

(2010) 07 SC CK 0141

In the Supreme Court Of India

Case No : Civil Appeal No's. 9525 and 9529 of 2003

Shashikant Bansal

APPELLANT

Vs

Gwalior Improvement Trust/Gwalior Development Authority

Gwalior Improvement Trust/Gwalior Development
Authority Vs Shashikant Bansal

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Madhya Pradesh Town Improvement Trust Act, 1960 — Section 147, 72(3)

Citation : AIR 2010 SC 2819 : (2010) AIRSCW 4640 : (2011) 1 JLJ 1 : (2010) 7 JT 301 : (2010) 7 SCALE 474 : (2010) 12 SCC 151 : (2010) 5 Supreme 687

Hon'ble Judges : G. S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Indu Malhotra, R.P. Gupta and Madhukar Rao, Niraj Sharma, Kush Chaturvedi, Prerna Priyadarshini, Parmanand Gaur, Krishnanand Pandeya, Vikas Mehta and Sanjeev Das, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—These appeals are directed against judgment dated 14.12.2000 of the Division Bench of Madhya Pradesh High Court whereby the appeal filed by Shashikant Bansal (hereinafter referred to as 'the appellant') u/s 147 of the Madhya Pradesh Town Improvement Trust Act, 1960 (for short, 'the Act') was partly allowed and market value of the land acquired by Gwalior Improvement Trust/Gwalior Development Authority (hereinafter referred to as 'the respondent') was fixed at the rate of Rs. 1.50 per square feet minus 25% development cost and the appellant's claim for payment of interest on solatium was rejected.

2. The appellant's land comprised in Khasra Nos. 48 to 53, 60 to 63 and 65 to 67 measuring 16.04 Bighas situated in Keshobaagh, Gwalior was acquired for execution of the residential scheme framed by the respondent. The appellant was offered a sum of Rs. 1,98,975/- as compensation for the land, house and wells existing over the land but he did not accept the same. Therefore, a reference

was made u/s 72(3) of the Act to the Joint Tribunal of All Town Improvement Trusts of Madhya Pradesh (for short, 'the Tribunal'). The Tribunal considered the rival pleadings and evidence and passed award dated 14.7.1992, the relevant portion of which reads thus:

We direct that the development authority Gwalior the successor in office of Gwalior Improvement Trust do pay Rs. 12000/- per bigha as compensation for the acquired land, Rs. 40,000/- per well i.e. Rs. 80,000/- for two wells. Rs. 50,000/- for the house on the land, Rs. 30,000/- for the standing trees and plants on the land, Rs. 50,000/- for the boundary wall, Rs. 3500/- for pipes and angles, Rs. 5000/- for the standing sugarcane crop, Rs. 15000/- for the amount spent in leveling the land, Rs. 5000/- for the loss of pump house and water tank (house) and Rs. 4000/- for tin shed. The development authority, Gwalior shall also pay 6% interest on the above amount from 30.7.76 and 16% solatium on the above amount.

3. Feeling dissatisfied with the market value fixed by the Tribunal, the appellant preferred an appeal u/s 147 of the Act. The Division Bench of the High Court partly allowed the appeal and fixed the market value of the land at the rate of Rs. 1.50 per square feet but ordered deduction of development cost at the rate of 25%. The Division Bench rejected the appellant's claim for award of interest on solatium by relying upon the judgment of this Court in *Yadavrao P. Pathade (Dead) by Lrs. and Others Vs. State of Maharashtra*, .

4. Shri R.P. Gupta, learned senior counsel appearing for the appellant argued that the direction given by the High Court for payment of compensation to the appellant at the rate of Rs. 1.50 per square feet after deducting 25% development cost is not only unjustified, but is legally unsustainable because in an identical case of *Narayan Prasad v. Nagar Sudhar Nyas and Ors.* First Appeal No. 3 of 1993 decided on 30.8.2000 the market value of the land was fixed at Rs. 1.50 per square feet without any deduction. Learned senior counsel extensively referred to the evidence adduced by the parties before the Tribunal and argued that the High Court committed an error by directing deduction of 25% towards development cost ignoring that the land had already been developed by the appellant. He made a pointed reference to the statements of PWs. 1, 2 and 3, who were examined by the appellant and documents marked Exts. P1 to p17 to show that the appellant had already leveled the land, constructed boundary wall, tube wells, tin sheds, power house and had planted large number of fruit bearing trees and submitted that in the absence of any contra evidence, there was no legal basis for applying the rule of 25% deduction towards the development cost. Learned senior counsel also relied upon the amendments made in the Land Acquisition Act, 1894 (for short, 'the 1894 Act') by Amendment Act No. 68 of 1984, the judgments of this Court in *Balammal and Others Vs. State of Madras and Others*, ; *Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.* AIR 1973 SC 689; *Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others*, and argued that even though

the appellant's land was acquired under the State Act, he is entitled to the benefit of the amendment made in the 1894 Act. Learned senior counsel further argued that in view of the Constitution Bench judgment in *Sunder Vs. Union of India*, by which the judgment in *Yadavrao P. Pathade v. State of Maharashtra* (supra) was overruled, the appellant is entitled to the interest on the amount of solatium.

5. Ms. Indu Malhotra, learned senior counsel appearing for the respondent fairly admitted that in the case of *Narayan Prasad*, which is identical to the appellant's case, the High Court had fixed the market value of the acquired land at Rs. 1.50 per square feet without 25% deduction towards development cost and that C.A. No. 9526/2006 filed by the respondent against the judgment of the High Court has been dismissed today on the ground of smallness of the amount, but argued that the impugned judgment cannot be said to be vitiated by any error of law because the deduction of 25% towards development cost was necessary because the respondent had to spend substantial amount in providing amenities necessary for a housing scheme. On the issue of the appellant's entitlement to get interest on solatium, Ms. Malhotra conceded that such benefit will be admissible to him in the light of the judgment of the Constitution Bench in *Sunder v. Union of India* (supra).

6. We have considered the respective arguments/submissions. In our view, the Division Bench of the High Court did not commit any error by fixing the market value of the acquired land at the rate of Rs. 1.50 per square feet, but the deduction of 25% towards development cost was totally uncalled for and unjustified. While the appellant had adduced oral as well as documentary evidence to show that he had already developed the land by leveling the same, constructing boundary wall, tube wells, power house, tin sheds and fixing the pipes and angles and also by planting large number of fruit bearing trees, the respondent did not adduce any evidence to disprove the same or that any particular amount was to be spent for the purpose of making improvements. Therefore, the deduction of 25% towards development cost is legally unsustainable.

7. The question whether the appellant is entitled to interest on solatium must be answered in his favour in view of the judgment of the Constitution Bench in *Sunder v. Union of India* (supra) and another judgment in *Virender Singh and Others Vs. Union of India* (UOI), . We may also observe that in view of the law laid down in *Balammal v. State of Madras* (supra), *Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors.* (supra) and *Maharashtra State Road Transport Corporation v. State of Maharashtra* (supra), the appellant is entitled to the benefits which are admissible to a person whose land is acquired under the 1894 Act including interest on solatium.

8. In the result, Civil Appeal No. 9525 of 2003 is allowed and Civil Appeal No. 9529 of 2003 is dismissed. The respondent is directed to pay enhanced compensation to the appellant in terms of the judgment of the High Court

without making any deduction. The appellant shall also be entitled to interest on solatium. The amount payable to the appellant in terms of this judgment should be paid within a period of 2 months from the date of receipt/production of copy of this judgment.