

K.S. Shivadevamma And Ors. Etc vs Assistant Commissioner And Land ... on 8 December, 1995

Equivalent citations: AIR 1996 SUPREME COURT 2886, 1996 (2) SCC 62, 1996 AIR SCW 633, (1996) 1 RENTLR 276, (1996) LACC 326, (1996) 2 ICC 52, (1996) 2 CIVLJ 5

Bench: K. Ramaswamy, B.L. Hansaria

CASE NO.:

Appeal (civil) 12116-18 of 1995

PETITIONER:

K.S. SHIVADEVAMMA AND ORS. ETC.

RESPONDENT:

ASSISTANT COMMISSIONER AND LAND ACQUISITION OFFICER AND ANR.

DATE OF JUDGMENT: 08/12/1995

BENCH:

K. RAMASWAMY & B.L. HANSARIA

JUDGMENT:

JUDGEMENT 1995 SUPP. (6) SCR 364 The following Order of the Court was delivered :

Leave granted.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), was published on January 12, 1978 acquiring 9 acres 10 guntas of land situated in survey Nos. 118/4, 118/5A and 5B situated in Nituvalli village, Davanagere. The Land Acquisition Officer by his order dated May 17, 1979 awarded a sum of Rs. 5,000 per acre. On reference, the civil court by its award and decree dated October 30, 1984 determined the compensation @ Rs. 30,000 per acre. On appeal, the High Court determined compensation after giving deductions of 53%, @ Rs. 18 per sq. yd. by judgment and decree dated August 19, 1992. Thus, this appeal by special leave has been filed by the claimants.

The State has not filed any appeal against the enhanced award of the High Court. Shri Javali, learned senior counsel appearing for the claimants, contended that in a notification issued in 1967 acquiring 1 acre 32 guntas of land covered in MFA No. 670/71, MFA No. 7/72 for expansion of the hospital, the High Court awarded @ Rs. 35 per sq. yd. after giving deductions. In another notification December 21, 1972, acquiring lands for the Police Parade Ground covered in MFA No. 1426 of 1987, by

judgment and decree dated June 12, 1993 the Division Bench of the High Court enhanced the compensation to Rs. 80 per sq. yd. after giving deductions for establishment of Employees State Insurance Hospital; and this Court in appeals @ SLP (c) Nos. 11908-11909/95 by order dated November 10, 1995, confirmed the said market value of the agricultural lands and Rs. 115 per sq. yd. for converted lands. In view of the fact that the lands are situated abutting the national Highway and having regard to the establishment of bus stand, the High Court committed grievous error of law in determining the compensation @ Rs. 18 per sq. yd. which is unjust and illegal. Shri Sanghi, the learned senior counsel for the respondents, has contended that the High Court has considered all the relevant facts and having regard to same, it was justified in determining the compensation at the rate of Rs. 18 per sq. yd.

Having heard the learned counsel for the parties, the question emerges is :

What would be the reasonable market value which the lands are capable to fetch ? It is seen that in the award of the Collector, he accepted the statement made by the parties regarding the situation of the lands. It is stated that the lands are situated in the heart of the industrial area of Davanagere City which lies within the limits of the Municipality. They are near the Cotton Mills, Ganesh Textile Mill, Davangere Cotton Mill, Rice Mill Davengere Regional Grave Yard, Fire Station, Oil Mill and another fast growing industries. This situation of the lands was also accepted by the Reference Court as well as by the High Court. Ultimately, the High Court recorded a finding that the lands possessed of potential value, though at the relevant time, they were agricultural lands and 2 acres and odd, were converted into non-agricultural use. No steps have been taken to develop the lands and other amenities have not been provided.

