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LAND ACQUISITION OFFICER, ELURU ETC.

v.

SMT. JASTI ROHINI AND ANR. ETC.

OCTOBER 27, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

*Land Acquisition Act, 1894— Section 23 (1)— Determination of compensation— Fixation of market value on basis of basic valuation register— Illegal and unsustainable— Court's consideration should alone be confined to market value prevailing on date of notification u/s 4 (1) — Acquisition of vast area— Reliance of small extents of land does not furnish satisfactory basis for fixation of market value.*

D

*Land Acquisition Act, 1894— Section 23 (1) — Determination of compensation— Acquisition of land for providing house sites to poor— Lands situated near Municipality— No building activities in neighbourhood— No rise in market condition— Lands being agricultural lands, fixation of market value as agricultural lands is just and fair— Notifications 1983 and 1985— Market Value fixed at Rs.65,000 per acre and Rs.80,000 per acre respectively.*

E

Notification issued u/s 4 (1) of the Land Acquisition Act, 1894 in the first case was published in the year 1983 for acquiring 9.47 acres to provide house sites to the poor. Again, 14.10 acres of land was acquired in the second case for the same purpose in the year 1985. The Land Acquisition Officer awarded compensation at Rs.40,000 per acre in both the cases. On reference, the market value was enhanced. The reference court relied upon the Basic Valuation Register maintained by the municipalities on the basis of the notification issued by the Government u/s 47 A of the Stamp Act. On appeal, the High Court further enhanced the market value in respect of land in the second case but upheld in the first case the market value of the land at Rs.150 per sq. yard. Hence these appeals.

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It was submitted by the claimants that the fixation of market value of acquired lands as prevailing in 1983-85 at Rs.150 was not high. In the first case claimants had relied upon two sale deeds from the very same acquired land. Since the claimants themselves had sold those lands to others, they would reflect the market value of lands as prevailing near about the date of acquisition.

H

The question, therefore, was what would be the market value prevailing as on the respective dates of notifications, viz 1983 and 1985. A

Allowing the appeal, this Court

**HELD 1.1** It is settled law that the market value should be determined on the hypothesis of the price fetched in the bonafide sale by a willing vendor who would agree to sell the lands to a willing vendee of the acquired land or the land in the neighborhood possessed of similar features. The notification u/s 47 (A) of the Stamp Act which is meant to be a guide for collection of revenue cannot form the basis for determination of market value of the Land under Sec. 23 (1) of the Land Acquisition Act. (236-C)

*Jawajee Naqnatham v. Revenue Divisional Officer, A. P., [1994] 4 SCC 595, relied on.* C

**1.2** While fixing market value, future suitability or adaptability of the land for any purpose shall not be taken into account. The compensation must, therefore, be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser as on the date of the notification published u/s 4 (1). The disinclination of the seller to part with his land and the urgent necessity of the vendee to purchase the land must, be considered as acting under compulsion. (236-H, 237-A) D

**1.3** The reasonable method to determine the market value of the acquired land is on the evidence of transactions of *bona fide* sales of acquired land, but not on evidence of sales of such land got up having had knowledge of the proposed acquisition, the former would furnish reasonable basis to determine the compensation. In its absence, *bona fide* sales but not manipulated sales of the lands in the neighbourhood possessed of same or similar quality and having the same or similar advantages would give an unerring assurance to the Court to determine just and proper compensation. Such sales must not only be proved but also be *bona fide* transactions etc. These factors must be established as a fact by examining either the vendor or the vendee. Marking of certified copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed. *Bona fide* sale or series of sales of small pieces of land do not furnish the sole basis to determine market value. *Bona fide* sales may furnish evidence of the market conditions for consideration. Fixation of market value on the basis of the basic valuation register is, therefore, illegal and unsustainable. E F G

(237-B-D) H

A 1.4 For an acquisition of a vast area of land, reliance of small extents of land does not furnish any satisfactory basis for fixation of the market value. (238-A)

B 1.5 The lands under acquisition are situated near Municipality. The finding recorded by the LAO in the award was that there is no upward trend in the prices. The High Court also accepted the finding of the reference court that the lands are interior though about the main road. It was also found that there were no developmental activities in the neighbourhood as on the date of notification. The LAO, therefore, rightly treated these lands as agricultural lands. (238-F)

C *Gulzara Singh v. State of Punjab*, [1993] 4 SCC 245 and *Inder Singh and Ors. v. U.O.I.*, [1993] 3 SCC 240, distinguished.

D 1.6 In the first case the notification was of the year 1983 and in the second case it was of the year 1985. The market value for the lands covered in the first case could be determined at Rs. 65,000 per acre and for the lands in the second case the market value could be determined at Rs. 80,000 per acre. (240-E)

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8743-45 of 1994.

