

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s) . 6240-6243 OF 2001

—

Sagunthala (Dead) through Lrs.

..Appellant(s)

Versus

Special Tehsildar (L.A.) & Ors.

..Respondent(s)

WITH

Civil Appeal Nos. 6244-6248 of 2001 and

Civil Appeal No. 495-504 of 2002

J U D G M E N T

GANGULY, J.

1. These appeals have been filed challenging the judgment and order dated 23.1.01 of Madras High Court.

2. Facts relevant to the present dispute are that an extent of 196 acres of lands were acquired

for the purpose of expansion of Tamil Nadu Magnesite Limited, a State owned company. Various notifications under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") were issued in the month of February, March and May 1984.

3. In connection with giving compensation for that acquisition, the Land Acquisition Officer had fixed the market value at the rate of Rs.18,000/- per acre for irrigated dry land and Rs.15,000/- per acre for unirrigated dry land in Award Nos. 1 to 9 and 11 of 1986.

4. As the claimants felt aggrieved by and dissatisfied with the awards, they asked for reference under Section 18 of the Act. The Reference Court, i.e. the Court of Subordinate Judge Salem, after considering the documentary and oral evidence, treated the lands as potential house sites and fixed the market value at Rs.1,75,000/- per acre.

5. The case as put forward by the claimants before the Reference Court and this Court was that the compensation was not fixed by the Collector on a proper basis and the acquired land is potential house site and the valuation ought to have been done on that basis. It was also their submission that relevant sale deeds were ignored while fixing up the value and the data sale deed selected by the Officer was absolutely unreliable. It was urged that in several cases, the Officer did not award compensation for well, cement channel and for the super structures and trees. While in some of the cases the Land Acquisition Officer had not awarded interest for the lands which are taken possession in advance from the land owners. Neither was the compensation paid for the change of residence and place of avocation.

6. Per contra, the respondents urged that the Land Acquisition Officer had fixed the value after verifying the records of nearby land owners on such transactions and after verifying all the

aspects. It was further submitted that the value fixed by the Land Acquisition Officer is correct and the value claimed by the claimants is very high and there was no objection by the owners for those lands at the time of acquisition. So there is no necessity for enhancement of compensation. It was urged that the documents relied upon by the claimants are in no way relevant for fixing the higher values.

7. The Reference Court taking into account the admission of R.W. 2 that there are number of buildings on the land acquired and the plots of land which are occupied by the building are to be treated as house sites, held that the classification of lands into irrigated and unirrigated lands made by the Land Acquisition Officer was unreasonable and erroneous. The Reference Court held that the Officer should have taken into consideration the proximity of lands acquired to the other residential

colonies, the factories and that the lands itself was used as housing plots.

8. The Reference Court fixed Rs. 1,75,000/- per acre as the amount taking note of the fact that although the lands acquired are situated in different survey numbers but they are adjacent to each other and are acquired as one block for the same purpose.

9. The High Court vide its judgment dated 23.01.2001 passed in Appeal Suit Nos. 134 to 143 of 1997 and C.M.P No. 16081 of 2000 in Cross Objection Sr. No. 14276 of 1997 while setting aside the order of Reference Court took into consideration the fact that plots of lands acquired were agricultural lands initially and continued to be so till they were acquired. The High Court relied on the fact that the claimants in their representation before the Land Acquisition Officer have claimed different amounts and majority of them claimed compensation only at the rate of Rs. One Lakh per acre. The High Court held that the

Reference Court had given no reason at all for awarding compensation higher than what had been claimed. The High Court after taking into note the existence of 2 housing colonies held that it could not be concluded that the vast extent of land acquired in the case would also become a housing colony on its own and was of the view that there was no sufficient material to establish that the lands in dispute could be converted into a housing site in near future.

10. It was held that lands in question were valuable agricultural lands where horticulture and other crops were raised and they were garden lands, sufficiently irrigated. The market value was fixed at Rs.75,000/- per acre uniformly for all the lands involved in the above acquisition. The award of interest on solatium and on additional grounds was held to be contrary to the principles laid down by the Apex Court.

