REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 2549-2553 OF 2009

(Arising out of SLP (C) Nos.12860 -12864 of 2007)

Karnataka Urban Water Supply and Drainage board, etc. .....Appellants

Versus

K.S. Gangadharappa & Anr. etc. .....Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

1. Challenge in these appeals is to the judgment of a Division Bench of the Karnataka High Court dismissing the appeals filed by the appellant, while allowing the appeals filed by the respondents. While the appellants

had questioned the correctness of the Award made by the Reference Court in proceedings under the Land Acquisition Act, 1894 (in short the 'Act'), the land owners i.e. respondents herein filed the appeals for enhancement of the compensation.

3. Background facts in a nutshell are as follows:

On 15.5.1985 the Govt. of Karnataka issued a preliminary notification under Section 4 of the Act in respect of land situated in the city of Shimoga for the purpose of underground drainage scheme for the city.

On 24.9.1986 the final notification under Section 6 of the Act was issued.

On 9.2.1988 the Land Acquisition Officer determined compensation @ Rs.12,500 per acre.

The claimants sought reference under Section 18 of the Act for determination of compensation by the Civil Court.

On 29.10.2001, Civil Court enhanced the compensation to Rs.54,500/- per acre and the same was set aside by the High Court in MFA No.750 of 1999 and the matters were remanded to the Civil Court.

On 31.10.2002 the Principal Judge, Senior Division, Shimoga, after remand in LAC No.10 of 1989, determined the compensation payable in respect of land in Survey No.24 measuring 5 acres 5 guntas at Rs.1,35,000/- per acre on the following findings:

(a) the land was agricultural land at the time of notification;

(b) P3,P4 and P5, which were the sale deeds of municipal sites in Survey No. 13 cannot be taken into consideration while determining the compensation of a larger area;

(c) evidence of PW 1 was not sufficient to arrive at the compensation for the lands.

It is to be noted that the learned Civil Judge permitted the production of the judgment of the High Court of Karnataka in MFA No. 348 of 1995 in respect of Survey No.77, wherein the compensation was determined at Rs.1,60,000/- per acre and placed reliance on the said judgment on the ground that the lands are similarly situated.

In this view the Civil Judge determined the compensation at Rs.1,35,000/- per acre.

Feeling aggrieved by the said order, the claimants therein preferred Misc. First Appeal before the High Court of Karnataka in MFA No.1396 of 2003.

The Principal Judge, Senior Division, Shimoga in LAC No. 8 of 1989, dealing with the land in Survey No.23 to the extent of 3 acres 20 guntas determined the compensation at Rs.1,50,000/- per acre.

Feeling aggrieved by the said judgment the petitioner herein filed Misc. Appeal in MFA No. 658 of 2005 before the High Court of Karnataka. The claimant therein had filed cross objection in CROB No.211/06.

State of Karnataka filed Misc. Appeal in MFA No. 1339 of 2003 before the High Court from the judgment and decree in LAC No. 10 of 1989.

All the Misc. Appeals and Cross Objections were heard and disposed of by a common judgment in the High Court of Karnataka.

4. The basic stand of the appellants is that no basis has been indicated by the High Court to determine the value at Rs.4,00,000/- per acre. It is pointed out that Exhs. P4 and P5 were small plots of land measuring about 30' x 50' and cannot provide a foundation for determination of the market value.

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court contending that though the price paid in respect of small plots of land may not provide a foundation but it can be taken note of and after making adjustments for development the same can provide such a foundation.

6. It is a trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices

fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In *Sahib Singh Kalha* v. *Amritsar Improvement Trust [1982 (1) SCC 419]* this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the "retail" price of land and the latter the "wholesale" price.

7. What is to be estimated therefrom is the "wholesale" price of land. In *Bombay Improvement Trust* v. *Mervanji Manekji Mistry [AIR 1926 Bom 420]* Macleod, C.J. suggested a simple rule:

> "Valuation cases must be dealt with just as much from the point of view of the hypothetical purchase as of the claimant. The valuation itself must often be more or less a matter of guesswork. But it is obviously wrong to fix upon a valuation which, judged by everyday principles, no purchaser would be likely to give.... I have always been adverse to elaborate hypothetical calculations which are no more likely to lead to a fair conclusion than far simpler methods. But, in any event, no harm can be done by testing a conclusion arrived at in one way by a conclusion arrived at in another.... *A very simple method of valuing land wholesale from retail prices is to take anything between one and half one-third, according to circumstances, of the expected gross valuation, as the wholesale price*."
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> (emphasis supplied)

8. Where a large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in The Collector of Lakhimpur v. Bhuban Chandra Dutta (AIR 1971 SC 2015), Prithvi Raj Taneja (dead) by Lrs. v. The State of Madhya Pradesh and Anr. (AIR 1977 SC 1560) and Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr. (AIR 1984 SC 892).

9. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

10. In the case of Suresh Kumar v. Town Improvement Trust, Bhopal (1989 (1) SVLR (C) 399) in a case under the Madhya Pradesh Town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam (AIR 1939 P.C. 98) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value,

disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must be disregarded alike; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality.

11. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages.

12. It is only when these factors are present, can it merit a consideration as a comparable case (See The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty (AIR 1959 SC 429).

13. These aspects have been highlighted in Ravinder Narain and Anr. V. Union of India (2003 (4) SCC 481)

14. The deduction to be made towards development charges cannot be proved in any strait-jacket formula. It would depend upon the facts of each case.

15. It is right as contended by learned counsel for the respondents that deductions can be made for development. But the deductions have to be made from some definite figure. In the instant case the High Court has not indicated any basis but has come to an abrupt conclusion that the claim of the owners for enhancement has to be accepted but not for Rs.9,00,000/- per acre as claimed but at Rs.4,00,000/- per acre. Market value has a definite concept and it cannot be evaluated without any foundation or basis.

16. In the circumstances we set aside the impugned judgment of the High Court to decide the matter afresh and indicate a basis for fixation of market value at a definite figure.

17. The appeals are allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(LOKESHWAR SINGH PANTA)

.....J.
(P. SATHASIVAM)

New Delhi
April 15, 2009