SUPREME COURT OF INDIA

A.P. Housing Board

Vs.

K.Manohar Reddy

C.A.Nos.4212-4223 of 2004

(Dr. Mukundakam Sharma and Anil R. Dave JJ.)

30.09.2010

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. The present appeals are filed by the appellant and are directed against the judgment and order dated 08.06.2001 passed by the High Court holding that the respondents-claimants are entitled to compensation at the rate of Rs. 75/- per square yard for the acquired lands after deducting 1/3rd from the said amount, i.e., Rs. 25/- per square yard, along with other benefits as awarded by the Civil Court.

2. The State Government of Andhra Pradesh by issuing a notification under *Section 4(1) of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act"]* on 16.01.1985, which was published in the Gazette on 17.04.1985, proposed to acquire an extent of land measuring 84 acres 24 guntas of land situated in Survey Nos. 4, 5, 6, 7, 8, 13, 14 and 108 of Pothireddipalli village, Sangareddy Mandal, Medak District. The aforesaid notification was followed by a notification under Section 6 of the Act. The Land Acquisition Officer thereafter, taking into consideration the sale transactions of adjoining lands for a period of three years prior to the publication of notification in question, passed an award determining the market value of the land in question at Rs. 36,000/- per acre.

3. The respondent-claimants being dissatisfied with the aforesaid award passed by the Land Acquisition Officer, sought for a reference under Section 18 of the Act to the Civil Court claiming compensation at Rs. 100/- per square yard for the acquired land.

> "Consequent to the said prayer, a reference case was registered. The respondents-claimants examined eight witnesses and also produced some documents on record in the nature of sale deeds exhibited as A1 to A15. On behalf of the Land Acquisition Officer, documents were produced which were exhibited as B1 to B22."

4. The District Judge, who heard the reference case, after considering the oral and documentary evidence produced before him, passed a common judgment and order dated 29.12.1997 fixing the market value of the land acquired at Rs. 50/- per square yard and also awarded 30 per cent solatium on the market value and a further sum of 12 per cent additional market value in terms of the *Section 23(1)(A) of the Land Acquisition Act*. The Civil Court also awarded interest at 9 per cent per annum for the first year and 15 per cent per annum thereafter.

5. The respondents-claimants, still aggrieved, filed appeals before the High Court under Section 54 of the Act. The Land Acquisition Department of the Government of Andhra Pradesh and the appellants herein also filed appeals before the High Court contending inter alia that the reference court was not justified in determining compensation on the basis of square yards of land when a large extent of land measuring 84 acres 24 guntas had been acquired. Another contention that was raised on behalf of the State was that the reference court should have at least made deduction towards development charges which could have been done in the range between 33 per cent to 65 per cent since the land acquired was a large tract of land whereas the exemplar is small plot of land.

6. Contention of the respondents on the other hand in their appeals was that similarly situated lands were sold for Rs. 200/- per square yards to Rs. 300/- per square yards and, therefore, the valuation fixed by the reference court should be enhanced.

7. The aforesaid appeals were heard by the High Court and by a common judgment and order dated 08.06.2001 the Court, taking into consideration the generality of the situation and the proximity of the land in question to industrial establishments and its potentiality, held that the claimants were entitled to compensation of Rs. 75/- per square yard for the acquired lands and then deducted 1/3rd from the said amount, which is Rs. 25/- per square yard, and consequently held that the respondents-claimants would be entitled for payment of compensation at the rate of Rs. 50/- per square yard with other benefits as awarded by the Civil Court. Being aggrieved by the aforesaid judgment and order, the Andhra Pradesh Housing Board has filed the present appeals on which we have heard the learned counsel appearing for the parties.

