

PETITIONER:
THE STATE OF M.P. ETC.

Vs.

RESPONDENT:
HARISHANKAR GOEL & ANR. ETC.

DATE OF JUDGMENT: 07/08/1996

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

CITATION:
1996 SCALE (6)39

ACT:

HEADNOTE:

JUDGMENT:

W I T H
CIVIL APPEAL NO.2796 OF 1987
AND
CIVIL APPEAL NO.2298 OF 1987
O R D E R

These appeals arise from the judgment of the High Court of Madhya Pradesh. On a difference of opinion among two learned judges, third Judge on reference in Miscellaneous Appeal No.82/75 and 83/75 enhanced the compensation. The notification under Section 4(1) of the Land Acquisition Act 1 of 1894 was published on January 17, 1964 acquiring 33 bighas 15 biswas of land belonging to two different individuals for industrial purpose. The land Acquisition Officer by his award under Section 11 determined compensation on March 14, 1966 at Rs. 3,150/- per bigha treating the lands to be agricultural lands. On reference under Section 18, the Additional District Judge by his award and decree dated May 15, 1975 enhanced the compensation to Rs.1/- per sq. ft. and also awarded statutory benefits. On appeal, learned Judge B.C.Verma, J. determined compensation at 0.90/- per sq. ft. deducted 15% towards developmental charges. Learned Judge R.C. Srivastava, J. determined the compensation at Rs. 0.50 per sq. ft. and deducted 25% towards developmental charges. On reference, learned Judge T.N. Singh, J. agreed with the determination of compensation B.C. Verma, J. at Rs.0.90 per sq. ft. but deducted 20% towards developmental charges. He also awarded enhanced solatium, interest and additional amount as available under the Amendment Act 68 of 1984. Thus these appeals by the State and also cross appeal by the claimants claiming compensation at Rs.1/- per sq. ft.

The question that arises for consideration is as to what is the rate. of compensation that the lands are capable to secure in an open market. It is not in dispute that though they were the agricultural lands as on the date of notification the respondents who are no other than the

builders and developers had, after the purchase obtained sanction under Section 172 of the Madhya Pradesh Revenue Code for conversion of the land into non-agricultural lands, but no sanction from the municipality for construction of any colonisation, was obtained. Even learned Judge B.C. Verma, J. had noted in his judgment that though the respondents- claimants had entered into the agreement of sales with the prospective purchasers, they had not completed the sale transactions. Those agreements were brought into existence to bolster the claims. However, the learned Judge found that the lands were situated very near to the Vickoy moped factory. They abut the Jhansi Road; Sitholi railway station is one mile from the acquired lands, but they are situated outside the municipal limits of Gwalior Municipal Corporation. Their lands are fit for developing industries, housing colonies, godown, petrol pumps etc:. The evidence also disclosed that the land was not improved and it was not even land. Considered in this background, the learned Judge had accepted the sale deed executed by one of the claimants for a small extent of land at Rs. 0.50 per sq. ft. but having found that the lands were possessed of potential value, determined the compensation at Rs.0.90 per sq. ft. and, as stated earlier, deducted 15% towards developmental charges. Learned Judge Srivastava, J. relied upon the very sale deeds put forth by the claimants and held that they could not claim higher than what they had put up, namely, Rs. 0.50 per sq. ft. and, therefore, determined the compensation on that premise and deducted 25% towards developmental charges. As seen, learned T.N. Singh, J. had agreed with B.C. Verma, J. in determining the compensation at Rs. 0.90 per sq. ft.

The question, therefore, is: what would be the reasonable market value the lands are capable to fetch as on the date of the notification had it been sold in the open market to a willing purchaser? It is seen that when 33 and odd bighas of land was sought to be sold in the open market, no willing prudent purchaser would with any credulity agree to purchase it on sq.ft. basis. It is well settled law that the judge determining compensation in a compulsory acquisition should eschew feats of imagination sit in the arm chair of a willing purchaser and put a question to himself whether as a willing prudent purchaser he would offer the same price sought to be awarded for the acquired land. It would, therefore, be clear that the learned Judges did not apply correct legal tests to determine the compensation but determine the compensation on the basis of sq.ft. which is illegal. per se. We, therefore, hold that the learned Judges had applied wrong principle of law in determining compensation.

The question then arises is what would be the just and adequate compensation which the land are capable to fetch in the open market? It is seen that the land are situated beyond the municipal limit and on uneven land. But for the Vickoy moped factory, there was no other immediate development. The claimants themselves purchased the lands as builders develop the lands. They did not file their own sale deeds to show at what rate they had purchased the land which would have furnished best material. Admittedly, on sanction from the Municipal Corporation or any competent authority was obtained in that behalf to construct housing colony. Necessarily when the land was to await some time for development either for industrial or colonisation, the price that could not be secured at the rate was put forth by the claimants. They themselves had sold at Rs. 0.50 per sq.ft. for a small extent of land. The learned Judges, therefore,

had not correctly appreciated the correct principles of law in determining the compensation. Having found that the ends were possessed of potential value the compensation could be determined on the basis of the market value on square yard basis. Considered from this perspective, we are of the view that the market value for the land would be Rs.4/- per sq. yd. and we agree with learned Judge Srivastava, J. that the deduction should be 25% towards developmental charges since it is in evidence that acquisition is for industrial purpose and electricity was immediately available as found by learned Judge T.N. Singh, J. The lands are adjacent to national highway. It is settled law that normally 33-1/3% should be deducted towards developmental charges. In this case as a special case, 25% is deducted. It will not be treated as present.

The learned Judges were wholly wrong in applying the Amendment Act 68 of 1984 since the acquisition was made in the year 1964 and the Collector had made the award on March 14, 1966 and the reference Court itself determined the compensation on May 15, 1975. Under those circumstances, the claimants are not entitled to the additional benefits of enhanced solatium under Section 23(2) at 30% interest under proviso to Section 28 at 9% for the first year from the date of taking possession and thereafter at 15% till date of deposit on the enhanced compensation and additional amount under Section 23(1-A). The judgment in that behalf also stands set aside. Instead, the claimants will be entitled to solatium at 15% on the enhanced compensation and interest at 4% on the enhanced compensation from the date of taking possession till date of deposit into Court.

The appeals of the State are accordingly allowed and the cross appeal of the claimants stands dismissed, but in the circumstances, without costs.