

(2004) 03 KAR CK 0025

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5479 of 2002

H.V. Krishna Rao

APPELLANT

Vs

The Assistant Commissioner and Land Acquisition Officer,
Shimoga Sub-Division

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 25, 4 (1), 54

Citation : (2004) 7 KarLJ 89 : (2004) 2 KCCR 1269

Hon'ble Judges : S.R. Nayak, J; Ram Mohan Reddy, J

Bench : Division Bench

Advocate : Narayan Associates and Lakshmi Iyengar, for the Appellant; K.P. Asokumar, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The appellant herein is the owner of Site Nos. 171 and 181 totally admeasuring 14763 sq. ft. situated in Hosahalli village of Shimoga Taluk. The appellant being aggrieved by the compensation awarded by the Civil Court, has preferred this appeal u/s 54 of the Land Acquisition Act, 1894 (for short, "the Act"), calling in question the correctness and validity of the judgment and award dated 28-2-2002 passed in L.A.C. No. 49 of 1999 as amended on 18-4-2002 in L.A. Misc. No. 33 of 2002 on the file of the Court of the Principal Civil Judge (Senior Division) and CJM, Shimoga (for short, "the Civil Court").

2. The facts of the case in brief are as follows.--

The Special Deputy Commissioner, Shimoga, under the provisions of the Karnataka Land Reforms Act, conferred occupancy rights of the acquired land on the appellant by his order dated 28-12-1978. Thereafterwards, the said land was converted for non-agricultural use and was developed into house-sites, being Site Nos. 171 and 181 admeasuring 14763 sq. ft. of land. Possession of those sites was taken over from the appellant by the State authorities on 14-8-1979

without initiating proceedings under the Act or under any other enabling Statute. Since no compensation amount was paid to the appellant, the appellant, along with certain similarly circumstanced others, whose sites were also forcibly taken possession, filed Writ Petition Nos. 30796 to 30881 of 1995 in this Court. This Court, by its order dated 17-8-1995, allowed writ petitions and directed the Special Deputy Commissioner to issue Notification for acquisition of the lands concerned and thereafter to pass awards for compensation.

3. In pursuance of the above direction of this Court, Section 4(1) Notification was issued on 29-8-1997 and Section 6(1) declaration was promulgated on 23-2-1998. The Land Acquisition Officer (LAO), after conducting award enquiry, passed the award on 21-7-1998 fixing the market value of the land at the rate of 50 paise per sq. foot. The appellant and other owners not being satisfied with the market value fixed by the LAO, sought reference of their claims for higher compensation u/s 18 of the Act. On reference of their claims to the Civil Court, the Civil Court passed the award on 28-2-2002 fixing the market value at the rate of Rs. 6/- per sq. foot placing reliance on documents marked as Exhibits P. 1 to P. 5 and P. 7 to P. 9. Certain mistakes were crept in the cause-title of the judgment and award and, therefore, a review petition was filed by the LAO on 12-4-2002 to rectify those mistakes and that review petition was allowed by the Civil Court on 18-4-2002.

4. The appellant, being dissatisfied with the market value fixed by the Civil Court, has filed this appeal seeking compensation at the rate of Rs. 13.20 per sq. foot. It is stated that the owners of the other sites have also preferred appeals to the District Court, Shimoga, and they are pending adjudication before that Court.

5. We have heard Sri H.N. Narayan, learned Senior Counsel for the appellant and Sri Asokumar, learned Additional Government Advocate for land acquisition.

