

(2011) 09 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No's. 7852-7853 of 2011 (Arising out of SLP (C) No's. 24832-24833 of 2010) and Civil Appeal No's. 7854-56 of 2011 (Arising out of SLP (C) No's. 25380-25382 of 2010)

Sanath Kumar

APPELLANT

Vs

The Special Tahsildar and Another

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 54, 6
Stamp Act, 1899 — Section 41A

Citation : (2012) 6 ALT 37 : (2012) 1 AWC 1077 : (2011) 4 RCR(Civil) 846 : (2012) 115 RD 23 : (2011) 10 SCALE 554 : (2011) 6 UJ 3616

Hon'ble Judges : H.L. Dattu, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : P.S. Mishra, Ajay Bhala, Manu Shanker Mishra and Abha R. Sharma, A.O.R, for the Appellant; G.E. Vahanvati, A.G. and Sudarsh Menon, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The Appellants are aggrieved by the judgment of the Division Bench of the Madras High Court whereby market value of the acquired land fixed by the Reference Court was reduced from Rs. 4,000/- to Rs. 3,100/- per cent by applying 53% cut towards development charges.

3. The Appellants' land was part of 935.52 hectares acquired by the State Government for construction of an industrial complex. Notification u/s 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 17.7.1998 and declaration u/s 6 was issued on 29.10.1998. The Land Acquisition Officer passed two awards dated 31.08.1999 and 25.01.2000 whereby he fixed market value of the acquired land at the rate of Rs. 350/- per cent.

4. The Reference Court considered the oral and documentary evidence produced

by the parties and held that market value of the acquired land should be Rs. 6,764/- per cent. The Reference Court then applied 40% cut towards development charges and held that the land owners are entitled to compensation at the rate of Rs. 4,000/-per cent. Paragraph 19 of order dated 31.03.2006 passed by the Reference Court which contains reasons for fixing higher market value of the acquired land reads as under:

19. Ex. C1 shows that the sale of the land was Rs. 70,243/- after paying deficit under 41-A of Indian Stamp Act for an extent of 0.10 cents, but there is no proof that deficit under 41-A of Indian Stamp Act was paid by the purchaser. Therefore, as per the document, the sale of the land is Rs. 69,053/- for 0.10 cents in the year 1996. As per Ex. C2, the sale of the land was Rs. 1,35,299/- for an extent of 8729 sq.feet wherein per cent is Rs. 6764/- of the year 1997. Therefore, this Court considers Ex. C2 as fit and proper document to take into consideration in fixing the market value of the land. Considering, future developments and other essential upgrading works, this Court intends to deduct 40% of the above said value and is Rs. 4058.40 rounding about Rs. 4000/- per cent and for the above stated reasons, the market value of the acquired lands in these petitions are fixed at market value of Rs. 4000/- per cent. The claimants are also entitled for the usual benefits of 30% solatium on the compensation amount, additional amount at the rate of 12% per annum from the date of 4(1) notification till the date of award of the referring officer, or taking possession of the land whichever is earlier, 9% interest for the first year from the date of taking possession of the land and 15% of interest for every subsequent year on the amount calculated on the market value of the land till the date of deposit, and answered this point accordingly.

5. The appeals filed by the Respondents u/s 54 of the Act were partly allowed by the High Court. While recording its agreement with the Reference Court that market value of the acquired land is Rs. 6,764/-, the High Court applied 53% cut towards development charges and declared that the Appellants are entitled to compensation at the rate of Rs. 3,100/- per cent with other statutory-benefits.

6. We have heard Shri. P.S. Mishra, learned Senior Counsel appearing for the Appellant Appellants and the learned Attorney General appearing for the Respondents.

7. The only point which arises for consideration in these appeals is whether the High Court was justified in applying the cut of 53% in lieu of the development charges.

8. In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which the land is acquired. In *Kasturi and Others Vs. State of Haryana*, this Court held:

...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 developmental 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. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, 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, as in this case, for development purpose.

9. The rule of 1/3rd deduction was reiterated in *Tejumaal Bhojwani (Dead) through Lrs. and Others Vs. State of U.P., V. Hanumantha Reddy (Dead) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer, H.P. Housing Board Vs. Bharat S. Negi and Others, and Kiran Tandon Vs. Allahabad Development Authority and Another, . In Subh Ram and Others Vs. Haryana State and Another*, this Court held as under:

Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". Two factors have a bearing on the quantum (or percentage) of deduction in the "retail price" as development cost. Firstly, the percentage of deduction is decided with

reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land.

The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water, etc.) then the development cost (that is, percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose of acquisition play a role in determining the percentage of deduction towards development cost.

10. A reading of the impugned judgment shows that the High Court ordained deduction of 53% of market value towards development charges only on the ground that substantial amount was spent for providing the facilities like road, power supply, water supply, drainage etc. for multinationals, NRI's and Ors. who would like to set up industries in the complex.

11. In our view, the reasons assigned by the High Court for increasing the percentage of deduction from 40 to 53 are legally untenable. While determining market value of the acquired land, the court must always bear in mind that in majority of cases the acquisition of land deprives the land owner of his only source of livelihood and sustenance. The acquiring authority and the beneficiaries of acquisition can always recover the cost of land from the allottees of plots. If the allotment is made to industrial entrepreneurs, they will invariably pass on the cost of land to the consumers of their products. Therefore, while increasing the percentage of deduction from the market value determined by the Reference Court, the High Court should have been extremely careful and circumspect and should have, keeping in view the law laid down by this Court, refrained from increasing the percentage of cut from 40 to 53, which resulted in depriving the landowners of their right to receive just and reasonable compensation.

12. In the result, the appeals are allowed, the impugned judgment is set aside insofar as the High Court ordered 53% deduction towards development charges and the order passed by the Reference Court is restored in its entirety. The Respondents shall pay the balance amount, if any due, to the Appellants within a period of three months from the date of receipt/production of a copy of this judgment. The amount should be paid to the Appellants by way of demand drafts drawn on a Nationalized Bank. The parties are left to bear their own costs.