(2008) 02 MP CK 0054

In the Madhya Pradesh High Court

Smt. Shanti Devi Tiwari APPELLANT

Vs

Town Improvement Trust
 Commissioner, Municipal Corporation Vs Indra Deo Prasad Tiwari, Smt. Shanti Devi Tiwari and Ram Pratap Singh and Another
 Town Improvement Trust Vs Smt. Shanti Sharan Tiwari and Surendra Singh and Another
 Surendra Singh and Others Vs Commissioner, Municipal Corporation RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 28, 4, 54

Citation : (2008) ILR (MP) 2336 : (2008) 4 MPHT 117 : (2008) 3 MPLJ 177

Hon'ble Judges : S.A. Naqvi, J;Arun Mishra, J

Bench : Division Bench

Judgement

Arun Mishra, J.

The appeals have been preferred by the claimants and erstwhile Town Improvement Trust, Rewa, substituted by Municipal Corporation, Rewa (hereinafter referred to as ''the Corporation'') during the pendency of the appeals. The determination of compensations by Joint Tribunal of Town Improvement Trust of M.P. (in reference cases No. 3/85, 5/85, 2/88, 1/87 & 2/85) has been assailed.

It is not in dispute that notification regarding the acquisition was published in the gazette dated 25.2.1984 under erstwhile Town Improvement Trust Act, 1960. In M.A. No. 567/91 the area admeasuring 0.59 acres comprised in survey No. 379 was acquired by the Land Acquisition Officer at the rate of Rs.27,600/-per acre. On reference being sought the tribunal has determined the compensation at the rate of Rs.2.50 per sq. ft. In M.A. No. 568/91 compensation at the similar rate has been awarded. Consequently Town Improvement Trust taken over by Muncipal Corporation, Rewa has come up in M.A. No. 571/91. In M.A. No. 571/91 the tribunal has awarded compensation at the rate of Rs.2/-per sq. ft. In M.A.

No. 596/91 the claimants have come up in the appeal for enhancement of compensation. The tribunal has awarded compensation at the rate of Rs.4.50 per sq. ft. whereas a cross appeal M.A. No. 595/91 has been preferred by the Trust/ Corporation for reduction of the amount of compensation awarded by the tribunal. M.A. No. 588/91 has been preferred by the Trust/ Corporation. The tribunal has awarded compensation at the rate of Rs.2/-per sq. ft. Prayer has also been made to award solatium, interest at the higher rate considering the provisions of Land Acquisition Act.

In M.A. No. 571/91 the area of 2.71 acres comprised in survey Nos. 347, 358, 359, 361, 362 and 363 has been acquired. In M.A. No. 568/91 the area admeasuring 0.90 acres comprised in survey No. 196 has been acquired. In M.A. No. 540/91, 596/91 and 595/91 area admeasuring 2.71 acres, 5.73 acres comprised in survey No. 368 and 369 situated at village Saman, Tehsil and district Rewa has been acquired. The rate of Rs.2/-to Rs.2.50/ and Rs.4.50/-per sq. ft. has been awarded by the tribunal as per the impugned awards.

Smt. June Choudhary, learned Sr. counsel with Smt. Jai Laxmi Aiyer, Adv. and Shri D.S. Baghel, Adv. appearing on behalf of the claimants, has submitted that the compensation awarded by the tribunal at the rate of Rs.2/-per sq. ft. is inadequate considering the various sale-deeds placed on record development in the area and also considering the potential value of the land as on the date of acquisition, the land was being used for the purpose of construction of the houses in nearby area, several houses had already been constructed, considering the other development in the area also, it has rightly been found by the tribunal that land is capable of being used as house site and in the case of Surendra Singh (M.A. No. 595/91 & 596/91) the tribunal has awarded for similar land compensation of Rs.4.50/-per sq. ft., the land of the other claimants being similar the compensation at the similar rate ought to have been awarded by the tribunal.

Shri L.N. Namdeo, Learned Counsel for the claimants, has submitted that even the compensation awarded in the case of Surendra Singh is inadequate, compensation at the rate of Rs.6.50/-per sq. ft. ought to have been awarded. He has further relied upon the decision of the Apex Court in Jabalpur Improvement Trust v. Shakuntala Malhotra and Ors. decided on 10.9.2003 in civil Appeal No. 4938-4952 of 1993 to contend that solatium at the rate of 30% and the interest from the date of acquisition till realization. He has placed reliance upon the decision of the Apex Court in Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad and Another, to contend that in the matter of grant of solatium etc. the provisions of the Land Acquisition Act have to be adhered to and the provisions of solatium of 15% in the Town Improvement Trust could not come in the way of the Court to award solatium and interest at the rate prescribed under the Land Acquisition Act.

