

## **Bhagawathulla Samanna And Ors vs Special Tahsildar And Land Acquisition ... on 18 September, 1991**

**Equivalent citations: 1992 AIR 2298, 1991 SCR SUPL. (1) 172, AIR 1992 SUPREME COURT 2298, 1991 (4) SCC 506, 1992 AIR SCW 2791, (1992) 1 APLJ 21.1, 1992 (1) UJ (SC) 1, (1991) 4 JT 56 (SC), (1991) 2 LS 23, (1992) 1 LANDLR 27, (1992) 1 MAD LJ 9, (1992) 1 MAHLR 191, (1992) 1 RRR 257, (1992) 1 SCJ 52, (1992) 6 LACC 31, (1992) 19 ALL LR 116, (1992) 1 CIVLJ 214, (1991) 3 CURCC 347**

**Author: M. Fathima Beevi**

**Bench: M. Fathima Beevi, N.M. Kasliwal**

PETITIONER:

BHAGAWATHULLA SAMANNA AND ORS.

Vs.

RESPONDENT:

SPECIAL TAHSILDAR AND LAND ACQUISITION OFFICERVISAKHAPATNAM

DATE OF JUDGMENT18/09/1991

BENCH:

FATHIMA BEEVI, M. (J)

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FATHIMA BEEVI, M. (J)

KASLIWAL, N.M. (J)

CITATION:

1992 AIR 2298

1991 SCR Supl. (1) 172

1991 SCC (4) 506

JT 1991 (4) 56

1991 SCALE (2)613

ACT:

Land Acquisition Act, 1894:

Section 24--Compensation--Award of--Expenses required for development of the land---Deduction of one-third value thereof--Whether and when justified.

HEADNOTE:

The appellants' lands were acquired under the Land Acquisition Act. The appellants claimed land value at the rate of Rs. 10 per sq. yard, but the Land Acquisition Offi-

cer awarded compensation at the rate of Rs.0.88 per sq. yard. On a reference the Sub-Judge determined the market value at Rs. 11 per sq. yard on the basis of certain comparable transactions, but granted the compensation at the rate of Rs. 10 as the appellants themselves had claimed only at that rate. On an appeal preferred by the Respondent-State, the High Court determined the market value of the lands at the rate of Rs. 6.50 per sq. yard and reduced the total compensation, following the decision of this Court in Tribeni Devi v. Collector, Ranchi, AIR 1972 SC 141 that a deduction of 1/3 of the value is to be made when large extent of land is acquired under housing scheme.

Aggrieved by the High Court's decision, the appellants preferred the present appeals, contending that the High Court had erroneously applied the principle laid down in Tribeni Devi's case without properly appreciating the nature of the land in question and the purpose for which it had been acquired. It was further contended that there was no justification for making any deduction since the land in question was fully developed and eminently suitable for being used as house sites. Even in respect of the land acquired for the purpose of formation of the road, it was argued, the High Court wrongly proceeded on the basis that expenses have to be incurred for development.

On behalf of the Respondents, it was contended that the appellants' lands form part of large tract acquired for the purpose of construction of

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houses, that the other transaction based on which compensation was decided by the Sub-Judge, related to small plots of land which were fully developed and while comparing the transactions, it was necessary to take into account the development that is required to be made for bringing the acquired land suitable for the purpose of construction and that 1/3 of the value was rightly deducted.

Allowing the appeals, this Court,

HELD 1. The principle of deduction in the land value covered by the comparable sale is 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, 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. [177-D].

Tribeni Devi v. Collector, Ranchi, AIR 1972 SC 1417, distinguished.

Kaushalya Devi v. Land Acquisition Officer, [1984] 2 SCR 900; Administrator General of West Bengal v. Collector,

Varanasi, AIR 1988 SC 943; Special Tahsildar, Land Acquisition, Vishakapatnam v. Smt, A. Mangala Gown, 1991 (2) Scale 301, relied on.

2 In the instant case, the lands involved are of even level and fit for construction without the necessity for levelling or reclamation. Having found that the land is to be valued only as building sites and stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. [177 F-H]

3. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a

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developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. [178-B,C).

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1221 & 1222 of 1977.

From the Judgment dated 20.1.1976 of the Andhra Pradesh High Court in Appeal Nos. 758 and 632 of 1975. Mrs. Shyamala Pappu and Ms. Indira Sawhney for the Appellants.

T.V.S.N. Chari for the Respondent.

The Judgment of the Court was delivered by FATHIMA BEEVI, J. The appellants are aggrieved that the High Court by the common judgment dated 20.1.1976 in two cases had substantially reduced on erroneous grounds the enhanced compensation allowed by the Subordinate Judge on reference under Section 18 of the Land Acquisition Act (for short the Act).

