SUPREME COURT OF INDIA

Spl.Land Acquisition Officer

Vs.

M.K.Rafiq Saheb

C.A.No.1086 of 2006

(Asok Kumar Ganguly and Swatanter Kumar,JJ.,)

05.07.2011

JUDGMENT

Asok Kumar Ganguly, J.,

1. The issue involved in the present case is whether the quantum of compensation awarded by the High Court in a land acquisition dispute is excessive or not.

2. A notification was published under section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') on 17.7.1994 for the acquisition of the respondents land measuring 34 guntas in Sy. No. 6/2 of Binnamangala Mahavartha Kaval, K.R. Puram, Bangalore South Taluk.

3. The Special Land Acquisition Officer (hereinafter referred to as `SLAO') passed an award on 26.9.1995 granting compensation at Rs.1,30,000/- per acre along with statutory benefits. The SLAO concluded that the lands were agricultural and no sale transactions relating to the same were available. Sale transactions were available in respect of non-agricultural lands but they could not be adopted for determining the valuation of agricultural land. Therefore, the SLAO chose to rely on acquisition proceedings in respect of lands in the vicinity for determining land value. Accordingly, it was found that in the neighbouring villages of Benniganahalli, B. Narayanapura and Kaggadasapura villages, land had been acquired in favour of DRDO complex where the government had approved awards fixing land value at Rs.1,30,000/-. The said valuation was thus adopted by the SLAO in the instant case.

4. Possession of the land was taken on 11.4.1996.

5. Dissatisfied by the award of the SLAO, the respondent filed a reference under section 18 of the Act for enhancement of compensation.

6. The Reference Court, vide judgment dated 28.5.1999, enhanced compensation to Rs.4,00,000/- per acre and also awarded statutory benefits. The Reference Court concluded that based on the evidence on record, it could not be said that the land in question was

agricultural land for all practical purposes since it was situated by the side of a residential locality and was in the midst of a highly developed industrial locality. Thus, it held that though the land remained agricultural land on the records, it was not an agricultural land for all practical purposes and no agricultural activities could be carried out on it. The Court did not rely upon sale deeds Exhibit P3, P4, P5, P6, P7 and P8. Exhibit P7 and P8 were not relied upon as the parties to the transaction had not been examined. Ex. P3 and P4 were corner sites, were not within vicinity of the acquired land and were sold in a public auction, and thus also held not reliable. The respondent had also produced Ex. P9, which was a gazette notification dated 20.1.1997 issued by the Revenue Secretariat, fixing the market value of the immovable property coming under the jurisdiction of several Sub-Registrar's office situated in Bangalore, for the purpose of collecting stamp duty. The Reference Court discarded the same on the reasoning that the Court did not know what was the basis of determination of market value for the purpose of collecting stamp duty in respect of immovable properties by the Sub Registrar.

7. Instead, the Reference Court proceeded to determine the market value of land on the basis of compensation awarded in the judgment and award dated 13.8.1998 made by the Reference Court in respect of land in the neighbouring villages of Kaggadasapura and Mahadevapura, pursuant to the preliminary notification dated 28.7.1988. In the said villages, about 110 acres of land had been acquired and market value was fixed at Rs.2,48,000/- per acre. The difference between dates of preliminary notifications in the abovesaid villages and in the instant case was 5 years and 15 days. Accordingly, the Reference Court gave a 10% enhancement for each year in respect of lands acquired in and around Bangalore city, relying on the judgment in *J. Narayan v. Land Acquisition Officer*[1], by which land value came to Rs.3,73,000/- per acre. However, the Reference Court found that the land had more potentiality and was situated in the midst of a heavy industrial area and in the immediate vicinity of an already developed residential locality. It was also in the vicinity of a road known as Old Madras road as well as the road leading to the airport. Hence, the Reference Court was of the opinion that the respondent was entitled to a higher market value than Rs.3,73,000/- per acre. Thus, the Reference Court held that Rs.4,00,000/- per acre would be reasonable and fair market value in the instant case.

