

(1999) 07 KL CK 0064
In the High Court Of Kerala
Case No : L.A.A. No. 438/96

State of Kerala

APPELLANT

Vs

Dr. Susheela Varghese and Others

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 4(1), 6, 9

Citation : (1999) 07 KL CK 0064

Hon'ble Judges : C.S. Rajan, J;A.S. Venkitachala Moorthy, J

Bench : Division Bench

Advocate : P.M. Poullose, Govt. Pleader, for the Appellant; Bechu Kurian Thomas, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—31.60 Ares of land was acquired by the Government for the purpose of Kerala Water Authority. Section 4(1) notification was issued on 1st February 1986. The Land was taken possession on 20th March 1,987. The land Acquisition Authority as per award dated 18th March 1987 awarded Rs. 8,151 per Are (Rs. 8,500 per cent). The claim was for Rs. 12,000 per Are. On a reference to the Land Acquisition Courts the court below awarded Rs. 20,995 per Are (Rs. 8,500 per cent). The state has come up in appeal against the above Decree and judgment of the Land Acquisition Court. The claimants have relied on Ext. A-1 document dated 21st December 1987 for the purpose of claiming enhanced compensation. According to the learned Government Pleader the above document being a post notification one could not have been relied on by the lower Court to award enhanced compensation.

2. Sri. P.M. Poullose, learned Government Pleader brought to our notice at least three decisions of the Supreme Court in order to drive home the point that the document executed after the date of Section 4 notification can be relied on only on certain conditions. In the ruling reported in Randhir Singh Vs. Union of India (UOI) and Others, , the Supreme . Court considered the above question in the

following words:

It is true that the sales deed Ext. 9.1 upon which the High Court has relied is of a date three years later than the notification u/s 4 but no material was produced before the Court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ext. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land in dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ext. 21.

In the ruling reported in Administrator General of West Bengal Vs. Collector, Varanasi, the Supreme Court considered the very same question and held as follows:

The sale transaction at Ext. 24 was an year later. Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there was no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value.

One of the recent rulings of the Supreme Court on this aspect is reported in Karan Singh and others etc. Vs. Union of India, . After relying on the two earlier decisions referred to above, the Supreme Court reiterated its stand in the following words:

...The consideration in terms of price received for land under bona fide transaction on the date of notification issued u/s 4 of the Act or a few days before or after the issue of notification u/s 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land has to be assessed in terms of those transactions. The sale of land on or about the issue of notification u/s 4 of the Act is stated to be the best piece of evidence for determining the market value of the acquired land. Often evidence on transaction of sale of land on or a few days before the notification u/s 4 is not available. In the absence of such evidence contemporaneous transactions in respect of, lands which had similar advantages and disadvantages would be a good piece of evidence for determining the market value of the acquired land. In case the same is not also available, the other transaction of land having similar advantages nearer to the date of notification u/s 4 of the Act would guide in determination of the market value of acquired land. In the present case, in the absence of evidence of any transaction or sale of land on the date of issue of notification u/s 4 of the Act, the Court would be justified in relying upon the transaction of sale of land having similar advantages nearer to the notification issued u/s 4 of the

Act which can be taken as a guide for determining the market value of the acquired land and compensation to be awarded to the claimants.

Thus it is very clear that in order to rely on a post notification document, the claimant has to prove that there was no upward increase in the price of the land in the locality and that the price was remaining static during the intervening period. This burden has to be discharged by the claimant by adducing reliable evidence.

3. The learned Government Pleader argued that the Respondents-claimants have not discharged, the above burden in this case. The evidence consists of the Oral testimony of A.W. 1 who is the claimant herself and A.W. 2 who represents the Company which purchased the land covered by Ext. A-1 document. According to A.W. 1 the negotiation for purchasing or selling the property as per Ext. A-1 started two years earlier. Due to the delay in getting sanction from the Head Office of the Company, the transaction could not take place. It was further stated by A.W. 1 that the above property does not have any road frontage and it is lying low from the level of the road. At the same time, the acquired property has got road frontage and lies on the same level of the road.

