M/S. Hasanali Khanbhai & Sons And Ors vs State Of Gujarat on 26 July, 1995

Equivalent citations: 1995 SCC (5) 422, JT 1995 (6) 92, AIRONLINE 1995 SC 792

Author: K. Ramaswamy

Bench: K. Ramaswamy, K.S. Paripoornan

```
           PETITIONER:
M/S. HASANALI KHANBHAI & SONS AND ORS...

        Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT26/07/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
PARIPOORNAN, K.S.(J)

CITATION:
 1995 SCC  (5) 422        JT 1995 (6)    92
 1995 SCALE  (4)786


ACT:



HEADNOTE:



JUDGMENT:
```

O R D E R Notification under Section 4 [1] of the Land Acquisition Act, 1894 [for short, `the Act'] was published in the State Gazette of Gujarat on March 17, 1960, acquiring 7 acres and 28 gunthas of land to establish orphanage at the outskirts of Rajkot Municipality. The Land Acquisition Collector awarded compensation by his award dated 30th July, 1962 at the rate of Rs. 1.25 per sq. yard as against the claim of Rs. 18/- per sq. yard. Dissatisfied therewith, on apapellants' reference Civil Court by its award and incree dated 31st July,1973 determined the compensation at the rate of

Rs. 2.05 per sq. yard. On appeal to the High Court under Section 54 of the Act, Gujarat High Court by its judgment dated 1st July, 1975 in First Appeal No.242/1973, while holding that the lands under acquisition are capable to fetch market value at the rate of Rs.10.00 per sq. yard, determined the compensation after 60% deduction, at the rate of Rs.4/- per sq. yard. In appeal by special leave under Article 136 of the Constitution, appellants challenges the corretness of the deduction at do% of the price determinaed to the lands under acquisition.

Shri Dholakia, learned senior counsel for the appellant strenuously contended that the reasoning of the Division Bench in giving deduction of 60% price are fallacious and legally unsustainable. It is contended that having accepted the sale transactions in survey Nos. 334 and 335 to be genuine and offer to be comparable sales to determine the compensation, would indicate that in the year 1960 the market value was ranging between Rs. 12 to 13 per sq. yard which were sold again in 1961 at the rates varying between Rs. 13 to 18 per sq. yard. The same would indicate that a prudent willing purchaser would offer to purchase the lands at the rate of Rs. 12-18 per sq. yard. Therefore, having determined the compensation at the rate of Rs. 10/- per sq. yard, the High Court was not justified in reducing 60% and wrongly fixed compensation at the rate of Rs. 4/- per sq. yard. He also further contended that the restrictive conditions which, in future, may be imposed by the appropriate authority on the development of the land were not a relevant circumstance to peg down the prevailing price. He also contended that the size of the land acquired and the location are not relevant since there is an indication that there was already steady development in the area and buildings were already constructed in the neighbourhood and that, therefore, the deductions were illegal. In support thereof, he placed strong reliance on Chimanlal Hargovingdas vs. Special land Acquisition Officer, Poona & Ors. [(1988) 3 SCC 751] and Bhagwathula Samana & Ors. vs. Special Tehsildar & Land Acquisition Officer, Vishakapatnam Municipality [AIR 1992 SC 2298].

The learned counsel for the State strongly resisted the contention of Shri Dholakia. The question, therefore, is whether the High Court was right in deducting 60% of the price in determining the compensation. Since the State had not come in appeal against the determination of the compensation at Rs.10/- per sq. yard, the need to go into its correctness is obviated. But suffice it to state that the High Court has rested its conclusion on diverse facts. The first, in our view, rightly is that the lands are situated far away from the municipal limits so as to use for building purpose; secondly, possibility of the restrictions to be imposed by the State under Section 74 of the Highways Act is always imminent. Thirdly, the vast extent of lands acquired. Lastly, the comparative extent of land under acquisition and the smallness of the lands covered by the sales in Survey Nos. 334 and 335. It had held that sales of small extent do not offer as a comparable instance in determination of the compensation of vast lands. The question is whether these principles are not relevant and germane to adjudge the market value ultimately to be fixed by the Court. It is true, as contended by Mr. Dholakia, that the counsel appearing for the State in the Reference Court had not adverted in the cross-examination to the relevant factors to be elicited in the cross-examination of the witness examined on behalf of the appellant. But it is settled law by series of judgments of this Court that the court is not like an umpire but is required to determine the correct market value after taking all the relevant circumstances, evinces active participation in adduction of evidence; calls to his aid his judicial experience; he evalutae the relevant facts from the evidence on record applying correct principles of law which would be just and proper for the land under acquisition. It is its

