

The Special Land Acquisition ... vs Mohd. Hanif Sahib Bawa Sahib on 19 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1558, 2002 (3) SCC 688, 2002 AIR SCW 1452, 2002 AIR - KANT. H. C. R. 993, (2002) 4 ALLMR 242 (SC), 2002 (4) ALL MR 242, 2002 (3) SCALE 22, (2002) 3 JT 176 (SC), 2002 (2) UPLBEC 1547, 2002 (2) SLT 598, 2002 (4) SRJ 443, (2002) 1 UC 673, (2002) 2 LANDLR 7, (2002) 2 MAD LJ 164, (2002) 3 MAHLR 580, (2002) 2 LACC 127, (2002) 2 UPLBEC 1547, (2002) 2 SUPREME 473, (2002) 2 RECCIVR 484, (2002) 2 ICC 770, (2002) 3 SCALE 22, (2002) 47 ALL LR 320, (2002) 2 ALL WC 1236, (2002) 2 CIVLJ 671, (2002) 2 CURCC 46

Bench: Doraiswamy Raju, Ashok Bhan

CASE NO.:
Appeal (civil) 12515 of 1996

PETITIONER:
THE SPECIAL LAND ACQUISITION OFFICER, BTDA, BAGALKOT.

Vs.

RESPONDENT:
MOHD. HANIF SAHIB BAWA SAHIB

DATE OF JUDGMENT: 19/03/2002

BENCH:
Doraiswamy Raju & Ashok Bhan

JUDGMENT:

With CA Nos. 13370-13371/1996, CA No.2238-2242 of 2002 (@ SLP © Nos. 21304-21308 of 1996) and CA Nos. 1552-1554 of 2000.

J U D G M E N T Bhan, J.

Leave granted in the special leave petitions.

This order shall dispose of CA No. 12515 of 1996, CA Nos. 13370- 13371/1996 and CA Nos.2238-2242 of 2002 (@ SLP © Nos. 21304-21308 of 1996) as common question of law and facts are involved in these appeals. The facts of Civil Appeal Nos. 1552-1554 of 2000 being different would be referred to in the later part of this judgment.

For the disposal of Civil Appeal Nos. 12515 of 1996, Civil Appeal Nos.13370-71 of 1996 and CA Nos.2238-2242 of 2002 (@ SLP © Nos. 21304-21308 of 1996, the facts are referred to from Civil Appeal No. 12515 of 1996.

The brief facts are as follows:

The State of Karnataka issued a notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') seeking to acquire the plots belonging to the claimants of Village Murnal for a public purpose, namely, Bagalkot new township. The notification was published in the Karnataka Gazette on 19th July, 1985. The declaration under Section 6 was published in the Karnataka Gazette on 14th August, 1987. The Special Land Acquisition Officer, BTDA, Bagalkot passed the award on 3rd June, 1988. He fixed the market value of the acquired plots at the rate of Rs. 3,500/- per acre treating the land as agricultural.

Aggrieved by the award the claimants submitted applications under Section 18 of the Act seeking enhancement of the market value. In the reference application under Section 18, it was alleged by the claimants that before passing the award, the Land Acquisition Officer did not issue any notice; the compensation awarded was too low, meagre and inadequate. The market value of the acquired property was more than Rs. 30/- per sq. ft., the method adopted for valuing the property was not proper and legal. The Land Acquisition Officer illegally treated the land to be agricultural. It was stated that the land under acquisition fell within the municipal limits of Bagalkot. On notice being served, respondents put an appearance through the AGP.

In support of their case, the claimants examined PW1 and PW2. Exhibits P1 to P29 were got marked. Respondents did not produce any evidence.

The reference Court on appreciation of the evidence came to the conclusion that the acquired plots were on the southern side of the Belgaum- Raichur road at a distance of 200 feet. On one side of the Belgaum-Bagalkot road, plots were situated and on the other side there was engineering college campus and K.I.D. Colony staff quarters etc.. The plots were adjacent to the engineering college. Near about the acquired plots some other persons had carved out plots on which construction was going on. PW1 stated that he was preparing to put up the building on the plot but in the meanwhile the Government acquired the land. Vidhyagiri Housing Colony, BTDA Office, new Circuit House, engineering college hostel and staff quarters were adjacent to the land acquired. From this it was concluded by the Reference Court that the land under acquisition was surrounded on all four sides by buildings and had a lot of potential for

further development. A finding was recorded that the land under acquisition was within the municipal limits.

No evidence was produced by the parties by way of comparable sale transactions to prove the market value. Evidence was also not forthcoming for adoption of the capitalisation method. On behalf of the claimants, reliance was placed on Ex. P.27, a notification issued under section 4 dated 19th January, 1978 by the Housing Urban Development Corporation and the judgment in Land Acquisition Case No. 240 of 1981 relating thereto which was later confirmed in appeal by the High Court.

