

PETITIONER:
SPL. TEHSILDAR LAND ACQN. VISHAKAPATNAM

Vs.

RESPONDENT:
SMT. A. MANGALA GOWRI

DATE OF JUDGMENT 09/08/1991

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
KASLIWAL, N.M. (J)

CITATION:
1992 AIR 666 1991 SCR (2) 472
1991 SCC (4) 218 JT 1991 (3) 444
1991 SCALE (2) 301
CITATOR INFO :
R 1992 SC2298 (10)

ACT:

Land Acquisition Act, 1894: Section 23--Acquisition of land--Compensation--Market value--Fixation of--Principles to be followed --Acquisition for housing scheme--Valuation of land--Deduction from the market value for development of land--Dependant on situation of land and need for development.

Constitution of India, 1950: Article 136--Land Acquisition--Compensation--Valuation of land--When Supreme Court would interfere.

HEADNOTE:

The respondent's land admeasuring 5 acres-589-1/3 Sq. yards was acquired by the State Government in 1963 for a housing scheme and compensation at Rs.1.58 per Sq. yard was awarded. On reference, the Civil Court enhanced the compensation to Rs. 10 per Sq. yard with solatium at 15 per cent and interest at 4 per cent. On appeal and cross appeals, the High Court confirmed the award.

In the appeal before this Court, on behalf of the Department, it was contended that the respondent had purchased the land in question in 1961 in three documents at Rs.0.42 p. per sq. yard and sold in 1963 one acre of the land at Rs.5 per sq. yard and, therefore, the deeds under which the transactions took place reflected the prevailing market value of the land in question, and courts below committed grave error in relying on a decision of the High Court awarding Rs. 10 per sq. yard in respect of another land acquired under a Notification of 1961, and that when a large extent of land was acquired for a housing scheme, at least 1/3 of the land should be deducted towards laying the roads, setting up parks, drainage and other amenities.

Allowing the appeal, this Court,

HELD: 1.1 The market value postulated in Section 23(1) of the Land Acquisition Act, 1894 is designed to award just and fair compensation for the lands acquired. The word "market value" would postulate price of the land prevailing on the date of the publication of the notifica-

tion under Section 4(1). In determining the market value of the land, the price which a willing vendor might reasonably expect to obtain from a willing purchaser would form the basis. For ascertaining the market rate, the Court can rely upon such transactions which would offer a reasonable basis to fix the price. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. [475E-G]

Periya & Pareekanni Rubbers Lief. v. State of Kerala, [1990] Supp. 1 SCR 362, referred to.

1.2 In the instant case, admittedly, the claimant purchased land at Rs.0.42 p. and in a span of one year and four months, sold at Rs.5 per sq yard. When the claimants themselves sold as a willing seller of an acre of land @ Rs.5 per sq. yard, if a large extent of five acres and odd under acquisition is offered to be sold as a block, it would not fetch higher rate but surely be negotiated for a lesser rate, if not the same market value of Rs.5 due to time lag of nine months. May be the payment of Rs. 10 per sq yard to the owner of another land acquired in 1961 was a windfall. Taking the totality of the facts and circumstances, the High Court committed grave error in completely ignoring the sale transactions of the lands under acquisition. In view of the time lag, the prevailing market value of the land as on the date of the notification would be Rs.6 per sq. yard. [476B, E-G]

1.3 In Building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve lay out for building colonies. Therefore, based upon the situation of the land and the need for development, the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections, deduction of 1/4 may be justified. [477G-H, 478A]

Spl. Tehsildar, Vishakapatnam v. Rednam Dharma Rao & Ors., CA No. 4187 of 1982 decided on July 17, 1990; Tribeni Devi & Ors. v. Collector of Ranchi, [1972] 3 SCR 208 at 213; Smt. Kaushalya Devi Bogre & Ors. etc. v. The Land Acquisition Officer, Aurangabad, [1984] 2 SCR 900; Vijay Kumar Motilal v. State of Maharashtra, [1981] 2 SCC 719; Vijay-singh Liladhar v. Special Land Acquisition Officer, [1983] 3 SCC 474

760; Spl. Land Acquisition Officer, Bangalore v.T. Adinarayan Setty, [1959] Sppl. 1 SCR 404 and The Tehsildar, Land Acquisition, Vishakapatnam v.P. Narasing Rao & Ors., [1985] 1 APLJ. 99, relied on.

1.4 In the instant case, 1/3 of the market value should be deducted for development of the lands. [478B]

1.5 The market value is determined at Rs.6 per sq. yard and after deducting 1/3 for development of lands, it would be Rs.4 per sq. yard. [478C]

2. It is settled law that when wrong application of a principle has been made or important points affecting valuation have been overlooked or misapplied by the High Court or Reference Court, this Court would, under Article 136 of the Constitution, correct the same.