6. Sri H.N. Narayan would contend that the Civil Court, in fixing the market value at the rate of Rs. 6 per sq. foot, has completely eschewed relevant factors and evidence on record. Sri H.N. Narayan would point out that inasmuch as Exhibit P. 6, which is an endorsement issued by the Sub-Registrar, clearly shows that during the year 1997-98 the site conveyed under Ex. P. 6 which is similar in all material aspects to the acquired land in this case, fetched price at the rate of Rs. 17/- per sq. foot, the Civil Court ought to have awarded compensation at least at the rate of Rs. 13.20 per sq. foot, as claimed by the appellant. Sri H.N. Narayan would also contend that the Civil Court having noticed that even sites situated in the interior were sold at Rs. 12/- sq. foot, is not justified in fixing the market value at the rate of Rs. 6/- per sq. foot with regard to the Site Nos. 171 and 181 which about the main road. Sri H.N. Narayan would further contend that Sites Nos. 171 and 181 are situate abutting Shimoga-Mangalore National Highway and they are only 3 kms. away from the centre of Shimoga City. In other words, according to Sri H.N. Narayan, the acquired land had high non-agricultural potentiality. Sri H.N. Narayan would next contend that though the Civil Court by placing reliance on Exhibits P. 1 to P. 5 and P. 7 to P. 9 and taking average value

thereof, came to the conclusion that the value of the acquired land would be Rs. 13.20 per sq. foot, seriously erred in fixing the market value at the rate of Rs. 6/- sq. foot after deducting more than 50% from the actual value solely on the ground that the extent of the acquired land in this case is bigger in extent in comparison with the extent of lands covered under Exhibits P. 1 to P. 5 and P. 7 to P. 9. In so doing, Sri H.N. Narayan would contend that the Civil Court has completely lost sight of the fact that all the 47 sites acquired under the same Section 4(1) Notification and for the same purpose are converted and well-developed house-sites and, therefore, there was no question of deducting any percentage of the value much less 50% towards developmental charges. In conclusion, Sri H.N. Narayan would contend that though the appellant is entitled to compensation at least at the rate of Rs. 17/- per sq. foot as per Exhibit P. 6, he has restricted his claim only at the rate of Rs. 13.20 per sq. foot because he had no money to pay more Court fee and the compensation be awarded accordingly and that the State cannot have any legitimate grievance to pay compensation at that rate.

7. Sri Asokumar, learned Additional Government Advocate for land acquisition, per contra, would contend that 14,763 sq. ft. of land acquired from the appellant comprised in Site Nos. 171 and 181 if compared to the lands conveyed under Exhibits P. 1 to P. 5 and P. 7 to P. 9 is larger and, therefore, Civil Court is justified in deducting 50% of the value of the land on that count while estimating actual market value of the acquired land on the date of Section 4(1) Notification and the deduction made by the Civil Court is in accordance with the well-settled principles of law.

8. Having heard the learned Counsels for the parties, the only point that arises for our decision is whether the market value fixed by the Civil Court at the rate of Rs. 6/- per sq. foot, in the facts and circumstances of the case and evidence on record, could be considered to be just and reasonable market value of the acquired land as on the date of Section 4(1) Notification and, if not, what is just and reasonable market value of the acquired land as on that date?

9. Before dealing with the above question, we may usefully notice and principles governing valuation of the lands acquired for non-agricultural purposes. Sections 23 to 25 offer a complete code for the guidance of the Court. Sections 23 and 24 of the Act stipulate factors that need to be taken into account and those that need to be eschewed while determining compensation payable to the owners of the acquired land. Section 23 is, however, not exhaustive as it does not prohibit other factors from being considered in special cases. What is actually taboo for consideration in the process of determination of the market value is detailed in Section 24. Valuation of immovable property is not an exact science and that valuation cannot be made by merely applying algebraic formulae for it quite often abounds in uncertainties and imponderables, and, therefore, no exact reasons for the conclusions arrived at is possible in all occasions. Some room has to be allowed for conjectures and guessworks, though the Court should be

reluctant to venture too far in that direction because, there is a danger of being misled in the decision-making. The Court while determining the market value should take into consideration the evidence adduced as to the nature, situation, income and potential value of the land.

10. The Apex Court in a catena of decisions over the past four and half decades and more have evolved principles and norms for determination of compensation of the lands compulsorily acquired by the State in exercise of its eminent domain power under the Act or under any other enabling statute. One of the principles discernible from the pronouncements of the Apex Court is that while determining compensation for larger extent of land, price paid for or compensation determined by the Court for smaller parcels of land does not provide a safe and dependable base. At the same time, it is also discernible from the pronouncements of the Supreme Court that in the absence of any better evidence, even transactions involving conveyance of smaller extents of land or blocks of land which are comparable in terms of point of time and the locus would become relevant.

