SUPREME COURT OF INDIA

Prabhakar Raghunath Patil

Vs.

State of Maharashtra

C.A.Nos.2817-18 of 2005

(Dr.Mukundakam Sharma and Swatanter Kumar JJ.)

11.11.2010

JUDGMENT

Dr.Mukundakam Sharma, J.

1. The present appeals are filed by the appellants-claimants praying for higher compensation for their lands as also for the structures standing thereon which were acquired by the State of Maharashtra by issuing a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

2. The aforesaid properties were proposed to be acquired by issuing a notification under Section 4 of the Act for the purpose of Hatnoor Project which was published on 15.09.1983. Subsequently, a declaration was issued under Section 6 of the Act which was published on 24.05.1984. The Land Acquisition Officer passed an award on 22.09.1986 and possession of the properties was also taken on 18.10.1986. By the aforesaid award, passed by the Land Acquisition Officer, compensation for the properties was valued at ` 1, 10,547.50 which was directed to be paid to the claimants in the Land Acquisition Reference No. 2 of 1991. In so far as the Land Acquisition Reference No. 3 of 1991 was concerned, the Land Acquisition Officer determined the compensation at ` 4,67,500.53 and for the case in Land Acquisition Reference No. 4 of 1991, the Land Acquisition Officer determined the compensation at ` 7,20,464.91.

3. The appellants-claimants not being satisfied with the compensation awarded by the Land Acquisition Officer, requested a reference of their claims to the Civil Court on the basis of which the aforesaid reference cases, viz., Land Acquisition Reference Nos. 2 to 4 of 1991 were numbered. The claimants claimed compensation at the rate of ` 350 per square meter for the open land and at ` 2,000 per square meter for the structures. After recording evidence adduced by the parties and considering the oral as well as documentary evidence placed before the reference court, it granted enhanced compensation of ` 2,48,526 to the claimants in Land Acquisition Reference No. 2 of 1991, ` 5,10,562.50 to the claimants in Land

Acquisition Reference No. 3 of 1991 and ` 10,84,605 to the claimants in Land Acquisition Reference No. 4 of 1991.

4. At this stage, however, we would like to record that the reference court, while relying on the sale instance and the oral evidence of the expert, enhanced the compensation determining the value of the open land at the rate of ` 225 per square meter and at the rate of ` 1,200 per square meter for the structure. Being aggrieved by the aforesaid judgment and order passed by the reference court, the State of Maharashtra filed appeals in the Bombay High Court which was registered as First Appeal Nos. 133/1995, 134/1995 whereas the three appeals filed by the claimants were registered as First Appeal Nos. 338/1995, 339/1995 and 340/1995.

5. Since the issues involved in the said appeals were similar, all the aforesaid appeals were taken up together for consideration by the High Court and disposed of the same by a common judgment and order dated 23.09.2003 whereby the High Court allowed the appeals filed by the State and dismissed the appeals filed by the claimants. So far as the valuation with regard to the open land is concerned, the High Court held that the reference court was justified in awarding compensation at the rate of ` 225 per square meter for open space. While coming to the aforesaid conclusion, the High Court considered a sale deed dated 11.12.1982 for an open space admeasuring 16' x 16' for which sale consideration of ` 8,000 was received. But, since the same related to a small plot of land as compared to the acquired land, therefore, deduction was made by the High Court from the exemplar value and on the basis thereof upheld the valuation of the reference court fixed at ` 225 per square meter for the open space.

6. Although a faint argument was made before us, seeking an increase in the valuation of compensation for the said open land, the counsel appearing for the appellants, however, could not show any cogent reason for such increase in the valuation. Even if the aforesaid sale consideration is taken to be the exemplar, the same would indicate that in the year 1982, the approximate price was around ` 336 per square meter for the land. When a large tract of land is acquired and the valuation thereof is sought to be determined on the basis of sale instances relating to small portion of land, the general trend of this Court is to deduct 33 per cent from the value of such small tract of land. Since a very small portion of land was sold by the aforesaid sale deed admeasuring 16' x 16', the same can be treated as a base guide only after proper deduction is made from the value fixed in such sale deed. Consequently, the plea for increase of compensation, in so far as open space is concerned, stands rejected by this common judgment and order.

7. Subsequent to the determination of the valuation of the open space, we are required to decide regarding the prayer of the claimants with regard to increase in the valuation of the structure that was acquired by the respondents. On this count, reliance was placed by the appellants on the evidence of the expert witness and also on the circular dated 03.01.1991 issued by the Chief Engineer, Amaravati in respect of cost of construction in justification of their prayer for the increase of the valuation of the structure. Under the aforesaid circular

dated 03.01.1991 issued by the Chief Engineer, Amaravati, the cost of residential building was fixed as under:-

> "Ground Floor - ` 2,800 per sq. mtr. First Floor - ` 2,200 per sq. mtr. Second Floor - ` 2,200 per sq. mtr."

