

(2009) 08 SC CK 0109
In the Supreme Court Of India
Case No : Civil Appeal No. 3726 of 2001

Saibanna "Dead" by LRs.

APPELLANT

Vs

Assistant Commissioner and Land Acquisition Officer

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) 6 ALT 25 : (2010) 1 AWC 156 Supp : (2009) 10 JT 587 : (2010) 2 MhLj 172 : (2009) 11 SCALE 531 : (2009) 9 SCC 409 : (2009) 14 SCR 401

Hon'ble Judges : H. S. Bedi, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : S. J. Amith and Kiran Suri, for the Appellant; Sanjay R. Hedge, A. Rohen Singh and Nishant Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—This appeal is directed against the judgment of the High Court of Karnataka at Bangalore dated 16.3.2000 in Miscellaneous First Appeal (for short, M.F.A.) No. 3232 of 1996.

2. The facts in nutshell are as follows:

The preliminary notification was issued on 13.8.1981 to acquire 4 acres and 27 guntas of land belonging to the appellant situated in Survey Nos. 129/1, 129/3, 129/4 and 129/74 situated in Taj Sultanpur, Gulbarga City in Karnataka. The award was passed on 30.6.1986 awarding compensation at the rate of Rs. 2,500/- per acre.

3. The Reference Court by its judgment and award dated 8.4.1996 determined the market value at the rate of Rs. 19,500/- per acre.

4. The appellant aggrieved by the said judgment preferred M.F.A. No. 3232 of 1996 before the High Court. The appellant placed reliance on the judgments and awards passed in M.F.A. No. 3738 of 1995 dated 20.1.1998 and M.F.A. No. 2557

of 1997 dated 27.1.1998, wherein the market value of the lands located at almost the same distance from Gulbarga city and is having same potentiality of development. The appellant also produced notification dated 30.10.1965 to show that the Taj Sultanpur village was declared to be within the municipal limits of Gulbarga city of Karnataka.

5. The High Court dismissed the appeal without considering the main submission of the appellant that the acquired lands are within the municipal limits of Gulbarga city and the deduction at the rate of 53% towards the development charges is excessive and not in consonance with the law laid down by the Full Bench of the High Court and by this Court.

6. In the present appeal, the appellant is aggrieved by the deduction at the rate of 53% towards development charges. In the present case, the following questions of law formulated by the appellant are reproduced as under:

A. Whether the High Court has committed a serious error in deducting 53% towards development charges in the facts and circumstances of the case?

B. Whether the High Court has committed a serious error in not appreciating that the acquired lands come within the Municipal limits of the city of Gulbarga and therefore the development charges cannot be more than 33-1/3%?

C. Whether the decision of Full Bench of the Karnataka High Court is binding on the learned Judge passing the impugned judgment?

D. Whether the High Court has failed to appreciate that the judgment in other appeals is applicable as it has the same potentiality?

E. Whether the High Court has failed to take note of the other evidences produced by the appellant such as valuer's evidence?

7. During the course of hearing, the parties have focused the entire argument as to whether deduction at the rate of 53% was in consonance with law or not? The appellant placed reliance on the judgment of this Court in K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, . In para 10 of the judgment, this Court accepted the argument that 53% deduction is not automatic but depends upon the nature of the development and the stage of development, meaning thereby that it would depend upon the facts and circumstances of each case. In this case, this Court has further observed as under:

This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made.

8. This Court in Kasturi and Others Vs. State of Haryana, has extensively dealt with this aspect and observed in para 7 as under:

...It is well settled that in respect of agricultural land or undeveloped land which

has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for development purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area....

This Court in the said case also observed that there is a difference between a developed area and an area which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired.

9. In substance, the ratio of the judgment in *Kasturi and Ors.* (supra) is that the deduction would depend on several factors, particularly the extent of land in question, location of the said land and the proximity of the land from the municipal limits.

10. In the instant case, the land in question is within the municipal limits of Gulbarga city since 1965. The Taj Sultanpur village is located only at a distance of 2-1/2 kms. from Gunj locality of Gulbarga City and, therefore, it is located within the close vicinity of Gulbarga City. The Taj Sultanpur village is adjoining Shak Roza and Vakkalgera limits of Gulbarga city which are part and parcel of Gulbarga city for a long period. So the cost of development is not likely to be very high. As laid down in *K.S. Shivadevamma's case* (supra), as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted.

11. Deduction at the rate of 53% as laid down in the impugned judgment seems to be on the higher side and is not in consonance with the ratio laid down by this Court. We would like to emphasize that there cannot be any hard and fast or a rigid rule. Every case has to be decided on its individual facts taking into consideration various facts and circumstances.

12. In the instant case, neither the Reference Court nor the High Court has assigned any specific reasons for making deduction at a rate more than 33-1/3%. On consideration of the ratio laid down by this Court in *Kasturi's case*

(supra) and in V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer, and in the facts and circumstances of this case, in our considered view, deduction at the rate of 53% is on the higher side and it should not be more than 33-1/3%.

13. On consideration of the totality of the facts and circumstances of the case, the impugned judgment of the High Court is modified to the extent of deduction charges. We direct the respondent to make deduction at the rate of 33-1/3% towards development charges.

14. In view of the above, the appeal stands allowed. The impugned judgment of the High Court is modified and disposed of in the abovementioned terms. The parties are directed to bear their own costs.