11. The Supreme Court in *Administrator General of West Bengal Vs. Collector, Varanasi*, , observed thus.--

"The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value, as one author put it, is the prediction of an economic event, viz., the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantage and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available".

12. This Court in *Jade Basappa Vs. Assistant Commissioner and Land Acquisition Officer*, , held:

"The approach of the Courts while dealing with the case of an agriculturist, ..., is to average and round off the figure, the acceptance always being on a little higher side rather than on the lower side. The object has not been to end up with the State paying more money, but to take note of the fact that whatever amount that the landowner seeks is a one-time compensation, the computation of which must never be grudgingly done because even a generous compensation is more than offset by the real land value in the hands of the acquirer, and that consequently the lands have always a tremendous potential both for actual financial yield and capital appreciation".

13. In *K.S. Shivadevamma Vs. Assistant Commissioner and Land Acquisition*

Officer, , a Division Bench of this Court held:

"It is clear that, if reasonably the land acquired has a potentiality for urban use, said benefit should be extended to it while awarding compensation. Lands in the outskirts of an expanding city has every tendency to become ripe for building use in course of time. Court has to make a reasonable exercise to find out the market value by reference to the existing material, unless the material on record is absolutely useless to find out the value of similar lands. If the value of comparable land, is of small size, appropriate deduction has to be made after applying the said rate, when a hypothetical building layout is imagined to work out the market value of the acquired land. A few decisions also indicate that, Court may take note of the value of land which may not be in the very locality but, situated in a nearby locality, provided, it is comparable to the acquired land with regard to the potentiality. If the available market rate is of some recent past, appropriate escalation rate may be applied to estimate the rate as on the date of the preliminary notification. No doubt, the entire exercise by the Court would be indirectly guided by the Court's own judicial sense as to what would have been a reasonable value for the land in question, at the relevant point of time".

14. This Court in Allisab (by his LRs) Vs. The Assistant Commissioner and LAO, , dealing with factors to be considered in determining the compensation and onus of fixing fair compensation observed thus.--

"It is the onus of the State acting through the Land Acquisition Officer to fix the fair compensation in the first instance. Though the law assumes that the L.A.O. will act correctly, the law also makes provision for revision of the figure awarded, by the Court, and experience has shown that in almost every case, the Courts had even required to intervene by stepping up the compensation. It is true that if the original awarded amount is disputed that the onus lies on the claimant and that on such basic issues as the question as to how much grain or other agricultural produce a particular piece of land yielded in a particular year is concerned, that it is the landowner who is the best person to testify. If one were to take note of the fact that for purposes of obtaining some more money that there would be a natural tendency to exaggerate, a Court will go by the prevailing standards and figures and as far as these are concerned, if independent evidence is not forthcoming then some reliance of a considerable degree will have to be placed on the figures which the State comes out with".

15. A Division Bench of this Court speaking through one of us (S.R. Nayak, J.,) in the case of Additional Special Land Acquisition Officer, Upper Krishna Project, Almatti v. Chandrashekar Sidramappa Heralagi and Ors., M.F.A. No. 1409 of 2003, DD 14-8-2003 (DB), held thus:

"It needs to be noticed that whether deduction should be made towards development charges or not is a question of fact and answer to that question depends upon facts and circumstances of each case and that no general or

universal rule or formula to answer the question whether deduction towards development charges should be made at all, and if deduction has to be made in a case, at what percentage such deduction should be made, can be laid down so as to make it applicable to each and every case. There is no hard and fast rule that 60% of the value of a land should be deducted towards development charges when such land is acquired for housing purpose regardless of the location, current use and potentiality of the land and development already made, if any".

16. In the same judgment, the Court further observed:

"The State should be fair and reasonable in compensating the uprooted agriculturists and it shall not be permitted to make unlawful gain while exercise eminent domain power under the Act or any other statute".

