Supreme Court of India
Chimanlal Hargovinddas vs Special Land Acquisition ... on 21 July, 1988
Equivalent citations: 1988 AIR 1652, 1988 SCR Supl. (1) 531
Author: M Thakkar
Bench: Thakkar, M.P. (J)

PETITIONER:
CHIMANLAL HARGOVINDDAS

Vs.

RESPONDENT:
SPECIAL LAND ACQUISITION OFFICER, POONA, AND ANR.

DATE OF JUDGMENT21/07/1988

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 1652 1988 SCR Supl. (1) 531
1988 SCC (3) 751 JT 1988 (3) 106
1988 SCALE (2)43
CITATOR INFO :
R 1992 SC 666 (4)

ACT:
Land Acquisition Act -Challenging valuation and compensation in respect of land acquired under provisions of-Whether appellant whose land was acquired is entitled to benefit of Central Amending Act 68 of 1984.

HEADNOTE:
The appellant not being satisfied with the compensation offered by the Land Acquisition officer in respect of his land placed under acquisition under the Land Acquisition Act, applied for a reference to a civil court, for determining the market value of the land for awarding compensation to the appellant. The Trial Court determined the market value of the land in question at Rs.8692 per acre. The High Court reduced the amount of compensation payable to Rs.4845.87 from Rs.8692 per acre. The appellant moved this Court for relief, complaining that the High Court had erroneously revised downwards the valuation correctly arrived at by the Trial Court.
Allowing the appeal partly, the Court
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HELD: The trial Court had virtually treated the award rendered by the Land Acquisition officer as a judgment under appeal. The Court laid down general guidelines to be followed in respect of methodology for valuation, in order to capsulize the true position. [534E] F

The valuation made by the High Court had been faulted on three grounds:

(1) The High Court should not have made a deduction of 25% in place of deduction made by the Trial Court at 20% to account for the factor pertaining to largeness of the block of land under acquisition. [539B]

(2) The High Court had grossly under-valued the land in determining the market value of the appellant's land at Rs.7000 per acre as a block. [539B-C]

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(3) There was no warrant for pushing down or depressing the market value of land as determined by the Trial Court in order to deduce the 'present value' by reference to Miram's Tables to account for the factor as regards the estimated time lag for development reaching the block of land in question which was situated in the interior. Besides, the time lag of 12 years as estimated by the High Court was excessive and unrealistic. [539C-D]

The first two grounds were devoid of merit. It was not possible to find fault with the reasoning or conclusion of the High Court. The High Court was regularly engaged in valuation of the lands in different parts of the State and was fully aware of the landscape. It had made the estimate as regards the time lag for development to reach the appellant's land to the best of its judgment, and having taken into account all the relevant factors, it had arrived at its determination. The High Court had not committed any error or violated any principle of valuation. It was purely a question of fact and it was not possible to detect any error even in the factual findings recorded by the High Court. There was no material on the basis on which the plea of the appellant could be upheld that the valuation of Rs.7000 per acre did not reflect the true market value or that the land in question was undervalued. [541B-F]

The Appellant's grievance with regard to the third ground was justified. The appellant's parcel of land in question, situated very much in the interior, was valued by the Trial Court at Ks. l0,866 per acre (less 20% for roads, etc.). The High Court valued this parcel of land at Rs.7,000 per acre. It had valued the land with the best situation on the Ganeshkhand Road at Rs.20,000 per acre. As against this, the appellant's land was valued at Rs.7,000 per acre. This pushing down was made to account for its situation in the interior on the premise that development would take about 12 years to reach the appellant's land under acquisition. But after 12 years, it would become land adjoining the developed area and not land which could be treated as in the interior. If the present value was to be ascertained, it should be

ascertained on the basis of present value of land which would fetch Rs.20,000 per acre after 12 years and not present value of land which would fetch Rs.7,000 per acre after 12 years. In fact the present value of Rs.20,000 payable at the end of 12 years at 8% would work out to Rs.6942 according to Miram's Table 7, p.657 of A.K. Mitra's Theory and Practice of Valuation 2nd Edition. The High Court was right in valuing the land in interior at Rs.7,000 per acre but wrong in directing that present value of Rs.7,000 payable after 12 years should be ascertained. The appellant must be awarded compensation at Rs.7,000
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per acre subject to deduction or allowance of 25% to account for land required to be set apart for roads, open spaces, etc. The appellant would be entitled to be paid compensation for his land in question at Rs.5250 per acre (Rs.7,000 less 25%) in place of lesser amount awarded by the High Court. [541F-H; 542A-F]

The appellant would be entitled to the benefit of the Central Amending Act 68 of 1984 in view of section 30(2) of the Act because these appeals were pending before this Court on 30th April, 1982, if the view is taken that the said Act had retrospective operation in the sense that the amended section 23(2) and section 28 apply also in relation to an order under appeal against an award made by the Collector or Court between April 30, 1982 and the commencement of the Amending Act. This must depend upon the decision of the Constitution Bench of this Court, expected soon; the appellant would be entitled to the benefit as above-said if the Constitution Bench upholds the view expressed in Bhag Singh case, (1985) 3 SCC p. 737 and overrules the view expressed in Kamalajamanniavaru case, (1985) 1 SCC 582. [542G-H; 543A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 272 1 & 2722 (N) of 1972.

