

(1997) 06 KAR CK 0004
In the Karnataka High Court
Case No : M.S.A. No. 74/94

The Asst. Commissioner

APPELLANT

Vs

Smt. Kamalabai Kom Laxman Metri

RESPONDENT

Date of Decision : 20-06-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24, 4, 54 (2)

Citation : AIR 1998 Kar 147 : (1997) ILR (Kar) 2063 : (1997) 3 KarLJ 673

Hon'ble Judges : P. Vishwanatha Shetty, J;G.C. Bharuka, J;Chidananda Ullal, J

Bench : Full Bench

Advocate : P.G.C. Chengappa, Addl. G.A, for the Appellant; P.M. Jalisatgi, for the Respondent

Judgement

G.C. Bharuka, J.—In this appeal filed u/s 54(2) of the Land Acquisition Act, 1894 (in short "the Act"), the Land Acquisition Officer has questioned the market value as determined by the District Judge, Uttar Kannada, Karwar in RA No. 164/89.

2. It appears that, under preliminary notification dated 9.5.1974 issued u/s 4 of the Act, lands in question were acquired for construction of Police Parade Ground, Assault Course, Police Play ground, Police Headquarters and wireless station etc., The learned District Judge on consideration of the materials placed before him, enhanced the market rate from Rs. 900/- to Rs. 1,400/- per gunta by allowing the contention of the land owner and rejecting the -appeal filed by the State for reduction of the market value. When the matter was taken up for hearing before the learned Single Judge, a controversy arose as to whether while determining the potential value of the land in question, deduction by way of development charges should be taken at 33.33% or 53% as held by a Division Bench of this Court in MFA 667/89 dated 9th September 1993, since the learned Single Judge was of the opinion that the said Division Bench Judgment was rendered on a misreading of the judgment of the Supreme Court in Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, . He found it advisable to recommend for placing the case before the full bench inviting attention on the

following two questions :

(1) Whether in respect of costs of development, deduction can be made to the extent of 53% or to the extent ranging between 20% to 33% of the cost or price of land and not more under the law laid down by the Supreme Court in *Brig. Sahib's* case?

(2) Whether the Division Bench in its decision dated 9.9.1993 given in MFA 667 of 89 (*Asst. Commissioner v. Sarasubai*) was correct and justified in reading and laying down that the Supreme Court's decision has laid down the law to the effect that to arrive at a market value of the larger tracts of land atleast 53% of the price fetched for smaller site shall be deducted towards development charges?

3. We have heard Mr. P.G.C. Chengappa, learned Additional Government Advocate appearing for the appellant and Mr. P.M. Jalisatagi, learned Counsel appearing for the respondent and have examined the Judgment of the Division Bench referred to above in the context of the law laid down by the Supreme Court on the point at issue.

4. The general principles for determining compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale-deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalizing the rent keeping in view the prevailing rate of interest. But this also is not a conclusive method. The Supreme Court had in *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, indicated at page 412 the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification u/s 4(1) which are (i) opinion of experts (ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstance into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonable correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in "respect of the situation or

the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. [See : Smt. Tribeni Devi and Others Vs. Collector of Ranchi, .

5. In the case of Tribeni Devi (Supra), two plots admeasuring 2.65 acres and 2 acres respectively were acquired under the provisions of the Act, For ascertaining the market value of the said lands, keeping in view the principles enumerated by it, as above, the Apex Court, took the sale transaction of a land admeasuring 0.617 acres which means just above half an acre as an objective standard for estimating the market value of the lands acquired by laying down the following principles.

"A smaller area such as this on a main road would certainly fetch a higher price compared to a larger undeveloped area even though it may have a frontage on the main road. In order to develop that area at least the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities."

6. Subsequently, in the case of Administrator General of West Bengal Vs. Collector, Varanasi, , the Supreme Court by placing reliance on some of its earlier judgments took the view that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. It was further held that:

"The principle requires that prices fetched for small developed Plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying-out roads drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc., are to be made."

7. Again, in the case of Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, the Supreme Court, after noticing that the founding principles regarding ascertainment of market value of lands in acquisition proceedings has been fully discussed in the case Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, , proceeded to reiterate that:

"It is settled law by catena of decisions that the market value postulated in Section 23(1) of the Act designed to award just and fair compensation for the lands acquired. The words "market value" would postulate price of the land prevailing on the date of the publication of the notification u/s 4(1). This Court repeatedly laid the acid test that in determining the market value : of the land, the price which a willing vendor might reasonably expect to obtain from a willing

purchaser would form the basis to fix the market value. For ascertaining the market rate, the Court can rely upon such transactions which would offer a reasonable basis to fix the price. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value."

8. Having traced the law that the price fetched for small developed plots cannot as such be taken to be the basis for valuing large extent of lands and further that for ascertaining the value of such large extent of lands, keeping in view its potentialities for forming layouts for building or commercial purposes, a reasonable deductions has to be made for development costs from the value ascertained by applying the rate at which the small plots are found to have been sold. Now, it needs to be found as to what would be the reasonable deduction on the said count.