8. The respondent, still dissatisfied with the compensation awarded, filed an appeal before the High Court of Karnataka. The appellant also filed cross-objections under Order 41, Rule 22 of CPC.

9. The High Court, by way of impugned judgment dated 17.6.2004, enhanced the compensation to Rs.35,17,470/- per acre and also awarded all other statutory benefits.

10. The High Court accepted the finding of the Reference Court that the land in question was fit to be utilized as a non-agricultural site as it was fully supported by evidence on record. The High Court agreed with the Reference Court that the land had ceased to be agricultural land and was fit to be used as a housing site or an industrial site.

11. The High Court then went onto determination of quantum of compensation. It concurred with the Reference Court in rejecting Ex. P7, P8 and P9, stating that they could not be relied upon as they related to transactions which had happened after the issuance of the preliminary notification. Since other sale transactions were available, which had taken place within reasonable time prior to the issuance of the section 4(1) notification, post- dated sale transactions could not be considered. The High Court also concurred in rejecting Ex. P3 and P4 on ground that these sale transactions related to corner sites sold at a public auction. Corner sites fetched much more than other sites and when sold at a public auction, the price depended upon the whims and fancies of the bidders. Thus, Ex. P3 and P4 could not be relied upon to determine market value. Ex. P6 related to the sale of a site with a building and thus it was not accepted. The High Court was of the opinion that Ex. P5 could be used to determine market value. Ex. P5 was a sale deed dated 23.4.1993 of the market value of a site measuring around 30' X 40' fixed at Rs.2,50,000/-, which worked out to Rs.182/- per square feet. The High Court also deducted 50% of the market value shown in Ex. P5 towards developmental charges, and market value of the acquired land was computed at Rs.95/- per sq. ft.

12. Being aggrieved by the enhancement in compensation granted by the High Court, the appellant approached this court by filing this appeal.

13. The point that arises for consideration before us is whether High Court has correctly enhanced compensation? Two related questions have to be answered to determine the same.

> "a. Whether the land is agricultural land or has it ceased to be so?
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> b. Whether Ex. P5, which relates to sale instance of a small piece of non-agricultural land, can be used to determine the market value of land?"

14. The appellant has challenged the finding of the High Court that the land ceased to be agricultural land. It contended that the land was agricultural land, as was clearly seen from the records and no conversion charges were paid to convert it into non-agricultural land.

15. We reject this contention of the appellant. That the land has ceased to be agricultural land and is capable of being used as a residential or industrial site is a concurrent finding of fact by both the Courts below and is amply supported by the evidence on record. We uphold the same. The appellant did not file any appeal impugning the finding of the Reference Court that the land could not be treated as agricultural land. Not having done so, it is not open to the appellant to question the finding of the High Court that the land is not agricultural land.

16. Otherwise also, we are of the opinion that in light of the fact that the land was situated by the side of a residential locality and was in the midst of a highly developed industrial locality, the acquired land was capable of being used for non-agricultural purposes and should be considered as non-agricultural land in determination of compensation. We find support in this reasoning from the judgment of this court in *Anjani Molu Dessai v. State of Goa and Anr. reported in*[2] The relevant portion of the said judgment is set out below:

"5. The High Court has also referred to the situation of the property and has noted that the acquired lands are in a village where all basic amenities like primary health centre, high school, post office were available within a distance of 500 meters. It can therefore be safely concluded that the acquired lands are not undeveloped rural land, but can be urbanisable land situated near a developed semi-urban village with access to all infrastructure facilities."

17. We find that the High Court relied on Ex. P5 to determine the market value of compensation. It appears that the said sale instance relates to a small residential site measuring 30' X 43' (125.309 sq. mts). The acquired land in question measures 34 guntas. The Reference Court rejected Ex. P5 in determining market value of land since it found that the land covered by Ex. P5 was at a distance of 2 kms from the acquired land. We are of the opinion that the Reference Court erred in rejecting Ex. P-5 in determining compensation for the acquired land.