17. Having noticed the relevant case-law governing the fixation of market value of the lands acquired, let us proceed to fix the market value of Site Nos. 171 and 181. The market value postulated in Section 23(1) of the Act is designed to award just and fair compensation for the lands acquired. The words "market value" would postulate price of the land prevailing as on the date of the publication of the Notification u/s 4(1) of the Act. The acid test for determining the market value of a land acquired is what is the price which a willing vendor might reasonably expect to obtain from a willing purchaser of that land, and that price would form the basis to fix the market value. The Court, for ascertaining the market rate, can rely upon such transactions which would offer a reasonable base 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. What is fair and just or reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. The market value of the land acquired should be fixed not only by reference to the use to which it was put on the date of publication of Section 4(1) notification, but also by reference to the uses to which it is reasonably capable of being put in the future. All its existing advantages and its potential possibilities when laid out in its most advantageous manner, should be taken into account while fixing the market value. The Court can also take into account any special circumstances, apart from the methods of valuation traditionally adopted, in order to arrive, as nearly as may be, at an estimate of the market value.

18. We can take judicial notice of the fact that in some situations, the assessment of the market value depends mainly on evaluation of many imponderables and uncertainties and may involve to some extent a matter of guesswork. The Court's attempt should always be to adequately and reasonably to compensate the loss sustained by a person as a consequence of compulsory acquisition of his property by the State by invoking its eminent domain power. No

man can be deprived of his land except on payment of compensation and the person who is deprived of his land is entitled to be compensated to the full value of the deprivation caused. The Court should also remember that it awards compensation cumulatively under all possible heads only once for deprivation of the land and injurious affection and there is no scope for an afterthought in the matter of claims to compensation. Therefore, failure of the Court to award just and fair compensation results in perpetual injustice to the person deprived of his land.

19. The Parliament itself, to avoid injustice to the persons whose lands are acquired, in Section 24 of the Act, has enacted factors which should go into the decision making while determining the market value and fixation of compensation. The Court, therefore, should be alive to the factors mentioned in Section 24 of the Act and keep them at the back of the mind. Further, the Court, in assessing the market value, should balance plus factors such as smallness of area of the land acquired, proximity to road, frontage on road, vis-a-vis land acquired etc., as well as minus factors such as largeness of area, situation in the interior at a distance from the road, remoteness from development locality and any other disadvantageous factor which would deter a purchaser and then evaluate all those relevant plus and minus factors in terms of price variation as a prudent purchaser would do.

20. The Civil Court, while assessing the actual market value of site Nos. 171 and 181 admeasuring 14763 sq. ft., which is the subject-matter of this appeal, has taken the average value of the lands conveyed under Exhibits P. 1 to P. 5 and P. 7 to P. 9, and has held that the market value of the acquired land on the date of Section 4(1) Notification would be Rs. 13.20 per sq. foot. It is neither the contention of Sri H.N. Narayan nor the contention of learned Additional Government Advocate that the method adopted by the Civil Court in placing reliance on Exhibits P. 1 to P. 5 and P. 7 to P. 9 is erroneous or illegal. The controversy between the parties centers around the question whether the Civil Court is justified in deducting 50% of the price of the land while assessing the actual market value of the acquired land. As many as 47 well-developed house-sites have been acquired for the same public purpose under the same Section 4(1) Notification. All the sites are carved out from the same block of land situated in Hosahalli village. All the 47 sites are carved out after conversion of the agricultural land for non-agricultural purposes and developing into house-sites. If that is so, we fail to understand how the State could justify any deduction much less at the rate of 50% from the price of the acquired land while fixing the market value of the acquired land solely on the ground that all the sites acquired are not of the same dimension. There is no dispute between the parties that the land conveyed under Exhibits P. 1 to P. 5 and P. 7 to P. 9 on which reliance is placed and the land acquired in this case are proximate in terms of time, place and potentiality and in every other material aspect. In that view of the matter, the contention raised by the learned Government Advocate is not acceptable to us. It also needs to be noticed that even the LAO while fixing the

market value, after award enquiry, considered all 47 sites as similar and of equal value and potentiality and, accordingly, fixed the market value at the rate of 50 paise per sq. foot for all sites. Therefore, it should not lie in the mouth of the Government now to contend that all the 47 sites acquired for the same public purpose under the same Section 4(1) Notification cannot be treated as similar and they should be treated differently for estimating market value.

