Smt. Shakuntalabai & Ors vs State Of Maharashtra on 23 November, 1995

Equivalent citations: 1996 SCC (2) 152, JT 1995 (8) 501, AIRONLINE 1995 SC 855

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

```
           PETITIONER:
SMT. SHAKUNTALABAI & ORS.

        Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT23/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
 1996 SCC  (2) 152        JT 1995 (8)   501
 1995 SCALE  (6)693


ACT:



HEADNOTE:



JUDGMENT:
```

O R D E R Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, `the Act'), acquiring an extent of 20 acres of land in Survey No.24/2 situated in Akola town for construction of the houses to weaker sections and middle income group people, was published in the State Gazette on August 11, 1965. The Land Acquisition Officer in his award dated March 26, 1971 determined the market value of the front portion of land admeasuring 4 acres 18 gunthas at Rs.5,500/- per acre and for the rest of 15 acres and 32 gunthas at 4,500/- per acres. Dissatisfied therewith, the appellant

sought reference under Section 18 of the Act and the Senior Civil Judge in his award and decree dated September 26, 1972 enhanced the compensation in respect of the lands in the front portion at Rs.1.25 per sq. ft. and to the rest of the land at Rs.1/- per sq. ft. He also deducted Rs.3,000/- per acre towards development charges and 30% land was left over for roads etc. On appeal by the State and also on cross appeal by the appellant, by judgment and decree dated July 28, 1980 the Division Bench of the Bombay High Court set aside the award and decree of the Reference Court and confirmed that of the Land Acquisition Officer. Thus this appeal by special leave.

It is true, as noted by the Reference Court and also accepted by the High Court, that the lands are situated in a developing area surrounded by roads on three sides and the lands had potential value for development for building purposes. Shri Mohta, learned senior counsel for the appellant, contended that the High Court totally omitted to consider Exh.38, a sale deed dated May 14, 1964, in respect of lands of an extent of 5392 sq. ft. for a consideration of Rs.4,000/- as broken by PW-6, the son of the vendee and Ex.44 dated February 8, 1964 of an extent of 6950 sq. ft. for consideration of Rs.5,000/- as spoken by PW-8, the clerk of the Yendee who was formerly an advocate and also was an ex-M.P. These two documents having been executed 18 months preceding the date of the acquisition and the Reference Court having accepted them to be reflective of having had the same potentialities, since the lands are situated adjacent to the acquired land, they would establish comparable value. The High Court committed obvious illegality in not considering this material evidence. Therefore, the judgment and decree of the High Court is vitiated by error of law.

Though, initially, we were inclined to accept the contention of Shri Mohta, on perusal of evidence on record, we find it difficult to give acceptance to the contention. It is an admitted fact that the claimant as PW-9 admitted in the cross-examination that in the year 1957 he purchased the very same entire 20 acres of land for Rs.10,000/-. In other words, he estimated the value of the same land in 1957 taking all potentiality at Rs.10,000/-. He also stated in the cross-examination that the market value of the lands had increased ten times from 1957 to 1965. In other words, according to his estimate the acquired land commands market value in 1965 for a total consideration of around Rs.1 lakh. The Land Acquisition Officer considered the evidence and ultimately determined the market value at Rs.5,500/- and Rs.4,500/- to the different portions of the land. On belting by average it worked out at a total consideration of Rs.1 lakh.

The question, therefore, is whether the High Court has committed any manifest error of law or had applied any wrong principle of law in determining the compensation and whether its failure to consider Ex.38 and 44 does make any difference. Having given our consideration to the contention of Shri Mohta, we think that the High Court had not committed any manifest error of law or omitted to apply any correct principle of law. It is seen that if there is evidence or admission on behalf of the claimants as to the market value commanded by the acquired land itself, the need to travel beyond the boundary of the acquired land is obviated. The head of take into consideration the value of the lands adjacent to the acquired land or near about the area which possessed same potentiality to work out the prices fetched therein for determination of market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where evidence of the value of the acquired land itself is available on record, it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands. As stated earlier, though

Ex.38 and 44 might command different market value to the land situated in approved lay- outs, since the appellant himself had purchased the self- same acquired lands in 1957 at Rs. 10,000/- for the entire 20 acres of land, the High Court was right in its view to consider the very same evidence to determine the compensation to the acquired land. On the assessment of the increase in the value by 10 times, the High Court had accepted that assessment of the appellant himself as PW-9 and upheld the award of the Land Acquisition Collector since it reflects the same price as granted in the award under Section 11.

It is seen that the Reference Court blissfully overlooked the admission of the owner on the surmise that it is an estimate made by the claimant and the evidence of the sale deeds under ex.38 and 44 being prevailing prices, it acted thereon and determined the compensation. The approach of the Reference Court is clearly illegal and that of the High Court is quite correct and it was the only way in which the market value could be determined on the face of the evidence on record. The Reference Court committed manifest error in determining the compensation on the basis of sq. ft. When lands of an extent of 20 acres are offered for sale in an open market, no willing and prudent purchaser would come forward to purchase that vast extent of land on sq. ft. basis. Therefore, the Reference Court has to consider the valuation sitting on the arm chair of a willing prudent hypothetical vendee and to put a question to itself whether in given circumstances, he would agree to purchase the land on sq. ft. basis. No feats of imagination is necessary to reach the conclusion. The answer is obviously no. This aspect of the matter was totally ignored by the Reference Court and mechanically accepted the two sale deeds to enhance the compensation at a value of nearly Rs.35,000/- per acre. In State of M.P. vs. Santabai & Ors., (C.A. No.2844/34) and Salgoankar vs. Union of India (C.A. No.3800/89) decided on 11.1.1990), this Court had accepted the principle that when the owner himself has purchased the land under acquisition, the consideration mentioned in the sale deed would form the basis to determine the market value. Though the High Court has relied on the sale deeds under Ex.65 and 66 relating to the lands in Nityanand Nagar Colony, it is also necessary to go into that aspect of the matter in the view we have stated above.

Considered from this perspective, we think that it is not a fit case for our interference under Article 136 of the Constitution. In view of the fact that the appellant has withdrawn the amount deposited pursuant to the award of the Reference Court, since the award of the Collector now stands confirmed, respondent No.2 is entitled to recover the same from the appellant. The appellant is given six months' time for depositing the same with the same interest as was awarded by the Reference Court.

The appeal is accordingly dismissed but, in the circumstances, without cost.