Shri Avinash Patel, Learned Counsel appearing for the corporation, has submitted that the compensation determined by the tribunal is excessive in the cases, ''large tract'' of the land was acquired, it would not fetch same value further, no deduction has been made for development, sale deeds evinced transaction with respect to the smaller piece of land, thus, could not have been relied upon so as to work out the compensation at the rate awarded by the tribunal, there is provision in Town Improvement Trust for awarding solatium at the rate of 15%, that has been rightly allowed, thus, the compensation be suitably reduced and no case for enhancement of compensation is made out.

Before we examine the rival submissions, we place it on record, it has not been disputed that land is capable of being used as house sites, several houses had come in the close vicinity of the area in question and it appears that there was pond between the high way and the land in question. The land appears to be situated adjacent to each other, thus, cannot be said that any part of land has the different potential value than the other land. It is also clear that large tract of the land was acquired by the erstwhile Town Improvement Trust which has been abolished and assets were taken over by the Corporation, Rewa during the pendency of appeals, the tribunal has rightly found that acquired land has urban site value, the claim of claimants in that regard has been rightly accepted.

Coming to the evidence furnished by the sale-deeds, in M.A. No. 540/91 (Ex.C.1) dated 26.4.83 was with respect to 2613 sq. ft. but it was sold for Rs.26,000/-, the rate per sq. ft. was Rs.9.80. The sale-deed (Ex.C.2) dated 13.10.82 was with respect to 1500 sq. ft. for Rs.3375/- at the rate of Rs.2.30 per sq. ft. Sale-deed (Ex.C.3) dated 8.7.83 was with respect to 2100 sq. ft. land sold for Rs.15,750/- at the rate of Rs.7.50/-per sq. ft. Sale-deed (Ex.C.6) dated 6.8.81 evince transaction of Rs.8,000/ sq. ft. sold for Rs.16,000/-at the rate of 2/-per sq. ft. Sale-deed (Ex.C.4) dated 30.11.81 with respect to Rs.4,000/-sq. ft. land was for consideration of Rs.10,000/-at the rate of Rs.2.50/-per sq. ft. As per sale-deed (Ex.C.5) dated 25.8.83 area of 3200 sq. ft., sold for Rs.15,000/-at the rate of 4.20 per sq. ft. In M.A. No. 571/91 the sale-deeds are similar. In M.A. No. 567/91 similar evidence was adduced. In the case of Surendra Singh sale-deed of small plots of land were for Rs.7.47 per sq. ft., Rs.9.80 per sq. ft., Rs.4.64 per sq. ft., Rs.6.50 per sq. ft., Rs.10 per sq. ft., the tribunal has worked out average Rs.5.50 per sq. ft. and deduction of 75 p. per sq. ft. was made so as to arrive at the figure of Rs.4.50 per sq. ft. It is not in dispute that sale-deeds were with respect to small piece of land.

Before dilating upon the valuation of the land we deem it appropriate to note certain decisions of the Apex Court laying down the principles for determination of compensation. In P.S. Krishna and Co. Pvt. Ltd. Vs. The Land Acquisition Officer, (Deputy Collector) Hyderabad, , it was observed that use on the date of acquisition is one of the material factors and on facts 1/5th deduction was made towards development. In Special Land Acquisition Officer, Karnataka Housing Board and others Vs. P.M. Mallappa and others, , the court held that potential value on the date of notification u/s 4 is relevant, not the subsequent user. In case of the acquisition of the developing land certain deduction has to be made depending upon the facts of each case. In Basant Kumar and Others Vs. Union of India (UOI) and Others, , 60% deduction towards development was held permissible on facts. In case the land is developed less deduction can be made as observed in Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, . In case of acquisition of large piece of land certain deduction is required to be made, 1/3rd deduction was made in Karan Singh v. Union of India (1998) 11 SCC 170. In case of acquisition of large piece of land -17.57 acres was acquired, grant of compensation per sq. ft. was held to be illegal, compensation should be awarded on per acre basis as held in Smt. Indumati Chitaley Vs. Government of India and another, . If the situation of the land is relevant criteria if the land is situated near the road as it may fetch higher value higher compensation is permissible. Distance from the city is relevant consideration for arriving at the value of the land which a prudent buyer would have offered. Genuineness of the transaction is also relevant consideration. Time gap between sale transaction, situation, are relevant factors while determining the price/ compensation for the land acquired. Similarly, acquisition of the plot whether it is small or large is relevant factor, nearness to road where land is in frontage or only small opening on front, proximity to developed area, depressed portion requiring filing, shape, level etc. are relevant considerations. Offer of two different price abutting road and the land which was low lying area was upheld by Apex Court, dealing with various aspects for determination of compensation elaborately in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, . In The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others, , considering the potential value of the land proximity of the area, deduction of 20% was made on facts instead of 35%. In Sharadamma v. Special Land Acquisition Officer and Anr. AIR 2007 SCW 1109, the acquired land was surrounded by factories, there was industrial potential in land, it was situated adjoining national highway and railway line and near corporation limit, development had taken place in the nearby area, compensation at the rate of Rs.20/-per square yard was awarded. In P. Rajan and Another Vs. Kerala State Electricity Board and Another, , it was observed that determination of compensation per sq. ft. in the case of large tract of land would be confined only to highly developed commercial land. In The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, , deduction at the rate of 53% was made from the value as the evidence indicated that acquired lands were agricultural lands.