From the Judgment and order dated 30.3.1972 of the Bombay High Court in First Appeal No. 440/62 and 577 of 1962.

Dr. D.Y. Chandrachud, S. Dutt and P.H. Parekh for the Appelant.

A.M. Khanwilkar and Ajit S. Bhasme for the Respondents. The Judgment of the Court was delivered by THAKKAR, J. Controversy is centred on the question of valuation of the lands under acquisition. The trial Court had correctly valued the lands and the High Court had erroneously revised the valuation downwards-complains the original owner of the land who is the appellant in these two allied appeals.

The lands in question situated in a locality known as 'Tigris Camp' within the city limits of Poona in Maharashtra admeasuring 15 acres and 17 Gunthas, comprised in Survey Nos. 85 and 86, were

1. By Certificate under Article 133(l)(a) of the Constitution of India as it existed at the material time.

placed under acquisition pursuant to a Notification under section 4 of the Land Acquisition Act published on March 8, 1956. The acquisition was a part of the total acquisition of 101 acres 33 Gunthas made for a public purpose viz. for construction of the Headquarters, Poona Rural Police Charge. The appellant was not satisfied with the compensation offered by the Land Acquisition officer in respect of his parcel of 15 Acres 7 Gunthas and applied for a reference being made under section 18 of the Land Acquisition Act. Two references were made to a Civil Court under section 18 of the Land Acquisition Act for determining the market value of the lands for the purpose of awarding compensation to the appellants. The Trial Court determined the market value of 2- 1/4 acres forming part of Survey Nos. 85 and 86 at Rs.15,00 per acre. Market value in respect of the remaining 13 acres and 7 Gunthas was determined at Rs.8692 per acre. The present dispute is confined to valuation of 13 Acres 7 Gunthas forming part of Survey No. 85. The High Court has reduced the total compensation payable in respect of the land in question from Rs.1,14,517 computed at Rs.8692 per acre to Rs.63,846 (which works out at Rs.4845.87 per acre) thereby reducing the compensation awarded to the appellant by Rs.50,554 in respect of this parcel of land.

Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the Trial Court has virtually treated the award rendered by the Land Acquisition officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized.

The following factors must be etched on the mental screen:

> (1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose. (5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land). (9) Even post notification instances can be taken into account (1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(l0) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors (14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. smallness of size.	1. largeness of area.
2. proximity to a road.	2. situation in the interior at a distances from the Road.

3. frontage on a road. 3. narrow strip of land with very small frontage compared to death.

4. nearness to developed area. 4. lower level requiring the depressed portion to be filled up.

5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquistion.	6. some special disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say l000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense. The problem which has surfaced in the present appeals needs to be recapitulated. The question is whether in scaling down the total compensation payable to the appellant from Rs.1,14,517 to Rs.63,846, the High Court has violated any principle of valuation or adopted any faulty methodology.

The formula evolved by the High Court may be briefly outlined. The High Court has taken into account the market value reflected in the instances pertaining to small parcels of land cited by the parties which on the analysis of the evidence have been considered as compar able subject to factors of differentiation. The High Court has valued the land having best situation admeasuring 9 acres comprised in Survey No. 86 which abuts on the Ganeshkhand Road at Rs.20,000 per acre. Having done so the market value reflected therein has been unloaded to account for the minus factors pertaining to the rest of the lands including the land in question. The lands comprised in Survey No.

86 situated in the interior were valued at Rs.16,000 per acre, whereas lands abutting on Pashan Road were valued at Rs.12,000 per acre. .

The appellant's land, which was agricultural land albeit with future potential for development as building site, was situated far far in the interior in the midst of blocks of undeveloped land. The formula for evaluation involved taking of three steps:

> (1) The High Court formed the opinion that allowance for largeness of block deserved to be made at 25% instead of 20% as done by the Trial Court. (2) The High Court formed the opinion that the development would take about 12 years to reach the appellant's land. On these premises the High Court formed the opinion that the land of the appellant could be valued at Rs.7000 per acre as a block. (3) The High Court directed that the market value so ascertained should be further depressed to account for the factor as regards the waiting period of 12 years which was the estimated period for development reaching the appellant's land. The 'present value' of the land was accordingly de- duced by depressing the valuation of Rs.7000 per acre by reference to Miram's Tables on the basis of discount rate of 5% per annum to account for the factor that approximately 12 years would elapse before development could reach the appellant's land.