9. As noticed above, in the case of Tribeni Devi (supra) on the facts before. Their Lordships of the Apex Court, they found that 1/3 of the value arrived at on the basis of the sale value of small extent as a fair deduction by way of development cost. But as noticed in the case of Special Tahsildar (supra) the Supreme Court has been approving, the deduction by way of development costs at varying rates ranging between 25% to 33.33% as noticed in para 4 of the said judgment which is to the following effect:

"In Smt. Tribeni Devi and Others Vs. Collector of Ranchi, , this Court held that "in order to develop that area at least the value of 1/3 of the land will have to be deducted for roads, drainage and other amenities". On this basis the value of the land at Rs. 2,08,135.70 per acre would, after the deduction of 1/3 come to Rs. 1,38,757 per acre. In Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, . This Court held that deduction of 1/3 was held to be reasonable. In Vijay Kumar Moti Lal Vs. State of Maharashtra, 1/3rd was deducted towards developmental charges in underdeveloped area. In Vijaysingh Liladhar Vs. Special Land Acquisition Officer, the deduction of 1/4th by the High Court which was not challenged in this Court was upheld. In The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, , deduction of 25 percent was held to be reasonable. It is to be noted that in building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity, etc. are condition precedent to approve lay out for building colonies. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections deduction of 1/4 may be justified. On that basis, this Court in R. Dharma Rao's case upheld deduction of 1/5 because the owner while obtaining

the lay out had already set apart lands for road and drainage. Therefore, deduction of 1/ 3 would be reasonable. In fact in the Tahsildar, Land Acquisition, Vishakhapatnam v. P. Narasing Rao (1985)1 APLJ 99, A Division Bench of the High Court surveyed judgments of the High Court relating to housing schemes of Vishakhapatnam upholding deduction of 1/3 to be reasonable. Accordingly we hold that 1/3 of the market value should be deducted for development of the lands."

10. The above said proposition is also well illustrated even in the case of Brig. Sahib Singh Kalha (supra). In this case, as noticed in the opening paragraph of the judgment, out of the two questions which had fallen for consideration before the Supreme Court, one was as to:

"Whether, cut of 33% of the market value in one case and 20% in others was justified in determining amount of compensation ?"

11. As is apparent from the para 3 of the judgment in Brig. Saheb Singh's case (supra) the Supreme Court was called upon to adjudicate the permissible deduction by way of development cost in respect of two different tracts of land described as belts "A" and "B". Considering the situation of the lands, the surrounding developmental activities and its potentialities, the Tribunal applied 20% cut in respect of one case and 33% in respect of another. The Supreme Court after referring to the Tribeni Devi's case (supra) held to the following effect :

"The cost of development may range from 20 to 33 per cent depending on the nature of the land, its situation and the state of development etc., The Tribunal had before it material on which it directed a cut of 33 per cent of the market value in one and 20 per cent in the other. It cannot be said that the aforesaid deductions were arbitrary or unreasonable having regard to the fact that the land acquired is an undeveloped area and the award of the Tribunal is based on the belting principle."

12. From the above analysis, it is clear that in Brig. Saheb Singh's case, the Supreme Court has held that the deduction on account of development cost can range between 20 to 33% depending on the situational factors pertaining to the land acquired. But, with due respect, it will be a clear misreading of the judgment if it is to be held that the Supreme Court in the said case has upheld deduction of 53% (i.e. 20% + 33%).

13. Now, coming to the decision of the Division Bench of this Court in the case referred to above, paragraph 9 thereof reads thus:

"The Supreme Court in Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, , held that deduction for land required for roads and civic amenities and deduction towards the cost of development, will together come up to 53% and therefore price fetched, for small plots cannot directly be applied in the case of large area, that the price of small plots in a lay-out would

be the retail price and the price for the large undeveloped area will be the wholesale price. Hence, the Supreme Court held that to arrive at the market value of the large tract of land atleast 53% of the price fetched for small sites shall be deducted.. This principle has been subsequently reiterated by the Supreme Court and this Court in several other decisions."

14. On reading of the above said paragraph, with great respect we may venture to point out that it is not only that the Division of this Court has committed the said mistake of reading 53% as permissible deduction by way of development cost in Brig. Sahib Singh's case (supra) but we may dare to observe that even the Supreme Court also appears to have caused a similar arithmetical error in case of the Administrator General of West Bengal's case (supra) where, in paragraph 6 of the judgment; it has further been observed that:

"In Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53%."

15. In any view of the matter, as noticed above in, its latter judgment in the case of Special Tahsildar (supra) the Supreme Court has clearly enunciated that the deduction for development cost for arriving at potential market value of larger extent of lands on hypothetical layout basis can be only upto 33 percent.

16. For the said reasons, we are constrained to hold that in the case of ASSISTANT COMMISSIONER v. SARASUBAI RATNABAI M.F.A. 667/1989 DD. 9.9.1993, the Division Bench has committed an error in holding that in the case of Brig. Sahib Singh (supra), the Supreme court has held that for ascertaining the market value of larger tracts of land, 53% of the price fetched for smaller sites shall have to be deducted.

17. We, accordingly answer the questions referred to us. Now the matter may be placed before the learned Single Judge for consideration of the respective claims on the basis of evidence and materials placed on record.