

SUPREME COURT OF INDIA

Revenue Divisional Officer-Cum-L.A.O.

Vs.

Shaik Azam Sahem

C.A.Nos.8984-8985 of 2003

(S.B. Sinha, Lokeshwar Singh Panta and B. Sudershan Reddy JJ.)

13.01.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted in Special Leave Petition (Civil) Nos. 4463-4470 of 2004, 12200-12205 of 2007, 12215 of 2007 and 12206-12213 of 2007.

2. These appeals by special leave involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

3. The basic fact of the matter is not in dispute.

“A notification under Section 4(1) of the *Land Acquisition Act, 1894* was issued (hereinafter referred to for the sake of brevity as, "the said Act") expressing the intention of the State to acquire land to the extent of 87 Acres 96 cents situated in Pasupula and B. Thandrapadu villages for the purpose of establishing a Post Graduation Centre of Sri Krishna Devaraya University.”

4. Out of the said 87 Acres 96 cents of land, we are concerned only with 25 acres of land of which respondents were owners. The Land Acquisition Officer made an award on or about 20.12.1995 fixing the market value of the lands at the rate of Rs.15,000/- per acre for the lands situated in B. Thandrapadu village and Rs.16,000/- per acre for the lands situated in Pasupula village.

5. Dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the respondents sought for reference from the Collector before the Civil Court in terms of Section 18 of the said Act.

“The learned Principal Senior Civil Judge, Kurnool by a judgment and award dated 28.03.2001 enhanced the market value thereof from Rs.15,000/- to Rs.90,000/- per acre for the lands situated in B. Thandrapadu village and from Rs.16,000/- to

Rs.1,00,000/- per acre for the lands situated in Pasupula village. Appeals and cross-objections were filed thereagainst by the parties hereto.”

6. By reason of judgments and orders dated 18.3.2002 and 28.3.2003, a Division Bench of the Andhra Pradesh High Court enhanced the market value of the land to Rs.1,90,000/- per acre uniformly for the lands situated in both the villages.

7. Parties thereto are, thus, before us.

8. The High Court in support of its judgment, inter alia, relied upon a registered deed of sale dated 12.11.1987, which was marked as Exhibit B-3 whereby and whereunder four cents of land was sold for a sum of Rs.10,000/-. On that premise, it was contended that the value of the land per acre would be Rs.2,50,000/-. The High Court furthermore relied on its earlier judgment and order passed in A.S. No. 1095 of 1996 (Exhibit B-6) wherein market value of the lands acquired therein was fixed at the rate of Rs.2,70,000/- per acre.

“In respect of the land covered by Exhibit B-6, a notification under Section 4(1) of the Act was issued on 30.06.1992 for the purpose of establishing Bharat Gas Power Station. It was noticed that the lands which were acquired for the said Bharat Gas Power Station being situated at a distance of about 8 kilometers from Kurnool Town whereas the acquired lands were situated about 4-5 kilometers away from Kurnool Town.

It was stated:

"As can be seen from Ex.B6, this court has fixed the rate of compensation at Rs.2,70,000/- and the notification was issued in June 1992 whereas in the present cases notification was issued in May 1995. In such an event, if escalation is given at 10&percent; on the value fixed by this Court, it would be around Rs.3,24,000/- per acre. Let us test the value from the other angle. Ex. B3 is a small extent of 4 cents and the purchase took place in the year 1997. The reference court correctly observed that as the purchase was made about 7 years earlier to the notification, the purchase was not made with a view to have an undue advantage of higher compensation. As per Ex. B3 the value per acre is Rs.4,00,000/- if 10&percent; escalation is given for 7 years, the same comes to Rs.6,80,000/- and even if we take 60&percent; of the amount by keeping in view the small extent sold under Ex.B3 and also giving discount for developmental activities, it would be Rs.2,72,000/- per acre. Therefore, we follow the safest method for arriving at the compensation with reference to Ex.B6 which is in an extent of 27 and the area covered by the batch of appeals is also almost same, and the notification was issued for 87.96 cents, granting of escalation by deduction 40&percent; of the amount and fixing the compensation at Rs.1,90,000/- would be just and reasonable. Therefore, we have taken the course of resorting to 40&percent; of the amount as the land acquired was for the University Buildings, wherein internal roads have to be laid and other open spaces have to be left out. Thus, keeping in view the

above facts, we feel that granting compensation at Rs.1,90,000/- is just and reasonable."

