

PETITIONER:
MR.M.GOVINDA RAJU

Vs.

RESPONDENT:
THE SPECIAL LEND ADDITIONAL LANDACQUISITION OFFICER & ANR.ET

DATE OF JUDGMENT: 24/07/1996

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

CITATION:
JT 1996 (7) 109 1996 SCALE (5)558

ACT:

HEADNOTE:

JUDGMENT:
THE 24TH DAY OF JULY,1996

Present:

Hon'ble Mr.Justice K.Ramaswamy
Hon'ble Mr.Justice G.B Pattanaik

C.S.Vaidyanathan, Sr.Adv. S.R.Setia, Shivram, Advs., with
him for the Appellant
P.R.Ramasesh, Adv. for Surya Kant and M.T.George, Advs. for
the Respondents.

O R D E R

The following Order of the Court was delivered:
Mr.M.Govinda Raju
V.

The Special Land Additional Land
Acquisition Officer & Anr. etc.

WITH

CIVIL APPEAL NOS.12007-8/95 & 4832-37/94

We have heard learned counsel on both sides.

These appeals arise from the judgment of the Division Bench of the Karnataka High Court made on November 21, 1989 in MFA No.2114/85 and batch. The only controversy raised and argued before us is: whether the High Court was justified in refusing to permit the appellants to pay the deficit court fees and to enhance the compensation @ Rs.75,000/- per acre. The admitted facts are that notification under Section 4(1) of the land Acquisition Act, 1894 (For short, the 'Act') was published on September 29, 1977 acquiring large extent of land by the Bangalore Development Authority for the formation of a layout called "Byrasandra Tavarekere Madiwala Scheme" (for short, 'BTM Layout'). The Land Acquisition Officer awarded compensation ranging from Rs.10,000/- to Rs.16,000/- per acre in 1981. On reference by judgment dated October 18, 1985, the Civil Judge enhanced the compensation to Rs.45,000/- per acre. The appellants filed the appeals in 1986 and though they valued the appeals at Rs.75,000/- per acre, they paid court fee @ Rs.60,000/- per acre on the basis of which the Appeals came to be numbered.

Subsequently, while the appeals were pending, it would appear that in another acquisition, the XVI Addl City Civil Judge, Bangalore enhanced the compensation in respect of some other lands @ Rs.75,000/- per acre and on that basis, the appellants filed an application in August 1989 for permission to pay deficit court fee. That application was directed to be posted along with the appeals. When they came up before the Division Bench, it held that since the appellants had restricted their claim only to Rs.60,000/- and paid the court fee accordingly, they are not entitled to make payment of the additional court fee and compensation @ Rs.75,000/- per acre. Thus, these appeals.

Shri Vaidyanathan, learned senior counsel for the appellants, contended that in Bhag Singh vs. United Territory of Chandigarh [(1985) 3 SCC 737] referred to in Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda vs. Union of India & Ors. [(1991) 1 SCC 174], though the appellants therein had filed LPA and had paid deficit court fee, they had reserved the right, to claim higher compensation and this Court had awarded higher compensation after condonation of delay in payment of deficit court fee. That ratio was not upset by another three-Judge Bench in Schedule Caste-Co-operative Land Owning Ltd. case (supra). The ratio in the later case was upheld by the Constitution Bench on reference in Buta Singh (Dead) by Lrs. vs. Union of India [(1995) 5 SCC 284]. Therefore, the appellants having kept the claim alive for higher compensation, though paid deficit court fee, are entitled to make good the deficit court fee and to be allowed higher compensation @ Rs.75,330/- per acre.

We find no force in the contention. It is true that in Bhag Singh's case, the appellants were directed to pay the deficit court fee and were granted enhanced compensation. In that case, since some of the claimants covered by same notification were given higher compensation and other were denied, this Court appears to have proceeded on the premise to pay them equal compensation. In Scheduled Caste Co-operative Land owning Society's case, this Court pointed out that whereas in that case, the parties allowed the appeals to become final in the former case and the party filed an appeal and kept the matter alive and denied the relief. In later case, no opinion was expressed in that behalf on keeping alive the claim though no court fee was paid. In Buta Singh's case, after the reference was answered by the Constitution Bench, similar situation had arisen therein. The parties filed the appeal, paid the court fee paid at a particular amount and after the arguments were heard in the matter, they filed an application for permission to pay the deficit court fee. The Division Bench did not permit them and dismissed the petition. Dealing with that situation, this Court had held that:

"The claim cannot be kept in uncertainty. If in an appeal under Section 54 of the Land Acquisition Act, the amount is initially kept low and then depending upon the mood of the appellate court payment of deficit court fee is sought to be made, it would create an unhealthy practice and would become a game of chess and a matter of chance. That practice would not be conducive and proper for orderly conduct of litigation."

It would be seen that an appeal was filed under Section

54 of the Act. The Memo of Appeal in terms of Order 41, CPC came to be raised that the party is at liberty to determine what would be the rate at which compensation would be payable for his acquired land. The relevant provisions of the Court Fees Act, State Legislature prescribes the court fees payable on money claims on the Memo of Appeal. When a party chooses to value the appeal and court fees paid at a particular rate, it would be obvious that the party is seeking to determine the compensation in respect of his land, at the rate he claims, subject to determination by the Court whether he would be entitled to the rate at which he valued the appeal and laid the claim or would not at all be entitled etc. If higher compensation is sought for, necessarily he has to pay court fee thereon. When higher amount was stated in Memo of Appeal but court Fee was paid at a lesser amount, it would be obvious that the appellant had valued and restricted his claim to the extent to which the court fee had been paid.

The question arises: whether the party would be permitted to pay the deficit court fee at a later stage on the difference of the amount claimed in the appeal? As indicated earlier, party makes a conscious decision and fixes the valuation and the court fee paid; it would be unhealthy practice and it will not be conducive to encourage the practice to keep on changing the valuation and then to pay deficit court fee thereon. As seen, after the appeal was filed by the appellants they claimed compensation @ Rs.75,000/- but paid the court fee at Rs.60,000/- per acre. After the Civil Judge in another case had enhanced the compensation, they came forward to claim higher compensation on the basis of that judgment. It will not be conducive to permit the parties to go on changing the valuation and giving permission to pay the deficit court fee for higher compensation. The Division Bench, therefore, was right in refusing to permit them to pay the deficit court fee to award enhanced compensation @ Rs.75,000- per acre.

Om Bhargava vs. S.B. (Mrs.) & Ors. [(1994) 4 SCC 662] was pressed by the learned counsel for consideration. In view of the fact that this Court in Banta Sing's case had laid the above principles per incuriam, it is not necessary for us to go into the same that being not a good law.

The appeals are accordingly dismissed No costs.