The Spl. Land Acquisition Officer, Bangalore v.T. Adinarayan Setty, [1959] Suppl. 1 SCR 404; Dattatrayaya Shankarb-

hat Ambalgi and Ors. v. The Collector of Sholapur and Anr., AIR (1970) SC 850 [1971] 3 SCC 43; The Dollar Co. Madras v. Collector of Madras, [1975] Suppl. SCC 403 and Padma Uppal etc. v. State of Punjab & Ors., [1977] 1 SCR 329, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1351 of 1976.

From the Judgment and Order dated 24.11. 1975 of the Andhra Pradesh High Court in A.S. No. 691 of 1972.

T.V.S.N. Chari for the Appellant.

A. Subba Rao and A.D.N. Rao for the Respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. This appeal by special leave arises against the Division Bench judgment dated November 24, 1975 in A.S. No. 691 of 1972 of the A.P. High Court fixing the market value @ Rs. 10 per square yard. The facts lie in a short compass are stated thereunder. By notification under section 4(1) of the Land Acquisition Act 1894 (in short 'the Act') was published in the State Gazette on November 21, 1963 to acquire 5 acres-589-1/3 sq. yards in T.S. No. 981, Block No. 34 of Waitair Ward, Vishakapatnam for a housing scheme. The Collector

awarded at Rs. 1.58 per sq. yard and on reference, the Civil Court enhanced the compensation to Rs. 10 per sq. yard with solatium at 15 per cent and interest at 4 per cent. The respondent claimed @ Rs. 12 per sq. yard. On appeal and cross appeals the High Court confirmed the award and dismissed the appeal as well as cross objections for enhancement to Rs. 12 per sq. yard. Two contentions have been raised by Shri Narsimahachari, the learned counsel for the appellant. Under Ex. B. 6 dated August 3, 1961; under Ex. B-7 dated Sept. 5, 1961 and Ex. B-8, dated Sept. 8, 1961 the respondent purchased one acre-1936 sq. yards in each documents in the same T.S. No. 981 @ -0.42 p. per sq. yard. He sold on January 24, 1963 in an extent of one acre under Ex. B. 10 @ Rs.5 per sq. yard. Therefore, the aforesaid sale deeds, Ex. B. 6, B. 7, B. 8 and B. 10 will reflect the prevailing market value of the land in question. The Trial Court and the High Court committed grievous error in placing reliance on a decision of the High Court in A.S. No. 191 of 1967 dated November 11, 1970 awarding @ Rs. 10 per sq. yard in respect of 6,209 sq. yards in T.S. No. 1008, Block No. 39, Waitair Beach Road which was acquired under a notification dated March 19, 1961 for the purpose of Caltex Oil Refinery. The price fixed therein does not reflect the correct market value while the bona fide sale deed of purchase and sale by the respondents relating to the acquired land are available on records and form correct basis. The courts below committed grave error of law in completely excluding those sale transactions and relying upon that judgment. We find force in the contention, though Shri Subba Rao, learned counsel for the respondent vehemently resisted, it. It is settled law by catena of decisions that the market value postulated in s. 23(1) of the Act designed to award just and fair compensation for the lands acquired. The word "market value" would postulate price of the land prevailing on the date of the publication of the notification under section 4(1). This Court repeatedly laid the acid test that in determining the market value of the land, the price which a willing vendor might reasonably expect to obtain from a willing purchaser would form the basis to fix the market

value. For ascertaining the market rate, the Court can rely upon such transactions which would offer a reasonable basis to fix the price. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. It is not necessary to cite all the decisions suffice to state that in a recent judgment in Periya & Pareekanni Rubbers Ltd. v. State of Kerala, [1990] Supp. 1 SCR

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362 a bench of this Court, to which one of us K.R.S., J., was a member surveyed all the relevant precedents touching the points. In the light of the settled legal position let us consider whether the High Court and the Civil Court are justified in excluding the sale deeds completely and to place reliance on another judgment of the Division Bench of the High Court of A.P. Admittedly, the claimant is a vendee in Ex. B. 6 to B. 8 @ -0.42 paise. In a span of one year and four months, they sold @ Rs.5 per sq. yard; It is common knowledge that proposal for acquisition would be known to everyone in the neighbourhood, in particular, to the owners of the property and it is not uncommon that sale transactions would be brought into existence before the publication of s. 4(1) notification so as to form the basis to lay higher claim for compensation. We do assume that Ex. B. 10 is a genuine and bona fide sale transaction. In respect of one acre of the land in the self-same land when sold at Rs.5 per sq. yard, would it fetch in a short period of nine months, double the market value, namely. @ Rs. 10 per sq. yard. We have no doubt that it would not get that price for 5 acres and odd area. It is undoubted that in respect of a notification of 1961 in which another T.S. number in the locality, namely, T.S. No. 1008, ultimately, the High Court awarded @ Rs. 10 per sq. yard. Perhaps had there been no bona fide or genuine sale transaction relating to the self-same land, the reliance placed on that judgment may be justified but exclusion of bona fide and genuine sale transactions in respect of the same land under acquisition and to place reliance on the award of some other land is obviously illegal. When the claimants themselves sold as a willing seller of an acre of land @ Rs.5 per sq. yard large extent of five acres and odd under acquisition, if it is offered to be sold as a block, it would not fetch higher rate but surely be negotiated for a lesser rate if not the same market value @ Rs.5 due to time lag of nine months. No attempt was made by the respondent to explain under what circumstances they came to sell their lands @ Rs.5 per sq. yard when they expect higher value @ Rs. 10 per sq. yard. May be the payment of Rs. 10 per sq. yard, be wind fall to the owner of the land in T.S. No. 1008 Taking the totality of the facts and circumstance, we hold that the High Court committed grave error to completely ignore the sale transactions of the lands under acquisition. In view of the time lag we have no hesitation to conclude that the prevailing market value of the land as on the date of the notification would be Rs.6 per sq. yard.

