

The Land Acquisition Officer, ... vs Nookala Rajamallu And Ors. on 21 November, 2003

Equivalent citations: 2004(2)ALT61(SC), 2004(1)AWC373(SC), JT2003(9)SC433, 2003(10)SCALE307, (2003)12SCC334, AIR 2004 SUPREME COURT 1031, AIR 2003 UTTARAKHAND 10, 2003 AIR SCW 6674, 2003 (7) SLT 367, (2004) 13 ALLINDCAS 701 (SC), (2004) 1 ALLMR 176 (SC), 2004 (1) RECCIVR 293.2, (2003) 9 JT 433 (SC), 2003 (10) SCALE 307, 2003 (12) SCC 334, 2003 (9) JT 433, 2004 (1) SRJ 163, (2003) 10 SCALE 307, (2004) 1 LANDLR 1, (2004) 2 MAD LW 839, (2004) 96 REVDEC 392, (2004) 1 LACC 242, (2003) 8 SUPREME 507, (2004) 1 RECCIVR 293(2), (2004) 13 INDLD 606, (2004) 1 KCCR 374, (2004) 54 ALL LR 182, (2004) 2 ANDH LT 61, (2004) 1 ALL WC 373, (2004) 1 CURCC 89

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Bench: Doraiswamy Raju, Arijit Pasayat

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. Lands of the respondents (hereinafter referred to as the. 'claimants') measuring 11.33 acres situated in Kammarpally village, Nizamabad District were acquired by the Government for providing house sites, to weaker sections of people. The Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short the 'Act') was gazetted on 4.6.1988. The claimants owned small extent of lands situated in different survey numbers. The Land Acquisition Officer (in short the "LAO") passed an award fixing the market value of the acquired land at Rs. 12,325 per acre. Not accepting the compensation awarded by the LAO claimants sought for reference under Section 18 of the Act for enhancement. The Reference Court after considering the evidence, both oral and documentary, awarded compensation at the rate of Rs. 10/-per sq. yard besides awarding the statutory benefits available. Before the Reference Court, several instances of sales were pressed into by the claimants. Ex.B/2 dated 18.6.1966 was for an extent of land measuring 170 sq.yards. The Ex.6/3 related to an award of the year 1981 whereunder Rs. 9/- was awarded as compensation per square yard. Ex.B/4 is the sale deed dated 23.1.1988 where extent of land was 162 square yards, and the rate of consideration was Rs. 82/-per sq. yard, Ex.B/5 is in respect of sale deed of 9.9.1985 where the extent of land was 127.5 square yards, and the sale consideration was Rs. 109/- per sq.

yard. Claimants being still not satisfied with the enhanced compensation filed an appeal before the Andhra Pradesh High Court. A Division Bench of the said Court by the impugned judgment held that the market value payable to the claimants was to be taken at Rs. 55/- per sq. yard.

3. Taking into account the extent of land covered by the exemplar sale deeds and the award made in respect of acquisition during the year 1981 the High Court was of the view that the instances of sales were comparable sales in respect of the lands under acquisition. Focusing of the sale consideration of the instance covered by Ex.B/4, and making 1/3rd deduction for development, the value was fixed at Rs. 54/- per sq. yard. As there was time gap of five months between Ex. B/4 and the notification, the escalation was taken to be Rs. 1/- per sq. yard. Accordingly, the rate of Rs. 55/- per sq. yard was fixed and, the statutory entitlements were also directed to be paid.

4. Learned counsel for the appellant submitted that the High Court did not take note of the relevant aspects like the extent of land covered by the Exhibits, and the proximity between the dates of sales and the date of acquisition, and more importantly the fixation of rates per square yard in respect of acquisition in 1981. According to him, had these factors been considered, the rate could not have been as high as fixed by the High Court.

5. Per contra, Mrs. K. Amreshwari, learned senior counsel appearing for the respondents-claimants submitted that the High Court has adopted a right approach in fixing the rates. The instances of sales related to lands which were situated at a close proximity to the acquired land. The instance of award cited by the appellant, related to an interior small village and did not have the advantages which the acquired lands have.

6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to few decisions of this Court in *The Collector of Lakhimour v. Bhuvan Chandra Dutta , Prithvi Raj Taneja (dead) by Lrs. v. The State of Madhya Pradesh and Anr. and Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr.* (AIR 1984 SC 392).

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

8. In the case of *Suresh Kumar v. Town Improvement Trust, Bhopal* in a case under the Madhya Pradesh Town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of *Vyricherla Narayana Gajapatiraju. v. Revenue Divisional Officer, Vizagapatam* that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser.

While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded. Neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criteria to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality.

9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

- (i) when sale is within a reasonable, time of the date of notification under Section 4(1);
- (ii) it should be a bona fide transaction;
- (iii) it should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) it should possess similar advantages.

10. It is only when these factors are present, it can merit a consideration as a comparable case (See *The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty* (AIR 1939 SC 429)).

11. The evidence of record shows that the acquired lands were agricultural lands. Obviously, their valuation would differ to a considerable extent from the land used for house sites. In such a case, necessary deductions for the extent of land acquired 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 realization of the price, the profits on the venture etc, are to be made. (See *Administrator General of West Bengal v. Collector, Varanasi* . In *Brig. Sahib Singh Kalha and Ors., v. Amritsar Improvement Trust, and Ors.* the deduction for such development, was taken as 53%.

12. In *K.S. Shivadevamma and Ors. v. Assistant Commissioner and Land Acquisition Officer and Anr.* this Court held as follows;

"it is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building. Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date, In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @33-1/3%, ordered by the High Court, was not illegal".

13. On applying the principles of law as set out in various decisions referred to above to the facts of the case we feel that deduction at the rate of 53% from the value indicated in Ex.B/4 would bring the rate per square yard to be around Rs. 40/-. The rate is accordingly fixed. The claimants shall be entitled to compensation at the rate of Rs. 40/- per sq-yard along with statutory entitlements including interest on solatium. The appeals are allowed to the aforesaid extent. Costs made easy.