
(1986) 07 KAR CK 0042

In the Karnataka High Court

Case No : M.F.A. No's. 1178 and 1548 of 1985

Land Acquisition Officer

APPELLANT

Vs

Chandrasekhar Reddy

RESPONDENT

Date of Decision : 01-07-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 24, 4 (1)

Citation : (1986) ILR (Kar) 2827

Hon'ble Judges : Venkatachaliah, J;Rajasekhara Murthy, J

Bench : Division Bench

Judgement

Venkatachaliah, J.—M.F.A. 1178/85 is by the L.A.O. Lingasugur and M.F.A. 1548/85 is by the Karnataka State Road Transport Corporation ("KSRTC" for short), and both arise out and are directed against the Award and Decree dated 15-12-1984 made in LAC 53/82 on the file of the Court of the District Judge, Raichur, enhancing in proceedings and reference u/s 18 of Land Acquisition Act, compensation in respect of 3 acres and 33 1/3 guntas of land in S. No. 770A situate in Sindhnoor town in Raichur District, acquired for purposes of construction of a Bus-Station for the "KSRTC" pursuant to the preliminary notification published in the Gazette dated 10-3-1977.

2. The LAO in his Award, (Ext. D-4), determined the market-value of the acquired land at 30Ps. per Sq. ft. and awarded compensation accordingly. The Court-below has fixed the market-value at Re. 1-50Ps. or Rs. 65,340/- per acre.

The claimant--land - owner has filed cross-objections seeking further enhancement of the compensation to Rs. 3/-per. Sq. ft. or Rs. 1,30,680/- per acre.

3. Originally, the claimant owned an extent of 5 acres in the said Survey No. 770A. The acquired land is situate in and forms part of Sindagi town. It is on the Sindagi-Kushtagi road and had potentiality for building purposes Even earlier Government had proposed to acquire this land for the said purpose of the

"KSRTC" and had published a preliminary notification in the year 1967. The land-owner challenged this notification in a Writ Petition which culminated in the order dated 9-8-1981 quashing the preliminary notification. It was only on 10-3-1977 that a fresh preliminary notification u/s 4(1) was published again.

In the meanwhile, the land-owner got the land--which was then an agricultural land--converted into non-agricultural use and is stated to have laid-out the land into building-lots and even sold some 18 sites at prices ranging from Rs. 2-50Ps. to Rs. 2.67Ps.per Sq.ft. Exts. P1 to P10 are some of the sale deeds respecting the sites. The evidence of market value afforded by these sales, is, however, assailed by the appellants on the ground that they were not bonafide transactions of sale, but merely sham and collusive transactions engineered by the land-owner himself to create artificial evidence of a higher market-value having had knowledge of the imminent fresh acquisition. We will advert to this aspect at an appropriate stage later.

In the fresh proceedings for acquisition so initiated the land-owner claimed compensation at the rate of Rs. 6/- per Sq. ft. This claim was rejected by the LAO, who fixed the market-value at 0-30ps. per Sq ft. The land-owner not having accepted the offer, sought a reference to a Civil Court, in proceedings pursuant to which the Court-below enhanced the compensation to Rs. 1-50 per square foot.

4. In the Court-below, the land-owner relied upon, what according to him, were bonafide transactions of sale evidencing market value of the acquired land. Exts.P1 to P10 were, as stated earlier, transactions of sale respecting the sites laid out in the very land. In addition, the land-owner relied upon two other transactions of sale of what, according to him, were comparable pieces of property with similar potentialities.

Ext. P13 was a sale-deed dated 6-2-1976 whereunder a plot of land measuring 35" x 90" stated to be situate at a distance of 25 yards from the acquired land, had been sold for a price of Rs. 11000/-. This worked out to Rs. 3-50 per square foot. The seller, P.W. 2, was examined. Ex. P. 14 was a sale-deed, dated 18-7-75 of a plot measuring 16" x 30 said to be situate within about 40 to 45 ft. from the acquired land, for a price of Rs. 3,000/-. This works out to Rs. 6-25ps. per Sq. ft.

5. The Court-below did not accept Ex.P. 1 to P. 10 as reflecting the true market-value. It also held that the land concerned in Ext.P-14, was not a comparable piece of property and could not afford any evidence of market-value of the acquired land. So far as Ext.P-13 was concerned, the Court-below was of the view that though the property concerned was a comparable piece of property, the plots that might be laid-out in the acquired land might not fetch uniformly a price at the same rate of Rs. 3.50 per sq. ft. The Court-below considered it appropriate to treat the retail-price of land at an average price of Rs. 3.00 per sq. ft. as against Rs. 3-50 per sq.ft. indicated by Exhibit P-13 and, adopting half of that as the market-value of the land-wholesale, fixed the market value of the acquired-

land at Rs. 1.50 per sq. ft.

