

PETITIONER:
PITAMBAR HEMMAL BADGUJAR (DEAD) BY LRS. & ORS.

Vs.

RESPONDENT:
SUB-DIVISIONAL OFFICER, DHULE & ANR.

DATE OF JUDGMENT: 05/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (2) 546 1996 SCALE (2) 270

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard the learned counsel on both sides.

This appeal by special leave arises from the judgment and decree of the High Court of Bombay in First Appeal No.829 of 1982 made on August 24, 1992. The notification under Section 4 (1) was published in respect of 2 acres of land covered in Survey No. 339/B on October 30, 1965 and Survey No.339/A2 of 1 acre 34 gunthas on March 11, 1971 for the purpose of establishing Market Committee. The Land Acquisition Officer awarded compensation at the rate of 25 paise per sq. ft. in respect of B land acquired in the first notification and 35 paise in respect of A land acquired in the second notification. On reference under Section 18, the District Judge enhanced the compensation to the land covered under second notification at the rate of Rs.2.50 per sq. ft. and confirmed the market value determined by the Collector for the land covered under the first notification. On appeal, the learned Judges of the High Court, while confirmed the compensation determined in respect of lands covered by the second notification, enhanced the compensation to Rs.1.20 per sq. ft. in respect of lands acquired by the first notification. The claimants have filed this appeal for further hike in compensation whereas State has not come up in appeal.

It is settled by series of this Court's judgments that determination of the compensation in respect of the lands acquired on the sq. ft. basis is an obvious illegal principle being adopted by the courts only to inflate the market value and no reasonable prudent purchaser would be willing to purchase the land on the sq. ft. basis when large extent of land is offered for sale. Same is the case when land is acquired for public purpose. The courts are required to consider sitting in the arm chair of the prudent purchaser acting in normal conditions prevailing in the open market, whether, when offered to purchase the land by a

willing vendor, he would purchase the same in an open market. The Court on that touchstone should evaluate the market value. No feat of imagination is necessary to cloud the consideration lest it runs into arena of misconduct. The courts, therefore, have proceeded on illegal premise in determining the compensation on sq. ft. basis. It is seen that the High Court noted that there is no development from 1968 to 1971. It is true that the High Court has proceeded on wrong footing of the date of notification of 1968. There appears to be some confusion with regard to first notification dated October 30, 1965 and the second notification dated March 11, 1971. In view of the fact that there is no hike in the value of the land and no sale deeds have been produced, it would be obvious that there is no appreciation of the value of the lands. So it is highly hazardous to rely upon oral evidence wherein witnesses have stated that prevailing market value ranges from Rs.4/- to Rs.5/- per sq. ft. Under these circumstances, we are not impressed with any evidence warranting further increase.

The appeal is accordingly dismissed. No costs.