

SUPREME COURT OF INDIA

Maya Devi

Vs.

State of Haryana

C.A.No.873-874 of 2018

(Ranjan Gogoi and R.Banumathi, JJ.,)

25.01.2018

JUDGMENT

R.Banumathi, J.,

SLP(C) No.30923-30924 of 2016

1. Leave granted

2. These appeals arise out of the judgment of the High Court of Punjab and Haryana at Chandigarh in and by which the High Court enhanced the compensation to Rs.2,19,413/- per acre and also dismissed the review holding that the subsequent evidence sought to be brought is not relevant as it is based upon post notification.

3. Respondent No.2-Haryana State Ware Housing Corporation had acquired 40 kanal and 8 marlas land at Rania for construction of warehouse/godown vide Notification dated 12.02.1988 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'); out of which 40 kanal 8 marlas land, 21 kanal 6 marlas land was of the present appellants; Notification dated 21.02.1989 was issued under Section 6 of the Act. Vide award No.9 dated 19.05.1990, the Land Acquisition Officer awarded compensation of Rs.75,000/- per acre. Being aggrieved by the award dated 19.05.1990, the appellants/claimants filed a reference petition under Section 18 of the Act before Additional District Judge, Sirsa for enhancement of compensation, which came to be dismissed by judgment dated 15.02.1993. Being aggrieved by the dismissal of the claim for enhancement, the appellants/claimants filed appeal before the High Court in R.F.A.No.1519 of 1993. The High Court relied upon the sale deed dated 26.05.1983 wherein small extent of land of 9 marlas was sold for Rs.25,500/- as an exemplar. The High Court gave escalation at 10% for the time gap of 56 months and calculated the value at Rs.6,64,887/- per acre and made the deduction at the rate of 67.5% for development charges and calculated the compensation to be awarded at Rs.2,19,413/- per acre.

4. Being aggrieved, the land owners filed Special Leave Petition(C) No.27989 of 2013 before this Court which was withdrawn by order dated 01.08.2014 with liberty to file review before

the High Court. In the review petition, the appellants/claimants relied upon:- (i) sale deed dated 27.12.1988; and (ii) subsequent acquisition of nearby land vide notification dated 27.03.1989 in which the High Court by its judgment dated 15.09.2006 in R.F.A. No.866 of 1996 awarded compensation of Rs.7,26,000/- per acre. The High Court dismissed the review, inter alia, holding that the sale deed dated 27.12.1988 is a post notification sale and also the acquisition vide notification dated 27.03.1989 was subsequent one and the same is not relevant for determining the market value of the lands acquired vide notification dated 12.02.1988. Moreover, the High Court found no valid ground for review under Order XLVII C.P.C. Being aggrieved, the appellants/land owners have filed these appeals.

5. Contention of the appellants/claimants are mainly three-fold:- (i) there was only ten months difference between the notification dated 12.02.1988 and the sale deed dated 27.12.1988 while so, the High Court was not justified in not considering the said sale deed dated 27.12.1988 as an exemplar on the ground that the same is a post notification; (ii) considering that the land acquired falls within municipal limits and had immense potential for use for commercial and residential purpose, applying the maximum cut at the rate of 67.5% was not justified; and (iii) for acquisition of the land of the adjoining khasra by notification dated 27.03.1989, compensation was awarded at the rate of Rs.7,26,000/- per acre by the High Court which is more than three times higher than the compensation awarded in the present case.

6. So far as the first contention is concerned, the sale deed relied upon by the appellants/claimants dated 27.12.1988 is post notification. Sub-section (1) of Section 23 of the Act provides that the compensation to be awarded shall be determined by the reference court, based upon the market value of the acquired land at the date of the publication of the notification under Section 4(1). In *Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal and Anr*¹., it was held that the relevant date for determining the compensation is the date of publication of the notification under Section 4(1) of the Act in the Gazette. In para (34), it was held as under:-

"34. One of the principles in regard to determination of the market value under Section 23(1) is that the rise in market value after the publication of the notification under Section 4(1) of the Act should not be taken into account for the purpose of determination of market value. If the deeming definition of "publication of the notification" in the amended Section 4(1) is imported as the meaning of the said words in the first clause of Section 23(1), it will lead to anomalous results. The owners of the lands which are the subject-matter of the notification and neighbouring lands will come to know about the proposed acquisition, on the date of publication in the Gazette or in the newspapers. If the giving of public notice of the substance of the notification is delayed by two or three months, there may be several sale transactions in regard to nearby lands in that period, showing a spurt or hike in value in view of the development contemplated on account of the acquisition itself." Applying the ratio of the above decision, we are of the view that the post notification instances

cannot be taken into consideration for determining the compensation of the acquired land.

7. So far as the contention regarding deduction at the rate of 67.5% for development charges is concerned, the exemplar relied upon by the High Court dated 26.05.1983 was for a small extent of land of 9 marlas which was sold for Rs.25,500/-. The transaction relates to the period which is about 56 months prior to the notification under Section 4 of the Act and the High Court adopted the rate of escalation at 10% and calculated the value at Rs.6,64,887/-. Considering the fact that the acquired land required for development and that the property covered under the exemplar was for a small extent of 9 marlas of land, the High Court applied maximum deduction at 67.5% and calculated the compensation to be paid at Rs.2,19,413/- per acre.

