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RAVINDER NARAIN AND ANR.

v.

UNION OF INDIA

FEBRUARY 28, 2003

B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

C

Land Acquisition Act, 1894—Sections 23, 24 and 25—Acquisition of Land—Compensation—Criteria for valuation of land—Held, where large area is subject matter of acquisition, rates at which small plots are sold cannot be said to be a safe criteria—The value of the potentiality of the land is to be determined on such materials as are available and not under imagination—Principle of fixation of market value with reference to comparable sale is that when sale is within reasonable time of the date of notification, it should be bonafide transaction, value should be of land acquired or of the adjacent land and it should possess similar advantages.

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Lands were acquired under Land Acquisition Act, 1894. Land Acquisition Officer fixed different market value for the land in different areas and fixed the compensation. In reference and in appeal High Court enhanced the compensation. While fixing the market value of the lands references were made to several instances of sale contemporaneous to the period. High Court felt that residential plots and shop plots had to be sold at different rates and their average was worked out to fix the compensation. High Court also made reference to various data provided by way of evidence and concluded that the total plotable areas cannot be taken into account and only the plotted areas have to be reckoned. It also took note of the development charges, miscellaneous charges on account of brokerage, administration, interest on investment etc. and worked out the net price to fix the market value. Hence the present appeals.

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Disposing of the appeals, the Court

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HELD: 1.1. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate.

[428-A, C]

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The Collector of Lakhimpur v. Bhuvan Chandra Dutta, AIR (1971) SC 2015; *Prithvi Raj Taneja (dead) by Lrs. v. The State of Madhya Pradesh and Anr.*, AIR (1977) SC 1560 *Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr.*, AIR (1984) SC 892, referred to. A

1.2. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded. Neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of Land Acquisition Act, 1894 enumerates the matters to be considered in determining compensation. The first criteria to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality. [428-F-H; 429-A, B] B C D E

Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam, AIR (1939) P.C. 98, relied on. F

Suresh Kumar v. Town Improvement Trust, Bhopal, (1989) 1 SVLR (C) 399, referred to.

1.3. The element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made when sale is within a reasonable time of the date of notification under Section 4(1) of the Act, it should be a *bona fide* transaction; it should be of the land acquired or of the land adjacent to the land acquired; and it should possess similar advantages. [429-C, D] G

The Special Land Acquisition Officer, Bangalore v. I. Adinarayan Setty, H

A AIR (1959) SC 429, referred to.

2. On the basis of the instances pressed into service by the acquiring authority and the land owner-appellants, the average can be fixed @ Rs. 61.50 per sq. yd. for both the notifications in question by adopting the extent of plotted area as done by the High Court which appears to be appropriate in the circumstances of the case. Therefore, the rate per sq. yard can be fixed @ Rs. 40. Though it was contended that there was marked variation in price relating to the instances of sale, vis-a-vis second notification, it does not appear, on the basis of evidence on record, that the fluctuation was of very high magnitude, the marginal differences noticed do not warrant any higher fixation of price. The entitlements of the appellants be accordingly worked out in addition to statutory entitlements, if any. [429-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11733-11734 of 1995.

D From the Judgment and Order dated 14.8.1987 of the Delhi High Court in R.F.A. Nos. 3370 and 269 of 1976.

WITH

E C.A. No. 11735 of 1995

Ashok H. Desai, Pallav Shishodia and D.N. Mishra, for the Appellants.

H.L. Agrawal and Y.P. Mahajan, for the Respondent.

F The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. In these three appeals, the controversy lies within a very narrow compass relating to the valuation of lands acquired under the Land Acquisition Act, 1894 (in short 'the Act').

