Kasturi & Ors vs State Of Haryana on 12 November, 2002

Equivalent citations: AIR 2003 SUPREME COURT 202, 2003 (1) SCC 354, 2002 AIR SCW 4644, 2002 (6) SLT 456, (2002) 5 ALL WC 3513, 2002 (8) SCALE 426, 2002 (4) LRI 909, (2003) 1 ALLMR 755 (SC), 2003 (1) ALL MR 755, 2002 (10) SRJ 525, (2002) 9 JT 299 (SC), (2003) 2 ALLINDCAS 470 (SC), 2003 (1) UJ (SC) 197, 2003 (1) UPLBEC 131, (2002) 8 SUPREME 40, (2003) 1 UC 218, (2003) 1 UPLBEC 131, (2003) 1 RECCIVR 278, (2003) 1 ICC 1, (2002) 8 SCALE 426, (2003) 1 INDLD 1072, (2003) 1 CIVLJ 509, (2002) 4 CURCC 177

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Bench: Doraiswamy Raju, Shivaraj V. Patil

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           CASE NO.:
Appeal (civil)  7139 of 2001

PETITIONER:
Kasturi & Ors.

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 12/11/2002

BENCH:
DORAISWAMY RAJU & SHIVARAJ V. PATIL.

JUDGMENT:
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J U D G M E N T W I T H (C.A. Nos. 7140/2001, 7143/2001, 7142/2001, 7141/2001, 7171/2001 7145-67/2001, 7144/2001, 7168/2001, 8206/2001, SLP (C) Nos. 17711/2001, 2107-08/2002, 2111-2112/2002, 2113-2114/2002 & C.A. Nos. 5777/2002, 5610/2002 & SLP(C) Nos. 17717/2001 13563/2001, 21250/2001, & 2109-2110/2002) SHIVARAJ V. PATIL J.

Since common question of law arises for consideration on similar facts, these appeals and special leave petitions are disposed of by this judgment.

A large area of 84.23 acres of land was acquired by the State of Haryana for development of residential and commercial area of Sector 13 and 23 in Bhiwani. A preliminary notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 4th June, 1986 under Section 6, declaration was made on 15.4.1987 and two awards were passed covering the entire area on 10.11.1987 and 31.3.1988 awarding a sum of Rs. 57,500/- per acre and Rs. 55,200/- per acre respectively. The claimants, not being satisfied with the award-amount, sought reference under

Section 18 of the Act. In all, 151 references were made; the learned District Judge disposed of all these references by awarding uniform rate of compensation @ Rs. 125/- per square yard as against Rs. 11.81 paise per square yard awarded by the Land Acquisition Collector. In all, 251 Regular First Appeals were filed in the High Court by the claimants as well as the State of Haryana against the judgment of the Reference Court. In the said appeals, claimants prayed for enhancement of compensation to Rs.500/- per square yard while the State sought for reduction of the compensation amount to Rs.11.81 per square yard as awarded by the Collector. The learned Single Judge, having reviewed and re- appreciated the entire evidence, keeping in view the contention of the parties, for the reasons stated in the judgment, reduced the amount of compensation to Rs.79.98 per square yard. In doing so, the learned Single Judge applied cut of 20% towards development charges. In the result, the learned Single Judge partly allowed the appeals filed by the State and dismissed the appeals filed by the claimants. The claimants, aggrieved by the order of the learned Single Judge, filed Letters Patent Appeals before the Division Bench of the High Court. The Division Bench dismissed the appeals, affirming the judgment and order of the learned Single Judge. Hence, these appeals are filed by the claimants.

Learned counsel representing the appellants strongly contended that applying cut of 20% on the rate of compensation arrived at on the basis of the sale instances is neither justified nor tenable; the High Court was not right in reducing the rate of compensation from Rs.125/- per square yard to Rs.79.98 per square yard; the HUDA in pursuance of the award of the District Judge raised the rate of allotment of the land to Rs.536/- per square yard as a result of which total rate of allotment of land worked out to more than Rs.1100/- per square yard, and as such there was no loss to the State or the HUDA so as to ask the appellant to pay back 20% of the amount of compensation already received; according to the learned counsel, if refund is to be made by the appellants, it amounts to unjust enrichment for the HUDA which has already received more money by way of increase in the rate of land from the allottees. The learned counsel finally submitted that having regard to the facts and circumstances of the case, if the appellants have to make refund now, of the 20% of the compensation amount already received by them, it would result in great hardship to them.

Opposing the submissions of the learned counsel for the appellants, the learned counsel for the respondent-State argued supporting and justifying the impugned judgment, stating that the learned Single Judge of the High Court did consider the entire material placed before him objectively and has applied 20% cut on the rate of compensation determined following the principles stated by this Court in that regard. He submitted that the judgment of the learned Single Judge is based on the finding of facts, which the Division Bench of the High Court has affirmed and as such the impugned order does not call for any interference at the hands of this Court.

The emphasis and thrust of the argument made on behalf of the appellants was that the cut of 20% on the amount of compensation was not at all justified having regard to the fact that the acquired land was in a fully developed area.