E From the Judgment and Order dated 29.9.93 of the Andhra Pradesh High Court in A.P.Nos. 497 and 645 of 1991.

K.Madhava Reddy, G.Prabhaker and G.Nageswara Reddy for the Appellants.

F A. Subba Rao, A.D.N.Rao, Y.B.Tatarao, A.V.Sivaiah, B.Kanta Rao, Ms.Sudha Mathur, B.Rajeshwar Rao and Vimal Dave for the Respondents.

The following Order of the Court was delivered:

Leave granted.

G In disposal of the three appeals by this common judgment, we shall refer to SLP (C) No. 12300/94 as first case and to SLP (C) Nos.3528-29 as second case.

H Notification issued under s.4 (1) of the Land Acquisition Act, 1894 in the first case was published on June 16,1983 for acquiring 9.47 acres near Eluru town of West Godavari Dist. of Andhra Pradesh to provide house

sites to the poor. Again, 14.10 acres of land was acquired in the second case for the same purpose by publishing the Notification under s.4 (1) on March 23, 1985. The land Acquisition Officer awarded compensation under s.11 at Rs. 40,000 per acre in both the cases. On reference, the Sub-ordinate Judge, Eluru, enhanced the market value in the first case to Rs.105 per sq. yard by deducting 30% for developmental charges out of Rs. 150 per sq. yard fixed as its value, with usual solatium and interest. In the second case, he enhanced to Rs. 70 per sq. yard as claimed by the claimants therein. On appeal, the High Court, by the impugned separate judgments dated September 29, 1993 enhanced the market value to Rs. 150 in respect of land in the second case but he upheld in the first case the market value of the land at Rs. 150 per sq. yard granting the usual solatium and interest. Thus, these appeals by special leave.

We have heard learned counsel on both sides and considered the reasoning of the High Court and also of the reference court vis-a-vis the evidence on record. Both the Courts committed manifest error of law. The main thrust of the arguments for the claimants is that the award of the Civil Court in Ex.A-3 marked in the second case relating to notification dated January 10, 1977 acquiring 2.17 acres of land in T.S. No.135 of the nearby lands, the LAO had awarded at Rs. 8.75 per sq. yd. and the reference court determined its compensation at Rs. 50 per sq. yd., which was upheld on appeal by the High Court. The fixation of market value of acquired lands as prevailing in 1983-85 at Rs. 150 is not high. Claimant also relied upon another award on reference which is the subject matter in the first case and yet another award Ex.A12 in O.P. No. 6/85 which is pending in appeal in the High Court apart from the sale deed Ex. A10 relied on and accepted by the High Court in both the cases and Ex. A16 and 17 in the first case.

The question, therefore, is what would be the market value prevailing as on the respective dates of notification. In the first case claimants have relied upon two sale deeds Ex. A16 and 17 sold on February 2, 1983 from the very same acquired land and claimed to be on the basis of a lay-out said to have been obtained from the competent authorities. According to the claimants, it would work out at Rs. 150 per sq. yd. Since the claimants themselves had sold those lands to others, they would reflect the market value to lands as prevailing near about the date of acquisition and could be of assistance to determine the compensation as on 1983. In the other case, the claimants relied upon the very same award as also sale deed Ex.A.10 in which the land sold is 120 sq. yd. for a sum of Rs.16,000 working out at Rs.133 per sq. yd. The reference court relied upon the Basic Valuation Register maintained by the municipalities on the basis of the notification

- A issued by the Government under s.47-A of the Stamp Act. In fact, the reference court mainly relied upon that document and awarded compensation on its basis.

The admissibility and evidentiary value of the entries in the Basic Value Register was considered by this Court in *Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad, A.P.*, 1994 (4) SCC 595. After an elaborate consideration this Court held that the Basic Value Register is maintained only for fiscal purpose of collecting stamp duty and registration charges. The market value mentioned therein cannot form a foundation to determine the compensation u/s. 23 (1) of the Act. It is settled law that the market value should be determined on the hypothesis of the price fetched in the *bona fide* sale by a willing vendor who would agree to sell the lands to a willing vendee of the acquired land or the land in the neighborhood possessed of similar features. The notification u/s. 47 (A) which is meant to be a guide for collection of revenue cannot form the basis for determination of market value of the land under s.23 (1) of the Act. The question of fixation of market value is a paradox which lies at the heart of the law of compulsory purchase of land. The paradox lies in the facts that the market value concept is purely a phenomena evolved by the courts to fix the price of land arrived between the hypothetical willing buyer and willing seller bargaining as prudent persons without a medium of constraints or without any extraordinary circumstances. But the condition of free market is the very opposite of the condition of the compulsory purchase which is ex-hypothesis, a situation of constraints. Therefore, to say, that for compulsory purchase, compensation is to be assessed and market value is to be determined in that state of affairs has to be visualised in terms by its direct opposite. To solve the riddle, courts have consistently evolved the principle that the present value as on the date of the compulsory acquisition comprised of all utility reached in a competitive field as on the date of the notification and the price on which a prudent and willing vendor and a similar purchaser would agree. The value of the land shall be taken to be the amount that the land if sold in the open market by a willing seller might be expected to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale. Future suitability or adaptability of the land for any purpose shall not be taken into account. The compensation must, therefore, be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser as on the date of the notification published under s.4 (1). The disinclination of the seller to part with his land and the