8. The evidence adduced by the witnesses and the documents relied upon and referred to by the courts below were also placed before us which we have carefully scrutinized. Out of the 15 exhibits, viz., Exhibits A1 to A15, which are sale deeds produced and exhibited by the respondents-claimants before the reference court, what is really relevant for our purpose are Exhibits A1 to A9, as they pertain to lands situated at Survey No. 8 which are similar to the land which was sought to be acquired under the notification in question. The aforesaid sale deeds were executed apriori the date of the notification issued under Section 4(1) of the Act. Exhibits A1 to A5 relate to transactions of sales of land in Survey No. 8 at the rate of Rs. 50/- per square yard, Exhibits A6 & A7 relate to transaction of sales of land in Survey No. 13 at the rate of Rs. 60/- per square yard and Exhibit A9 relates to transaction of sale of land in Survey No. 4 at the rate of Rs. 48.30 per square yard. Another important aspect which is to

be noted at this stage is that the proposal for acquisition of this land was initiated on 12.10.1982. In light of the said fact, one of the contentions of the appellants was that the aforesaid purchase of property under all the sale deeds were made in anticipation of acquisition of land thereby showing inflated rate of sale.

9. It is true that all the aforesaid Exhibits which are produced by the respondents-claimants were executed after 12.10.1982 when the aforesaid proposal for acquisition was initiated. It is also clear from the evidence on record that J. Subbiah [PW-3] who was examined in the reference case is also the claimant No. 7 and was a signatory to Exhibit A9 and is also related to Deva Sahayam [PW-2] who was the vendor.

> "Similarly, Narayana Goud [PW-5] purchased the land from PW-2 in respect of Exhibit A3 whereas PW-5 is signatory in sale deeds, viz., Exhibits A1 and A2. But, the fact remains that the land which is acquired is very ideal and suitably located, there being a court house and bus stand in proximity to the acquired land. There is also evidence on record indicating that the acquired land is abutting the main highway.
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> Therefore, the acquired land has potential value to be properly used and developed even for housing project or to exploit it for commercial purposes. The acquired land, although classified as agricultural land, could always be converted to land of good quality by making investments like filling up of the land, providing road, sewage system and other civic amenities. The land in question having such potential value could, therefore, be converted to a land of good quality by investing money towards its development."

10. This Court while dealing with the admissibility of the sale deed in the case of *Cement Corporation of India Ltd. v. Purya & Ors.*[1] at paragraph 28 held that even the vendor or vendee to a sale deed are not required to be examined themselves for proving the contents thereof if the contents of the sale deed are held to be admissible by Court in accordance with law: - "28. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term `acceptance of evidence' relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law.

> "But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of

the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word `may'. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e. upon taking into consideration the relevant factors."

11. This Court in a catena of decisions has laid down that when a large tract of land is acquired and sale instances produced for small plots as exemplar, the best course for the court to arrive at a reasonable and fare valuation is to deduct a reasonable percentage from the valuation shown in the exemplar land and on the basis thereof to arrive at a just and fair valuation. In *Rishi Pal Singh and Others vs. Meerut Development Authority and Anr.*[2] this Court while dealing with the issue relating to a large tract of land held as follows:- 5.....With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, especially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of small plots into consideration.....

"In *Administrator General of West Bengal v. Collector, Varanasi*[3], this Court held (paragraph 12) that where large tracts of land are required to be valued, valuation in transactions with regard to small plots cannot directly be adopted for valuing the compensation of large tracts of land.

"12. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In Sahib Singh Kalha v. Amritsar Improvement Trust this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent. But the prices fetched for

small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the "retail" price of land and the latter the "wholesale" price."

12. On the admissibility and relevance of sale deeds, this Court in *Ranvir Singh & Anr. V. Union of India*[4] held as follows: - "31. Furthermore, it is well settled that the sale deeds pertaining to the portion of lands which are subject to acquisition would be the most relevant piece of evidence for assessing the market value of the acquired lands."

"36. Furthermore, a judgment or award determining the amount of compensation is not conclusive. The same would merely be a piece of evidence. There cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. ....."

13. It was held in the case of *Union of India & Anr. v. Ram Phool & Anr.*[5] that : - "6. ..... the sale price in respect of a small bit of transaction would not be the determinative factor for deciding the market value of a vast stretch of land. ....."