11.The claimant(s)/appellant(s) being aggrieved by the aforesaid order of the High Court approached this Court.

12.The main bone of contention on behalf of the appellant is regarding the classification of lands and their value fixed by the High Court. It was argued before this Court that the acquired lands are potential house sites and that the High Court was not justified in ignoring the documentary evidence in that regard.

13.This Court finds that the Reference Court was right in holding that while determining the value of the property acquired one has to see whether the land has got the building potentiality to be used for the building purposes in the immediate or in near future. In

P. Ram Reddy and others v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and others (1995) 2 SCC 305, this Court held that:

"Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under Section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the LA Act."

This Court went on to further hold that:-

"Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under Section 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under Section 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality....."

(See para 8)

14. The High Court, however, has taken note of the deposition of C.W. 1 who has admitted that excepting the plots of land under acquisition,

all other lands are agriculture lands. The aforesaid witness also admitted that his land under acquisition was agriculture land at the time of notification. C.W.6 has also admitted that initially all the acquired lands were agriculture lands. But High Court ignored other materials on record and fell into an error in concluding that the acquired lands were agriculture lands and erroneously reversed the conclusions arrived by the Reference Court.

15. The High Court relied on the case of Land Acquisition Officer, ELURU and others v. Jasti Rohini (Smt.) and another [(1995) 1 SCC 717], The Collector, Raigarh v. Dr. Harisingh Thakur and another [AIR 1979 SC 472] and Raghubans Narain Singh v. The Uttar Pradesh Government, through Collector of Bijnor, [AIR 1967 SC 465], wherein this court has held that the market value, on the basis of which compensation is payable under Section 23 of the Act, means the price that a willing purchaser would pay to a willing seller for a property having due regard

to its existing condition with all its existing advantages and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for which the property is compulsorily acquired.

16. We, however, feel that the view taken by the learned High Court is not tenable. In our view the learned Reference Court has rightly appreciated the evidence in this regard. While examining the evidence of C.W. Nos. 1, 2, 4, 6, 8 to 14, 17 to 19 and 21 it concluded that they have categorically stated that the lands were near the residential housing colonies and abutting the Itteri road which connects the Tanmag road and are situated abutting the road from Thekkampatti village. According to C.W 4 and 6 Gandhi Nagar Colony is at a distance of 100 feet.

17. It will be worthwhile to refer to Section 23 of the Act. Section 23 reads as under:

"23. Matters to be considered on determining compensation:-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

First, the market- value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector' s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the

publication of the notification under section 4, sub- section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation: - In computing the period referred to in this sub- section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition."

18. This Court in the case of State of Orissa v. Brij Lal Misra and others, [(1995) 5 SCC 203], held that:

"Section 23(1) of the Act charges determination of the amount of compensation for the acquired land taking into account firstly the market value of the land at the date of the publication of the notification under Section 4(1) of the Act. The question, therefore, would be that what would be the market value of the land. The market value prevailing on the date of the notification including potentiality the land possessed of or realisable potentiality existing as on the date of the notification would be the relevant fact for consideration to determine market value."

(See para 3)

19. Further in the case of Viluben Jhalejar Contractor (Dead) by Lrs. v. State of Gujarat, (2005) 4 SCC 789, this Court illustrated some positive and negative factors that could have a bearing on the market value of land under Section 23. [See para 20 pg. 797] While upholding the aforesaid view it was held in the case of Attar Singh and another v. Union of India and another, (2009) 9 SCC 289, that determination of market value of the land may also depend upon the facts and circumstances of each case.

20. R.W.3 in his evidence stated that about 50 company quarters were constructed on the acquired land and 6 or 7 factory buildings were there. The construction made for factory was within 40 acres and about 30 acres were constructed for residential quarters. He admitted that there are houses of agriculturists in the acquired land. He also admitted that the acquired land was on the northern side of the road from Thekkampatti and

Anna Nagar Colony was just interior to that being at a distance of 1 K.M. from interior to the road. He also said that there may be terraced buildings on the acquired land.

