

(2003) 04 KAR CK 0012

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 1563, 1693, 2800 and 2860 of 1995

Smt. Parvathibai

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Citation : (2004) 3 KarLJ 6 : (2003) 3 KCCR 1958

Hon'ble Judges : M.S. Rajendra Prasad, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : S.P. Shankar, in M.F.A. Nos. 2800 and 2860 of 1995 and Basavaprabhu S. Patil, in M.F.A. Nos. 1563 and 1693 of 1995, for the Appellant; S.P. Shankar, for Respondent 1 in M.F.A. Nos. 1563 and 1693, Basavaprabhu S. Patil, in M.F.A. Nos. 2800 and 2860 of 1995 and Chandrashekar Rodnavar, High Court Government Pleader for Respondents 1 and 3 in M.F.A. Nos. 2800 and 2860 of 1995 and for Respondents 2 and 3 in M.F.A. Nos. 1563 and 1693 of 1995, for the Respondent

Judgement

M.F. Saldanha, J.—The claimants as also the Gulbarga Development Authority have both filed appeals in respect of the enhancement allowed by the Reference Court in relation to LAC Nos. 57 and 58 of 1992. Two areas comprising of 18 acres 31 guntas in Sy. No. 49 and 11 acres 12 guntas in Sy. No. 50 of Badepur Extension, Gulbarga were acquired vide preliminary notification dated 8-9-1988 for purposes of forming house sites. The Land Acquisition Officer had awarded compensation computed at Rs. 15,500/- per acre and the claimants had approached the Reference Court for enhancement to the extent of Rs. 2 lakhs per acre, the principal ground being that in the case of certain other sales that have taken place in the area, the prices varied from Rs. 8 to Rs. 12.50 ps. per sq. ft. in various instances, but the real ground that was urged very strongly was the fact that these lands are located in the proximity of the Gulbarga-Sedam Road and Gulbarga Ring Road, wherein the entire area has been fully developed insofar as there are residential buildings, office buildings, schools, hospitals and the like. The authority had seriously opposed any enhancement and the grounds

urged in support of the enhancement. The contention was, the fact that admittedly at the time of acquisition these lands were categorised as agricultural lands, that no non-agricultural permission had been obtained and furthermore, various statistics were sought to be produced by the Secretary in support of his contention that the total infrastructural facilities would have to be provided in respect of these lands and the bottom line of the argument therefore was to the effect that the Reference Court would have to take into consideration the abnormally heavy expenditure under this head and consequently, that the compensation awardable cannot take for its basis some of the prices that prevail in respect of even the adjoining developed areas. We need to say that the learned Judge who presided over the Reference Court has done a very careful and thorough analysis of the material that was placed before it, we have been impressed by the fact that he has adopted a very fair and balanced approach and that he has ultimately enhanced the compensation to Rs. 1 lakh per acre. As indicated earlier, the claimants who contend that they should be awarded at least Rs. 1.5 lakhs per acre have both preferred appeals against the decision and the authority has also preferred cross appeals contending that no enhancement at all to be awarded on the special facts and circumstances of this case.

2. We have heard the learned Counsels representing the contesting parties and the learned Government Advocate on merits. The principles governing this class of cases are now well-defined and it is really not necessary for us to re-state the law or for that matter to re-activate those principles. We have however been very carefully guided by some of the changes in respect of a few finer areas that have come about in the decisions both by this Court as also the Supreme Court in the recent past and we have been guided by these principles while deciding these appeals. We first start by very briefly summarising the factual position that falls for consideration. There is no doubt about the fact that the lands were categorised as agricultural lands. This would undoubtedly have considerable bearing on the aspect of developmental expenditure but the learned Counsel representing the authority as also the learned Government Advocate were extremely emphatic about the fact that it makes a major difference as far as the potential value of the lands are concerned. On the other hand, Mr. Shankar, learned Counsel who represents the claimants pointed out something of considerable significance to us insofar as his contention is that it is the location or situation of the lands that are of paramount importance and not the question as to whether they are agricultural lands or non-agricultural lands. Towards this end, he demonstrated to us from the sketches that are on record as also from the CDP produced by the authority itself, that the whole of that area is not only urban area but that the whole of that area has also been developed to the extent that these plots are possibly among the only ones that have not so far been built upon. The argument is that in such a situation the potentiality is what the Court is required to assess and not the categorisation as far as the revenue records are concerned. We have evaluated the rival contentions and what we need to observe is that in a situation such as the present one where agricultural lands are