constitutional, statutory and social duty. The court should eschew aside feats of imagination but occupy the arm-chair of a prudent willing but not too anxious purchaser and always ask the question as to what are the prevailing conditions and whether a willing purchaser would as a prudent man in the normal market conditions offer to purchase the acquired land at the rates mentioned in the sale deeds. After due evaluation taking all relevant and germane facts into consideration, the Court must answer as to what would be the just and fair market value. These principles were enunciated by this Court in, all decisions including the one relied on by Mr. Dholakia which needs no reiteration. It is a question of fact in each case to consider whether the land under acquisition is possessed of such value which includes potential value, if any, as comparable with reference to the evidence on record. It is seen that the sale instances referred and relied on by the High Court in Survey Nos. 334 and 335 are small pieces of land; they do not offer as comparable sales. This Court in Administrator General of West Bengal vs. Collector, Varanasi [AIR 1988 SC 943] has settled the law that when sales of small lands are found to be germane sales in developed area between willing purchaser and willing vendor but not too anxious buyer the value of small developed plots cannot directly be adopted in fixing the price for large extent and is not a safe guide in valuing large extent of lands. However, if it is found that large extent to be valued admits of and is ripe for use of building purposes, that building lots could be laid out on the land could be good selling proposition and that valuation on the basis of method of hypothetical layout could with justification be adopted. Then in valuing such small layout any such valuation as included in the sales comparably small sites in some area at the time of notification would be relevant in such cases. Necessary deduction for the extent of the land required for the formation of the roads and other civic amenities requires to be made. In that case 50% was deducted.

The facts in Bhagwathula Samana's case [supra] were that the lands were situated in already developed area and that, therefore, this Court had held that no deduction towards developmental charges could be made. The ratio therein is of little assisance. When the lands are sought to be used for building purposes, admittedly the entire land cannot be used for building purposes without providing roads, drainage, electricity and other civic amenities for which necessary deduction of 1/3rd should also be made as held in a catena of decisions of this Court.

It is seen that when a large track of land of 7 acres and 28 gunthas was purchased by the claimant owners in 1956 at Rs.251 per acre, in 1960 when the notification was issued what would be the reasonable and probable price which a reasonable prudent purchaser would offer when a large track of land is offered for sale in open market. In this case, neighbouring land was sold at the rate of Rs.960/- per acre in 1960 as against the price which is paid in 1956 at the rate of Rs.251/- per acre. In 1956, he himself valued and assessed the land that it has potentiality at the rate of Rs. 251/- per acre. It is settled law that instead of proceeding on the feats of imagination the Court has to sit in the arm-chair of a prudent purchaser and then consider whether a prudent purchaser would be willing to purchase such a large extent of land and if so at what price. In this case, having considered the situation of the land being far away from the outer minicipal limits though situated near about the railway line, that itself would be a factor to be taken into consideration in determing the market value. Added to that, there is a possibility to impose statutory restrictions to develop the lands for buildig purposes. No prudent purchaser would hazard to purchase such large extent of land at the rates when small extents of lands are sold in plots. True that the purchasers hazarded to purchase

lands in the neighbouirng survey numbers and have taken grave risk. But it would not be safe guide to adopt the same price offered by them. Considered from this perspective and fromthe totality of facts on record, we are of the view that the High Court was well justified in deducting 60% of the value and giving Rs. 4/- per sq. yard. Accordingly, we do not find any justification warranting interference. The appeal is dismissed but in the circumstances, with no costs.