Supreme Court of India
Topandas Kundanmal(Since ... vs State Through The Land ... on 25 July, 1995
Equivalent citations: AIR 1995 SC 2396, (1996) 1 GLR 393, 1995 (4) SCALE 701, (1995) 5 SCC 336, 1995 Supp 2 SCR 318, 1995 (2) UJ 600 SC
Bench: K Ramaswamy, K Paripoornan
JUDGMENT

1. These appeals are by certificate of fitness granted by the High Court under Article 133(1) of the Constitution of India. Notification under Section 4(1) of Land Acquisition Act, 1894 (for short, 'the Act') was published on October 15, 1959 acquiring 10 acres and 12 gunthas of land situated in Jamnagar for the establishment under development of T.B. Hospital. The appellants laid a claim pursuant to the notice issued under Section 9 and 10 at the rate of Rs. 1,08,898 per acre. The Land Acquisition Officer in his award dated July 18, 1962 under Section 11 awarded a sum of Rs. 2,500 per acre. Dissatisfied therewith, a Reference to the Civil Judge senior division was made under Section 18 of the Act. The appellants restricted their claim to Rs. 2.00 per sq. ft. The Civil Court enhanced the compensation to Rs. 1.25 per sq. ft. The High Court in the impugned judgment in the First Appeal Nos. 521 and 519 of 1963 dated 28.7.72 set aside the award and decree of the Reference Court and confirmed that of the Collector. Since the value involved is more than 20,000 the High Court granted a certificate. Thus these appeals.

2. The learned Counsel for the appellants strenuously contended that Ex.39 dated August 8, 1959 to an extent of 5016 sq. ft. land was sold by Jaisukhlal Devji who was examined under Ex. 32, for a sum worked out at the rate of Rs. 2.25 per sq. ft. and the High Court was not justified in rejecting that sale deed. In addition, he also placed reliance on Ex.38 dated December 6, 1959 of Rs. 2,700 which worked out at the rate of Rs. 2.88 per ft. proved through Lawshankar Monucha Manilal examined under Ex.28 who is the son of the vendee. It would also establish according to the counsel, that there is a further increase in the value of the land. He also buttressed his argument by reference to Ex. 41 July 12, 1990 under which 1200 sq. ft. was sold by Vijaykunvarba who was examined as Ex. 176 a neighbouring land. The High Court, therefore, was not justified in reversing the award and decree of the Civil Court. We find no force in the contention.

3. It is settled law that the claimants like plaintiffs are entitled to succeed for higher compensation only on proof of value prevailing as on the date of notification. What is the prevailing market value as on the date of notification is a question of fact to be proved by adducing evidence. Burden is always on him to prove the same. It is seen that the appellant himself purchased the land in 1957 at the rate of Rs. 190 per acre. The land adjacent to the land under acquisition in S. No. 225-1 admeasuring 8 acres 39 gunthas was purchased by one Umiyashankar Damodar Vyas under Ex. 55 on August 25, 1960 at the rate of 568 per acre. Ex.39 strongly relied upon by the claimants was executed just two months prior to the date of the Notification. It is common knowledge that issuance of Notification under Section 4(1) to initiate acquisition would take considerable time and the publication of the Notification under Section 4(1) of the Act would be made much later on. Having had knowledge, it would be obvious that documents would be brought into existence to inflate the market value. Ex.39 was sought to be pressed into service to inflate the market value. The conclusion of the High Court is that no attempt was made by the claimant or the vendor or vendee

who were examined, to prove Ex.P.39, to prove the distance of the land covered in Ex.P-39 and the land under acquisition or as a comparable sale. We have seen the award of the Collector. All the sales referred in the award would only show the sales on acreage basis. Obviously the documents have been brought into existence on the basis of the sq. ft. to inflate higher market value. The property of 10 acres and 12 gunthas, when offered for sale in the open market, no prudent purchaser would be willing to purchase the same on sq. ft. basis. If this small extent of land in a commercial area, like Nariman Point in Bombay or Cannaught Place in Delhi is sought to be acquired, perhaps, determination of the compensation on the basis of the sq. ft. may be justified. But when the claimant himself assessed the market value at Rs. 190 per acre and purchased in 1957 and when in 1960 the 8 acres and 39 gunthas of neighboring land was sold for Rs. 568 per acres, no prudent purchaser would offer to purchase on square foot basis. This Court in a catena of decisions deprecated the practice of the reference courts or High Court to determine market value of the lands on sq. ft. basis unless it is established as a fact that the acquired lands are situated in already highly developed residential and industrial area where regular sales are on sq. ft. basis. The High Court also has given cogent and well considered reasons in not accepting the award and decree of the Reference Court. We have carefully gone through the judgment and we find no compelling reasons to differ from the cogent reasons given by the High Court. Accordingly, the appeals are dismissed but in the circumstances without costs.