located in the midst of a relatively developed area, that the question as to whether non-agricultural permission had been obtained or not is of secondary consequence because those lands as has emerged from the evidence on record were not being used for any agricultural operations, that they had been leveled out and they were on par with any other lands on which building or developmental activity would take place. Some marginal allowance would certainly have to be made for the fact that no non-agricultural permission had been obtained, but this factor would not materially change the value of the lands because in our considered view, it is really the developmental potentiality that is of paramount significance. To this extent, the Reference Court has done a comparative analysis of the sales transactions in the areas that are within the immediate proximity and the learned Single Judge has finally arrived at valuation of Rs. 8/- per sq. ft. Thereafter, what has been done is that a deduction of Rs. 3/- per sq. ft. has been applied insofar as the learned Single Judge has taken the average value in respect of the comparative transactions and then deducted Rs. 3 per sq. ft. as indicated by us balancing out the average market value at Rs. 5 per sq. ft. While computing the compensation the learned Single Judge has thereafter deducted 53% under the head of developmental expenditure and finally arrived at the figure of Rs. 2.53 ps. per sq. ft. which works out to Rs. 1,02,6017- per acre, which has been rounded off to Rs. 1 lakh per acre.

3. The learned Counsel who represents the authority has drawn our attention to a decision of the Supreme Court in *V.G. Kulkarni v. The Special Land Acquisition Officer* 1997(6) Kar. L.J. 737 wherein, though the Reference Court had awarded a sum of Rs. 3.90 lakhs per acre, the Supreme Court confirmed the High Court decision in reducing the compensation to Rs. 67,200/- per acre principally on the ground that there was no evidence of actual development having taken place near the land in question. He also drew our attention to another decision of the Supreme Court in *Government of Andhra Pradesh v. H.E.H., The Nigam, Hyderabad* 1997 (6) Kar. L.J. 374 wherein the Supreme Court had observed that the Courts need to take into account the high costs of development which justified deductions between 33 1/3% to 65%. The learned Counsel also drew our attention to one of the companion acquisitions in respect of which another Division Bench of this Court on 21-9-2002 approved the compensation of Rs. 65,000/- per acre which had been awarded by the Reference Court and refused to enhance the same and it is his submission that in the light of this decision the compensation of Rs. 1 lakh per acre which has been awarded by the Reference Court is liable to be reduced. The appellants' learned Counsel brought it to our notice that on the other hand, while arguing the similar appeal he had advanced the submission that in another case relating to the same acquisition in respect of which the judgment has been produced at Exhibit P. 11 to these proceedings, that the Division Bench of this Court has enhanced the compensation to Rs. 1.07 lakhs per acre and that the decision in question has been accepted and not appealed against. His submission is that unfortunately, the judgment copy was not available and that therefore he could not produce the same before the other

Division Bench, that this fact was pointed out to the Apex Court in an appeal filed against the decision in M.F.A. No. 239 of 1997 clubbed with M.F.A. Nos. 55 and 877 of 1997 referred to by us supra, and that the Apex Court has permitted the petitioners to withdraw the SLP with liberty to apply for review of the decision before the High Court. The submission canvassed is that the law on the point is now well-settled by virtue of the ratio in Major Dhian Singh Vs. Union of India, wherein the Apex Court very clearly laid down the principle that where valuation has been accepted by a Court in respect of comparable land that the Courts are obliged to follow the same principle and the same standard while deciding the other similar cases. We hasten to add here that while the claimants' learned Counsel has vehemently submitted that in the light of the earlier decision the compensation must be enhanced to Rs. 1.75 lakhs per acre and that there is no need to go into any elaborate debate on this issue, the respondents' learned Counsel were quick to point out that even in respect of lands which are the subject-matter of the same acquisition that there can be and that in fact there are potential differences, for instance, they brought it to our notice that the lands covered by the earlier case were non-agricultural lands whereas the lands in the present case are agricultural lands. That secondly, the exact location, the exact size, of the plots and the several other factors which we do not need to recount contribute towards the justification for higher valuation as far as those plots were concerned. We do concede that no Court will apply a mechanical equaliser as far as this set of cases are concerned and that undoubtedly if there are any facts which differ or differentiate that these will have to be taken into account.

4. We have already dealt with the line of reasoning adopted by the Reference Court, which generally meets with our approval. We have however noted that while averaging the market value which work out to Rs. 8/- per sq. ft. that the learned Judge has then deducted a sum of Rs. 3/- per sq. ft. without assigning any reason whatsoever and again as far as the figure of Rs. 5/- per sq. ft. is concerned he has then applied a deduction of 53% towards developmental expenditure. The learned Counsel appearing on behalf of the authorities and the State have vehemently contended that particularly in urban areas the costs of development have virtually been escalating, one of the reasons being that there are long delays which occur principally because of the length of the litigation which perhaps the Court must take cognisance of and that consequently, the common liberality that is shown by the Courts with regard to the percentage of deduction ought not to be on the downward side. It is true that while considering the infrastructural costs the Courts have taken cognisance of the factors that comprise it, but there has been no specific reference to the aspect of the long time lag and the learned Counsel are right when they refer to this aspect. They have also pointed out to us that the Courts have at times gone to the extent of applying a deduction of 65% and that this is fully justifiable at present costs. At the other end of the scale comes the argument canvassed by the appellants' learned Counsel who have even cited before us the decisions of the Supreme Court in Bhagwathula Samanna and others Vs. Special Tahsildar and Land

