

SUPREME COURT OF INDIA

Executive Engineer, Karnataka Housing Board

Vs.

Land Acquisition Officer, Gadag

C.A.No.51-52 of 2011

(R.V.Raveendran and A.K.Patnaik,JJ.,)

04.01.2011

ORDER

R.V.Raveendran,J.,

1. Leave granted.
2. An extent of 127 acres 26 guntas of lands in Betegeri village within the municipal limits of Gadag-Betegeri Municipality, was acquired for Karnataka Housing Board in pursuance of Preliminary Notification dated 6.2.1992. The Land Acquisition Officer, Gadag, made an award dated 14.2.1997 awarding a compensation of Rs.45,000/- per acre.
3. On a reference being made at the instance of the land owners, the Reference Court, by judgment and award dated 11.7.2003, determined the compensation for the acquired lands as Rs.2,17,372/- per acre. For this purpose, the Reference Court relied upon Exhibit P-2 which is a sale deed dated 30.7.1992 executed by the Municipal Commissioner, Gadag-Betegeri Municipality in favour of one Manikamma in regard to a plot measuring 329 sq. meters which was sold for Rs.37,600/- in an auction sale on 2.1.1989 (which works out to Rs.114.29 per sq.m). The Reference Court, therefore, arrived at the market value per acre as Rs.4,62,494/-. It deducted 53% towards development (that is, towards areas to be set apart for roads, drains and vacant spaces and towards cost of development) and arrived at the market value as Rs.2,17,372/- per acre. The Reference Court referred to the evidence showing that the plot covered by Ex. P-2 was across the road from the acquired lands and was therefore a neighboring property.
4. Feeling aggrieved, the Appellant (Housing Board) filed appeals. The land owners filed cross-objections. The High Court, by impugned judgment dated 30.1.2008, dismissed the appeals of the appellant and allowed the cross-objections filed by the land owners and increased the compensation to Rs.4,42,000/- per acre. Instead of Ex. P-2 relied upon by the Reference Court, the High Court relied upon Ex. P-19 which related to another auction sale of a smaller plot measuring 150 sq.m. by the Gadag-Betegeri municipality on 20.11.1989, for a price of Rs.24500/- (which works out to a price of Rs.163.33 per sq.m). On that basis the

High Court works out the market value per acre as Rs.6,60,977/-. The High Court was of the view that the deduction/cut towards development factor should be only 33% instead of 53% adopted by the Reference Court. By deducting 33% from Rs.6,60,977/- it arrived at the market value as Rs.4,42,875/- per acre which was rounded off to Rs.442,000/- per acre, while awarding the compensation.

5. Feeling aggrieved, the Housing Board has filed these appeals by special leave. The appellants have put forth the following contentions:

“(i) Ex. P-19 relied upon by the High Court did not relate to a neighbouring land whereas there was specific evidence that the plot covered by Ex. P-2 was in regard to a nearby land. Therefore, Ex. P-2 ought to have been preferred to Ex. P-19. Further as Ex.P-19 related to a very small plot it ought to have been ignored and the transaction relating to the larger plot (Ex.P-2) should have been preferred.

(ii) The High Court ought to have maintained the cut towards cost of development as 53% instead of applying a cut of 33%. (iii) Auction sales do not furnish a safe guide for determination of market value and therefore, the High Court and Reference Court ought not to be relied upon either Ex.P19 or ExP2 which relate to auction sales.

6. We may deal with the last submission first. The standard method of determination of market value of any acquired land is by the valuer evaluating the land on the date of valuation (publication of notification under section 4(1) of the Land Acquisition Act, 1894 - 'Act' for short) notification, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value. A 'willing seller' refers to a person who is not acting under any pressure to sell the property, that is, where the sale is not a distress sale. A willing seller is a person who knowing the advantages and disadvantages of his property, sells the property after ascertaining the prevailing market prices at the fair and reasonable value. Similarly, a willing purchaser refers to a person who is not under any pressure or compulsion to purchase the property, and who, having the choice of different properties, voluntarily decides to buy a particular property by assessing its advantages and disadvantages and the prevailing market value thereof. Of course, unless there are indications to hold otherwise, all sale transactions under registered sale deeds will be assumed to be normal sales by willing sellers to willing purchasers. Where however there is evidence or indications that the sale was not at prevailing fair market value, it has to be ignored. But auction sales stand on a different footing. When purchasers start bidding for a property in an auction, an element of competition enters into the auction. Human ego, and desire to do better and excel other competitors, leads to competitive bidding, each trying to outbid the others. Thus in a well advertised open auction sale, where a large number of bidders participate, there is always a tendency for the price of the auctioned property to go up considerably. On the other hand, where the auction sale is by banks or

financial institutions, courts, etc. to recover dues, there is an element of distress, a cloud regarding title, and a chance of litigation, which have the effect of dampening the enthusiasm of bidders and making them cautious, thereby depressing the price. There is therefore every likelihood of auction price being either higher or lower than the real market price, depending upon the nature of sale. As a result, courts are wary of relying upon auction sale transactions when other regular traditional sale transactions are available while determining the market value of the acquired land. This Court in *Raj Kumar v. Haryana State - 2007 (7) SCC 609*, observed that the element of competition in auction sales makes them unsafe guides for determining the market value.