Civil Appeal No. 1222 of 1977 relates to acquisition of Ac. 8.33 cents of land in Survey No. 2/1 of Dondaparthi village in pursuance to Notification under Section 4(1) of the Act published on 7.7.1966 for construction of quarters for the staff of Porl Trust.

Civil Appeal No. 1221 of 1977 relates to acquisition of Ac.1.68 cents of land in Survey No. 2/2A of the same village in pursuance to the Notification published on 1.8.1968 for the purpose of formation of the national highway diversion road.

The appellants claimed land value at the rate of Rs. 10 per sq. yard since the Land Acquisition Officer awarded only 0.88 paise per sq. yard. The learned Subordinate Judge determined the market value of the land at the rate of Rs. 11 per sq- yard accepting as basis the value of land under the transactions evidenced by Exhibits A-1 to A-4, but granted the compensa-

tion at the rate of Rs. 10 per sq. yard as the claimants themselves had claimed compensation at the rate of Rs. 10 per sq. yard. The State preferred appeal against the said judgment of the 'Subordinate Judge to the High Court of Andhra Pradesh. The High Court accepted Exhibits A-I to A-4 as reflecting the value of land in the neighbourhood. It however following the decision of this Court in Tribeni Devi v. Collector, Ranchi, AIR 1972 SC 1417, that a deduction of 1/3 of the value is to be made when large extent of land is acquired under housing scheme, determined the market value of the appellants land at the rate of Rs. 6.50 paise per sq. yard and accordingly reduced the total compensation allowed by the Subordinate Judge.

The learned counsel for the appellants contended before us that the High Court had erroneously applied the principle laid down in Tribeni Devi's case (supra) without properly appreciating the nature of the land in question and the purpose for which it had been acquired. It was submitted that the land in question was fully developed and eminently suitable for being used as house sites and, therefore, there was no justification for making any deduction. It is also pointed out that even in respect of the land acquired for the purpose of formation of the road, the High Court wrongly proceeded on the basis that expenses have to be incurred for development and thus in awarding the compensa- tion, the High Court wrongly applied principles of deduction of 1/3 of the value. The learned counsel has taken us through the relevant evidence and maintained that the learned Subordinate Judge had reduced the land value to Rs. 10 per sq. yard though the market value was higher at Rs. 11 per sq. yard only because the appellants had themselves limited the claim to Rs. 10 per sq. yard The learned counsel for the respondent maintained that the appellants' land forms part of large tract acquired for the purpose of construction of houses, that the sale deed Exhibits A-1 to A-4 relate to small plots which are fully developed and when the transaction is compared, it is necessary to take into account the development that is required to be made for bringing the acquired land suitable for the purpose of construction and that the High Court was right in making the deduction of 1/3 of the value in the facts and circumstances of the case.

In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide trans-

fer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully de- veloped small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in

the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. This principle has been stated by this Court in Tribeni Devi's case (supra).

In *Kaushalya Devi v. Land Acquisition Officer*, [1984] 2 SCR 900, this Court observed at pages 912-913 as under:

"When large tracts are acquired, the transaction in respect of small properties do not offer a proper guideline .....In certain other cases this Court indicated that for determining the market value of a large property on the basis of a sale transaction for smaller property a deduction should be given."

We shall also refer to the observations of this Court in *Administrator General of West Bengal v. Collector, Varanasi*, AIR 1988 SC 943: --

"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 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."

This Court has in a recent decision in *Special Tahsildar Land Acquisition, Vishakapatnam v. Smt. A. Mangala Gowri*, 1991(2) Scale 301, following Tribeni Devi's case pointed out as under:-

"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

justi- fied."

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, 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 build- ing 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.

The national highway runs very near to the proposed Port-trust colony. The lands acquired already for the South Eastern Railway Staff Quarters lie to the southern side of the land under acquisition. The town planning trust road runs on the northern side of the land under acquisition. The colony is in the fast developing part of the municipal town. The plot of Ac. 1.68 cents in Survey No. 2/2A acquired for the formation of the diversion road is adjacent to built-in-area. The land involved in these cases is of even level and fit for construction without the necessity for levelling or reclamation. The High Court has itself conclud- ed on the evidence that the lands covered by the acquisition are located by the side of the National Highway and the southern railway staff quarters with the town planning trust road on the north. The neighbouring areas are already de- veloped ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduc- tion. It is not in every case that such deduction is to be allowed. Where the acquired land is in the midst of already developed land with amenities of roads, electricity etc., the deduction in the value of the compara- ble land is not warranted.

The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no require- ment of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other ameni- ties and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction; and reducing the fair market value of land from Rs. 10 per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed.

In the result, the appeals are allowed and the respond- ent is directed to pay the compensation as determined by the learned Subordinate Judge with interest and solatium in accordance with law. In

the circumstances of the case, we make no order as to costs.

G.N.

Appeals allowed.