8. In *Haryana State Agricultural Market Board and Anr. v. Krishan Kumar and Ors*², this Court has held that "if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads, drains, and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of leveling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines."

9. Observing that the development charges for development of particular plot of land could range from 20% to 75%, in *Lal Chand v. Union of India and Another*³, in paras (13), (14) and (20), this Court held as under:

"13. 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 layout in which the exemplar plots are situated.

14. 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.

20. Therefore the deduction for the 'development factor' to be made with reference to the price of a small plot in a developed layout, 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 unauthorised private layout 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."

The same principle was reiterated in *Andhra Pradesh Housing Board v. K. Manohar Reddy and Ors*⁴.

10. In a catena of judgments, this Court has taken the view to apply one-third deduction towards the development charges. After referring to various case laws on the question of deduction for development, in *Major General Kapil Mehra and Ors. v. Union of India and Anr*⁵, this Court held as under:

"35. Reiterating the rule of one-third deduction towards development, in *Sabha Mohammed Yusuf Abdul Hamid Mulla v. Land Acquisition Officer*⁶ this Court in para 19 held as under: (SCC pp. 606-07)

"19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In *Kasturi v. State of Haryana*⁷ the Court held: (SCC pp. 359-60, para 7)

'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 road 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. 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.' The rule of 1/3rd deduction was reiterated in *Tejmal Bhojwani v. State of UP*⁸, *V. Hanumantha Reddy v. Land Acquisition Officer*⁹, *H.P. Housing Board v. Bharat S. Negi*¹⁰ and *Kiran Tandon v. Allahabad Development Authority*¹¹." (emphasis in original)

36. While determining the market value of the acquired land, normally one-third deduction i.e. 33 1/3% towards development charges is allowed. One-third deduction towards development was allowed in *Tehsildar (LA) v. A. Mangala Gowri*¹², *Gulzara Singh v. State of Punjab*¹³, *Santosh Kumari v. State of Haryana*¹⁴, *Revenue Divl. Officer and LAO v. Sk. Azam Saheb*¹⁵, *A.P. Housing Board v. K. Manohar Reddy*¹⁶, *Ashrafi v. State of Haryana*¹⁷ and *Kashmir Singh v. State of Haryana*¹⁸.

37. Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in *Haryana State Agricultural Market Board v. Krishan Kumar*¹⁹, *Director, Land Acquisition v. Malla Atchinaidu*²⁰, *Mummidi Apparao v. Nagarjuna Fertilizers & Chemicals Ltd*²¹. and *Lal Chand v. Union of India*²².

38. In few other cases, deduction of more than 50% was upheld. In the facts and circumstances of the case in *Basavva v. Land Acquisition Officer*²³, this Court upheld the deduction of 65%. In *Kanta Devi v. State of Haryana*²⁴, deduction of 60% towards development charges was held to be legal. This Court in *Subh Ram v. State of Haryana*²⁵, held that deduction of 67% amount was not improper. Similarly, in *Chandrashekar v. Land Acquisition Officer*²⁶, deduction of 70% was upheld."

11. In *Subh Ram and Others v. State of Haryana and Anr*²⁷., the deduction of 67% was held to be not improper. In the case in hand, the High Court applied deduction at 67.5% which in our considered view is on the higher side. In the facts and circumstances of the present case and considering that the exemplar dated 26.05.1983 was for a small extent of land and that the acquired land has to be developed for construction of warehouse, we deem it appropriate to apply one-third deduction and deducting one-third that is Rs.2,21,629/- from Rs.6,64,887/- , the compensation to be awarded is arrived at Rs.4,43,258/- per acre.

12. The impugned judgment is modified and the appellants/claimants are entitled to get enhanced compensation of Rs.4,43,258/- payable with all statutory benefits. The appeals are partly allowed. It is made clear that the appellants/claimants shall not be entitled to claim interest for the period of delay in preferring the appeals from the review.

Judgment Referred.

¹(2011) 9 SCC 0207

⁵(2015) 2 SCC 0262

⁹(2003) 12 SCC 0642

¹³(1993) 4 SCC 0245

¹⁷(2013) 5 SCC 0527

²¹(2009) 4 SCC 0402

²⁵(2010) 1 SCC 0444

²(2011) 15 SCC 0297

⁶(2012) 7 SCC 0595

¹⁰(2004) 2 SCC 0184

¹⁴(1996) 10 SCC 0631

¹⁸(2014) 2 SCC 0165

²²(2009) 15 SCC 0769

²⁶(2012) 1 SCC 0390

³(2009) 15 SCC 0769

⁷(2003) 1 SCC 0354

¹¹(2004) 10 SCC 0745

¹⁵(2009) 4 SCC 0395

¹⁹(2011) 15 SCC 0297

²³(1996) 9 SCC 0640

²⁷(2010) 1 SCC 0444

⁴(2010) 12 SCC 0707

⁸(2003) 10 SCC 0525

¹²(1991) 4 SCC 0218

¹⁶(2010) 12 SCC 0707

²⁰(2006) 12 SCC 0087

²⁴(2008) 15 SCC 0201