Acquisition Officer, Visakhapatnam Municipality, wherein the Supreme Court accepted the principle that where the area is fully developed, insofar as there are roads, drainage, electricity, communications, etc., in the vicinity that no deduction should be made under the head of developmental expenditure. We need to be very careful as far as these principles are concerned. It is true that as far as the present lands are concerned, the handicap is that the record does categorise them as agricultural lands. Appellants' learned Counsel submitted that this makes absolutely no difference insofar as it only meant that the procedure for conversion has to be completed on the payment of a small fee and that the character of the lands was such that they are straightaway buildable and secondly, that all the infrastructural facilities have reached the immediate vicinity and that consequently, his submission is that even if the developmental expenditure is to be deducted that it should be at the barest minimum. We have very carefully looked at the topography, we have very carefully examined the location of the land and we have also done an assessment of whether or not the authority would be required to undertake a considerable amount of expenditure for purposes of converting these agricultural lands into buildable, utilisable house sites and in our considered view, that expenditure would still have to be incurred. It may be that the facilities have to be extended from the areas upto where they have reached, but having applied our minds very carefully to the facts and circumstances and to the various factors that comprise the expenditure we uphold the submission canvassed on behalf of the respondents' learned Counsel and the learned Government Advocate that the Reference Court was justified in applying the developmental expenditure of 53%. Undoubtedly, this figure does appear to be a little high but we do feel that it is justified. In doing so, we have done a practical and realistic appraisal of expenditure level, time factor and everything else that needs to be taken.

5. The only modification that we propose as far as the order of the Reference Court is concerned is to take note of the fact that the Reference Court was in error in having arrived at the figure of Rs. 8/- per sq. ft. as the market value, and then deducted Rs. 3/- per sq. ft. for no ostensible and justifiable reason and then to have deducted developmental expenditure, which amounts to double deduction. What we propose to do is to retain the original figure of Rs. 8/- per sq. ft. and to then apply the deduction of 53% of developmental expenditure and having done this assessment, we arrive at a figure of Rs. 3.76 ps. per sq. ft. which works out to Rs. 1,64,160/- per acre. We have ironed out this figure to Rs. 1.5 lakhs for the additional reason that in our considered view a Court is required, wherever necessary, to balance various factors that have been pointed out by the contesting parties and arrive at what in the opinion of the Court would be a fair and just compensation.

6. An amendment was. applied for on behalf of the claimants on the ground that they are justifiably entitled to compensation of Rs. 1.75 lakhs per acre as was done in the earlier case referred to by us and further more that different Courts including the Supreme Court have at different times not debarred themselves

from awarding a compensation higher than what has been asked for on basis of the Court fee paid on the technical ground allowing the claimants to pay the Court fee at a later point of time. A number of decisions were cited before us by the claimants' learned Counsel starting from the decisions of the Supreme Court in Harcharan Vs. State of Haryana, , Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , Gokal Vs. State of Haryana, and SLP No. 975 of 2000, DD: 31-1-2000, which decision was followed by the learned Single Judge of this Court in R.P. No. 425 of 2000, dated 20-2- 2003; also a decision in Sangopantha Traymbakro Patil Vs. Special Land Acquisition Officer, wherein, one of us M.F. Saldanha, J., had pointed out that in deserving situations all that the Court would do is to virtually permit the recovery of the legitimate Court fee to be deferred either on the ground that it would be paid up before the compensation is disbursed or that it could be deducted by the State Government at the time of depositing the amount. The principle is now well-settled insofar as the discretion is vested in the Court. If the Court is satisfied in appropriate cases that the claimant is entitled to a particular scale of compensation and if the appellant has satisfied the Court that it was due to poverty, inability or other compelling reasons that the Court fee had not been paid on the higher amount earlier, the Court is certainly within its rights to still award the compensation and permit the deferred Court fee to be recovered. That issue may not arise in the present set of appeals insofar as we have modified the order of the Reference Court to Rs. 1.5 lakhs per acre, but, in the event of some deficit having to be made good, we direct that the same will have to be deposited with the office of this Court before the decree is drawn up.

7. For the reasons that have been indicated by us, M.F.A. Nos. 2800 and 2860 of 1995, the appeals filed by the claimants, are allowed with costs M.F.A. Nos. 1693 and 1563 of 1995, the appeals filed by the authority to stand disposed off. Parties to bear their own costs The claimants would be entitled to the statutory benefits.