It is next contended by Shri Narsimahachari that when a large extent of land was acquired for a housing scheme, at least 1/3 of the land should be deducted towards laying the roads, setting up parks,

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drainage and other amenities. The High Court committed

manifest error in omitting to deduct 1/3 of the land.

Shri Subba Rao, the learned counsel for the respondent contended that the High Court had noted this contention of the appellant and considered that the market value of the land would be Rs. 12 per sq. yard and after giving the deduction of 1/3 it would come to Rs. 10. The reasoning of the High Court is proper and warrants no interference. In support thereof he placed reliance in Spl. Tehsildar, Vishakapatnam v. Rednam Dharma Rao & Ors., C.A. No 4187 of 1982, dated July 17, 1990 wherein this Court had upheld the deduction of 1/5 from the market value towards developmental charges. It is settled law that the High Court and the Reference court when made wrong application of a principle or important points effecting valuation has been over looked or misapplied, this Court would under Art. 136 correct the same, vide The Spl. Land Acquisition Officer, Bangalore v. T. Adinarayan Setty, [1959] Suppl. 1 S.C.R. 404; Dattatrayaya Shankarhat Ambalgi and Ors. v. The Collector of Sholapur and Anr., AIR 1970 SC 850-'[1971] 3 S.C.C. 431; The Dollar Co., Madras v. Collector of Madras, [1975] Supp. SCC 403 and Padma Uppal Etc. v. State of Punjab & Ors., [1977] 1 SCR 329.

In Tribeni Devi & Ors. v. Collector of Ranchi, [1972] 3 S.C.R. 208 at 2 13, this Court held that "in order to develop that area at least the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities". On this basis the value of the land at Rs.2,08,135.70 per acre would, after the deduction of 1/3 come to Rs. 1,38,757 per acre. In Smt. Kaushalya Devi Bogre & Ors. etc. v. The Land Acquisition Officer, Aurangabad, [1984] 2 S.C.R. 900 this Court held that deduction of 1/3 was held to be reasonable. In Vijay Kumar Motilal v. State of Maharashtra, [1981] 2 SCC 7 19 1/3rd was deducted towards developmental charges in undeveloped area. In Vijaysingh Liladhar v. Special Land Acquisition Officer, [1988] 3 SCC 760 the deduction of 1/4th by the High Court which was not challenged in this court was upheld. In Spl. Land Acquisition Officer, Bangalore v. T. Adinarayan Setty, supra, deduction of 25 per cent was held to be reasonable. It is to be noted that in building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve lay out for building colonies. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the

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rural areas housing schemes relating to weaker sections deduction 1/4 may be justified. On that basis, this court in R. Dharma Rao's case upheld deduction of 1/5 because the owner while obtaining the lay out had already set apart lands for road and drainage. Therefore, deduction of 1/3 would be reasonable. In fact in The Tehsildar, Land Acquisition, Vishakapatnam v. P. Narasing Rao & Ors., [1985] 1 A.P.L.J. 99, a Division Bench of the High Court surveyed judgments of the High Court relating to housing schemes of Vishakapatnam upholding deduction of 1/3 to be reasonable. Accordingly we hold that 1/3 of the market value should be deducted for development of the lands. The High Court committed greivous error in giving a curious reasoning of valuing at Rs. 12 and upholding Rs. 10 to be the market value after deduction, though the market value was determined at Rs. 10. Accordingly the appeal is allowed. The market value is determined at Rs.6 per sq. yard and after

deducting 1/3 the market value is Rs.4 per sq. yard. The respondents are entitled to 15 per cent Solatium on market value and 4 per cent interest thereon from the date of dispossession. But in the circumstances parties are directed to pay and receive their own costs.

N.P.V.
allowed.

Appeal al-

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JUDIS