PETITIONER:
V.G. KULKARNI

Vs.

RESPONDENT:
THE SPL. LAND ACQUISITION OFFICER

DATE OF JUDGMENT: 15/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
NANAVATI G.T. (J)

CITATION:
JT 1996 (4) 220 1996 SCALE (3)297

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Notification under Section 4(1) of the Land Acquisition Act, 1894 [for short, the 'Act'] acquiring 20 acres and 4 gunthas of land for industrial development, was published on January 21, 1982. The Land Acquisition Officer determined compensation at the rate of Rs.8000/- per acre. On reference the Civil Court enhanced the compensation to Rs.8.97 per sq. ft. which worked out to Rs.3,90,000/- per acre. On appeal, the High Court reduced the compensation to Rs.67,200/per acre. Thus, this appeal by special leave.

Shri Javali, learned senior counsel for the appellant contended that the High Court, having noticed that the lands are possessed of immense potentiality for non-agricultural use and that Dharwad City has been developing towards the land under acquisition, committed grievous error of law in reducing the compensation. He also referred to another judgment of the High Court wherein the High Court had held that 10% escalation in price is to be given for each year. In this case, even accepting the view of the High Court that Rs.67,200/- would be the market value, due to time lag of about 10 months from previous notification, the appellant is entitled to 10% more compensation.

The question, therefore, is: whether the High Court has committed any error of law or applied wrong principle of law in determining the compensation? The High Court in para 37 found that the sale deeds Exs.P-2 to P-7 being of the year 1985, i.e., 3-1/2 years after the notification published under Section 4(1), were not comparable sales Moreover. those sale deeds related to small corner plots in a developed area. Therefore, they do not offer any comparable sales. The High Court also found that though the lands are situated towards the University area which is developing, actual development would take some more years. There is no evidence of actual development taking place near the land in question. Under those circumstances, in the absence of any comparable sale instances, the High Court relied upon

determination of the market price at Rs.56,000/- per acre in respect of nearby lands which were the subject-matter of MFA Nos.678 to 681 of 1989 and which were also disposed of by the High Court on that day, viz., September 25, 1992 and added the notification 20% this case is of January 1982. Thus the High Court determined the compensation in this case at the rate of Rs.67,200/- per acre. It can be seen from the evidence on record that as on the date of the notification the acquired lands did not possess building potentiality. In view of the evidence on record that it would have taken 3 to 4 years for actual development of area, the finding recorded by the Reference Court that the lands possessed building potentiality was not correct. It appears that the learned District Judge did not correctly appreciate the legal position. Therefore, determination of the compensation by the Reference Court on the basis that the lands had already acquired building potentiality was not at all proper. No willing purchaser would have purchased the land at the rate of Rs.3,90,000/- per acre., The acid test of the court sitting in the arm chair of a willing prudent purchaser in open market is whether the would be prepared to purchase the land at the rate about to be determined by the court. The sale deeds, Exs.P-2 and P-3 relied upon by the claimants were not comparable sales as found by the High Court. The lands were sold in plots near the acquired lands only in 1985, only after Further development had taken place in that area. Therefore, those two instances of sale could not have afforded a reasonable basis for determination of compensation. The High Court, therefore, has not committed any error of law in rejecting those sale instances.

Further contention of the learned counsel for the appellant that since the judgment in the above referred cases [MFA Nos 678 to 681 of 1989] has not been made a part of the record of this case, the High Court could not have taken note of the compensation determined at the rate of Rs.56,000/- per acre in those cases. Though legally, the learned counsel is right, he overlooks the fact that the High Court has done it to do justice to the appellant instead of throwing its hands up in despair in the absence of evidence justifying giving of higher compensation instead of what was awarded by the Land Acquisition Officer. It has held that though the claimants have failed to establish on the basis of evidence led tn the case that the compensation awarded by the Land Acquisition Officer deserved to be enhanced, it can take notice of the market value determined in comparable cases disposed of on that day. If at all any complaint could be made in this behalf, it would be by the State and not by the appellant. With regard to escalation of market price of lands every year it has to be stated that the principle of taking judicial notice cannot be extended to such a matter also. Each case has to be considered on its own facts. The claimants would be required to establish by adducing evidence that there was gradual rise in price due to development and constant demand for land in the neighborhood. Therefore, the approach adopted by the High Court cannot be said to be vitiated by any error of law. The High Court has in fact extended the benefit of escalation in price to the claimants, by increasing the market value determined at Rs.56,000/- per acre in the aforesaid case by 20%.

For all these reasons, we hold that the High Court has not committed any illegality in determining the compensation at Rs.67,200/- per acre and holding that further increase in the market price by the reference Court was not justified.

The appeal is dismissed with costs.