21.R.W. 2 in his evidence stated that there are about 50-60 houses at Anna Nagar. He also said that it was correct to say that there were lands on both sides of the acquired land which belong to the agriculturists. He also categorically admitted that land was acquired to build quarters for the labourers.

22.R.W. 1 in his evidence admitted that the land adjacent to the acquired land goes from Thekkampatti to Sengaradu. According to him Gandhi Nagar colony has 150 residential houses.

23.As such the evidence of these witnesses supports conclusion that even at the time of the notification under Section 4 (1) there were buildings including the terraced buildings on the land acquired and they are all abutting the

main road and are at a distance of 1 K.M. from residential colonies like Anna Nagar and Gandhi Nagar.

24. In the light of the above material facts this Court feels that the presence of number of buildings on the lands acquired and the said lands being occupied by the buildings are to be treated as house sites. The basic purpose that has been traced out in the evidence and as admitted by the RWs that the lands were acquired for the purpose of putting up residential quarters. As a portion of the land is being considered as house site, the adjoining lands have the potential of being put in better use as house sites in the near future.

25. The other important factor is the proximity of the plots to two residential colonies i.e. Anna Nagar and Gandhi Nagar. As it has come on record that the Anna Nagar colony has about 50-60 houses and Gandhi Nagar colony has about 150

houses, as such it is reasonable and proper to conclude that the present lands under dispute were near the residential colonies.

26.It should also be taken into consideration that the disputed lands were situated near the factory premises and further were adjoining the main road which connects the Tanmag road. As such the aforesaid lands are potential house sites.

27.In the judgment under appeal, the High Court took into consideration the fact that in the representation before the LAO, the claimants have claimed different amounts ranging from Rs.80,000/- to Rs. Two Lakhs and the majority of the claimants have claimed compensation only at the rate of Rs. One Lakh per acre. The High Court opined that no reason was given by the Reference Court for not accepting the claims of the claimants excepting stating that the claimants have claimed lesser amount.

28. It is settled that the burden of establishing/proving the market value of the lands is always on the claimants. In Periyar and Pareekanni Rubbers Ltd. v. State of Kerala [AIR 1990 SC 2192], this Court held that it is the duty of the Court to determine just and fair market value. It was further held that the claimants should produce necessary evidence on the value of land since the burden of proof is on them to establish the higher compensation claimed. While agreeing with the judgment in Periyar and Pareekanni Rubbers Ltd (Supra), this Court in the case of Special Deputy Collector & Another v. Kurra Sambasiva Rao & Others, (1997) 6 SCC 41, held that in a claim for enhancement of compensation the burden of proof was on the claimants that land was capable of fetching higher compensation. Further in the case of Kiran Tandon v. Allahabad Development Authority and another, [(2004) 10 SCC 745], it was held that the burden of proving that the amount of compensation awarded by the Collector is

inadequate lies upon the claimant and he is in the position of a plaintiff.

29. The Court, therefore, has to treat the reference as an original proceeding before it for determination of the market value afresh on the basis of the material produced before it. The claimant in the position of a plaintiff has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in Court. The material produced and proved by the other side will also be taken into account for this purpose. [See Para 10 page 754 of Kiran Tandon (supra)]

30. The claimants have placed reliance on sale deeds Ex. C 7, 8, 11 and 12 for the purpose of valuation of land. The Reference Court has considered that sale deeds as Ex. C 8 & 11 can be adopted as the basis for acquired lands. Ex. C8 is in respect of sale of house plots and is dated 11.03.83 which is nearly one year prior to the notification under Section 4 (1) and on

that basis the value of lands acquired under notification was fixed at Rs. 1,75,000/- per acre. It was held by the Reference Court that though the lands were acquired in different survey numbers but they were adjacent to each other and are acquired as one block for the same purpose.

