders submitted that having regard to their location and the developments all around the acquired lands had fully the potential of developing into housing sites and as a matter of fact were fast taking up that character; small pieces of land in close vicinity of or even abutting on the acquired area were being sold for construction of dwelling units. In support of their submission the claimants/landholders relied upon a number of sale deeds (exts.B2 to B7) produced in evidence before the reference court. The reference court accepted the case of the claimants/landholders and the Principal Senior Civil Judge, Kakinada by his judgment dated 30 October 2000 held that the sale deed ext. B2 formed a sound basis for fixing the rate of compensation for the acquired lands. Exhibit B.2 is in regard to the sale of a piece of land, 110 sq. yards in area, that took place on 23 July 1990 for a consideration of Rs.14, 850/-. The Principal Senior Civil Judge observed that the piece of land sold under the sale deed ext.B.2 just abutted on the acquired land. He also observed that though the sale transaction was brought to the notice of the Land Acquisition Officer he rejected it on the ground that it related to S No.248 where house sites were already made, whereas the acquired land was not readily fit as a housing site. Discussing the evidentiary value of ext. B.2 the Civil judge observed as follows: "No suggestions are made to R.W.4 to the effect that Ex. B.4 (sic. Ex.B.2) transaction is fraudulent transaction or nominal transaction, as such it can be held that on considering the potential value of the site covered under Ex.B.2, R.W.4 purchased the house site covered under Ex.B.2 It is to be further held that the site covered under Ex.B.2 is under approved lay out made in the year 1987 itself. As such sale transaction under Ex.B.2 can be looked into, to see whether Ex.B.2 sale transaction can be relied upon as comparative or representative sale for fixation of the market value for the present acquired land."

4. The market value of the acquired land on the basis of the sale deed ext.B.2 worked out to Rs. 6, 53,400/- per acre. The Civil judge deducted one third of the value so arrived at as development cost and came to the figure Rs.4, 35,000/- Per acre. It recorded its finding as follows:

"Accordingly I find that market value fixed by Land Acquisition Officer for the acquired land covered under O.P.203/93 at Rs.35, 200/- is not adequate. So also market value fixed by Land Acquisition Officer at the rate of Rs.37, 000/- for the lands covered under O.Ps. 200/93, 201/93, 205/93, 206/93 and 208/93 is not adequate. So also market value fixed at the rate of Rs. 42,000/- for the land covered under O.Ps.

202/93, 204/93, is not adequate and market value for the above lands is enhanced to Rs. 4, 35,600/- per acre. Claimants are entitled to 12% additional market value on the enhanced market value, 30% Solatium on enhanced market value. Claimants are also entitled to interest at 9% p.a. for one year from the date of taking possession and thereafter at 15% p.a. till payment of enhanced market value on the enhanced market value. Claimants are not entitled to interest on additional market value and Solatium."

5. Against the order passed by the reference court, the petitioner filed appeals before the Andhra Pradesh High Court. During the pendency of the appeals the petitioner also brought on record certified copies of the earlier decrees and judgments of the High Court dated 11 August 2003 in A. S. No. 906/1999 and dated 28 February 2005 in A. S. No. 664/2000 by which compensation for the lands acquired in 1985 for the same purpose of creation of Green Belt for the petitioner's factory was fixed @ Rs.82, 600/- per acre.

6. The High Court, however, didn't disturb the basic premise of the Civil Judge that the sale deed ext.B.2 served as a good basis for fixing the market value of the acquired land. But having regard to the small area of the land transferred under the sale deed ext.B.2 and further in view of the undeveloped state of the acquired land at the time of acquisition deemed fit to deduct as development charges 50% from the market value of the land fixed on the basis of ext.B.2. Thus by its judgment and order dated 9 October 2006 the High Court arrived at the figure of Rs.3, 25,000/- per acre and fixed the compensation at that rate. The High Court further clarified that the claimants would be entitled to 12% towards additional market value and other statutory benefits as laid down in the judgment of this Court in *Sunder Vs. Union of India*¹.

7. Mr. Parasaran Learned Senior Counsel appearing for the petitioner assailed the High Court judgment for accepting the sale deed ext.B.2 as the basis for fixing the rate of compensation and merely enhancing the ratio of deduction from 1/3rd to half. Learned counsel submitted that the entire approach of the Civil Judge and the High Court was quite wrong. The sale deed, ext.B.2 was in respect of a very small piece of land, only 110 square yards in area that was purchased with the declared intent to construct a dwelling house. The consideration shown in ext.B.2 could not, therefore, form the basis for determining the rate of compensation for the acquired land.

