Supreme Court of India
The Special Land Acquisition ... vs T. Adinarayan Setty on 7 November, 1958
Equivalent citations: 1959 AIR 429, 1959 SCR Supl. (1) 404
Author: S Das
Bench: Das, S.K.

PETITIONER:
THE SPECIAL LAND ACQUISITION OFFICER, BANGALORE

Vs.

RESPONDENT:
T. ADINARAYAN SETTY

DATE OF JUDGMENT:
07/11/1958

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
IMAM, SYED JAFFER
KAPUR, J.L.

CITATION:
1959 AIR 429 1959 SCR Supl. (1) 404
CITATOR INFO :
RF 1968 SC1425 (20)
APL 1970 SC 850 (2)
F 1972 SC1417 (4)
RF 1975 SC1670 (7)
R 1977 SC 580 (9)
RF 1979 SC 472 (10)
F 1984 SC 892 (13)
RF 1992 SC 666 (3,4)

ACT:
Land Acquisition-Principles of valuation-Exemplars, use of-Land Acquisition Act, 1894 (1 Of 1894), ss. 11 and 23.

HEADNOTE:
Certain land belonging to the respondent was compulsorily acquired by the Government for a maternity hospital. Most of the land consisted of building sites but there was a building on a small portion of the land and a portion was low lying-land. The Special Land Acquisition Officer held on the basis of the value of sites previously sold by the respondent, that the market value of the land was Rs. 10/- per sq. yard and awarded a sum of Rs. 1,41,169/- to the respondent as compensation. He did not give any

compensation for the low lying land or for the building. Against this award the respondent raised an objection and a reference was made to the District judge. The District judge accepted the rate of Rs. 10/- per sq. yard as fair, reduced the amount of deductions for providing electric installations by Rs. 10,000/- and allowed a sum of Rs. 10,000/- for the low lying area at the rate of Rs. 3/- per sq. yard, thereby increasing the amount of compensation by Rs. 20,000/-. Not being satisfied the respondent appealed to the High Court. The High Court held that the rate of compensation for the land except the low lying portion, should be Rs. 13/8/- per sq yard and for the low lying portion it should be Rs. 8/8/- per sqyard. It further awarded a sum of Rs. 7,000/- for the building. In arriving at the figure of Rs. 13/8/- the High Court took into account only four sale transactions which had been made by the respondent at the rates of Rs. 12, I5, 14 and 7/8/- per sq. yard but did not take into consideration two other transactions which had been made by the respondent at the rates of Rs. 6/8/- and Rs. 10 per sq. yard. It calculated the average of the four transactions to be Rs. 12/2/per sq. yard and then took a second average between Rs. 15/-,

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which was the maximum price obtained by the respondent and RS. 12/2/- and arrived at the figure of Rs. 13/8/-. The High Court was also influenced by considerations such as the purpose for which the land was acquired., the report of certain medical authorities as to the unsuitability of the land for the maternity hospital and the delay in putting the land to the use for which it was acquired.

Held, that with regard to the valuation of the land, other than the low lying portion, the High Court misdirected itself by taking into account extraneous considerations and had committed an error of principle in arriving at the figure of Rs. 13/8/- by adopting a wrong method of ascertaining the market value. The High Court ought to have taken the average of all the six sale transactions and arrived at the proper valuation of Rs. 11/. per sq. yard. There was no justification for ignoring two of the sale transactions or for taking a second average. With respect to the compensation for the low lying land and the building there was no error of principle or otherwise in the findings of the High Court and no interference was called for.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 138 of 1955.

Appeal from the judgment and decree dated October 15, 1953, of the Mysore High Court at Bangalore in Regular Appeal No. 255 of 1950-51, arising out of the order dated September 18, 1950,

of the Court of the District Judge, Bangalore, in Misc. Case No. 39 of 1947-48.

G. Channappa, Assistant Advocate-General, Mysore R. Gopala Krishnan and T. M. Sen, for the appellant' A. V. Viswanatha Sastri, M. A. Rangaswami, K. R. Sarma and K. R. Choudhury, for the respondent.

1958. November 7. The Judgment of the Court was delivered by S. K. DAS, J.-This appeal by the Special Land Acquisition Officer, Bangalore, has been brought to this Court on a certificate granted by the High Court of Mysore, and is from the decision of the said High Court dated October 5, 1953, in a regular appeal from an order made by the 2nd Additional District Judge, Bangalore, on September 18, 1950, on a reference under s. 18 of the Land Acquisition Act (herein. after referred to as the Act).