That is how the total compensation payable to the appellant for the block of land admeasuring 13 acres 7 gunthas was determined at Rs.63,846 which works out at approximately Rs.4,845.87 per acre.

The valuation made by the High Court has been faulted on three A grounds:

> (1) The High Court should not have made a deduction of 25% in place of deduction made by the Trial Court at 20% to account for the factor pertaining to the largeness of the block of land under acquisition. (2) The High Court had grossly undervalued the land in determining the market value of the appellants' land at Rs.7,000 per acre.
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> (3) There was no warrant for pushing down or depressing the market value of land as determined by the Trial Court in order to deduce the 'present value' by reference to Miram's Tables to account for the factor as regards the estimated time lag for development reaching the block of land in question which was situated in the interior. Besides, the time lag of 12 years as estimated by the High Court was excessive and unrealistic.

The first two grounds are devoid of merit. It is common knowledge that when a large block of land is required to be valued, appropriate deduction has to be made for setting aside land for carving out roads, leaving open spaces, and plotting out smaller plots suitable for construction of buildings. The extent of the area required to be set apart in this connection has to be assessed by the Court having regard to shape, size and situation of the concerned block of land etc. There cannot be any hard and fast rule as to how much deduction should be made to account for this factor. It is essentially a

question of fact depending on the facts and circumstances of each case. It does not involve drawing upon any principle of law. It cannot be said that the High Court has committed any error in forming the opinion that having regard to the facts and circumstances of the case 25% deduction was required to be made in this connection. The High Court cannot be faulted on this score.

The more serious grievance of the appellant however is that the High Court has depressed the market value excessively in evaluating the land in question at Rs.7,000 per acre as compared to the land abutting on the Ganeshkhand Road valued at Rs.20,000 per acre, the land abutting in the interior of Survey No. 86 valued at Rs.16,000, and land abutting on Pashan Road valued at Rs.12,000 per acre. A glance at the sketch on the record shows that the appellant's land is situated very much in the interior as compared to the other parcels of land. It is in the midst of large blocks of undeveloped land. A hypothetical purchaser would not offer the same market value for lands with such a situation as lands which are nearer to the developed area and abut on a road or are nearer to a road. The development of lands which are nearer to the developed area and nearer to the road can reasonably be expected to take place much earlier. Only after such lands are developed and construction comes up, the development would proceed further in the interior. It would not be unreasonable to visualize that a considerable time would elapse before development could reach the block of undeveloped land located in the interior. Besides, the land which is situated in the interior does not fetch the same value as the land which is nearer to the developed area and nearer to the road. If a hypothetical purchaser opts to purchase the land situated in the interior in the midst of an undeveloped area, he would doubtless take into account the factor pertaining to the estimated time for development to reach the land in the interior. For, his capital would be unprofitably looked up for a very long time depending on the estimated time required for the development to reach the land in the interior. Meanwhile he would have to suffer loss of interest. It is, therefore, understandable that the land in the interior would fetch much smaller price as compared to the lands situated nearer to the developed locality. More so as all these factors are incapable of precise or scientific evaluation. The valuer has to indulge in some amount of guess work and make the best of the situation. The High Court having accorded anxious consideration to all these factors of uncertainty has arrived at the valuation of Rs.7000 per acre. Says the High Court in paragraph 51 of the Judgment:

> "This brings up for final consideration the plots which we have described as interior plots in all the survey numbers and which do not have a frontage on the roads. A lower price will have to be provided for these plots, since the plot- holders will have to spend moneys for getting water and drainage connections which are given only upto the Municipal Roads. Then again, in our opinion, the interior plots would not be sold at all as long as any of the plots having a frontage on Pashan Road or Baner Road are sold, though once such plots have been disposed of the demand for interior plots would certainly pick up. Here again, it is impossible to be precise in fixing the value; but in our opinion the interior plots may fairly be valued at Rs.7,000 per acre. As stated earlier, the sales of these plots would commence after all the plots having a frontage on Pashan Road and Baner Road are disposed of i.e. after 12 years, and we may say that those plots would be sold within a period of about 4 years."