9. Mr. R. Sundarvardhan, learned Senior Counsel appearing on behalf of appellant would contend:

"i. As this Court in Civil Appeal No. 5206-5228 of 1997 (A.P. Industrial Infrastructure Corporation Limited vs. G. Mohan Reddy & ors.) interfered with the judgment and order passed in A.S. No. 1095 of 1996 and batch to hold that the market value of the land in question should be fixed at Rs.1,35,000/-, Rs.90,000/- and Rs.70,000/- per acre for different survey nos. on the premise that the situation of the land keeping in view their distance from the National Highway play a vital role as the land which is near the Highway would definitely get a higher price than the land which is away therefrom, the impugned judgment cannot be sustained.

ii. Exhibit B-3 being the registered sale deed dated 12.11.1987 could not have been relied upon as only 4 cents of land was the subject matter of transfer in terms thereof whereas the notification had been issued for acquisition of land measuring 87 Acres 96 cents."

10. Mrs. K. Amareswari, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would contend:

"i. It is not correct to contend that an exemplar in terms whereof only a small portion of land had been transferred can never be taken into consideration.

ii. Keeping in view the fact that the market rate in terms of Exhibit B-3 would come to Rs.2,50,000/- per acre, even if 50 per cent is deducted therefrom, the market value may be determined at Rs.1,25,000/- to which increase therein at the rate of 10 per cent per year should be added and as the lands in question were acquired on 5.5.1994, that is, 7 years after the said deed of sale was executed, the market value thereof would come to Rs.2,12,500/- per acre.

iii. So far as the judgment of this Court passed in Civil Appeal No. 5206-5228 of 1997 (A.P. Industrial Infrastructure Corporation Limited vs. G. Mohan Reddy & ors.) is concerned, the notification therein having been issued on or about 30.6.1992 whereas the notification in the instant case having been published on 5.5.1994, no reliance can be placed thereupon as admittedly the lands were situated 8 kilometers away from the National Highway whereas the lands in question are situated only 4 kilometers away from the Highway."

11. Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors; the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefor are also required

to be considered, namely, as to whether they are irrigated or non- irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road or highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land.

12. The mode and manner in which determination of such valuation are to be carried out would also depend upon the facts and circumstances of each case, namely, whether any deed of sale executed in respect of similarly situated land near about the date of issuance of notification under Section 4 (1) of the Act is available, or in absence of any such exemplars whether the claim can be determined on yield basis or in case of an orchard on the basis of the number of fruit bearing trees and the yield therefrom.

13. One other important factor which also should be borne in mind is that it may not be safe to rely only on an award involving a neighbouring area irrespective of the nature and quality of the land. For determination of market value again, the positive and negative factors germane therefor should be taken into consideration, as laid down by this Court in *Viluben Jhalejar Contractor vs. State of Gujarat*¹, namely:

“Positive factors Negative factors (i) Smallness of size (i) Largeness of area (ii) proximity to a road (ii) situation in the interior at a distance from the road (iii) frontage on a road (iii narrow strip of land with very) small frontage compared to depth (iv) Nearness to developed area (iv) lower level requiring the depressed portion to be filled up (v) regular shape (v) Remoteness from developed locality (vi) Level vis-`-vis land under (vi) Some special disadvantageous acquisition factors which would deter a purchaser (vii Special value for an owner of) an adjoining property to whom it may have some very special advantage.”

14. Before determination of the market value of the land, we may notice that the town of Kurnool is the District Headquarter of Kurnool district.

“The acquired lands are situated about 4 kilometers away from the said town abutting National Highway No. 18. The lands in question have been held to have the requisite potential value as building site as also for constructing industrial complexes. The learned Reference Judge noticed that there are educational institutions like Pulla Reddy Engineering College, Don Bosco School, St. Mary's Residential School etc. surrounding the acquired lands.

G. Pulla Reddy Engineering College is said to be situated just on the other side of the road of the lands acquired. As on the date of acquisition, it was found that the vicinity surrounding the land was well developed.”