The facts so far as they are relevant to the appeal before us are these. An area of about 51,243 squard yards of land was acquired by Government under Notification No. M. 11054 Med. 80-45-25 dated April 16, 1946, for development of the Appiah Naidu Maternity Home at Malleswaram, Bangalore City, into a Maternity Hospital. There were eight owners interested in the property acquired, out of whom two objected to the award made by the Special Land Acquisition Officer, now appellant before us. One of these two was T. Adinarayana Shetty, a diamond merchant of Mysore City. Originally, he was the respondent before us, and on his death his son and legal representative has been brought into the record as the sole respondent to this appeal. The deceased respondent Adinarayana Setty (hereinafter called the respondent) was interested in 48,404 sq. yards out of the total area, and it may be stated here that there is no dispute before us that out of the said 48,404 sq. yards an area of about 3,000 sq. yards consists of land which has been variously characterised as a depression or a pit or low-lying land (called 'halla' in the local vernacular language). Out of the total amount of compensation awarded by the Special Land Acquisition Officer, a sum of Rs. 1,41,169/was awarded to the respondent. The Special Land Acquisition Officer proceeded on the following basis for his award. Firstly, he found that the land value in and around Bangalore City had increased in recent years owing to the war and the respondent had paid to the Deputy Commissioner, Bangalore District, a sum of money called a conversion fine for sanctioning a scheme of converting the land into non- agricultural land. Thereafter, a layout for building sites was prepared and approved by the Municipality and the res- pondent sold a few of the sites shown in the layout to some purchasers. This was done before the publication of the preliminary notification of acquisition; but the sale of further building sites was stopped after the said publication. Secondly, the Special Land Acquisition Officer took into consideration the value of the sites sold by the respondent and came to the conclusion that Rs. 10/- per sq. yard was the market value of the land in question. He awarded to the respondent compensation for approximately 48,404- sq. yards at the rate of Rs. 10/- per sq. yard, but after deducting therefrom an area of 26,248 sq. yards which, according to the Special Land Acquisition Officer, was required for making roads and drains as per the layout scheme. The total amount thus calculated came to Rs. 2,21,563. and odd and from this a sum of Rs. 98,807 was again deducted as representing the expenditure which would be required for making roads and drains. The net amount was thus found to be Rs. 1,22,756 and odd and adding 15% as the statutory compensation payable to the respondent the total amount awarded by, the Special Land Acquisition Officer to the respondent, came to Rs. 1,41,169/-. Against this award, the respondent raised an

objection, and a reference was accordingly made to the District Judge of Bangalore under s. 18 of the Act. This reference was heard by the 2nd Additional District Judge who, by his order dated September 18, 1950, came to the following conclusions:-

(i) that the rate awarded by the Land Acquisition Officer at Rs. 10/- per sq. yard was fair and should be,upheld;-

(ii) that a sum of Rs. 10,000/- for providing electric installation out of the sum of Rs. 98,807/- deducted by the Land Acquisition Officer from the compensation payable to the respondent should not be deducted; and

(iii) that with regard to the area of the low-lying. land which I was completely excluded by the Land Acquisition Officer, the respondent should get at the rate of Rs. 3/- per sq. yard or approximately a sum of I Rs. 10,000/-. In other words, the learned Additional District Judge increased the compensation in favour of the respondent by a sum of about Rs. 20,000/-. Not being satisfied, the respondent preferred an appeal to the High Court of, Mysore. The learned Judges of the High Court found that the proper compensation for the land,. except the portion characterised as low-lying, should be Rs. 13/8/per sq. yard and as to the low-lying portion it should be reduced by Rs. 51- per sq. yard inasmuch as a sum of Rs. 15,000/- was necessary, according to the evidence given in the case, for filling it up; in other words, the High Court awarded compensation at the rate of Rs. 8/8/- per sq. yard for the low-lying land. The High Court also reduced the area which had to be deducted for making roads, etc., according to the layout scheme from 26,248 sq. yards to 12,101 sq. yards. It also reduced the layout charges to Rs. 64,432/-. The High Court added to the compensation a sum of Rs. 7,000/- as the value of a building which the respondent had constructed on one of the sites on the finding that the construction was made prior to the preliminary notification. In this respect the High Court departed from the finding of the Land Acquisition Officer that the building was put up after the publicaion of the preliminary notification. The total amount of compensation which the High Court awarded came to about Rs. 4,80,000 and odd.

As the judgment of the High Court was a judgment of reversal and the appellant felt dissatisfied with it, a certificate of fitness was asked for and was granted by the High Court on July 6, 1954. The present appeal has been brought to this Court in pursuance of that certificate. The appellant has confined his appeal to the following three points: (1) payment of compensation of a sum of Rs. 7,000/- for the building said to have been constructed before the publication of the preliminary notification; (2) payment of compensation at Rs.,8/8/per sq. yard for the low-lying land (halla); and (3) payment of compensation at Rs. 13/8/- for the remaining land after deducting the area for making roads and buildings. We may state that there is no dispute before us now as to the area which should be so deducted and also as to the amount of layout charges, as the findings of the High Court on these two points nave not been challenged before us.