It is not possible to find fault with the reasoning or conclusion of the High Court. The High Court was day in and day out engaged in valuation of the lands in different parts of the state and was fully aware of the landscope. There is no yardstick by which the future can be forseen with any greater degrees of preciseness. The High Court has made the estimate as regards the time lag for development to reach the appellant's land to the best of its judgment. Having taken into account all the relevant factors, the High Court has arrived at the aforesaid determination. And in doing so, the High Court has not committed any error or violated any principle of valuation. It is purely a question of fact and it is not possible to detect any error even in the factual findings recorded by the High Court. In fact the High Court has been extremely considerate and has approached the question of valuation with sympathy and understanding for the land owner. The High Court did not opt for an easy way out by taking the view that since there was no comparable instance of undeveloped lands in the interior on the basis of which the valuation of the appellant's land could be made, the Award made by the land Acquisition officer should remain undisturbed. The High Court has done the best under the circumstances albeit by making recourse to some guess work which in the circumstances of the case was inevitable. There is no material on the basis of which this Court can uphold the plea of the appellant that the valuation at Rs.7,000 per acre does not reflect the true market value or that the land in question is under-valued. The argument urged by the appellant in this behalf, under the circumstances, cannot be accepted.

Turning now to the third ground, it appears that the appellant's grievance is justified. The grievance is that there was no warrant for making any further deduction once the land was valued at Rs.7,000 as against the valuation of the best parcel of land at Rs.20,000 which was made precisely to account for the factor pertaining to its situation in the interior. There was therefore no warrant for ascertaining the present value of Rs.7,000 as if Rs.7,000 would be fetched after 12 years. Now the parcel of land admeasuring 13 acres 7 gunthas comprised in Survey No. 85 which was situated very much in the interior was valued by the Trial Court at Rs. 10,866 per acre (less 20% to account for roads etc.). This parcel of land was valued at Rs.7,000 per acre by the High Court. The High Court had valued the land with the best situation on the Ganeshkhand Road at Rs.20,000 per acre. As against this the appellant's land was valued at mere Rs.7,000 per acre which reflected an unloading by Rs.13,000 per acre which works out at 65%. This pushing down was made to account for its situation in the interior on the premise that development would take about 12 years to reach the land under acquisition. If the appellant's land just adjoined the land valued at Rs.20,000 per acre it would have been valued at the same figure of Rs.20,000. It has been valued at Rs.7,000 per acre precisely because it is so situated that development would reach the appellant's land after 12 years as estimated by the High Court. But after 12 years it would become land adjoining to developed area and not land which could be treated as in the interior. Therefore, if present value was to be ascertained it should be ascertained on the basis of present value of land which would fetch Rs.20,000 per acre after 12 years and not present value of land which would fetch Rs.7.000 per acre after 12 years. In fact present value of Rs.20,000 payable at the end of 12 years at 8% would work out at Rs.6942 (.3971 x 20,000 = 6942)1. The High Court was therefore right in valuing the land in interior at Rs.7,000 per acre but wrong in directing that present value of Rs.7,000 payable after 12 years should be ascertained. The last ground is thus well founded .

In the result appellant must be awarded compensation at Rs.7,000 per acre subject to deduction or allowance of 25% to account for land required to be set apart for roads, open spaces etc. In other words appellant will be entitled to be paid compensation for 13 acres 7 gunthas comprised in Survey No. 85 at Rs.5,250 per acre (Rs.7,000 less 25% i.e. Iess 1750=Rs.5,250) in place of the lesser sum awarded by the High Court. Appeal must be partly allowed to this extent accordingly. F The question however remains whether the appellant is entitled to the benefit of Central Amending Act (Act 68 of 1984) providing payment of solatium and interest at enhanced rates on the ground that present appeals were pending before this Court on 30th April, 1982. The appellants would be entitled to the benefit thereof by virtue of section 30(2) of the Act if the view is taken that the said Act has retrospective operation in the sense that amended section 23(2) and section 28 apply also in relation to an order under appeal against an award made by the Collector of Court between April 30, 1982 and the commencement of the Amending Act. This must depend on the deci-

1. See Mirarm's Table 7 at 657 of A.K. Mitra's Theory and Practice of Valuation (2nd Edition) Published by Eastern Law House.

sion of the Constitution Bench which is expected soon. The appellant Will be entitled to the benefit of Central Amending Act (Act 68 of 1984) in case the Constitution Bench upholds the view expressed in Bhag Singh case [1985] 3 SCC- p. 737 and overrules the view expressed in Kamalajammanniavaru Case [1985] 1 SCC p. 582. In case the Constitution Bench affirms the view taken in Kamalajammanniavaru Case, the appellant will not be entitled to such benefit.

Appeal is partly allowed accordingly to the aforesaid extent. Order passed by the High Court is modified to the corresponding extent.

Having regard to the facts and circumstances of the case there will be no order regarding costs in this Court.

S.L. Appeal allowed.