

Jaw Ajee Nagnatham vs Revenue Divisional Officer on 25 January, 1994

Equivalent citations: 1994 SCR (1) 368, 1994 SCC (4) 595

Author: K. Ramaswamy

Bench: K. Ramaswamy, N Venkatachala

PETITIONER:

JAW AJEE NAGNATHAM

Vs.

RESPONDENT:

REVENUE DIVISIONAL OFFICER

DATE OF JUDGMENT 25/01/1994

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1994 SCR (1) 368

1994 SCC (4) 595

JT 1994 (2) 604

1994 SCALE (2) 298

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The appellant is the owner of 18 gunthas of land, i.e., 2178 sq. yards, situated in Ward No. 5, Block No. 7 in Adilabad Municipality of A.P., which was proposed for acquisition under notification issued under Section (1) of the Land Acquisition Act and published on April 17, 1975, for a public purpose. The Land Acquisition officer awarded compensation on the basis of letting value. On reference under Section 18, the Additional District Judge, Adilabad in his award and decree enhanced the market value to Rs 75 per sq. yard. Not having been satisfied, the appellant filed the appeal in the

High Court and claimed Rs 300 per sq. yard. The High Court by the impugned judgment and decree dated 29-10-821, dismissed the appeal.

2. Shri A.K. Ganguli, the learned Senior Counsel for the appellant contended that the High Court having accepted that the acquired lands were situated in the heart of the municipal area; the State Bank of Hyderabad and the Andhra Bank were located on the eastern and western sides across the roads; Gandhi Chowk Market and Ambedkar Chowk Market also existed on the National Highway towards Nagpur each at a distance of 200 yards from the land; two cinema theatres were situated at a distance of 50 to 60 yards from the acquired site; three cooperative consumers' stores were situated at a short distance of 10 yards from the acquired land; the Basic Valuation Register showed that for stamp duty the Revenue Authorities had fixed the market value in commercial area at Rs 300 (on complaints being reduced to Rs

250) and for residential area Rs 75 per sq. yard, it should have seen that the land had a very high market value. The Revenue Authorities themselves having determined market value in that area at Rs 300 per sq. yard for purposes of stamp duty, unless the respondent produced contra-evidence, which was not done, the Basic Valuation Register formed foundation to determine the market value of acquired land at Rs 300. The fixation of market value at Rs 75 per sq. yard was unjust and arbitrary. It is also contended that the appellant is entitled to interest at 6% under the Act. The State Act has no application to and the owner cannot be discriminated in payment only at the rate of 4%, while other land acquired for Central Government would get interest at the rate of 6%.

3. Having given anxious consideration to the contentions we find them to be without force. Though the District Court fixed the market value at the rate of Rs 75 per sq. yard, the State did not file any cross-objection or appeal. So the need for the High Court to go into the question whether fixation of the market value at Rs 75 per sq. yard was high did not arise. The High Court held that the post-notification sale deeds were not admissible as none of the persons connected with them were examined to establish the genuineness of the sales or of similarity of the lands acquired and those covered in the sale transactions. It also rejected the agreements of sales finding them to be those fabricated to inflate the market value. We cannot find fault with the approach made by the High Court in the facts and circumstances of the case. The sales claimed to be comparable were rightly not acted upon.

4. The High Court found that Basic Valuation Register had no evidentiary value, in that it had no statutory basis. Therefore, the entries in the Basic Valuation Register cannot form the basis to enhance the market 1 AIR 1983 AP 155 value. The contention of Shri Ganguli, as stated earlier was that the Basic Valuation Register, prepared in official capacity by Revenue Department having been acted upon to collect stamp duty and registration charges at Rs 300 per sq. yard for commercial use, the Government cannot ask the court to adopt different standards to award market value under Section 23(1). Having regard to the fact that the lands are situated in commercial area of the busy town, the appellant is entitled to the market value at Rs 300 per sq. yard, Firstly, the contention that the lands are to be treated as of commercial area cannot be accepted to be totally correct. Admittedly, the appellant had not prepared nor got approved any lay-out demarcating as sites either for commercial purpose or for residential purpose. The entire extent of 2178 sq. yard cannot be

treated as capable of being sold only for commercial purpose. May be the lands abutting the main road were capable of being sold for commercial purpose. But the entire land, unless there is proof of lay-out and demarcation for commercial purpose, cannot be treated as land available for commercial purpose. In addition the entire land cannot be earmarked for sites unless some land is set apart under the Building Rules for laying roads. Deduction ought equally to be made for further developmental purposes. The entire land cannot be treated to be possessed of commercial value. Under Section 24 clause sixthly of the Act, in fact, the future potential use is not relevant but decided cases show that it may be a factor to be kept in view in an appropriate case for determining the market value. In this case, there is no evidence on record except the Basic Valuation Register admittedly maintained by the authorities.

