

Vithal Rao And Anr Etc vs The Special Land Acquisition Officer on 7 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3330, 2017 (8) SCC 558, (2017) 3 RECCIVR 1033, (2017) 7 SCALE 582, (2017) 179 ALLINDCAS 75 (SC), AIR 2017 SC (CIVIL) 2401, (2017) 5 ANDHLD 112, (2017) 6 MAD LJ 227, (2017) 3 CURCC 69, (2017) 4 MAD LW 648, (2018) 1 MPLJ 287, (2018) 1 MAH LJ 817, 2018 (131) ALR SOC 48 (SC)

Author: Abhay Manohar Sapre

Bench: Sanjay Kishan Kaul, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.1645-1647 OF 2016

Vithal Rao & Anr. Etc.Appellant(s)

VERSUS

The Special Land Acquisition
Officer

....Respondent(s)

WITH

CIVIL APPEAL No.1648 OF 2016

Annappa since dead by
His Lrs. & Ors.

....Appellant(s)

VERSUS

The Special Land Acquisition
Officer

....Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1) These appeals are filed by the land owners against the final judgment and order dated 07.07.2014 passed by the High Court of Karnataka, Circuit Bench at Dharwad in M.F.A. No. 25301, 25302, 25303 and 25304 of 2012 whereby the High Court allowed the appeals in part and modified the Award dated 24.08.2012 passed in LAC Nos. 107, 106, 108 and 109 of 2004 by the Court of Senior Civil Judge, Mudhol and re-determined the compensation at Rs.13,93,920/- per acre as against Rs.6,75,000/- per acre with all statutory benefits as envisaged under Section 23 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”).

2) We herein set out the facts, in brief, to appreciate the issues involved in these appeals.

3) The respondent, by Notification dated 25.01.2003 issued under Section 4(1) of the Act followed by final Notification dated 26.03.2003 issued under Section 6(1) of the Act, acquired the lands belonging to the appellants in Survey No. 554/1 measuring 16 acres 27 guntas, Survey No. 554/2 measuring 15 guntas, Survey No. 555/2 measuring 3 acres 34 guntas and Survey No. 553/A/1 measuring 9 acres 14 guntas (total 30.8 guntas approx.) situated at Mudhol village and Taluk for the purpose of construction of Rehabilitation Centre in favour of the displaced persons of Gudadinni Village of Bilagi Taluk, whose properties came to be submerged under Upper Krishna project.

4) By awards dated 22.07.2003, the Special Land Acquisition Officer determined the market value of the acquired lands at the rate of Rs.96,164/- per acre.

5) Being aggrieved by the awards made by the Land Acquisition Officer, the appellants (land owners) sought reference to the Senior Civil Judge, Mudhol under Section 18(1) of the Act and claimed compensation at the rate of Rs.300/- to Rs.350/- per sq. ft. for the acquired lands inter alia on the ground of building potentiality and comparable sale deeds of the several plots in the vicinity of the acquired lands. Their applications were registered as LAC Nos. 107, 106, 108 and 109 of 2004. The Reference Court clubbed them together and recorded common evidence in LAC No. 107/2004.

6) By common judgment and Award dated 24.08.2012, the Reference Court, by relying upon its earlier judgment dated 18.12.2009 passed in LAC No. 1659/2000 wherein the market value was determined at the rate of Rs.5,00,000/- per acre, fixed the market value of the acquired lands of the appellants at the rate of Rs.5,00,000/- per acre and awarded the compensation of Rs.6,75,000/- per acre inclusive of Rs.1,75,000/- per acre towards escalation price at the rate of 5% per annum from 21.08.1996, the date on which the Notification under Section 4(1) was issued in LAC No. 1659 of 2000 till 25.01.2003, the date on which the Notification under Section 4(1) was issued in the cases at hand.

7) Aggrieved by the compensation determined by the Reference Court, the land owners filed appeals being M.F.A. Nos. 25301, 25302, 25303 and 25304 of 2012 before the High Court.

8) By impugned judgment dated 07.07.2014, the High Court allowed the appeals in part and while setting aside the award of the reference Court and disagreeing with its reasoning re-determined the compensation at Rs.13,93,920/- per acre as against Rs.6,75,000/- per acre awarded by the Reference Court with all statutory benefits as envisaged under Section 23 of the Act.

9) The High Court, inter alia, held by relying on the price (Rs. 64/- per sq. ft.) value of one exemplar sale deed (Ex.P-61) out of 11 sale deeds filed by the appellants and deducting 50% towards development charges from its price determined the market value at Rs.13,93,920/- per acre (Rs. 32/- per sq. ft.).