14. In the case of *Kasturi & Ors. v. State of Haryana*[6] this Court held as follows:

"7. ..... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe

in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

15. Further, in the case of *Shaji Kuriakose & Anr. v. Indian Oil Corpn. Ltd. and Ors.*[7] this Court held that: - "3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method.

16. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. ....."

17. In *Lal Chand v. Union of India & Anr.*[8], this Court while determining the rate at which development charges may be deducted, held (paragraph 8):

> "..The percentage of 'deduction for development' to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the lay out in which the exemplar plots are situated. The 'deduction for development' consists of two components. The first is with reference to the area required to be utilised for developmental works and the second is the cost of the development works....

....9. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed lay out, to arrive at the cost of undeveloped land, will be for more than the deduction with reference to the price of a small plot in an unauthorized private lay out or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure. Even among the layouts formed by DDA, the percentage of land utilized for roads, civic amenities, parks and play grounds may vary with reference to the nature of layout - whether it is residential, residential- cum-commercial or industrial; and even among residential layouts, the percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and play grounds provided. Some of the layouts formed by statutory Development Authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical sub-stations etc. in addition to the usual areas earmarked for roads, drains, parks, playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the `deduction for development' factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%.

1. It is, therefore, implicit from the aforesaid discussion of case law and precedent that whatever could be deducted towards development charges for developing a particular plot of land could range between 20 per cent to 75 per cent. This is a very wide bracket, no doubt, but an appropriate deduction befitting the situation, location and the nature of the land justifying the deduction made could be arrived at upon estimation of all the aforesaid factors. If the land is already developed and could be used as a commercial/residential plot, what should be deducted would be in the lower side whereas if development is to be made, like filling up of the land, providing of roads, sewage and other civic amenities, etc., the range of the deduction could be higher.

2. Considering the facts and circumstances of the present case, and the situation of the land, what could be an appropriate deduction in our estimation is 1/3 rd from the awarded amount towards development charges.

We have referred to the evidence adduced in this case which shows that the land is agricultural land and therefore would require extensive development to be utilised as a residential site.

3. The High Court interfered with the rate of market value fixed by the reference court and raised it to Rs. 75/- per square yard from Rs. 50/- per square yard as fixed by the reference court and thereafter deducted 1/3rd from the aforesaid rate towards the development charges. However, the High Court has not given any reason, let alone cogent reasons, for increasing the aforesaid rate from Rs. 50/- to Rs. 75/-. Such a course was also not permissible in view of the clear evidence which was relied upon

and exhibited by the claimants-respondents themselves, presented as Exhibits A1 to A9. Those were sale deeds which were executed in proximity to the date of acquisition and there is also evidence on record to indicate that the proposal for acquisition of the acquired land was initiated as on 12.10.1982. Therefore, such an increase without any supporting reasons cannot be said to be valid and legal.

4. Therefore, relying on the Exhibits which were produced by the claimants-respondents and which are found as a reliable yardstick for determining the valuation in the present case, we determine the market value of the land at Rs. 50/- per square yard as on the date of the notification and direct that 1/3rd of the awarded amount shall be deducted from the aforesaid valuation towards development charges. It is needless to point out here that the respondents shall also be entitled to the statutory benefits as provided for under Section 23(1), 28 and 34 of the Act for which the decision rendered in the case of *Sunder v. Union of India*[9] which was later affirmed and elaborated in the case of *Gurpreet Singh vs. Union of India*[10] would be applicable.

5. We accordingly allow these appeals. However, we leave the parties to bear their" own costs.

[1]*(2004) 8 SCC 270*
[2]*(2006) 3 SCC 205*
[3]*(1988) 2 SCC 150*
[4]*(2005) 12 SCC 59*
[5]*(2003) 10 SCC 167*
[6]*(2003) 1 SCC 354*
[7]*(2001) 7 SCC 650*
[8]*(2009) 15 SCC 769*
[9]*(2001) 7 SCC 211*
[10]*(2006) 8 SCC 457*