8. Mr. Parasaran submitted that the real controversy in the matter is whether at the time of acquisition the acquired land was agricultural or it had the potential to develop into a housing site. He took the stand that the acquired land was nothing but agricultural and it was wrong to see in it any potential to develop into a site for construction of houses. He further submitted that the Land Acquisition Officer had rightly taken the land as purely agricultural. In support of the submission he invited our attention to different passages in the awards made by the Land Acquisition Officer. He also referred to the statements of witnesses examined before the court to contend that the acquired land was agricultural in nature and had no potential to develop into a housing site.

9. Mr. Parasaran submitted that the High Court disposed of the appeal in a very perfunctory manner. He also stated that the observations made by the High Court in Paragraph 4 of the judgment hardly justified the final order passed in the appeals. Learned counsel also questioned the direction of the High Court for deduction of 50% as development charges from the value of the land fixed by the court and contended that in the facts of the case the ratio of deduction should have been much higher. In support of the submission he relied upon several decisions of this Court which we do not consider necessary to mention here.

10. Mr. Parasaran also referred to the earlier judgment and decree of the High Court dated 8 November 2003 by which compensation for the lands acquired in the year 1985 was fixed @ Rs.82, 600/- per acre.

11. Mr. Parasaran placed strong reliance on the government order bearing G. O. Ms. No.81 H. M. Agrl. U.D. Dept. (12) M. A. dated 23 February 1989 issued by the Govt. of Andhra Pradesh and published in the AP gazette issue no. 14 dated 6 April 1989. The aforesaid order prohibited any constructions on the lands around the industrial unit or the sale of those lands as house sites and set apart the use of those lands for the purpose of green belt and afforestation. The learned Counsel submitted that in view of the government order it was meaningless and futile to contend that the acquired lands had the potential of developing into housing sites since such user of the land was expressly prohibited by the government.

12. Learned Counsel appearing on behalf of the respondents/claimants supported the Judgment of the Civil Judge and submitted that he rightly took into account the potential of the acquired land to develop into a housing site. Learned counsel submitted the finding that the acquired lands had the potential to develop into housing sites is one of fact, arrived at on proper appreciation of the evidences brought before the Civil Judge and warranted no interference by this Court. He further submitted that as a matter of fact the claimants/landholders at one time felt aggrieved by the large deduction, directed by the High Court from the market value of the acquired land but they no longer wanted to make an issue of it. Learned counsel submitted that there was a background to the acquisition of the lands, forming the subject matter of dispute. In a public interest litigation filed against the petitioner industrial unit for causing heavy environmental pollution the Court directed for creation/extension of the green belt around the factory unit and that led to further acquisition of lands, including the lands forming the subject matter of the present dispute. Learned counsel submitted the net result is that the common man went to the Court complaining about the petitioner industrial establishment causing environmental pollution and ended up by having his lands forcibly acquired for creation/extension of the green belt.

13. In regard to the 1989 government order earmarking the lands around the factory for afforestation and setting-up the green belt learned counsel submitted that the Government order was published in the gazette on 6 April 1989 just a few months before the issuance of the Sec. 4 notifications on 25 January 1991 and 2 December 1991. He further submitted that having regard to the back ground in which the acquisitions were made it would be quite unjust and unreasonable to put a cap onto the compensation for the acquired lands on the basis of the government order completely disregarding the potential inherently acquired by

the lands in question as a result of the developments taking place all around in the natural course.

14. On hearing counsel for the parties and on a careful consideration of the materials on record we are satisfied that this matter doesn't merit any interference by this Court. The Civil Judge came to hold and find that the acquired lands had the potential to develop into housing sites and accordingly took ext.B.2 as the basis for fixing the rate of compensation. The High Court having regard to the present state of the lands enhanced the ratio of deduction to half of the market value as worked out on the basis of ext. B2. We are satisfied that compensation awarded by the High Court to the claimants/landholders is correct, just and proper and warrants no interference by us.

15. This special leave petition is dismissed. The parties shall bear their costs.

¹*AIR 2001 SC 3516*