10) Against the said judgment, the appellants have filed these appeals before this Court seeking further enhancement in the compensation awarded by the High Court.

11) Heard Mr. Dhruv Mehta, learned senior counsel for the appellants and Mr. Basava Prabhu S. Patil, learned senior counsel for the respondent.

12) Mr. Dhruv Mehta, learned senior counsel appearing for the appellants(land-owners) while assailing the legality and correctness of the impugned order mainly raised five submissions.

13) In the first place, learned counsel urged that the High Court having rightly held that the appellants were not awarded adequate compensation by the Land Acquisition Officer and the reference Court commensurate with the market value of the acquired land erred in awarding compensation only at the rate of Rs.13,93,920/- per acre., i.e., at the rate of Rs. 32/- per sq. ft.

14) According to learned counsel, firstly, the compensation awarded by the High Court is wholly inadequate and not commensurate with the market value of the acquired land and secondly, it is against the evidence adduced by the appellants and hence unsustainable in law.

15) In the second place, learned counsel urged that the appellants have filed in evidence 11 sale deeds of the exemplar's land to prove the market rate of the acquired land. Learned counsel pointed out that out of 11 sale deeds, some sale deeds were part of the acquired land whereas the remaining pertained to the land adjacent to the acquired land.

16) It was urged that since these 11 sale deeds were executed much prior in point of time from the date of issuance of Notification under Section 4, therefore, such sale deeds are the best piece of evidence as they represent the correct price/value of the acquired land for proving the market value of the acquired land.

17) Learned counsel urged that out of 11 sale deeds, two sale deeds, which represent the highest value should have been made the basis for determining the market value of the acquired land.

18) In the third place, learned counsel urged that out of 11 sale deeds, the High Court having rightly held the four sale deeds (Ex- 55,56,59 and 61) to be of relevance for proving the market value of the acquired land erred in excluding the three sale deeds out of the four while determining the market value of the acquired land and confined its reliance only on one sale deed, namely, Ex-61(which was for Rs. 64/- per sq. ft.) for determining the market value without any justification. It was also his submission that the High Court erred in making deduction of 50% out of the price of Ex.P-61 sale deed without there being any justification and reduced its price to Rs. 32/- per sq. ft. This finding, according to learned counsel, is legally unsustainable and hence deserves to be set aside.

19) In the fourth place, learned counsel urged that out of 11 sale deeds, 2 sale deeds, viz., Exs. 55 and 56 represented the land to have been sold at Rs. 218/- per sq. ft. and, therefore, Rs.218/- per sq. ft. rate should have been held to be the market rate of the acquired land that being the highest price of the land out of 11 sale deeds and, accordingly, the compensation should have been determined at the rate of Rs.218/- per sq ft., if not more.

20) In the fifth place, learned counsel urged that it being an admitted fact that the acquired land is abutting the main district road (MDR) in the city and further surrounded by developed colonies and several institutions/organisations etc. in its near proximity and being non-agricultural land situated within the limits of municipality has potentiality to undertake any housing project over the land and, therefore, the rate claimed by the appellants is well justified having regard to the totality of the circumstances.

21) It is essentially these submissions learned counsel for the appellants(land owners) elaborated in his arguments with the aid of evidence adduced and decided case law of this Court.

22) In reply, Mr. B.P.S. Patil, learned senior counsel appearing for the respondent supported the impugned order and contended that the submissions urged by the appellants' counsel has no merit. Learned counsel contented that 11 sale deeds relied on by the appellants relate to very small area/plots whereas the acquired area is quite large (30 acres) and, therefore, the price shown in such sale deeds is of no relevance and nor can these sale deeds be relied on to determine the true market value of the acquired land.

23) Learned counsel also doubted the bona fides of the sale deeds and contented that the manner in which the transactions were made pursuant to these sale deeds, clearly show that the transactions made therein are not genuine. In substance, the submission of learned counsel for the respondent was that the appeals have no merit.

24) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in some of the submissions of learned counsel for the appellants.

25) Before we examine the facts of this case, it is necessary to take note of general principle of law on the subject which is laid down by this Court in several cases some of which were also cited at the bar by the learned counsel for the parties. Indeed, if we may say so, law on the several issues urged herein by the learned counsel for the parties is fairly well settled and what has varied is its application to the facts of each case.

26) In *Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona & Anr.* (1988) 3 SCC 751, this Court dealt with the question as to how the Court should determine the valuation of the lands under acquisition and what broad principle of law relating to acquisition of land under the Act should be kept in consideration to determine the proper market value of the acquired land.

27) In Para 4 of the judgment, this Court laid down as many as 17 principles, which are reproduced below for perusal:

“(1) to (4).....

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 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 Section 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. (Sometimes 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.