6. We have heard Sri K. Shivashankar Bhat, learned Senior Standing Counsel for the K.S.R.T.C., in M.F.A. 1548/85; Sri R.P. Hiremath, learned Government Advocate for the appellant in M.F.A 1178/85 and Sri Gurushanthappa, learned Counsel for the claimant/cross-objector. On the contentions urged at the hearing the following point falls for determination in this appeal :

"Whether the determination of the market-value of the acquired land at Rs. 1. 50 per sq. ft. (or Rs. 65,340/- per acre) is supportable on the evidence on record or whether it calls for upward or downward revision ?"

7. The acquired-land is situate in a mofussil town in Raichur District. The land is converted into non-agricultural use. It is situate within the town limits and had potentialities for building-purposes. Indeed, the Land Acquisition Officer himself stated in his evidence that its location was the "second-best" in Sindhanur town. In determining the market-value of the land, with potentiality for building purposes, the land must be valued not only with reference to its present use but also with reference to the use to which it could be put in the immediate, or in the reasonably near, future. There is some evidence indicating a general trend towards growth and development of the area in which the land is situate; but there is, however, no clear or clinching evidence as to the degree of the potentiality or the rate of growth. Though it is true that potentialities of the land and not merely its realised potentialities should be taken into consideration, it is equally true that while evaluating the potentialities of a land for a better use in the immediate or in the reasonably near future, provision should also be made for the possibility that such potentialities as the property possesses might not be realised at all or not realised for quite a considerable time in the future. The existence of the potentiality is one thing; the degree of probability that the land may not be needed for the potential purpose for quite a long time in the future is another.

Market-value in this context is said to be the price that a willing -- but not too anxious -- a purchaser is prepared to pay and which a willing seller is prepared to accept, for the property. The assessment of the market-value, in the ultimate analysis, is the predication of the incidents and the result of an economic-event expressed in terms of all probabilities. This inevitable element of conjecture involved in the exercise is pointed out by the Supreme Court, *Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others*,

"3 We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess, but the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily be to same extent a matter of conjecture or guess "

8. The first objection to the determination of market-value as made by the Court-

below raised by Sri Shivashankar Bhat is that the Court-below should not have placed reliance on the evidence of market-value in Ex. P. 13, as it had become quite well-known that the KSRTC was keen on the acquisition of this land and that a preliminary notification in that behalf had been published in the year 1967 itself. He submitted that though that notification came to be quashed by the High Court, it was well known that the acquisition had not been given-up. The Counsel says that if this expectation and knowledge of the acquisition had had the effect of putting-up the market-value, any resultant appreciation of the value should be excluded from consideration. He submitted that Section 24 of the Land Acquisition Act provides for the exclusion of any appreciation of market-value, which is the result of the acquisition itself.

In the present case, the preliminary notification was dated 10-3-1977 and Ex. P. 13 was of 6-2-1976. Even assuming that, there was improvement of the tone of the neighbourhood in anticipation of the developments incidental to the purpose of the impending acquisition and that this general upward trend had informed the price in Ex. P. 13, yet, it would not be appropriate to exclude the evidence of market-value in Ex. P. 13, if it, other-wise, represented a bonafide transaction of sale of a comparable piece of property.

The following observation of the Bombay High Court in Dhusabhai Polabhai and Others Vs. Special Land Acquisition Officer, Ahmedabad, is a full answer to Sri Bhat's contention;

"If the knowledge that acquisition by the Government is imminent raises the tone of the market and gives impetus to the market, a new market rate would be created and the transaction would be governed by that rate.

It would be too dangerous a proposition to lay down and too unfair a comment on human impulses to generalise and stigmatise every transaction of sale and lease-cum-sale entered into after the market had risen as a speculative transaction or demonstration of profiteering tendency of a human mind....."

The first contention of Sri Shivashankar Bhat need not, therefore, detain us.

9. Sri R. P. Hiremath, Learned Government Advocate, submitted that Ex. P. 13 was not a comparable plot of the land at all. He submitted that it was a small plot measuring 35" x 90" and the price fetched for such small-plots cannot be regarded as reliable guides in determining the market-value of large stretches of land. He relied upon several pronouncement of Supreme Court where evidence of sale of small plots was considered inapposite in valuing of large tracts of land.