7. But where an open auction sale is the only comparable sale transaction available (on account of proximity in situation and proximity in time to the acquired land), the court may have to, with caution, rely upon the price disclosed by such auction sales, by providing an appropriate deduction or cut to off-set the competitive-hike in value. In this case, the Reference Court and High Court, after referring to the evidence relating to other sale transactions, found them to be inapplicable as they related to far away properties. Therefore we are left with only the auction sale transactions. On the facts and circumstances, we are of the view that a deduction or cut of 20% in the auction price disclosed by the relied upon auction transaction towards the factor of 'competitive - price hike' would enable us to arrive at the fair market price.

8. There is clear evidence that the plot sold under Ex. P-2 was very near to the acquired lands whereas there is no such specific evidence in regard to the proximity of the plot sold under Ex.P19, though that plot was also in the vicinity. Further, though both Ex. P2 and P19 relate to developed plots, Ex. P19 relates to a comparatively small plot of 150 sq.m. whereas Ex. P2 refers to a larger plot of 329 sq.m. Having regard to the proximity of location and the size, we are of the view that the Reference Court was justified in relying upon the sale transaction under Ex. P2 and the High Court was not justified in ignoring Ex. P2 and relying upon the transaction under Ex. P19. We may also note that the general rule that the highest of the comparable sales should be relied upon will not apply, where the sale transactions relied upon are auction sales, for the reasons mentioned in para (6) above. There is yet another important reason for ignoring the said auction sale for determining the market value of the acquired lands. In regard to acquisition of nearby lands within the Gadag-Betegeri municipal limits for the Karnataka Power Transmission Corporation in pursuance of a preliminary notification dated 15.9.1994 this court determined the compensation as Rs.426,670/- per acre (*Executive Engineer (Electrical), Karnataka Power Transmission Corporation Ltd. Vs. Assistant Commissioner & LAO, Gadag* decided on 11.2.2010). That land abutted the Sambarpur Road and was also near to the bus stand, market and educational institutions. That land was equally well-situated, if not better situated than the acquired lands. When this court has determined a market value of Rs.426,670/- in regard to a acquisition more than two and a half years later, that is 15.9.1994, the determination of higher compensation of Rs.4,42,875/- as on 6.2.1992 based on Ex. P19, is unsustainable.

9. We may now consider what should be the proper compensation with reference to Ex. P2. The sale price disclosed by the said auction sale on 2.1.1989 is Rs.37600 for 329 sq.m. On

that basis the value of one acre of land works out to Rs.4,62,494. We have already held that a deduction of 20% has to be made to off-set the impact of competitive-hike involved in the auction sale. On such deduction of 20%, the market value per acre as on 2.1.1989 would be Rs.3,69,995. The relevant date for determination of compensation in this case is 6.2.1992 and there is a gap of three years for which appropriate appreciation has to be provided for. Having regard to the fact that the acquired lands were within the municipal limits with considerable development potential, adopting a cumulative increase of 10% per annum for three years, would enable us to arrive at the market value as on 6.2.1992. By applying such increase, the market value as on 6.2.1992 will be Rs.4,92,460/- per acre.

10. Evidence shows that the acquired lands were situated within the municipal limits, though on the outskirts of Gadag-Betegeri within a distance of one kilometer from Gadag Railway Station and the bus stand; and that there were several residential colonies and colleges in the surrounding areas. Therefore though the lands were agricultural, they could be classified as lands having urban development potential. Having regard to the partial access to infrastructural facilities, we are of the view that a deduction of 40% towards cost of development would meet the ends of justice. On the facts and circumstances, the cut of 53% applied by the Reference Court is too high and the cut of 33% applied by the High Court is low. On applying a cut of 40%, the rate per acre for the acquired land as on 6.2.1992 would be Rs.2,95,476/- (rounded off to Rs.2,95,500).

11. Accordingly we allow these appeals in part and reduce the compensation awarded from Rs.4,42,875/- to Rs.295,500/- per acre. The respondents will be entitled to all statutory benefits as already awarded.

Judgment Referred.

¹CA No.1768-1775 of 2010