urgent necessity of the vendee to purchase the land must, alike, be disregarded and neither of them must be considered as acting under compulsion. A

The reasonable method to determine the market value of the acquired land is on the evidence of transactions of *bona fide* sales of acquired land, but not on evidence of sales of such land got up having had knowledge of the proposed acquisition, the former would furnish reasonable basis to determine the compensation. In its absence, *bona fide* sales but not manipulated sales of the lands in the neighbourhood possessed of same or similar quality and having the same or similar advantages would give an unerring assurance to the court to determine just and proper compensation. Such sales must not only be proved but also be *bona fide* transactions etc. These factors must be established as a fact by examining either the vendor or the vendee. Marking of certified copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed. *Bona fide* sale or series of sales of small pieces of land do not furnish the sale basis to determine market value. *Bona fide* sales may furnish evidence of the market conditions for consideration. Fixation of market value on the basis of the basic valuation register is, therefore, illegal and unsustainable. B C D

Section 24 of the Act puts an embargo on the court that it shall not take into consideration the degree of urgency for the acquisition; disinclination of the person interested to part with possession of the acquired land; any increase in the value of the land acquired likely to accrue from the use to which it will be put when acquired; any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put to; any layout or improvements on or disposal of the land acquired etc. without the sanction of the Collector or after s.4 (1) notification was published, special suitability or adaptability of the land for any purpose or any increase in the value of the land on account of its being put to any use which is forbidden of law are opposed to public policy. Therefore, in determining the market value and fixation of the compensation, the court should be alive to these factors and keep them at the back of the mind and should not be influenced by the future or later development in the locality or neighbourhood and should not get influenced by the prevailing situation as on the date of the determination of the compensation. Its consideration should alone be confined to the market value prevailing as on the date of the notification under s.4 (1). E F G

The question then is whether the High Court is right to determine market value on the basis of Ex.A.10 ; reference awards and potential values as house sites. It is seen that in the first case 9.49 acres of land was H

- A acquired and in the second case 14.10 acres of land was acquired . For an acquisition of such vast area, reliance of small extents of land of 120 sq. yd. does not furnish any satisfactory basis for fixation of the market value. Ex.A.10 is of a small extent and its value at Rs. 133 per sq. yd. offers no assistance. The High Court, therefore, was clearly in error in determining the market value solely on the basis of Ex.A.10 marked in the second case
- B to determine the market value at enhanced rate of Rs. 150, It is at the height of the illegality. The same document was marked in the first case. Ex.A-16 and Ex.A-17 no doubt relate to the lands under acquisition in the first case. It would be obvious that the proposal for acquisition would take long time for its taking final shape culminating in the issuance and publication of the notification under s.4 (1) . The proposed acquisition would be invariably
- C within the knowledge of the owners of the land. It is apparent from the dates of sale that they were not bona fide sales between a willing vendor to a willing vendee and price shown in the sale deeds were inflated to boost up the market condition for determination of compensation. Ex.A.3, the award and decree of the civil court of 1977 acquisition wherein compensation at Rs.50 was fixed is also based on the got up sales . These factors were not
- D critically examined either by the Reference court or the High Court. So these sales also do not assist the claimants. Equally Ex.A.12 in O.P. No.56 of 1985 is also based on the basic value register and its foundation is knocked of at its bottom by the decision of this court. For the said reasons determination of compensation is vitiated by application of wrong
- E principles of law.

When we exclude these documents from consideration, we do not have any other evidence except the fact that the lands are situated near Eluru Municipality within the master plan prepared for the municipal town. The finding recorded by the LAO in the award was that there is no upward trend in the prices. The High Court also accepted the finding of the reference

F court that the lands are interior though abut the main road. It was also found that there are no developmental activities in the neighbourhood as on the date of notification, the LAO, therefore, treated these lands as agricultural lands. In our view, he is right in treating these lands correctly as agricultural lands.