It is no doubt true that evidence of small-plots of developed land cannot be a safe guide to determine market-value where large stretches of land are acquired. Supreme Court in The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, said :

"4. In our opinion the High Court overlooked the fact that the plots which were the subject matter of the sale deeds Exhibits 1 to 4 were comparatively of small areas and it is well known that when a large area like the one which was the

subject matter of acquisition has to be sold it cannot possibly fetch a price at the same rate at which small plots can be sold....."

In Padma Uppal and Others Vs. State of Punjab and Others, it was observed :

"8.....It is also well settled that in determining compensation the value fetched for small plots of land cannot be applied to the lands covering a very large extent and that the large area of land cannot possibly fetch a price at the same rate at which small plots are sold....."

The seller of the site concerned in Ext. P.13 has been examined as P.W.2. P.W.2 says--he has not been cross-examined on the point--that the site was situate about 25 yards from the acquired-land. The sale was on 6-2-1976 almost a year prior to the date of the preliminary-notification. The Court-below recognized--and made provisions for--the probability that if the acquired land is laid-out into small building-lots, all the sites so demarcated may not enjoy the same degree of potentiality for building purposes, or, atleast may not be put to the potential use either immediately or in the reasonably near future. It must also be shown that the sites so laid-out would be good selling propositions. There must be evidence to show that there was corresponding demand for sites. The Court-below taking all these circumstances into consideration, deducted 15% or 0-50 paise per square foot from the price indicated in Ex. P. 13 to reckon the retail price of laid-out plots at an average of Rs. 3/- per sq. ft. On this the retail price, the Court-below arrived at the whole-sale price at 50% of that retail-price. In Bombay Improvement Trust Vs. Mervanji Manekji Mistry, Chief Justice Macleod suggested this simple rule for deriving the wholesale price of land from evidence of its retail price :

".....A very simple method of valuing land wholesale from retail price is to take anything between one and half and one third, according to circumstances, of the expected gross valuation, as the whole-sale price....."

In Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, Supreme Court said :

"It is well settled principle of valuation that where there is a large area of undeveloped land under acquisition, provision has to be made for providing the minimum amenities of town life such as water connections, well laid-out roads, drainage facility, electric connections etc. The process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on a par with the developed lands. An extent of 20 per cent of the total land acquired is normally taken as a reasonable deduction for the space required for roads. This is apart from the cost of laying roads themselves and the cost of providing other amenities like electricity, water, underground drainage etc. In Smt. Tribeni Devi and Others Vs. Collector of Ranchi, the Court allowed a deduction of 33-1/3 per cent towards the cost of development. The cost of development may range from 20 to 33 per cent depending on the nature of the land, its situation and the stage of development etc....."

In that case a deduction of 20% for roads and 33% for development was held to be reasonable. In all, deduction of 53% was held to be reasonable. This would mean that the wholesale-price was 47% of what may be called the retail price.

Turning now to the contention that evidence of market-value in Ext. P. 13 is of a small-plot and that the same cannot be a safe basis of valuation of the comparatively larger extent of the acquired-land, it must be stated that there can be no dispute about this proposition; but we must understand the real scope of this rule. Price fetched by small plots which is said to be the price of land in retail cannot directly be adopted for valuing larger stretches of land wholesale. The rule does not mean that the evidence of retail prices can in no event be relevant in the valuation of land wholesale even where appropriate deductions are made. When a large extent of land is to be valued on the hypothetical lay-out method after making provisions for and deducting the land needed for laying-out roads and providing other amenities, and provision is made for outlays on development, the value of the plots so laid-out can be ascertained on the analogy of prices fetched by other similar smaller plots. What are valued under the layout method are the small sites themselves. This, of course; is subject to the requirement that the plot on the basis of whose price the sites in the hypothetical lay-out are valued is itself a comparable piece of land having similar advantages and amenities. Sri Hiremath's proposition can be said to be correct only with this qualification. The proposition thus understood means that the price fetched for a developed site of small dimension cannot directly be adopted for valuing large extents of land; but it does not mean that the prices fetched by small plots cannot serve as guides even where a large extent of land is to be valued on a hypothetical layout method and on the basis of what the land would bring-in if, it is developed, laid-out into small lots and sold in retail.