On behalf of the respondent our attention has been' drawn to the decisions of the Privy Council in Charan Das v. Amir Khan (1), Narsingh Das v. Secretary of State for India (2) and Nowroji Bustomji Wadia v.

(1) (1920) 47 I.A. 255.

(2) (1924) 52 I.A. 133.

Bombay Government (1). On these decisions it is submitted by learned counsel that though s. 26 of the Act was amended in 1921 by insertion of sub-s. (2) which says that every award shall be deemed to be a decree' and thus an appeal therefrom must be considered and determined in the same manner as if it is a judgment from a decree in an ordinary suit the established practice of the Privy Council has been not to interfere with a finding on the question of valuation, unless there is some fundamental principle affecting the valuation which renders it unsound. The practice, it is stated, was based on two considerations: first, that the courts in India were more familiar with local conditions and circumstances on which the valuation depended and, secondly, the Privy Council found it necessary to limit the extent of the enquiry in order to spare the parties costly and fruitless litigation. On behalf of the appellant it is submitted that this Court has no doubt adopted the practice that it will not ordinarily interfere with concurrent findings of fact, but this Court has no such established practice as was adopted by the Privy Council in valuation cases even where a difference of opinion has occurred between two courts upon the number of rupees per yard to be allowed for a plot of land. He has further submitted that the reasons for the practice adopted by the Privy Council do not apply with equal force to this Court. In view of the facts of this case and the opinion which we have formed after hearing learned counsel for both parties, we do not think it necessary to make any final pronouncement as to the practice which this Court should adopt in a valuation case where two courts have differed. We are content to proceed in this case on the footing that we should not interfere unless there is something to show, not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied.

(1) (1925) 52 I.A. 367.

We are satisfied that there is no error of principle or otherwise in the findings of the High Court as to the first two points urged in support of the appeal. As to the construction of the building for which a compensation of Rs. 7,000 has been awarded, the clear finding of the High Court is that it was constructed prior to the preliminary notification. It has been further stated before us that the building is in actual occupation of the medical department. Learned counsel for the appellant has taken us through the evidence on the question of construction of the house and the application for a licence for building the said' house which was made by the respondent to the Bangalore Municipality. We are unable to hold that that evidence has the effect of displacing the clear finding of the High Court. As to the low-lying land, we consider that the High Court has given very good reasons for its finding. Admittedly, the area of the low-lying land (halla) is about 3,000 sq. yards. The Land Acquisition Officer valued it at Rs. 3 per sq. yard. A sum of Rs. 15,000 has been deducted from the compensation payable to the respondent on the ground that that amount will be required for filling up the low-lying

-land and converting it into building sites. Therefore, the position is that the respondent has not only been made to part with 3,000 sq. yards of land at 3 per sq. yard, but he has also been made to pay Rs. 15,000 for filling up the land. If these two figures are added, even then the market value of the land comes to about Rs. 8 per sq. yard. This is so even if we do not follow the method adopted by the High Court that the sum of Rs. 15,000 for 3,000 sq. yards gives an average of Rs. 5 per sq. yard and that amount should be deducted from the rate of Rs. 13-8-0 per sq. yard fixed as the proper compensation for the remaining land. We are of the opinion that on the materials before us the value per sq. yard fixed by the High Court for the low-lying land is fully justified even on adoption of the method suggested by learned counsel for the appellant. Learned counsel for the respondent has referred us to the circumstance that some of the sales of building sites which the respondent had made appertained to the low-lying land and he has further emphasised the circumstance that just opposite the low-lying land which is at the eastern end of the entire area, some houses had been built. We have taken these circumstances into consideration, but do not think that the conclusion which learned counsel for the respondent wishes us to draw follows therefrom. First of all, it is by no means clear that the sales of the building sites at the low rate of Rs. 6-8-0 or thereabout appertained to the low-lying land only, and, secondly, the mere circumstance that some buildings have been made on land opposite the low-lying lands but on the other side of the road, does not necessarily mean that the low-lying lands are as valuable as the other land in the area. We are therefore of the view that the compensation fixed by the High Court for the low-lying land is not vitiated by any error of the kind which will justify our interference with it.