4. A.W. 2, who was the Accounts Manager of the Company which purchased Ext. A-1 property deposed that due to the delay in getting sanction from the Head Office the transaction could not take place immediately after the negotiation. He also deposed that the negotiation started in 1985. In this connection it must be pointed out that there was no suggestion at the instance of the State that Ext. A-1 was executed solely for the purpose of claiming enhanced compensation for the acquired land. It was also not disputed that Ext. A-1 document was a genuine document bona fide executed by the parties. In this connection it must also be mentioned that the property covered by Ext. A-1 is a large extent so that it was not intended to procure as an evidence for higher price in the locality.

5. Sri. Bechu Kurian Thomas, learned Counsel for the Respondents brought to our notice an earlier ruling of the Supreme Court reported in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, corresponding to (1988) 3 S.C.C. 751. In a well considered judgment the Supreme Court evolved certain factors which must be "etched on the mental screen", while tackling the problem of valuation of the land under the Land Acquisition Act. They are the following:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court.

(2) So also the award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the court

unless produced and proved before it. It is not the function of the court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a Plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the court. Of course this materials placed and proved by the other side and also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification u/s 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification u/s 4) as if the value is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of acquisition of land)

(9) Even post-notification instances can be taken into account (1) if they are very proximate (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle.

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a

prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be under taken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) facts:

plus factors minus factors

1. smallness of size 1. largeness of area 2. proximity to a road 2. situation in the interior at a distance from the road. 3. frontage on a road 3. narrow strip of land with very small frontage compared to depth. 4. nearness to developed area 4. lower level requiring the depressed portion to be filled up. 5. regular shape 5. remoteness from developed locality. 6. level vis-a-vis land under 6. some special disadvantageous acquisition factor which would deter a purchaser. 7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plot, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 percent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

According to the 9th principle, even post notification in stances can be taken into account if they are very proximate, genuine and the acquisition itself had not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

6. If we apply these principles to the facts of this case, we will get the following plus factors:

- (1) road frontage
- (2) regular shape
- (3) levelled land"
- (4) less extent of land compared to the area covered by Ext. A1.

The only minus factor is that Ext. A-1 document was executed after one year and 10 months of the date of the notification u/s 4(1) of the Land Acquisition Act.

7. The claimants have deposed that the value of the property would be Rs. 10,000 to Rs. 12,000 at the time of acquisition on the ground that the acquired land is more superior than the property covered by Ext. A-1, and that it is situated in a more important locality with more road frontage. The evidence of A.Ws. 1 and 2 have not been challenged in cross-examination by putting questions on this aspect. The State also has not adduced any contra evidence. The basic document on which the State wanted to rely on has not been produced before the court also.

8. The advocate Commissioner who inspected the site has stated in the report that the acquired land is lying in the same level as that of the road. Due to transportation facilities available and its close proximity to temples, churches, schools, hospitals, Bank, other commercial establishments etc. the acquired land can be regarded as an extremely important plot of land for use, either residential or commercial. No objection has been filed by the State to the Commission report. Therefore, Ext. C-1 commission report also can be safely relied on.

9. The price of the property, as claimed by the claimants in their depositions as well as in the claim is Rs. 12,000. Atleast 22 months after the Section 4(1) notification, another property with less importance fetched Rs. 6,500. Out of this, if one considers, for the sake of argument that the value of the property would have increased 10 per cent per year and if the same is calculated and deducted, roughly one would get the figure of Rs. 5,500. As against this, there is an undisputed claim of Rs. 12,000 by the claimants. We have already pointed out the extra plus factors as far as the acquired property is concerned. In these circumstances! we are of the definite view that a balance can be struck and the figure can be arrived at safely, in any event, not less than Rs. 8,500. Therefore, we do not find any arbitrariness or illegality in awarding Rs. 8,500 by the lower court to the acquired land. Therefore, we confirm the Decree and judgment of the lower court. The appeal is dismissed.