21. The contention of the learned Government Advocate is also untenable in the light of the judgment of the Apex Court in the case of *Parvati Rani Sahoo v. Bishnu Sahoo*, (2002) 10 SCC 510. In that case also, on behalf of the appellant (LAO), it was contended that the land which was transferred under Exhibit A. 4 on which reliance was placed for the purpose of fixing the market value was only 5 guntas of land, whereas the acquired land was 14 acres 32 guntas and, therefore, necessary deduction should have been made while fixing the market value. This contention was countered by the landlords of the acquired land by contending that the acquired land admeasuring 14 acres 32 guntas of land did not belong to one or two individuals and that extent belonged to as many as 26 persons and most of them are owners of less than 20 guntas of land and therefore, there was no question of applying the principle of reducing the price on the basis of sale transaction for a small piece of land. The Supreme Court, while accepting the above contention of the landowners and rejecting the contention of the LAO, in para 8 of the judgment, held thus:

"It is true that normally while fixing the market value of the land under acquisition, when the sale instances are for small piece of land then appropriate reduction is required to be made while fixing the market price of land under acquisition. However, in the present case, the land which is acquired is out of the same survey number. Various sale-deeds produced on record reflect the increase in price of the portions of land of the same survey number. Other evidence on record indicates that in the village there is increase in market price of land during the relevant years. Therefore, considering the increasing trend of the market price and the fact that small pieces of land owned by different persons are acquired, this would not be a fit case for reducing the amount on the ground that relevant sale-deed is for a small piece of land".

22. The above ratio squarely applies to the facts of this case also. In this case, under the same Section 4(1) Notification and for the same public purpose, as many as 47 well-developed house-sites are acquired of which 3 sites admeasure between 100-2000 sq. ft., 31 sites between 2000-3000 sq. ft., 4 sites between 3000-4000 sq. ft., 7 sites between 4000-4500 sq. ft. and 2 sites above 5000 sq. ft. Site No. 171 and Site No. 181 acquired from the appellant herein fall within the second and last category respectively. All sites are carved out of the converted land. Since all sites are well-developed house-sites and had tremendous potentiality for commercial and industrial purposes, spending any money by the acquiring authority towards developmental charges would not arise. The lands conveyed under sale deeds, Exhibits P. 1 to P. 5 and P. 7 to P. 9

and the acquired land in this case are comparable in terms of proximity of time and place. Therefore, the principle that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties, has no application for the facts of this case. The principle that evidence of market value of sales of small developed plots is not a safe guide and dependable base in valuing large extents of land has to be understood in its proper perspective and having due regard to established facts in individual cases which facts are relevant and have bearing on the decision-making. The Court should not apply that principle mechanically or as a ritualistic rule without appreciating facts of individual cases. It is not as if the above rule does not admit of any exception. It does. For example, in a case, if it is shown that a large house-site to be valued does admit of and is ripe for immediate use for building purposes; that building that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical layout could with justification be adopted, then in valuing such big house-site, the valuation indicated by sale of comparable small sites in the area at or about the time of Section 4(1) Notification would be relevant provided it does not involve expenses of development of the site acquired 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 etc. In this case, such expenses are not necessary though the acquired sites are larger than the sites conveyed under Exhibits P. 1 to P. 5 and P. 7 to P. 9 and, therefore, deduction of any part from the price would not arise while assessing the market value of site Nos. 171 and 181. Since, the average market value adopted by the Civil Court placing reliance on Exhibits P. 1 to P. 5 and P. 7 to P. 9 is not contested either by the appellant or by the respondent and for the reasons stated by us supra, it is trite that the appellant is entitled to compensation at least at the rate of Rs. 13.20 per sq. foot.

23. In the result and for the foregoing reasons, we allow the appeal with costs and fix the market value of 14763 sq. ft. of land comprised in Site Nos. 171 and 181 of the appellant at the rate of Rs. 13.20 per sq. foot. The impugned award shall stand modified accordingly. We also declare that the appellant is entitled to all other statutory benefits under the Act on the basis of the market value fixed by us.

Advocate's fee is fixed at Rs. 2,000/-.