As in the instant cases large tract of the land has been acquired, the sale deeds were of small piece of land, thus, for large tract of land valuation could not have been made at the same rate and further deduction was required to be made for the development as the amount/area was required to be deducted. It would be appropriate to deduct 40% amount from the valuation to be made towards development of the area in the facts & circumstances of the instant cases as that area would have been consumed for providing facilities such as road and the other amenities in the area in question.

Coming to the question of valuation per square ft., as the evidence discloses in the case of Surendra Singh the average value was at the rate of Rs.5.50/-but that could not be the rate offered for the large tract of the land by a prudent buyer, it would be appropriate to assess the rate at Rs.3.25 per sq. ft. and after making 40% deduction for development the valuation per sq. ft. comes to Rs.1.95/- per sq. ft.

The question of award of solatium at the rate of 30% on the amount awarded is covered by the decision of the Apex Court, reference was made to larger bench in Jabalpur Improvement Trust v. Shakuntala Malhotra and Ors. (2004) 10 SCC 186; reference was made on 15th July, 2003, the question has been answered by the Apex Court relying upon the decision of the Apex Court in Savitri Cairae v. U.P. Avas Evam Vikas Parishad and Anr. (supra) in which the Apex Court has laid down that in the matter of award of additional compensation, enhanced rate of solatium can be claimed on the basis of the parity invoking Article 14. The reference has been answered thus:

The appellant herein is established and constituted under the Madhya Pradesh Improvement Trust Act, 1960 (hereinafter referred to as ''the Act''). One of the purposes of the Act is to acquire land for housing Schemes. The appellant herein, in pursuance of that object issued a notification on 2nd September, 1966, acquiring a large tract of land situated at village Chawanpur in the city of Jabalpur. On 23rd March, 1973, the appellant took over the possession of the land. The respondents herein submitted their separate claims for compensation in respect of acquired land before the Tribunal, constituted under the Act. On 10th March, 1983, the Tribunal gave an Award. Under the Award the claimants were given compensaion a the rate of Rs.0.25 paise per sq. ft. to Rs.0.45 paise per sq. ft. with interest at the rate of 6% per annum from 23rd March, 1973 till he date of payment. The Tribunal also awarded solatium at the rate of 15%. The appellant as also the claimants, both aggrieved, preferred cross objections/ appeals u/s 54 of the Land Acquisition Act before the High Court. The High Court after hearing the matter, allowed the appeals holding that the lands falling under Category ''A'' be valued at Rs.0.90 paise per sq. ft.; Category ''B'' be valued at Rs.0.70 paise per sq. ft.; and Category ''C'' be valued at Rs.0.55 paise per sq. ft. The High Court further granted solatium at the rate of 30% on the amount awarded to the claimants, interest at the rate of 12% from the date of acquisition till realisation of the amount and 15% for compulsory acquisition of land on the amount of compensation so determined. Aggrieved, the appellants are in appeals before us.

We have heard Learned Counsel for the parties. We are of the view that these matters stand covered by the decision of this Court in the case of Savitri Cairae Vs. U.P. Avas Evam Vikas Parishad and Another, . In view of the above, the appeals are, accordingly, dismissed. No costs. W.P. of 1992 : Learned Counsel states that this petition is rendered infructuous and is, accordingly, dismissed.

Thus, the appellants-claimants are held entitled for solatium at the rate of 30% on the value determined, apart from the interest at the rate of 12% per annum from the date of notification till the taking over the possession and thereafter as provided in Section 28 at the rate of 9% from the date of taking the possession till the compensation determined is paid. The claimants are held entitled to claim the compensation at the rate determined by this Court in the aforesaid manner. They are also entitled for interest and solatium at the aforesaid rate.

Resultantly, the appeals are accordingly disposed of. No costs.