- G Shri Tata Rao, the learned Senior counsel for the claimants in the second case placed reliance on the judgment of this Court reported in *Gulzara Singh v. State of Punjab*, [1993] 4 SCC 245, and contended that this Court had accepted the potential value as a basis to determine the market value, and accordingly, he contended that the lands being situated
- H within the municipal limits, have potential value and that therefore, market

value should be determined on that basis. We find no force in the contention. In fixing the market value on the basis of its potentiality for use for building purposes, it must be established by evidence aliunde that the potential purpose must exist as on the date of acquisition by other possible purchasers in the market conditions, prevailing as on the date of the notification; Existence of constructed house or construction activity in other similar lands in the locality for the purpose contended for or of purchase for such purposes as on the date of proposed acquisition *prima facie* indicates that there is demand for and the possibility of the immediate user of the land and it is a reasonable possibility to infer that the acquired lands also are possessed of potential value. Therefore, the existence of a demand for and a market at the time of acquisition for potential use must be established as a fact from reliable and acceptable evidence to show that if the acquired land has been thrown into the market, others would have bought it for the special purposes or for building activity which would show the demand for and a market to purchase the land possessed of potential value for the purpose of building activity at that time. On proof thereof the land must not be valued as though it has already been built up but the possibility to use for building purpose existing as on the date of the notification must be taken into consideration. The question whether the land has potential value as a building site or not is primarily one of fact depending upon diverse factors as to its conditions, the use to which it is put or is reasonably capable of being put and its suitability for building purpose. Its proximity to residential, commercial or industrial area, existence of educational, cultural, industrial or commercial institutions, existence of amenities like water, electricity, drainage and the possibility of future extension in that area, the existence of or prospects of development schemes, the existence or absence of building activities towards the acquired land or in the neighbourhood thereof are the relevant facts to be taken into consideration in evaluating the market value on the basis of potential use of the land. It is true that an element of guess, in an estimate, would have a play in determining the market value. But the present value alone falls to be determined and feats of imagination should not run riot or travel beyond its manifest limits nor be an arbitrary or whim of the court in determining the compensation or the fixation of the market value. The existing conditions, the demand for the land in the neighbourhood and other related and relevant facts should be taken into consideration in determining the compensation on the basis of potential value of the land. In *Gulzara Singh's* case, it was found that the sale deed Ex.A.9 was a genuine sale deed between a willing vendor and a willing vendee and it furnished the basis for determination of the market value. It was also found that the land was situated in the developing area and accordingly this Court took those factors



- A into consideration, and had fixed the market value on the basis of potential value on existing conditions.

Equally the decision in *Inder Singh and Ors. v. U.O.I.*, [1993] 3 SCC 240, renders little assistance. In that case also, it was found that abadi land fetched Rs.33,600 per acre and they had potential value for development, such as for building houses etc. as in the immediate neighbourhood the lands were developed for industrial purpose. Taking those factor, this Court had determined the market value of abadi lands at Rs. 42,000 and of other barani lands at Rs.38,000 . In view of the nature of lands in that case, this court had determined the market value at the rates mentioned therein after recording the finding that the land possessed of potential value. In the appeals on hand, if the sale deeds are excluded from consideration, there is no other evidence to consider that the lands are possessed of potential value for building purposes. Though the acquisition was for providing house sites to the poor, there is no building activities in the neighbourhood, there is no rise in the market condition and since the lands are admittedly agricultural lands as on that date, the fixation of the market value as agricultural lands is just and fair, instead of remanding the case as contended for by Sri Tata Rao for further evidence.

In the first case the notification was of the year 1983 and in the second case it was of the year 1985. Taking these factors into consideration, we find that the market value for the lands covered in the first case could be determined at Rs. 65,000 per acre and for the lands in the second case the market value could be determined at Rs.80,000 per acre. The claimants are entitled to 12% additional compensation under S.23 (1-A) from the date of notification till date of taking possession till date of deposit into court. In the first case possession was taken on March 15, 1985 and in the second case on May 25, 1985. Therefore, 12% additional compensation shall be paid to the claimants from the respective dates of S.4 (1) notification till the date of taking possession. The claimants are entitled to solatium under S.23 (2) at 30% and the interest under S.28 at 9% on the enhanced compensation from the date of the taking possession for one year and 15% after the expiry of one year till date of deposit into the court.

The appeals are accordingly allowed. The award and decree of the reference court under s.26 and the judgment and decree of the High Court under s.54 are set aside. The claimants are entitled to the aforesaid amounts. In the circumstances, parties are directed to bear their own respective costs.

A.G.

Appeals allowed.