15. Indisputably, a big chunk of lands, namely, 87 Acres 96 cents were acquired for the purpose of establishing an institution known as Sri Krishna Devaraya University. The award

of the Land Acquisition Collector was accepted by most of the persons. Only the respondents before us objected thereto.

16. The lands are situated in two different villages. The plan showing the location of the land vis-à-vis the National Highway No. 18 had not been placed before us. From the award of the learned Reference Judge, it appears that the lands situated in Pasupula village are better placed than the lands situated in B. Thandrapadu village. Such a distinction had also been kept in mind not only by the Land Acquisition Collector but also by the Reference Court.

17. We agree with the judgment of this Court in Civil Appeal No. 5206- 5228 of 1997 (A.P. Industrial Infrastructure Corporation Limited vs. G. Mohan Reddy & ors.) that the market value of the land would also depend upon the situation thereof.

18. Applying the said formula, if we rely on Exhibit B-3, the market value of the land in question would come to about Rs.1,25,000/- per acre. It is, however, not possible to agree with the submissions of Mrs. Amareswari that we should determine the market value only on that basis upon addition of 10 per cent enhancement of the market value each year. It must be bear in mind that the lands in question were agricultural lands whereas the lands which were the subject matter of the said deed of sale was a homestead land, thus, some amount, therefore, will have to deducted towards the development cost.

19. Indisputably while comparing the market value of developed lands with that of undeveloped lands, the court has to make suitable deductions towards the cost of development.

12 We, however, may notice that this Court, at different times, has spoken in different voices.

In *P.S. Krishna and Co. Pvt. Ltd. v. The Land Acquisition Officer, (Deputy Collector) Hyderabad*², this Court refused to interfere with the judgment of the High Court which had given a deduction of 20% towards development charges. Recently, a Division Bench of this Court in *Mummidi Apparao v. Nagarjuna Fertilizers and Chemicals Ltd.*³ did not interfere with the decision of the High Court which had given a direction for deduction of 50% as development charges. However, we are not oblivious of the fact that this Court had observed in *Viluben Jhalejar Contractor (D) v. State of Gujarat*⁴:

"28. In *Hasanali Khanbhai & Sons v. State of Gujarat*⁵ and *Land Acquisition Officer v. Nookala Rajamallu*⁶ it has been noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible.

29. We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases. (See *Kasturi v. State of Haryana*⁷, *Tejumaal Bhojwani v. State of U.P.*⁸, *V. Hanumantha Reddy v. Land*

Acquisition Officer & Mandal R. Officer⁹, *H.P. Housing Board v. Bharat S. Negi*¹⁰
and *Kiran Tandon v. Allahabad Development Authority and Anr.*¹¹."

20. In the facts and circumstances of the present case, one-third deduction, in our opinion, should be made towards development costs for the lands situated both in Pasupala village as also B. Thandrapadu village.

“Keeping in view the fact that the lands are abutting National Highway and near the district town, where a large number of educational institutions have come up, 10 per cent escalation per year has to be added. Thus, Rs. 1,41,666.66 per acre may be fixed for the lands in Pasupala village.

The lands in another village B. Thandrapadu Village being situated away from the NH 18, another 10 per cent from the amount fixed for the lands in Pasupala village must be deducted. Thus, Rs. 1,27,499.99 per acre may be fixed for the lands in B. Thandrapadu village.

We have adopted the same method which had been adopted by the Reference Judge inasmuch as the Reference Judge had fixed market value for the lands situated in Pasupala village at Rs. 1,00,000/- per acre and Rs.90, 000/- per acre in respect of B. Thandrapadu village.”

21. The appeals are allowed to the aforementioned extent. No costs.

¹[(2005) 4 SCC 789]

²[(1991) 2 SCALE 1186]

³[2008 (16) SCALE 226]

⁴[(2005) 4 SCC 789]

⁵[(1995) 5 SCC 422]

⁶(2003) SCC 334; (2003) 10 SCALE 307

⁷[(2003) 1 SCC 354]

⁸[(2003) 10 SCC 525]

⁹(2003) 12 SCC 642

¹⁰(2004) 2 SCC 184

¹¹(2004) 10 SCC 745)