G As the points in issue are common they are dealt with together. Notifications under Section 4 of the Act were issued on 13.11.1959 and 15.7.1960 in the two cases. The acquired lands according to the appellants are situated on the main road known as the Mall or Delhi Karnal Road near to National Highway No.1. They claimed Rs.60 per sq. yard along with interest and solatium. So far as the acquisitions covered by the Notification

H dated 13.11.1959 is concerned, the Land Acquisition Collector divided the

acquired land into two blocks and fixed the market value of land in these blocks separately. As regards Bagh Nehri land, the rate was fixed at Rs.4,000 per bigha and Gair Mumkin land @ Rs.3,500 per bigha in respect of block A. In respect of Block B, he fixed the market value of garden land @ Rs. 3,500 per bigha and for other land @ Rs. 3,000 per bigha. So far as the acquisition relating to Notification dated 15.7.1980 is concerned, the Land Acquisition Collector fixed the compensation at the flat rate of Rs. 3,400 per bigha.

References were made under Section 18 of the Act. In the first case, the reference Court fixed the compensation at Rs. 26,000 per bigha and in the second case also similar rate was fixed. Matter was carried in appeals before the Delhi High Court which by the impugned judgment fixed the compensation @ Rs. 30,000 per bigha. While fixing the value, references were made to several instances of sale contemporaneous to the period. The High Court felt that the residential plots and the shop plots had to be sold at different rates and their average was worked out to fix the compensation. The High Court made reference to the instances cited by the appellants to hold that they related to smaller plots and do not provide a reasonable comparison. High Court also made reference to various data provided by way of evidence and came to conclude that the total plotable areas cannot be taken into account and only the plotted areas have to be reckoned. It was hypothetically noted that if the total plotable area was 1000 sq.yds, plotted area on the basis of materials on record, would come to 637 sq. yds. It also took note of the development charges, miscellaneous charges on account of brokerage, administration, interest on investment etc. and worked out the net price to fix the market value.

Mr. Ashok Desai, learned senior counsel appearing for the appellants submitted that the High court erred in not taking note of comparable cases and placed reliance on instances of sale which cannot be termed to be contemporaneous. With reference to the location of the acquired land, it was submitted that the market value as fixed is certainly on the lower side. Judicial notice can be taken note of rapid upward trend in prices and, therefore, for the subsequent notification, higher rates were fixed.

Per contra, Mr. H.L. Agrawala, learned senior counsel appearing for the respondent submitted that the High Court made detailed analysis of the factual position and has rightly fixed the market value. There is no material to substantiate the plea of upward trend in prices.

- A Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to three decisions of this Court in *The Collector of Lakhimpur v. Bhuvan Chandra Dutta*, AIR (1971) SC 2015, *Prithvi Raj Taneja (dead) by Lrs. v. The State of Madhya Pradesh and Anr.*, AIR (1977) SC 1560 and *Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and Anr.*, AIR (1984) SC 892.
- B

- C It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

- D In the case of *Suresh Kumar v. Town Improvement Trust, Bhopal*, (1989) 1 SVLR (C) 399 in a case under the Madhya Pradesh Town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of *Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam*, AIR (1939) P.C. 98 that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded. Neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criteria to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by
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the Court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guess work involved while determining the potentiality.

It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

- (i) when sale is within a reasonable time of the date of notification under Section 4(1);
- (ii) it should be a bona fide transaction;
- (iii) it should be of the land acquired or of the land adjacent to the land acquired; and
- (iv) it should possess similar advantages.

It is only when these factors are present, it can merit a consideration as a comparable case (See *The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty*, AIR (1959) SC 429.

Keeping the aforesaid principles in view we feel that on the basis of the instances pressed into service by the acquiring authority and the land owner-appellants, the average can be fixed @ Rs. 61.50 for both the notifications in question by adopting the extent of plotted area as done by the High Court which appears to be appropriate in the circumstances of the case. Therefore, the rate per sq. yard can be fixed @ Rs.40. Though it was contended that there was marked variation in price relating to the instances of sale, *vis-a-vis* second notification, it does not appear, on the basis of evidence on record, that the fluctuation was of very high magnitude. The marginal differences noticed do not warrant any higher fixation of price. The entitlements of the appellants be accordingly worked out in addition to statutory entitlements, if any. The appeals are accordingly disposed of. No costs.

K.K.T.

Appeals disposed of.