18. The judgment of the High Court is well reasoned and well considered. We find no perversity in its reasoning. The only issue is that Ex. P-5, which was relied upon by the High Court, relates to a small piece of land, whereas the acquisition is of a larger piece of land. It is not an absolute rule that when the acquired land is a large tract of land, sale instances relating to smaller pieces of land cannot be considered. There are certain circumstances when sale deeds of small pieces of land can be used to determine the value of acquired land which is comparatively large in area, as can be seen from the judicial pronouncements mentioned hereunder.

19. It has been held in the case of *Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh v. Nookala Rajamallu and Ors. reported in*[3] that:

> "6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to few decisions of this Court in Collector of Lakhimour v. Bhuban Chandra Dutta: AIR 1971 SC 2015, Prithvi Raj Taneja v. State of M.P. AIR 1977 SC 1560 and Kausalya Devi Bogra v. Land Acquisition Officer AIR 1984 SC 892.
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> 7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land However, in such cases necessary deductions/adjustments have to be made while determining the prices."

20. In the case of *Bhagwathula Samanna and Ors. v. Special Tahsildar and Land Acquisition Officer, reported in*[4] it was held:

> "13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is

capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted..."

21. In Land *Acquisition Officer, Revenue Divisional Officer, Chittoor v. Smt. L. Kamalamma (dead) by Lrs. and others*[5], this Court held as under:-

> "...when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lump sum payment as also the waiting period required for selling the sites that would be formed."

22. Further, it has also been held in the case of *Smt. Basavva and Ors. v. Special Land Acquisition Officer and Ors, reported in*[6] that the court has to consider whether sales relating to smaller pieces of land are genuine and reliable and whether they are in respect of comparable lands. In case the said requirements are met, sufficient deduction should be made to arrive at a just and fair market value of large tracks of land. Further, the court stated that the time lag for real development and the waiting period for development were also relevant factors to be considered in determining compensation. The court added that each case depended upon its own facts. In the said case, based on the particular facts and circumstances, this court made a total deduction of 65% in determination of compensation.

23. It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracks of land. The sale of land containing large tracks are generally very far and few. Normally, the sale instances would relate to small pieces of land. This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the Court should look into sale instances of smaller pieces of land while applying reasonable element of deduction.

24. In the present case, the land acquired is 34 guntas and the notification under section 4 of the Act was issued on 17.7.1994. We have already held that for the purposes of determining compensation, the acquired land should be considered to be non- agricultural land. Ex. P-5 is a sale deed for sale of a non-agricultural land dated 23.4.1993. The land covered by the sale deed is about 2 kms. away from the acquired land.

25. In contrast, the Reference Court relied upon the compensation awarded for acquisition of land in the neighbouring villages, which had occurred 5 years prior to the present acquisition. We are of the opinion that market value of the land acquired in the present case is much better reflected by exemplar Ex. P-5, which relates to sale of land just 2 kms. away from the acquired land and is just a little over a year before the issuance of the section 4 notification in the present case. All other sale deeds presented before this Court could be relied upon and

were rightly rejected by both the Reference Court and the High Court for the reasons given above.

26. Thus, we are of the opinion that the sale deed Ex. P-5 was rightly relied upon by the High Court in determining compensation.

27. The High Court made a 50% deduction since the sale instance Ex. P-5 related to a smaller piece of land. We are of the considered view that the said deduction should be increased to 60%, which we find fair, just and reasonable in the circumstances.

28. Hence, the judgment of the High Court is modified to the extent of the abovementioned deduction. All other findings of the High Court are sustained.

29. The appeal is thus dismissed with the aforesaid modification.

30. No order as to costs.

Judgment Referred.

[1] *(1980) 2 KLJ 0441*
[2] *(2010) 13 SCC 0710*
[3] *(2003) 12 SCC 0334*
[4] *(1991) 4 SCC 0506*
[5] *AIR 1998 SC 0781*
[6] *AIR 1996 SC 3168*