

SUPREME COURT OF INDIA

C.R. Nagaraja Shetty

Vs.

Special Land Acquisition Officer and Estate Officer

C.A. No.1173 of 2009

(Tarun Chatterjee and V.S. Sirpurkar JJ.)

24.02.2009

JUDGMENT

V.S. Sirpurkar, J.

1. Leave granted.

2. The present appeal has a slightly chequered history. Land acquisition proceedings were initiated in respect of the land, bearing Survey No. 4 of Beratana Agrahara Village, Begur Hobli, Bangalore South Taluk, measuring 35 guntas, belonging to the appellant. Section 4 Notification dated 29.11.1990 was published on 20.12.1990. After Section 5-A enquiry, declaration under Section 6 of the Land Acquisition Act (hereinafter referred to as 'the Act') was published on 18.6.1992. In the award proceedings dated 9.12.1994, the compensation was determined at Rs.10/- per square feet. An application for enhancement under Section 18 of the Act was filed by the appellant and Reference Court partly allowed the Reference and enhanced the compensation to Rs.27.50 per square feet. The appellant was also held to be entitled to solatium at 30% of the market value and for additional amount at 12% p.a. under Section 23(1-A) of the Act. The Reference Court accepted that this was non-agricultural land and was situated adjacent to the Highway and thus, it had potential for being used for commercial purpose. The public purpose for which the land was acquired, was for widening of the National Highway.

3. Dissatisfied by the judgment of the Reference Court, an appeal was filed before the High Court. The High Court set aside the order of the Reference Court, enhancing the compensation and strangely enough held that the Reference Court had erred in enhancing the compensation. Aggrieved by the judgment of the High Court, the appellant filed a Special Leave Petition, being SLP (Civil) No. 8575 of 2006 before this Court. This Court, by its order dated 26.2.2007, set aside the judgment and remanded the matter to the High Court to consider the appeal afresh. Accordingly, the High Court heard the matter again and partly allowed the appeal, enhancing the compensation amount at Rs.75/- per square feet. However, the High Court deducted Rs.25/- per square feet for development charges. The High Court also did not award the compensation towards yielding coconut trees, barbed fencing wire etc.

Aggrieved by that order, the appellant, now, has come before us by way of the present appeal.

4. The Learned Counsel appearing on behalf of the appellant urged that considering that this land was on the outskirts of Bangalore City and had the great commercial potential, the High Court was bound to give enhanced compensation, at least at the rate of Rs.100/- per square feet. It was pointed out that the acquired land was on the National Highway and as such, had the potential for commercial purposes. The Learned Counsel further, by way of his second submission, urged that the High Court, at any rate, should not have deducted Rs.25/- per square feet, so as to limit the compensation to Rs.50/- per square feet. The Learned Counsel pointed out that such deduction for development charges was completely unjustified, particularly, because there could be no development in the small piece of land. The Learned Counsel relied upon the judgment reported in¹.

5. As against this, the Learned Counsel appearing on behalf of the respondent, supported the impugned judgment and contended that in fact, the High Court had given much more compensation than what was actually deserved by the appellant.

6. The High Court has increased the compensation from Rs.27.50/- per square feet to Rs.75/- per square feet. In the impugned judgment, the High Court observed that the concerned land was abutting the National Highway and was within 15 kilometers from Bangalore City Corporation limit and further that all-round development has taken place as industries have come up thereby. In this, the High Court relied upon a Division Bench judgment passed by the same High Court, wherein, it was found that the value of the nearby land was Rs.62.50/- per square feet. The High Court ultimately held that since the said land referred to in the earlier judgment passed by it was 25-30 kilometers away from Bangalore Bus Station; the present land would deserve a better rate than the one given in the earlier judgment, since it was only 15 kilometers away from the Bus Station. Accordingly, the High Court recorded a finding that the rate of Rs.75/- per square feet would be a proper rate. We are satisfied with this finding of the High Court, as the Learned Counsel has not been able to show anything from the record to hold that the concerned land would deserve a higher price than the one awarded by the High Court. We are generally satisfied with the finding of the High Court and would choose to confirm the same. Thus, we hold that the High Court was right in awarding the rate of Rs.75/- per square feet for the concerned land.

7. That leaves us with the other question of deduction ordered by the High Court.

8. The High Court has directed the deduction of Rs.25/- per square feet. Unfortunately, the High Court has not discussed the reason for this deduction of Rs.25/- per square feet nor has the High Court relied on any piece of evidence for that purpose. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of development contemplated and the possible expenditure for such

development. We do not find any such discussion in the order of the High Court. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Sr. Division), Bangalore, Rural District, Bangalore in Reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up. The Learned Counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any costs there for. In the reported judgment in *Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others* in 2007(9) SCC 447, this Court has discussed the question of development charges. That was a case, where, the acquisition was for laying a Railway line. This Court found that the land under acquisition was situated in an area, which was adjacent to the land already acquired for the same purpose, i.e., for laying Railway line. In paragraph 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. The Court relied on judgment in *Viluben Jhalejar Contractor Vs. State of Gujarat*² where it was held that the purpose for which the land is acquired, must also be taken into consideration in fixing the market value and the deduction of development charges. Further, in paragraph 30, the Court specifically referred to the deduction for the development charges and observed:-

“30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways..... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise.”

9. The Court made a reference to two other cases, viz., *Hasanali Khanbhai & Sons Vs. State of Gujarat*³ and *Land Acquisition Officer Vs. Nookala Rajamallu*⁴ respectively, where, the deduction by way development charges, was held permissible. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs.25/- per square feet out of the ordered compensation at the rate of Rs.75/- per square feet. We set aside the judgment to that extent. The claimant would, therefore, be entitled to the compensation at the rate of Rs.75/- per square feet with all the statutory benefits like solatium under Section 23(2), 12% interest under Section 23 (1-A) on the enhanced market value and interest at 9% and 15% as provided under Section 34 of the Act for one year and the rest of the period from the date of taking possession till the date of payment of the compensation awarded in favour of the claimant. With this, we partly allow the appeal and modify the order of the High Court.

¹2007 (9) SCC 447

²2005(4) SCC 789

³1995 (5) SCC 422⁴2003(12) SCC 334