8. In so far as the evidence of the expert witness is concerned, the reference court however considered the same to be unreliable as the expert had failed to state in his evidence, details regarding the age of the building which was acquired under the notification. Since the counsel appearing for the appellants made a sincere attempt to justify the increase as sought for by the appellants, we have looked into the evidence of the expert as also on the aforesaid notification.

9. In so far as the opinion of the expert is concerned, he has not given any specific evidence as to what was the age of the structure when it was notified for acquisition. Without making an enquiry with regard to the age of the structure which was acquired, it would be difficult to assess the valuation and, therefore, the expert was not justified in not making an assessment with regard to the age of the structure. He has faulted on the basic principle of assessment of valuation of a construction. Besides, the cost of construction of the ground floor is always on the higher side while the cost of construction of first floor and second floor is on the lower side. The expert examined has also ignored the said fact which goes to the root of the valuation and for that also the evidence of the expert, in our considered opinion, is not reliable. The only evidence that, therefore, is available before us is the circular issued by the Chief Engineer, Amravati dated 03.01.1991 regarding District Schedule Rates in respect of cost of construction with reference to Building and Construction Department of State of Maharashtra.

10. The High Court, however, held that the aforesaid evidence is also not reliable as the same shows the District Schedule Rates for the year 1991 in District Amravati and that the same cannot be a safe guide for the determination of the compensation of the structure in question acquired in the year 1983. It is established from the records that the practice of issuing circular by the Chief Engineer with regard to the cost of construction was for the first time introduced in the year 1991 and no such practice was in existence in the year 1983. But since there is at least some evidence indicating the District Schedule Rates for the standing structure in the year 1991 we can relate back the said valuation to the year 1983. However, such an exercise to determine the compensation with reference to future documents must be undertaken with great care and caution. The dangers of such a comparison have already been amply illustrated by this Court in The General Manager, Oil & Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Anr. reported at wherein it was observed:

> "13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary

notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future."

11. In this instance, however, we are of the considered opinion that the compensation as determined by the Reference Court for the plot containing the structures is on the lower side. The High Court, while referring to the oral evidence adduced by the expert, has stated that the fine condition of the structures and the superior quality of materials used for construction of the same is beyond doubt. Despite the ambiguity surrounding the age of the structures, the condition and quality of the building has never been called into question. Therefore, we are inclined to raise the compensation awarded in the present case. We are also of the opinion that the margin of error in comparing Schedule rates for construction of buildings in the same district would be lesser than in attempting to use future sale transactions as exemplars. The Schedule Rates cover costs of construction in the entire district, thus factoring any sudden spurt in increase of land prices owing to acquisition in the area. Moreover, the quality of the structures stands testimony of the fact that the building possesses considerable value, notwithstanding the fact that its age has not been correctly ascertained. In *Administrator General of West Bengal v. Collector, Varanasi*[1], this Court held that 8. [...] building value is estimated on the basis of the prime-cost or replacement-cost less depreciation. The rate of depreciation is generally, arrived at by dividing the cost of construction (less the salvage value at the end of the period of utility) by the number of years of utility of the building. The

factors that prolong the life and utility of the building, such as good maintenance, necessarily influence and bring down the rate of depreciation.

12.Therefore, the cost of construction, which would be admittedly lower in 1983 than in 1991, must also be juxtaposed with the depreciation that would have accrued to the structures owing to wear and tear over a period of 8 years. In the year 1991, the cost of construction of residential building was ` 2,800 per square meter for the ground floor and ` 2,200 per square meter for the second and third floors. We are of the considered opinion that a deduction of 60 per cent (approximate) from the said valuation of the cost of construction in 1991 would be appropriate, and accordingly arrive at a compensation of ` 1700 per square meter for the structure. Our decision to deduct the said percentage of 60% is based on the Building Cost Index between 1983 and 1991 published by the Central Public Works Department, which reflects the rise in cost of construction over the said period of time.

13. Therefore, we allow these appeals partly to the extent of the valuation fixed with regard to the compensation payable in respect of the structure which was acquired under the notification for acquisition raising it from ` 1,200 per square meter to ` 1700 per square meter. We, however, reject the prayer for increase in the amount of compensation so far as open space is concerned. 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*[2] which was later affirmed and elaborated in the case of *Gurpreet Singh vs. Union of India*[3] would be applicable. We leave the parties to bear their own costs.

[1]*(1988) 2 SCC 150*
[2]*(2001) 7 SCC 211*
[3]*(2006) 8 SCC 457*