31. The High Court, however, refused to rely on the aforesaid documents as the High Court opined that Ex. C8 was not admissible since the vendor or the vendee has not been examined. The High Court held that the sale of 1½ cents of land on the condition that they should be used for house sites appears to be unusual. With respect to the other document i.e. Ex. C11 the High Court considered the admission of CW 15 that the land was not sold as house sites. It was also held by the High Court that the Reference Court was wrong in not deducting developmental charges from the value arrived. Basing its conclusion on the facts that the

lands are agriculture lands the market value was fixed at Rs. 75,000/ per acre.

32. In view of the admitted case that the lands acquired were potential house sites we do not agree with the views taken by the High Court while calculating the compensation. R-13 and R-15 are the two sale deeds containing particulars of the sale transactions held 3 years prior to the Section 4 (1) notification. The Reference Court after close perusal of the aforesaid documents held that the same discloses that out of more than 100 sales, number of sales in respect of the lands is sold as house sites in village Thathaiyangarpatti village and the adjacent survey numbers in Thekkampatty village were also sold as house sites.

33. This Court in **Avinash Dhavaji Naik v. State of Maharashtra**, (2009) 11 SCC 171, has observed as following:

"14. The potentiality of a land for the purpose of development as also for building purposes would depend upon a large number of factors. For the said purpose, the court may not only have to bear in mind the purpose for which the lands were sought to be acquired but also the subsequent events to some extent.

15. In a case of this nature the court may proceed on the presumption that such a vast tract of land viz. 96 villages were sought to be acquired at the same time for construction of New Bombay. We are not unmindful of the fact that development in the entire area was not possible at one point of time. Development of the area must have taken place in phases. We are also not unmindful of the fact that the price of the land may skyrocket depending upon the development as also future potentiality."

34. In Atma Singh (Dead) through Lrs., and others v. State of Haryana and another, [(2008) 2 SCC 568], it was observed that the expression "market value" has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in

most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding principle would be the conduct of hypothetical willing vendor who would offer the land and that of a purchaser who, in normal human conduct, would be willing to buy as a prudent man in normal market conditions but not of an anxious purchaser dealing at arm's length nor a fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. [See para 4]

35. It has been further held in Atma Singh (Supra) that the market value of a property has to be determined having due regard to its existing

condition with all its existing advantages and its potential possibility when let out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of facts depending upon its condition, situation, user to which it is put and whether it is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. [See para 5]

36. Following those principle laid down by this Court we hold that the High Court and the Land Acquisition Officer failed to take into consideration the advantages and facilities, as discussed above, which were available in the acquired land. Moreover, the very purpose for which the land was being acquired is also a relevant factor.

37. The purpose for which the acquisition is being made is an important factor. This Court in the case of Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others (2007) 9 SCC 447, held that both the Special Land Acquisition Officer, the District Judge and the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. [See para 29, page 459]

38. In the present case it has come on evidence from R.W. 2 that the lands were acquired to build quarters for the workers of the Company.

39. As such we observe that the Reference Court rightly fixed the amount of compensation to be Rs. 1,75,000/- and we are inclined to uphold the said finding. As far as the question of grant of higher compensation than what is claimed by the claimants goes, the Reference

Court has observed, and in our opinion rightly so, that even before the representation before the Land Acquisition Officer, the claimants had stated that in event of their being not satisfied with the award, they reserve the right to go before the Civil Court for determination of just and reasonable compensation.

40. For the reasons above, the judgment of the High Court is set aside and the order of the Reference Court is upheld. So far as the claim of the appellant(s) for solatium, interest and other benefits under the statute is concerned, we direct that the same should be governed by the principles laid down in Sunder v. Union of India, (2001) 7 SCC 211, and the principles laid down in para 26, page 231 of the judgment be followed. Para 26 of the judgment in Sunder (supra) is set out below:

“Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation

awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well."

41. In so far as the enhanced compensation as determined by this Court is concerned, the same should be distributed to the appellant(s) and concerned parties by the District Judge of Salem by cheques drawn in their names as early as possible, preferably within three months from the date of service of this order on the District Judge. The respondents are to take steps accordingly.

42. The appeals are thus allowed with no order as to costs.

.....J.
(G.S. SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

New Delhi
February 24, 2010

