

CASE NO.:
Appeal (civil) 7678-7683 of 1997

PETITIONER:
V.Hanumantha Reddy (Dead) By L.Rs.

RESPONDENT:
The Land Acquisition Officer & Mandal R. Officer

DATE OF JUDGMENT: 17/12/2003

BENCH:
S.N. VARIAVA & H.K. SEMA.

JUDGMENT:
J U D G M E N T

SEMA, J.

Parties are heard.

On 30.9.1985, a chunk of land measuring 5 acres 39 cents in Survey no.386 of Pebbair Village, Mahaboob Nagar District, Andhra Pradesh, was acquired by a draft Notification dated 30.9.85 under Section 4(1) of the Land Acquisition Act, 1894 (in short 'The Act') for providing house-sites to the poor. Section 17(4) Notification, by invoking urgency clause by which the enquiry under Section 5-A of the Act was dispensed with, was also issued. Possession of the land was taken over on 10.3.1986. Earlier draft Notification, having lapsed, led to a fresh Section 4(1) Notification dated 28.2.1990. On 28.3.1991, the Land Acquisition Officer after holding an enquiry fixed the market value of the land at Rs.45,000/- per acre, equivalent to Rs.10/- per square yard. Aggrieved by the Award, the claimants made a reference application under Section 18 of the Act. The learned Civil Judge by its order dated 28.4.1992 determined the market value of the land at Rs.78/- per square yard and after allowing deduction of 1/4th of the acquired area, which was required for developmental purposes, arrived at Rs.58/- per square yard as net payable. The Reference Court also awarded additional amount under Section 23(1A) of the Act @ 12% per annum from the date of subsequent publication of Section 4(1) Notification i.e. 28.2.1990 to the date of Award i.e. 28.3.1991 and solatium @ 30% and interest @ 9% per annum for one year from the date of taking possession i.e. 10.3.1986 to 9.3.1987 and @ 15% per annum from 10.3.1987 to the date of the Award i.e. 28.3.1991 along with costs. Aggrieved by the Award of the Reference Court, two sets of appeals were filed before the High Court - one by the claimants seeking enhancement of the compensation from Rs.58/- to Rs.80/- per square yard; and the other filed by the Land Acquisition Officer assailing the enhancement. Both sets of appeals were disposed of by the High Court by a common order on 17.12.1996 allowing the appeals filed by the Land Acquisition Officer and dismissing the appeals filed by the claimants. In the said order the High Court fixed the market value of the acquired land @ Rs.30/- per square yard. The High Court also allowed solatium @ 30% and interest @ 9% for one year from 10.3.1986 to 9.3.1987 and @ 15% from 10.3.1987 till the date of payment. The High Court held that the claimants were not entitled to additional amount under Section 23(1-A) from the date of Notification under Section 4(1) i.e. from 28.2.1990 upto the date of Award dated 28.3.1991. Aggrieved by the aforesaid order the present appeals have been preferred by the claimants. Before the Reference Court, the claimants adduced evidence and exhibited documents, which are sale instances of comparable land. The claimants also admitted that the land so acquired is about hundred yards away from the National Highway No.7. It is also the case of the claimants that there are houses, shops, two petrol bunks and hotels on the north, south

and west of the acquired land. While interfering with the enhancement of the compensation made by the Reference Court, the High Court held that the Reference Court accepted the sale instances of comparable land without discussing and without assigning any reasons. The Reference Court relied on the Exhibit X-1, which is a certified copy of the Award dated 21.7.1989 made by the Assistant Collector relating to the acquisition of land bearing Survey No.1071/2 measuring 2 acres and 5 guntas situated in Pebbair village for construction of APSRTC bus stand for which the draft Notification under Section 4(1) of the Act was published in the Gazette on 23.7.1987. The land so acquired by the aforesaid Notification was admittedly abutting the National Highway No.7. Since the land for which the Award has been made by Exhibit X-1 is abutting the National Highway No.7, such Award cannot be comparable with the land acquired, which is admittedly away from the National Highway about 100 yards.