5. The question, therefore, is whether the Basic Valuation Register is evidence to determine the market value. This Court in *Special Land Acquisition Officer v. T. Adhinarayan Setty*² in paragraph 9 held that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1). The methods of valuation may be (1) opinion of experts (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. Same was the view in *Tribeni Devi v. Collector of Ranchi*³. It was reiterated in catena of decisions, vide, *Periyar and Pareekanni Rubbers Ltd. v. State of Kerala*⁴. Therefore, it is settled law that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case to determine the market value. Generally the second method of valuation is accepted as the best. The question, therefore, is whether the Basic Valuation Register would form foundation to determine the market value. The Indian Stamp Act, 1899 2 AIR 1959 SC 429: 1959 Supp 1 SCR 404 : 1959 Cri LJ 526 3 (1972) 1 SCC 480 :(1972) 3 SCR 208 4 (1991) 4 SCC 195 provides the power to prescribe stamp duty on instruments, etc. Entry 44 of List 111, Concurrent List, of the VIIth Schedule read with Article 254 of the Constitution empowers the State Legislature to amend the Indian Stamp Act, 1899. In exercise thereof all the State Legislatures including the Legislature of A.P. amended the Act and enacted Section 47-A empowering the registering officer to levy stamp duty on instruments of conveyance, etc., if the registering officer has reason to believe that the market value of the property, covered by the conveyance, exchange, gift, release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the rules prescribed, to pay the additional duty thereon. If the vendor is dissatisfied, he has been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47-A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe it to be undervalued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis of the prevailing market value. Section 47-A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village, block, district or the region and to maintain Basic Valuation Register for levy of stamp duty

for registration of an instrument, etc. No other statutory provision or rule having statutory force has been brought to our notice in support thereof. Whether an instrument is liable for higher stamp duty on the basis of valuation maintained in the Basic Valuation Register, came up for consideration in *Sagar Cements Ltd. v. State of A.P.*⁵ B.P. Jeevan Reddy, J., as he then was, considered the question and held that the Government has unilaterally fixed the valuation of the lands, the Basic Valuation Register had no statutory foundation and therefore it does not bind the parties. Neither the Registrar nor the vendor is bound by it. The market value of the land for proper stamp duty has to be determined as per the law under Section 47-A itself. That view was followed by another learned Single Judge in *P. Sasidar v. Sub-Registrar*⁶. It is, therefore, clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration. Equally it would not be a basis to determine the market value under Section 23 of the Act, of the lands acquired in that area or town or the locality or the taluk etc. Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine market value. The 5 (1989) 3 Andh LT 677 6 (1992) 1 Andh LT 49 Division Bench followed, in support of its view a decision of another Division Bench in *Land Acquisition Officer v. Venkateswara Prasad*⁷ which also decided that Basic Valuation Register cannot be relied on to determine the market value. It would appear that in *Govt. of A.P. v. Sohan Lal*⁸ a Division Bench of that High Court, without noticing these two binding decisions, held that the Basic Valuation Register would form foundation to determine the market value and directed to determine the compensation on that basis. The entire controversy was considered by yet another Division Bench in *Vasireddi Bharata Rao v. Revenue Divisional Officer*⁹. The Division Bench, after considering the case law disagreeing with *Sohan Lal*⁸ view as per *incuriam*, also reiterated that the Basic Valuation Register maintained by the registering authority has no statutory foundation to determine the market value and cannot form the base under Section 23(1) to determine the market value. This Court in *Gulzara Singh v. State of Punjab*¹⁰ held that mutation entries of the land transactions in the revenue records are not evidence unless the parties to the transactions have been examined in proof of documents. In *Director of Survey-cum-LAO v. Mohd. Ghouse*¹¹ relied on by Mr Ganguli, the Division Bench of Madras High Court, relying upon the instructions issued by the Government to determine the market value for the purpose of registration of the instrument under Section 47-A, held that it would form basis to determine the market value under Section 23 in an appropriate case, subject to proof of the market value. What were the instructions issued by the Government and whether they had any statutory foundation, have not been stated by the Division Bench. If the broad proposition of law that under Section 47-A of Stamp Act such instructions could be issued, as contended for the appellant herein, as appears to be the view of the High Court, it is not correct law. As we have already noted, Section 47-A being local amendment, made by each State Legislature did not find any such statutory basis. Like A.P. Act, Tamil Nadu Act is also referable to transactions *intra vivos* and not as general guidelines. If they are based on evidence *inter partes* it would be consistent with Section 47-A. Accordingly we hold that the basic value of registration has no statutory base. It cannot form any basis to determine the market value of the acquired lands under Section 23 of the Act. The burden of proof is always on the claimant to prove, in each case the prevailing market value as on the date of notification published in the State Gazette under Section 4(1) of the Act with reference to the sale deeds of the same lands or neighbour's lands possessed of

same or similar advantages and features executed between willing vendor and willing vendee or other relevant evidence in the reference court. The State did not file any appeal against the award of the reference court which 8 (1988) 2 Andh LT 306 9 (1992) 1 Andh LT 591 10 (1993) 4 SCC 245 11 (1985) 1 MLJ 116