It was noticed by the reference Court that the notification, Ex. P.27, was dated 19th January, 1978. The land under acquisition under that notification was in close proximity of the land under acquisition in these appeals. The reference Court had determined the market value of the land in LAC No.240 of 1981 at Rs. 3 per sq. ft. which was later confirmed by the High Court in MFA No. 929 of 1987. Notification under Section 4, in the present case, is of 19th July, 1985. Keeping in view that there was a distance of seven years in the earlier acquisition and the subsequent acquisition and the fact that lot of development had already taken place and was continuing to take place, the reference Court taking the base price of the land in that area at Rs. 3/- per sq. ft. for the year 1979 granted an appreciation in the value of land at 10% for every subsequent year. While giving the appreciation of the value @ 10% for the next seven years the reference Court fixed the value of the land at Rs. 6.85 per sq. ft. After making a deduction of 20% towards development charges the payable market value was fixed at Rs. 5.50 per sq. ft. which comes to Rs. 2,39,580/- per acre. Statutory benefits of solatium and interest, as applicable, were ordered to be paid over and above the market value.

The State of Karnataka filed appeals before the High Court which have been dismissed by the impugned judgment.

Counsel for the appellant strenuously contended that the reference Court as well as the High Court have erred in giving an appreciation at the rate of 10% per annum for every subsequent year. That the reference Court committed a factual error in calculating the value of the land at Rs. 6.85 per sq. ft.. According to him, even if, appreciation of value of land is taken at 10% on the base price of Rs. 3 for the year 1979, for the next seven years, then the market value of the land in the year 1985 would come to Rs. 5.10 per sq. ft. and not Rs. 6.85 per sq. ft.

Counsel for the respondents fairly conceded that the reference court made a factual error in arriving at the value of the land at the rate of Rs. 6.85 per sq. ft. for the year 1985 even taking the appreciation at 10% for the subsequent years. There was no error in giving an appreciation of 10% per year as lot of developmental activities were going on in an around Bagalkot In fact a new township for Bagalkot was being built as the old area of Bagalkot had sub-merged in water. But according to him no

deduction could be made for development of the land as the base price of Rs. 3/- had been fixed by the High Court in MFA 929 of 1987 after making deductions for the development charges.

After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our interference. Counsel for the parties did not dispute that after the sub- mersion of the old township area of Bagalkot in water, a new township was being built up. For this lot of developmental activities are taking place. This is evident from the fact that number of acquisitions have been made for the development of the new township of Bagalkot. In this order, reference has been made to the earlier acquisition of 1979. In Civil Appeal Nos. 1552- 54 of 2000 as well acquisition of the land was made for formation of a link road to the new town. We agree with the counsel for the appellant that the reference Court wrongly valued the land at Rs. 6.85 per sq. ft. for the year 1985 taking the base price of the land at Rs. 3/- per sq. ft. for the year 1979 on an appreciation of 10% per annum for every subsequent years. The appreciation of value of land at 10% on the base price of Rs. 3/- per sq. ft.

would increase the value of the land @ 0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs., 2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs. 2.10 paise and added to the base value of Rs. 3/-, the market value of the land under acquisition in the year 1985 would come to Rs. 5.10 paise. We agree with the counsel for the respondents that deduction on account of development charges from the price fixed cannot be made as the base price of Rs. 3/- had been determined in the earlier cases after taking into account the development charges.

Taking an overall view of the matter, we fix the value of the land at Rs. 5/- per sq. ft. instead of Rs. 5.50 per sq. ft. which was fixed by the reference Court and upheld by the High Court. The appeal is partly accepted. The market value is fixed at Rs. 5/- per sq. ft. In addition, the claimants would be entitled to the statutory benefits of solatium and interest etc. These group of appeals before us shall stand allowed to that extent in view of the notification made in the market value to be adopted.

CA Nos. 1552-1554 of 2000 In these appeals the land was acquired by issuing a notification under section 4 dated 22nd August, 1991, for a public purpose, namely, the formation of link road to the new town, Bagalkot Township. It is not disputed that the land under acquisition is adjacent to the land in Civil Appeal No. 12515 of 1996 and other connected cases. The potential value of the land under acquisition in these appeals is the same as in the earlier cases. The reference Court granted an appreciation of 10% for every subsequent year. Taking the base price at Rs.5.50 per sq.ft. fixed for acquisition of the land in the year 1985, as in the earlier cases, at the rate of 10% in the value of the land for every subsequent year. As the earlier acquisition was of 1985 and this acquisition is of the year 1991, appreciation for six years was granted. The reference Court determined the payable market value at Rs.7/- per sq. ft. which was later confirmed by the High Court. In addition statutory

benefits of solatium and interest etc. were also granted. In the earlier notification for the year 1985 we have fixed the market value of the land for the year 1985 at Rs. 5/- per sq. ft. On giving an appreciation of 10% in the value of the land for every subsequent year for a period of six years the value of the land would come to Rs. 8/- per sq.ft. The claimants have not filed either cross appeals or cross objections. The overall value of Rs.7/- per sq. ft. fixed by the reference Court and confirmed by the High Court is thus reasonable and does not call for any interference.

For the reasons stated above, the Civil Appeal No.12515 of 1996, Civil Appeal Nos. 13370-71 of 1996 and CA Nos._____ of 2002 @ SLP© Nos.21304-21308 of 1996 are partly allowed to the extent indicated in this judgment. Civil Appeal Nos.1552 1554 of 2000 are dismissed. Parties shall bear their own costs.

J. (Doraiswamy Raju) .J. (Ashok Bhan) March 19, 2002