The claimants examined PWS 1,2 and 9 and also tendered documents - Exhibits A-1, A-2, A-18 and A-19. PW-1 deposed that village Pebbair is situated on National Highway No.7 between Hyderabad and Kurnool. He also stated that the acquired land bearing Survey No.386 and the National Highway no.7 are intervened by a petrol bunk and the premises of State Bank of India. He further stated that the acquired land is about 100 yards away from the National Highway no.7. PW-2 deposed that Exhibit A-1 dated 12.1.1985 was sanctioned by the Sarpanch of Pebbair village for converting the land into house sites. He also stated that the acquired land is at a distance of 100 yards from Nethaji's statute and one furlong away from National Highway no.7. PW-9 also deposed in the same way. RW-1, in cross-examination, admitted that the acquired land is at a distance of one furlong from Nethaji's statute. Evidence of all the PWS would also reveal that there is developmental activity only on Kurnool side and there is no such developmental activity on Hyderabad side. Exhibit A-18 is the plan showing the acquired land and the surrounding Survey numbers. It corroborates the statements of the witnesses that the distance from Nethaji's statute to the acquired land would be about one furlong. It is also clear that Survey no.390 is in between National Highway No.7 and the acquired land which is Survey no.386.

For the enhancement of market value of the land acquired, the claimants relied on sale instances of comparable land Exhibits A-4, A-14 and A-15. Exhibit A-4 is a certified copy of the sale deed dated 14.9.1987 which shows the land measuring 133.33 square yards in Survey No.391 was sold for Rs.20,000/- which works out to Rs.150/- per square yard. PW-4 deposed that he sold the land in 1987 for a consideration of Rs.20,000/-. It will be seen from Exhibit A-19 (Map) that Survey no.391 is abutting the National Highway no.7. The land acquired is at a distance of one furlong from the National Highway no.7. Therefore, by no stretch of imagination the sale instance of Exhibit A-4 can be taken as comparable land with the present land acquired. It is now well established principle of law that the land abutting the National Highway will fetch far more higher price than the land lying interior. Exhibit A-14 is a certified copy of the sale deed dated 22.11.1991. The sale instances at Exhibits A-14 and A-15 are with regard to the sale deed in Survey No.1070. In both the Exhibits - A-14 and A-15, the land so sold was abutting the National Highway No.7. So also, the sale instances of the land at Exhibits A-13 and A-16 were abutting the National Highway no.7. The sale instances at Exhibits A-7, A-8, A-10 and A-11 are also filed by the claimants. The transactions were effected few months prior to the present draft Notification. It is an admitted fact that the plots covered under Exhs. A-7 and A-11 were not abutting the National Highway No. 7. Ex. A-8 is the sale deed dated 2.2.1989 where a plot measuring 277.7 sq. yards, in Survey No. 1069, was sold at the rate of Rs. 45/- per sq. yards, which was abutting the National Highway No. 7, but the plot sold was not abutting the National Highway. In other words, Survey No. 1069 was abutting the National Highway but the plot so sold under the sale deed was not abutting the National Highway. In all those sale transactions the consideration amount works up to Rs.45/- per square yard.

The High Court, in our view, therefore, was right in taking the sale instances of Exhibits A-7, A-8, A-10 and A-11 at the rate of Rs.45/- per square yard, as the basis for the determination of market value of the

acquired land. After making 1/3rd deduction on account of laying out of roads and for other developmental purposes, the High Court has worked out the value of the acquired land at Rs.30/- per square yard. In the facts and circumstances stated above, we do not find any infirmity in the conclusion reached at by the High Court.

It is contended by Dr.Rajeev Dhawan, learned senior counsel for the appellants that the land so acquired has high potentialities. The National Highway no.7 is being intervened by the petrol bunk and the premises of the State Bank of India. There are houses, shops and hotels on the north, south and west of the acquired land. The developmental activities are towards Kurnool where the land at Survey No. 386 has been acquired. The learned Senior counsel, therefore, urged that the sale instances relied upon by the Reference Court ought not to have been disturbed by the High Court. We are unable to sustain this submission of the counsel. The land may be having high potentialities or it may be proximate to the developed land, but that itself would be no ground for not deducting the developmental charges. This Court in a recent judgment reported in *Kasturi and others vs. State of Haryana*, (2003) 1 SCC 354, held that it is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. This Court also pointed out that there is difference between a developed area and an area having potential value, which is yet to be developed. It was further pointed out that the land is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot. The facts of the present case are exactly the same as the situation in which this Court has made the above observation. In the present case, the undisputed facts on record would show that the acquired land with National Highway no. 7 is intervened by a petrol bunk and the premises of the State Bank of India. There are also houses, shops and hotels on the north, south and west of the acquired land. The acquired land is also about 100 yards away from the National Highway no.7. No doubt, the acquired land may be having high potential value but that itself per se cannot be claimed to be a developed land. Lots of developmental activities are to be undertaken like laying of roads, sewerage facility, water supply etc. so that the land would be made fit for construction of houses for the needy people, which would require enormous amount of expenditure. We, therefore, do not find any infirmity in the order of the High Court, which would warrant our interference. These appeals are, accordingly, dismissed with no order as to costs.