(10) 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-à-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 thereafter 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 distance from the road
3. frontage on a road	3. narrow strip of land with very small frontage compared to depth

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-à-vis land under 6. some special acquisition 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 10,000 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 approximately between 20 per cent to 50 per cent 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 locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact 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.”

28) These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (see also Union of India vs. Raj Kumar Baghal Singh (Dead) Through Legal Representatives & Ors. (2014) 10 SCC

422).

29) In addition to these principles, this Court in several cases have also laid down that while determining the true market value of the acquired land and especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made vary from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller piece of land can

be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available. This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (See *Trishala Jain & Anr. Vs. State of Uttaranchal & Anr.*, (2011) 6 SCC 47)

30) Keeping the aforementioned principles in mind when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (30 acres approx.); Secondly, the purpose of acquisition is "Establishment of Rehabilitation Centre"; Thirdly, it is situated within the municipal limits; Fourthly, its one side is abutting the main district road (MDR); Fifthly, it is not fully developed; Sixthly, some buildings have come up in its near proximity; Seventhly, the appellants(land owners) have not filed any exemplar's sale deeds relating to large piece of land sold in acres to prove the market value of the acquired land; Eighthly, all sale deeds relied on by the appellants pertain to very small piece of land such as, 25x55ft., 40x20ft., 40x40ft., 12x45ft, 30x40ft., 12x45ft., 60x60ft., 10x65ft., 50x65ft., 40x65ft. and 29x49ft. whereas the land acquired, as mentioned above, is quite large (30 acres) and the price at which these small plots were sold is Rs.85/- per sq. ft., Rs.70/- per sq. ft., Rs.80/- per sq. ft., Rs. 69/- per sq. ft., Rs. 55/- per sq. ft., Rs. 64/- per sq. ft., Rs. 65 per sq. ft., Rs. 100/- per sq. ft., and Rs.218/- per sq. ft.,; Ninthly, these eleven plots were sold prior to the date of acquisition (2000, 2001 and 2002) whereas the acquisition was in the year 2003; Tenthly, the small parcel of lands sold under these sale deeds are situated in near proximity of the acquired land and some were part of the acquired land; Eleventhly, all the eleven sale deeds are held bona fide and proper and lastly, these sale deeds, therefore, can be relied on for determining the proper market value of the acquired land.

31) Taking into account the factual scenario of the acquired land and having regard to the totality of the circumstances taken note of supra, we are of the considered view that it would be just, fair and proper to take out the average value of these plots. Since the acquired land is not fully developed and it requires for construction of rehabilitation centre, it would be just, fair and proper to deduct 40% of the amount towards development charges out of the average price worked out. Such deduction is permissible in law (*Land Acquisition Officer Revenue Divisional Officer, Chittor vs. L. Kamalamma (Smt.) Dead by LRs. & Ors. Etc.*(1998) 2 SCC

385.

32) The average value of the land in this way is worked out to Rs.99/- per sq. ft. and after deducting 40% towards development charges, we get a rate of Rs.60/- per sq. ft. (rounded off).

33) In our considered opinion, the market value of Rs.60/- per sq. ft. which we have worked out, is just, fair and proper market value of the acquired land having regard to the totality of the circumstances taken note of above and on applying the aforementioned principle of law laid down by this Court. It is this value which, in our opinion, should have been awarded to the appellants for the acquired land.

34) We are unable to accept the submission of learned counsel for the appellants when he urged that the appellants are entitled to claim compensation at the rate of Rs.218/- per sq. ft. or even more that being the highest rate of the land out of total sale deeds.

35) As held supra, firstly, all the sale deeds relate to very small piece of land; secondly, except two parcels of land sold for Rs.100/- and Rs.218/-, remaining plots were sold in the range of Rs.55/- to Rs.85/- and lastly, the appellants did not file any sale deed in relation to large chunk of land to prove the price in acres. For these reasons, in our view, it is not safe to rely on one or two isolated sale deeds of high value of very small plots. We have, therefore, preferred to work out the average of these sale deeds for determining the market value of the acquired land.

36) In the light of foregoing discussion, the appeals succeed and are accordingly allowed in part. The impugned order is modified to the extent that the appellants are held entitled to claim compensation for the acquired land at the rate of Rs.60/- per sq ft. As a consequence, the appellants are held entitled to claim all statutory compensation accordingly.

37) Let the compensation now awarded by this Court by enhanced rate be re-worked and after making proper calculation and verification of the land, the same be paid to the appellants (respective land owners) within 3 months from the date of this order.

.....J. [ABHAY MANOHAR SAPRE]J. [SANJAY KISHAN KAUL] New Delhi;

July 07, 2017