Appellants' reliance on Ext. D.6 is not also of much help to them. Admittedly, the land concerned in Ext. D.6 was not a comparable piece of property. It was situate far away from the acquired land and did not have the same degree of potentiality. Appellants also sought to rely upon certain awards made in Raichur town. Exts. D.7, D.8 and D.9 pertain to certain lands acquired for the purpose of the KSRTC in Raichur Town. The argument was that Sindhanoor is a moffusil town, a less important town than Raichur and that, therefore, the value of land in Sindhanoor must necessarily be very much less than that obtaining in Raichur. This argument, did not, in our opinion rightly, appeal to the Court-below. A plot of land in a less important town need not necessarily be less in value than all lands in a more important or more populous town.

10. Before any final conclusion is reached on the evidentiary-value of Ext. P.13 let us examine the material relied upon by the claimant for even a higher valuation and consider whether the circumstances of the case justify a further enhancement.

Sri Gurushanthappa, learned Counsel for the claimant-cross-objector, strenuously contended that having regard to the high value of lands in the area, the land-

owner has been wholly under-compensated in this case. He referred to certain admissions of the witnesses on the side of the appellants themselves in regard to the favourable location of the acquired land in Sindhanoor town. He also relied upon the following observations as to the importance of the location of the land in the spot inspection notes (Ext.P.15) of the LAO himself :

" The land in question is towards right hand side on the main road proceeding from Sindhanur to Kushtagi and located almost in the heart of the town. The land is fallow and mostly covered by jali trees and also there are 25 to 30 temporary huts so to say encroached on the land. The soil is black. The land in question is very close to T.D.B. Office, Taluk Office and around it has converted into N. A. purpose and some shops, Rice Mill and KSRTC bus depot are covered up.

The land has been converted into N.A in 1971 and plots have been laid out and 18 plots have been sold. The land in question has good potential value for building purposes since it is situated in the heart of the town. "

Sri Gurushnathappa also relied upon certain admissions made by the witnesses examined on the side of the Land Acquisition Officer (R.ws, 1, 2 and 3) in regard to the relative importance of the situation of the acquired-land. He stated that the sale-deed Exts.P.1 to P.10 evidence a price range of Rs. 2.50-2.67 per sq. ft. for laid -out lands, even in the year 1972 and if an annual appreciation of atleast 10% over the next 5 years was allowed till the date of the preliminary notification the price of small plots could be put at Rs.4/-per sq. ft. Learned Counsel submitted that the sale at Ext.P. 14 dated 18-7-1975, which fetched a price of Rs. 6. 25 per sq. ft would afford guidance for a proper determination of market-value. If Rs. 6.25 sq.ft is the retail price of land in 1975 atleast Rs. 3/- should be the market price, per sq. ft. of the acquired land in the year 1977.

11. We have bestowed a careful consideration to these submissions and the material relied on in this behalf. So far as the sale-deeds at Exts. P.1 to P.10 are concerned, they are assailed by the acquiring authorities principally on the ground that the vendor is the claimant himself. Sri R.P. Hiremath's criticism of these sale-deeds was that they were collusive and sham transactions and not bona-fide transactions of sale. Sri Hiremath submitted that none of the purchasers under these sale-deeds came forward to claim compensation and seek references. He submitted that the least that claimant was expected to do was to call the purchasers to the box and submit them to cross-examination. He submitted that the burden of showing that Exts.P.1 to P. 10 were bona-fide transactions of sale was on the claimant and that it was up to him to provide sufficient reassurance to the Court as to the bona-fides of the transactions by examining the purchasers. He submitted that the examination of the vendor, who is no other than the claimant himself, would not be sufficient to show that the transactions were bonafide transactions of sale between a willing purchaser and willing seller dealing at arm's length.

We think that the submissions of learned Government Advocate on this aspect

cannot be brushed-aside. It was for the claimant to show that these sales are bonafide sales at arm's length and do reflect the true market-value at the time they were entered into. No explanation is forthcoming why the purchasers were not examined. Sri Gurushanthappa said that a sale transaction can be spoken to and proved by either the vendor or the vendee. It is true that either of them could be called to speak to a transaction, provided the transaction was an independent transaction to which claimant himself was not a party. Rule that either the vendor or vendee could speak to and prove a sale is, in the context of the present purpose, subject to the limitation that when bona-fides of the transactions are to be established, it is for the claimant to adduce such evidence as would re-assure the Court in that behalf. By examining himself he could at best be said to have complied with a technical formality of proof of the deeds. But the burden of establishment of the bonafides of the transactions would require something more. We are afraid" the criticism of Sri Hiremath that the transactions were not shown to be bonafide and at arm's length must be accepted. We think, therefore, that the Court-below did not fall into any error in excluding the evidence of market-value in Exts. P.1 to P. 10.