From this, the question is what would be the reasonable market value that the lands would command in open market. The appellants themselves have placed on record the sale deed of an extent of 133' x 99' under Ex.P-18 dated May 30, 1974 which fetched of consideration of Rs. 41,000 per acre. The High Court was not inclined to accept in to this sale deed. But it held that it provides guidance in determination of the market value. Though the appellants have relied upon the Government Circular determining the value of the lands for the purpose of fixing Stamp Duty and Registration Fee and also the Commissioner's Report regarding the valuation assessed by him, the High Court rightly has not accepted them. This Court also had held that the circulars issued by the Government under Section 47A of the Stamp Act for fixation of Stamp Duty and the Registration fee would not form basis to determine the compensation unless evidence is adduced as regards the prevailing market value of the land in the locality possessed of similar advantageous features. Even Commissioner's assessment is his "best judgment assessment". Therefore, it cannot form the basis to determine the market value.

We have seen the judgment in MFA No. 670/71 rendered by the High Court on September 12, 1973. The learned Judges had proceeded on the footing of averaging the prices and accepted the average price at Rs. 71 and odd. After giving deduction of 33 1/3% determined market value @ Rs. 35 per sq. yd. It is not necessary to go into the correctness of the above judgment since that is not the subject matter here. Suffice it to state that the approach adopted by the Court is not a sound principle of law, to form basis for determination of compensation in this case. It is also to be noted that the lands concerned therein was for expansion of the Civil Hospital which was already in existence and in a developed area. Lands covered in other appeals are situated in already developed area and far away from the acquired land. Under those circumstances, it is not safe to rely on them to provide basis to determine compensation in this case. It is seen that the sale deed relied on by the appellants is a small piece of land which could never form the basis for determining the compensation for a large extent of land measuring 9 acres 10 guntas of land.

Having rejected these sale deed, what could be the basis that would form foundation for determination of the compensation. It is seen that both the courts have considered potential value as basis to determine the compensation. In view of the finding by the Land Acquisition Officer himself that the lands are situated in a developing area, though at that point of time the major part of the land was agricultural, the lands are possessed of potential value for building purposes. But they are not immediately capable to realise the price as building sites. Though sanction for conversion of two acres into non-agricultural land was obtained two years prior to Section 4(1) notification the fact that no steps were taken to have them developed as plotted lands would itself furnish intrinsic evidence that the lands were not capable to put immediate use for building purpose.

Shri Javali contended that since acquisition was only for the purpose of bus stand, the High Court has committed grievous error in deducting 53% for developmental charges. The High Court has noted that if the lands are to be used for building purposes necessarily under the Building Rules the land owner has to leave out 53% area for roads, open space and other public amenities. In addition, the owner is required to expend money for development and construction of the roads, water supply mains and electrical lines etc. and that this requires considerable expansion and improvement. If the compensation is determined on the basis of yardage, the owner cannot put the entire land to use unless he leave out land for the above purposes and also expend money for developmental purpose. Merely because land is acquired for establishment of bus stand, that use is irrelevant in determining market value.

The judgment of the A.P. High Court in Revenue Divisional Officer v. Dasari Ganga Raju & Ors., (1992) Suppl. ALA cases 403, relied on by the counsel, proceeded on a wrong assumption of law and directed not to deduct any amount towards any developmental charges since the land was acquired for bus stand purpose. As stated

above the principle is not for what purpose the land was acquired. Had the owner sold the land in open market as house sites, would he be entitled to use the entire land for building purpose ? That would be the yardstick. Therefore, the ratio therein is not correct in law.

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 $33\frac{1}{3}$ 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 handover the land to the City Improvement Trust for roads and for other amenities and his requirement to expand money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ $33\frac{1}{3}$, as ordered by the High Court, was not illegal.

Considering these facts and also the situation of the land as noted by the Land Acquisition Officer and courts below, we think that Rs. 20 per sq. yd. would be the just compensation. The appeals are accordingly allowed and compensation @ Rs. 20 per sq. yd. is fixed being just and proper. The appellants are entitled to the solatium at 30% on enhanced compensation. The appellants are entitled to interest at the rate of 9% for one year from the date of taking possession and 15% thereafter till date of deposit. The claimants are not entitled to the additional amount under Section 23(1-A) since the Collector made the award on May 17, 1979. No costs.