

PETITIONER:
THE SECRETARY, KARNATAKA ELECTRICITY BOARD

Vs.

RESPONDENT:
ASSISTANT COMMISSIONER, GADAG & ORS

DATE OF JUDGMENT 07/03/1995

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
RAMASWAMY, K.

CITATION:
1995 SCC Supl. (2) 1 JT 1995 (3) 184
1995 SCALE (2) 146

ACT:

HEADNOTE:

JUDGMENT:

HANSARIA, J.:

1. Leave granted in both the petitions.
2. A plot of land measuring two acres was acquired by Notification dated 14.4.1988 for establishment of sub-station by the Karnataka Electricity Board, the appellant herein. The market value of the land was fixed by the Land Acquisition Officer at Rs. 13,000/- per acre by an award made on 21.8.1989. On reference being made, the Civil Judge, however, enhanced the compensation to Rs. 10,000/- per gunta i.e. Rs. 4 lacs per acre by an order dated 16.12.1989. On appeal being preferred before the High Court, the enhancement was sustained but with the direction to deduct 65% towards development and other charges. The Electricity Board has preferred this appeal by special leave. The land owner has also approached this Court seeking further enhancement.
3. A perusal of the order of Reference Court shows that the land owner had himself led evidence to show yield, which was found to be around Rs. 11,000/- per acre per year. This was the gross income; the net annual income assessed being Rs. 5,695/-, after deducting 50 % towards cost of cultivation. The market value as per the capitalisation method was, therefore, fixed at Rs.28,470/- per acre by deducting 50 % of the average annual yield, assuming that the claimant had exaggerated the average annual yield in his evidence; he being an interested witness.
4. The Reference Court, instead of fixing the market value at Rs.28,470/- per acre determined as per the capitalisation method, fixed the same at Rs.4 lacs on the strength of a solitary sale deed which related to small piece of land measuring 74 feet x 17 feet, which was sold for Rs. 10,000/- at the relevant point of time.
5. Learned counsel for the Board has contended that the Reference Court, as well as the High Court, erred in law in placing reliance on a solitary sale transaction and that too

relatable to a very small piece of land in fixing the market value at Rs. 4 lacs. The learned counsel for the claimant, however, draws our attention to the evidence of the approved Land and Building valuer who was examined as P.W.3 and whose evidence has been dealt in para 10 of the Civil Judge's order. We have been taken through this part of the Civil Judge's order wherein mention has been made, inter alia, about the aforesaid plot of land being within the Gadag-Betigeri Municipal limit, which is not so, as the acquired land is situated beyond the limit of the municipality. From the judgment of the High Court, it further appears that the plot of land whose sale was taken into consideration had abutted two main roads; and could not have, therefore, been taken as the basis for determining the market value of the acquired land. The High Court itself has, therefore, stated that the sale deed could not have been made as the basis for determining the market value. Being of this view, what the High Court did was to make a deduction of 65% towards development and other charges.

6. According to us, however, if the sale deed in question could not have formed the basis of determining the, market value of the acquired land, the proper course open for the courts below was to fix the valuation as per the capitalisation method, as was sought to be pressed into service by the claimant himself which is apparent

186

from the fact that to bring on record the yield he examined himself The courts below committed manifest error of law in having fixed the market value by taking into consideration a transaction wherein the land was valued on square foot basis. It has been noticed by this Court. in its several decisions that recourse to determination of market value on square foot basis is taken at times to show the value rather less, whereas ultimately it works out to be much more.

7. We, therefore, set aside the order of the Reference Court as modified by the High Court; instead, fix the market value at Rs.28,470/- per acre. The claimant would be entitled to solarium @ 30 % and an amount calculated @12% per annum on the market value so fixed from 14.8.1988 till 21.8-1989. This apart, the claimant would be paid interest @9% for a period of one year from the date of taking possession of the land and thereafter @ 15% per annum till the date of payment of the enhanced compensation, less the amount already paid.

8. In the result, the appeal No. 3247/95 arising out of SLP(C) No.2246/94 is allowed as aforesaid. The appeal No.3248/ 95 arising out of SLP(C) 21959/94 stands dismissed. No order as to costs.

188