The learned Single Judge, dealing with the question of location and potentiality of the acquired land, has observed that there is really not much dispute between the parties in that regard; documents clearly show that the land in question is adjacent to the land already acquired for developing Sectors

13 and 23; on one side of the acquired land, there is a city railway station while on the other, there is 100 ft. wide road; there is overwhelming documentary evidence to show that the land in question is surrounded by developed areas and the land has a commercial and residential potentiality. The learned counsel for the appellants, pointing out to these observations urged that there was no need to apply any cut on the amount of compensation based on the market value. In support of this submission, they heavily relied on the decision of this Court in Bhagwathula Samanna & Ors. vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, Visakhapatnam [(1991) 4 SCC 506]. The learned Single Judge, after considering evidence placed reliance on Exbt. P-7 as the very foundation for giving the claimants amount of compensation for the acquired land. The Division Bench of the High Court in the impugned judgment noticed that the learned Single Judge adopted the cut of 20% on the cumulative effect of various factors enumerated in the judgment. Inter alia, on the ground that Exbt. P.7 relates to sale transaction between two individuals in respect of plot of 3 canals (nearly 1800 square yards) located on the main road itself with 100 feet wide face touching the main road. It has greater commercial potential value in comparison to other area and it would be difficult to place it at par with the land at considerable distance from the main road. Whereas the land acquired is a large area of 84 acres, which has been acquired for development of residential and commercial areas of Sectors 13 and 23 in Bhiwani. Further, the sale instance Exbt. P-7 is of the land after the same had been developed; whereas in respect of the land in question, the State has to carry out and incur heavy expenditure for developing it. After noticing the observations made in the judgment of the learned Single Judge, the Division Bench concurred with the findings recorded therein and upheld the 20% cut applied by the learned Single Judge on the compensation amount payable to the claimants. The learned Single Judge had taken into consideration yet another ground that the value of the land of claimants have been enhanced considerably because of the activities carried out by the State or its instrumentalities; but for the development of the project by the Haryana Urban Development Authority (HUDA), the prices of the acquired land would not have shot up that high as shown in Exbt. P-7. The land for the development of the project was acquired by the State on earlier occasions in the year 1974, and thereafter in 1985. The State has to carry out and incur heavy expenditure for developing the land which has now been acquired and as such, there was justification to apply 20% cut. The learned Single Judge following the earlier decisions of this Court and of the same High Court, determined the market value of the acquired land having regard to the evidence placed on record and applied 20% cut in arriving at the amount of compensation to be paid to the claimants.

It is not debated that sale transaction covered by Exbt. P-7 relates to a small plot and the land in question acquired is about 84 acre. This land comprising of large area is not developed although it has potential value for residential and commercial purposes. In order to develop this land, roads were to be laid, provisions for drainage was to be made and certain area was to be earmarked for other civic amenities. Thus, after leaving the area in the land required for the purposes mentioned above, plots were to be made for residential and commercial purposes by incurring expenditure for other developmental works, such as providing electricity, water, etc. The acquired land is not small plot located in such a way that no other development was required at all and it could be utilized as it is as a developed building site. It is well-settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3 amount of compensation has to be deducted out of the amount of compensation payable on the acquired land

subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for the residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that area adjoining his land is developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3 and in some cases less than 1/3. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose.

This Court in Administrator General of West Bengal vs. Collector, Varansi [(1988) 2 SCC 150] referring to earlier decisions has held that prices fetched for small plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Para 12 of the said judgment reads:_ "It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. (See Collector of Lakhimpur v. B.C. Dutta [(1972) 4 SCC 236];

Mirza Naushervan Khan v. Collector (Land Acquisition), Hyderabad [(1975) 2 SCR 184];

Padma Uppal v. State of Punjab [(1977) 1 SCR 329]; Smt. Kaushlya Devi Bogra v. Land Acquisition Officer, Aurangabad [(1984) 2 SCR 900]). The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. 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 not 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 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 civil 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 realization of the price; the profits on the venture etc. are to be made. In Sahib Singh Kalha v. Amritsar Improvement Trust [(1982) 1 SCC 419], this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent.

But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the `retail' price of the land the latter the `wholesale' price."

In Gulzar Singh & Ors. vs. State of Punjab & Ors. [(1993) 4 SCC 245], referring to the case of Administrator of West Bengal (supra) and other cases, this Court upheld the deduction of 1/3 of the undeveloped land towards developmental charges. In that case, 90 acres of undeveloped land was acquired which required development by laying road, parks, drainage, lighting and other civic amenities. It may also be noted that in the said judgment, this Court distinguished the case of Bhagwathula Samanna (supra) on which the appellants strongly relied.

Yet again in K. Vasundara Devi vs. Revenue Divisional Officer (LAO) [(1995) 5 SCC 426], this Court reiterated that when genuine and reliable sale deeds of small extents were considered to determine market value, the same will not form sole basis to determine market value of large tracts of land. Sufficient deduction should be made to arrive at a just and fair market value of large tracts of land. Again, in this case also Bhagwathula Samanna (supra) was distinguished while upholding the deduction as to developmental charges.

