

PETITIONER:

THE PRESIDENT, A.P.M.C. TALUKA DARWHA, DISTRICT YAVATMAL, MAH

Vs.

RESPONDENT:

MANIKANT & ORS

DATE OF JUDGMENT: 11/10/1996

BENCH:

K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

Leave granted.

Heard learned counsel on both sides.

Notification under Section 4 [1] of the Land Acquisition act 1894 [for short, the "Act"] was published initially on January 8, 1970 acquiring an extent of nearly 3 acres and odd of land; part of the same was withdrawn by notification under Section 48 [I]. Subsequently, another notification was issued on September 6, 1993 acquiring a part of the land which was withdrawn by notification under Section 48 [1]. Ultimately, the land acquired now remains is 3 acres 33 gunthas. The Land, Acquisition Officer determined the market value @ Re.0.36 per sq. foot. On reference, the Civil Judge enhanced the market value to Re.1/- per sq. foot. The appellants have not carried the matter in appeal to the High Court against the market value enhanced by the reference Court. On further appeal by the claimants, the High Court enhanced the compensation to Rs.1.30 per sq. foot for the land covered under the second notification by impugned judgment dated July 30/31, 1992 made in Appeal No.241/88, Thus this appeal by special leave.

The Land Acquisition Officer in his award has described the topography and potentiality of the land thus:

"The land under acquisition falls within the municipal limit of Digras. Digras is a pressures [sic] and commercial town. Previously it was a renowned cotton market. This land falls on Digras-Manora District Major road. It is also adjoining to Darwaha-Pusad road, The market yard, godown and offices of A.P.M.C. Digras, are just adjoining to the Abadi of the town. A new locality of Shastri Nagar is on the Western side of this land. Now constructions of the buildings are in progress in the vicinity of this land. This is

a plan and table land. The Ginning Factory of Digras cooperative Society is also adjoining to this land. The existing cotton market is just adjoining to this land. The shade of the Grain market is also adjoining to this land. The construction of residential houses of D.Y.K. S. Cooperative Society are also constructed on eastern side of this land. Since the plot No. sheet no. is given in Nazul record to this land it was already converted into non Agricultural purposes. So this land had non-agricultural potentiality in view of the above description."

That was affirmed by the reference Court. The claimants relied upon the sale deeds, Exs. 43, 40 and 61. Ex. 43, sale deed executed on January 8, 1970 relates to 4 acres of land sold at the rate of Rs. 4000/- per acre. It was on the same date of publication of the notification. Ex. 40 relates to sale transaction of 1 acre of land dated December 6, 1970, one year thereafter sold for Rs. 15,000/-. Ex. 61 is dated August 27, 1971 under which 3 acres gunthas of land was sold for Rs. 61,501/- which worked out to the rate of Rs. 16,000/- and odd per acre. Therefore, the courts below were not justified in enhancing the compensation @ Re. 1/- Per sq. foot and Rs. 1.30 and Rs. 1.70 sq. foot as determined therein.

It is now well settled legal position that when a large extent of land was acquired for established of market yard, no willing purchaser would be prepared to purchase the land on square foot basis. Therefore, the very principle on which the courts below had proceeded to determine the compensation is vitiated by obvious error of law. However, the appellants did not challenge the award of the reference Court which had become final as against them. Therefore, any inference even by this Court would not be beyond what was determined by the reference Court though done wrongly on the square foot basis. The High Court, therefore, was in error in enhancing the compensation to Rs. 1.30 per square foot in relation to the First notification and Rs. 1.70 per square foot in relation to the second notification.

The appeal is accordingly allowed and the judgment and decree of the High Court stand set aside and that of the reference Court stands restored as having attained finality. No costs.