12. What remains to be considered is Ext. P. 14. Sri Gurushanthappa stated that there was a general trend of appreciation of prices of land in that area. That appears to be so. There is some oral evidence supporting this position. But the trend of appreciation and the rate of appreciation are two different things. On the latter point such evidence as is placed before Court is not sufficient. Evidence relating to a gradual rise in prices in the locality is relevant and has to be put into the scales in determining the market-value. Ext. P. 14 indicates a price of Rs. 6.25 per square foot. The question is whether this can be said to be related to a comparable piece of property.

The site concerned in Ext. P. 14 is a small bit of 16 x 30 sold for Rs. 3000/-. The purchaser is examined as P.W. 3. Even assuming that it is a bonafide transaction of sale at arm's length, the question that yet remains is whether this plot is a comparable piece of property. The site was obviously a commercial-plot. P.W.3 himself stated in his evidence that he had put up a shop-building on it. In valuing urban property, unlike agricultural lands, even the slightest changes of locations make for wide variation of price. Though this plot is stated to be about 40 to 45 feet from the acquired land, however, from the characteristics of this plot, it appears to be unsafe to accept it as a piece of property comparable to the sites that may be laid-out in the acquired-land. Indeed, there is one other intrinsic circumstance which detracts from the acceptability of this plot as a comparable piece of property. If Ext. P. 13 land is, as is sought to be made out by the claimant, itself a piece of property comparable with the acquired-land and that itself is of a value of Rs. 3. 50 per square foot as on 6-2-1976, the plot concerned in Ext. P. 14 which fetched a price of Rs. 6.25 at a much earlier date, i.e., 18.7.1975 could not, on claimant's own reasoning be considered a property comparable to the land concerned in Ext P. 13. If Ext. P. 13. site and Ext. P.M. site are not mutually comparable pieces of property, as we hold they are not, one

of them atleast is not comparable with the acquired land. In deciding which one is not so comparable, the choice is obviously, Ext. P. 14 as it is smaller plot and admittedly a shop-site.

In this view of the matter, we think that neither Exts. P.1 to P.10 nor Exhibit-P.14 help the claimant to seek a further enhancement. We, therefore, find no substance in the cross-objections.

13. Now, in the end, the question that remains is whether the Court-below erred in broadly accepting the evidence of market-value in Ext. P. 13. Sri Hiremath said even this was not a comparable plot. He said it had roads on both sides and therefore had distinctly greater advantages. The Court-below found this plot to be a comparable plot. It was situate within 25 yards of the acquired property. The sale was more than a year before the preliminary notification. The Court-below not only did not allow any appreciation for the 1 year but also deducted 15% from the value to ascertain the price of land in retail. In effect, the deduction from the price indicated in Ext.P. 13 is about 20% to 25%-- because no appreciation for the period upto the date of preliminary notification is allowed and 50 paise was also deducted from the price indicated in Ext. P. 13. Court-below took a flat-rate of Rs. 3/- per square foot and awarded 50% of that as the market-value of the acquired land.

On the evidence, it is difficult to say that this exercise by the Court-below is so erroneous as to call for interference in appeal. The Court-below could, perhaps, have fixed the price of the acquired-land at something lesser than 50% of the retail-prices and at something lesser than 1.50 per sq.ft. But as observed by the Supreme Court⁷:

"4. At the outset, we must warn ourselves of the broad guide-line that in an appeal from an award granting compensation this Court will not interfere unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied. Moreover, there is a prudent condition to which the appellate power, generally speaking, is subject. A Court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong. These twin principles serve as backdrop to our approach to the rival contentions in the case."

We, therefore, decline to interfere with the determination of the market-value as made by the Court-below.

14. In the result, both the appeals and the cross-objections are dismissed. In the circumstances of the case, we leave the parties to bear and pay their own costs.

15. Claimant shall be entitled to higher-rates of solatium at 30% and to higher rates of interest at 9% and 15% respectively, as the case may be, on the enhanced amount of compensation. Claimant shall also be entitled to the

additional amount under section. 23(1A) of the Land. Acquisition Act.

7. The Dollar Company, Madras Vs. Collector of Madras,