This Court again in Special Land Acquisition Officer, Bangalore vs. V.T. Velu & Ors. [(1996) 2 SCC 538] in a similar situation as in the case on hand has held that at least 1/3 of the land acquired is to be set apart for road purpose, developmental purpose and other civic amenities. It is also observed, "the mere fact that there is a connecting road to the lands, by itself is not a correct principle of law in refusing to deduct towards developmental charges".

(emphasis supplied) In U.P.Jal Nigam, Lucknow through its Chairman & Anr. Vs. Kalra Properties (P) Ltd. Lucknow & Ors. [(1996) 3 SCC 124] this Court has stated thus:-

> "Therefore, it should be determined only on the basis of yardage. If the principle of determination of compensation on yardage basis is adopted, it is equally settled law that at least 1/3rd of the land required should be deducted towards developmental purposes, namely, providing roads, electricity, drainage facilities and other betterment development."

A Bench of three learned Judges of this Court, in similar circumstances in U.P. Avas Evam Vikas Parishad vs. Jainul Islam & Anr. [(1998) 2 SCC 467] upheld the deduction of 1/3 of the price towards cost of development for the housing scheme involving construction of roads and other amenities after agreeing with the earlier decisions of this Court even after referring to the case of Bhagwathula Samanna aforementioned. In the said judgment, it is observed that "The High Court has also held that the exemplar submitted by the Parishad could not be accepted for the reason that

therein it was categorically provided that the purchaser would take the risk of statutory prohibitions, if any, on the transfer and that the vendor would not be responsible and that for covering the risk, the purchaser will normally demand reduction in the rate. Referring to the exemplars produced by the landowners the High Court observed that in respect of land covered in most of the exemplars no evidence of any deficiency had been brought to its notice. The High Court has pointed out that admittedly, the acquired land was not developed and it may only have the potentiality of development to be used as building sites and while facilities for drainage, electricity supply, water supply and pucca road are available in those developed areas, the land which is acquired measuring more than 200 acres does not have such advantages. The High Court was however, of the view that as the acquired land is within the municipal limits and is surrounded by developed area with buildings and pucca roads and other facilities and has the advantage of road passing by the side, it has potentiality of developing though it cannot be treated to have similar advantages as the land in the developed areas. The High Court has also taken note of the fact that the entire acquired area was used for the purpose of agriculture even in 1983 when the surrounding areas had already developed. In the light of the aforesaid circumstances, the High Court held that the rates available for land in developed area could not be adopted for determination of market value of the acquired land though they can be used for guidance to determine the market value by taking note of other circumstances as available on record."

On facts and in the light of the legal position emerging from the various decisions referred to above, it is not possible for us to say that cut of 20% adopted by the learned Single Judge as affirmed by the Division Bench in the impugned judgment is wrong or unsustainable. It appears to us having regard to facts and circumstances of the case that the High Court has applied cut of 20% as against the normal 1/3 deduction. We find that the High Court was right and justified in doing so.

The decision of Bhagwathula Samanna (supra) does not help the appellants as the said decision was rendered on the facts of that case. As already noticed above, the said decision was referred to in earlier decisions of this Court and distinguished. That was a case of a fully developed land having all amenities and situated in an advantageous position. In the context of the facts of that case, in para 11, it is stated thus:-

> "The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."

(emphasis supplied) In that case deduction was not given on the ground that even in the vast area there may be land, which is fully developed having all amenities and situated in an advantageous position; if smaller area within the large tract is already developed and suitable for building

purposes and have in its vicinity roads, drainage, electricity, communication, etc., then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

In the present case the situation is entirely different. The area acquired is not a small area; it was not developed; may be it had some advantages; a small portion of the large tract was abutting the main road; it was also not the case that any smaller area within the large tract of land acquired was fully developed having all facilities as in the case of Bhagwathula Samanna (supra). The appellants herein did not establish that the entire area of 84 acres of land acquired was fully developed having all the facilities such as roads, drains, sewers, water, electricity lines and civic amenities. In order to convert the land into plots for the purpose of construction of residential and commercial buildings certain area was to be earmarked for the abovementioned purposes in accordance with the law governing in the matter of creating layouts in addition to incurring of expenditure for the development area. Hence the claim of the appellants that there should have been no deduction out of the compensation amount determined for the entire area acquired is unsustainable. May be the acquired land with potentiality for construction of residential and commercial buildings had some advantages, which aspect is taken note of by the High Court in giving cut of only 20% as against 1/3 normal deduction.

We do not find any force in the contention that the HUDA has made unjust enrichment by collecting more money from the allottees after the compensation amount was enhanced by the District Judge and that neither the State nor the HUDA will be put to any loss as they have collected money from the allottees. It is not the case where collection of any tax is involved to bring in the theory of unjust enrichment. Be that as it may, we are not concerned in these cases as to what happened between the HUDA and the allottees. The question for consideration is as to the determination of amount of compensation for the acquired land. Once the proper amount of compensation is finally determined, the land owners will be entitled only to that amount.

Having regard to all these aspects, we find no merit in these appeals. Hence, the appeals as well as the special leave petitions are dismissed. Parties to bear their own costs.