We now proceed to consider the third and main point urged on behalf of the appellant, namely, the rate of 13/8 per sq. yard for the other land in the area. Learned counsel for the appellant has submitted before us that the High Court has committed two fundamental errors in arriving at this finding. Furthermore, the High Court has been influenced by extraneous considerations such as the purpose for which the land was acquired, the report of certain medical authorities as to the unsuitability of the land for the purpose for which it was acquired, and the delay in putting the land to the use for which it was acquired. We agree with learned counsel for the appellant that these were extraneous considerations which had no bearing on the question of valuation and the learned Judges of the High Court misdirected themselves as to the scope of the enquiry before them when they imported these considerations into the question of valuation. We further think that the High Court committed an error of principle in arriving at the figure Rs. 13/8 and the error was committed by adopting a wrong method in ascertaining the market value of the land at the relevant time. It is not disputed 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 s. 4(1) and the methods of valuation may be (1) opinion of experts, (2) the price paid within a reasonable time in bonafide 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. In the case under our consideration the High Court adopted the second method, but in doing so committed two serious errors. There were altogether seven transactions of alienation made by the respondent. One was a gift which must necessarily be excluded. The earliest of the sales was in favour of Muniratham which was made on May 15, 1945. Another was made on July 18, 1945. This was in favour of Venugopal who was the husband of a grand-daughter of the respondent. Four other transactions in favour of Kapinapathy,

Puttananjappa, Shamanna and Rajagopal Naidu were made in August, 1945. The notification under s. 4 of the Land Acquisition Act was made on October 4, 1945. What the learned Judges of the High Court did was to take only four out of the aforesaid six transactions into consideration and then to draw an average price therefrom. The learned Judges gave no sufficient reason why two of the transactions were left out. In one part of their judgment they said :

" The evidence discloses that the appellant has effected four sales about a couple of months prior to the date of preliminary notification and the rates secured by him are Rs. 12, 15, 14 and 7/8 which on calculation give an average of Rs. 12/2 per sq. yard ". Why the transaction of May 15, 1945, which was at a rate of Rs. 6/8 per sq. yard only was left out it is difficult to understand. Similarly, the transaction of July 18, 1945, was at the rate of Rs. 10 per sq. yard. That also was left out. We are of the view that this arbitrary selection of four transactions only out of six has vitiated the finding of the High Court. If all the six transactions of sale are taken into consideration, the average rate comes to about Rs. 10/13 per sq. yard only. Having arbitrarily discarded two of the transactions, the learned Judges of the High Court committed another error in taking a second average. Having arrived at an average of Rs. 12/2 per sq. yard from the four transactions referred to above, they again took a second average between Rs. 15, which was the maximum price obtained by the respondent, and Rs. 12/2. Having struck this second average, the learned Judges of the High Court arrived at the figure of Rs. 13/8. No sound reasons have been given why this second average was struck except the extraneous reasons to which we have already made a reference. It is obvious that the maximum price Rs. 15 per sq. yard had already gone into the average when an average was drawn from the four transactions. It is difficult to understand why it should be utilised again for arriving at the market value of the land in question. We are of the view that if the aforesaid two errors are eliminated, then the proper market value of the land in question is Rs. 11 only. Learned counsel for the appellant has drawn our attention to the claim made by the respondent himself before the Land Acquisition Officer (Ex. 11). The respondent had therein said:

Hence, under the standing orders compensation has to be paid at rates for building land in the neighbourhood. This rate ranges from Rs. 10 to Rs. 12, an average of Rs. 10 a sq. yard, as could be verified from entries in the local Sub- Registrar's Office and Bangalore City Municipal Office. At any rate, I myself have sold in the course of this year some six sites out of the land proposed to be acquired for rates ranging from Rs. 7 to Rs. 15 or on an average of Rs. 10 per sq. yard. At this rate the compensation amount will be Rs. 5,12,430 and adding the statutory allowance of Rs. 76,860 at 15 per cent. on the compensation amount on account of the compulsory nature of the acquisition, the total cost of the land will be Rs. 5,89,290 or nearly six lakhs of rupees."

The learned Judges of the High Court took the aforesaid claim to mean that the average rate was Rs. 10 ,per sq. yard, only if the entire area was taken into consideration; but the rate would be different if small building sites were sold- according to a layout scheme. It is worthy of note, however, that in his claim the respondent clearly stated that even as building land the average rate in the neighbourhood ranged from Rs. 10 to Rs. 12 per sq. yard and he had himself sold six building sites at an average rate of about Rs. 10 per sq. yard. It is worthy of note that the six transactions to which the respondent referred were sales of small building sites. It appears to us, therefore, that the High Court had in effect given the respondent a rate more favourable than what he had himself claimed.

We consider, therefore, that on a proper consideration of the materials in the record and after eliminating the two errors which the High Court had committed, the proper value of the land in question should be Rs. 11 per sq. yard. The result, therefore, is that we allow this appeal to this limited extent only, namely, the order of the High Court will be modified by substituting the figure Rs. 11 per sq. yard for the figure Rs. 13/8 awarded by the High Court as compensation to the respondent for land other than the low- lying land. We maintain the order of the High Court that the parties will receive and pay costs in proportion to their success and failure, as now determined, in the courts below; but so far as the costs of this Court are concerned, the parties must bear their own costs in view of their divided success here.

Appeal partly allowed.