

THE STATE OF M.P. ETC.
v.
HARISHANKAR GOEL AND ANR. ETC.

AUGUST 7, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Land Acquisition Act, 1894 :

Ss.4(1), 11, 18, 23(1-A), 23(2) and 28—Acquisition of more than 33 bighas of land in 1964—Award by Collector in 1966 determining compensation at the rate of Rs. 3,150 per bigha—Award and decree by reference court in 1975 enhancing compensation at the rate of Re.1 per sq. ft.—High Court determining compensation at Rs. 0.90 per sq. ft. and awarding enhanced solatium, interest and additional amount as available under Amendment Act 68 of 1984—Held, reference court and High Court committed error of law in determining compensation of such a large extent of land on sq.ft. basis—High Court also committed error of law in allowing benefits of enhanced solatium and additional amount under s.23(1-A) and 23(2) as also interest under proviso s.28—Compensation determined at Rs. 4 per sq. yd. and deduction would be 25% towards developmental charges.

CIVIL APPELLATE JURISDICTION : Civil appeal no. 2297 of 1987 Etc.

From the Judgment and Order dated 28.10.86 of the Madhya Pradesh High Court in M.A. No. 83 of 1975.

K.N. Shukla, Prashant Kumar and S.K. Agnihotri for the Appellants.

S.S. Javeli and Vivek Gambhir for the Respondents.

The following Order of the Court was delivered :

These appeals arise from the Judgment of the High Court of Madhya Pradesh. On a difference of opinion among two learned Judges, third Judge on reference in Miscellaneous Appeal No. 82/75 and 83/75 enhanced the compensation. The notification under Section 4(1) of the Land Acquisition Act I of 1894 was published on January 17, 1964 acquiring 33 bighas 15 biswas of land belonging to two different individuals for industrial

A purpose. The Land Acquisition Officer by his award under Section 11 determined compensation on March 14, 1966 at Rs. 3,150 per bigha treating the lands to be agricultural lands. On reference under Section 18, the Additional District Judge by his award and decree dated May 15, 1975 enhanced the compensation to Rs. 1 per sq. ft. and also awarded statutory benefits. On appeal, learned Judge B.C. Verma, J. determined compensation at 0.90 per sq. ft. deducted 15% towards developmental charges. B Learned Judge R.C. Srivastava, J. determined the compensation at Rs. 0.50 per sq. ft. and deducted 25% towards developmental charges. On reference, learned Judge T.N. Singh, J. agreed with the determination of compensation B.C. Verma, J. at Rs. 0.90 per sq. ft. but deducted 20% towards C developmental charges. He also awarded enhanced solatium, interest and additional amount as available under the Amendment Act 68 of 1984. Thus these appeals by the State and also cross appeal by the claimants claiming compensation at Rs. 1 per sq. ft.

D The question that arises for consideration is as to what is the rate of compensation that the lands are capable to secure in an open market. It is not in dispute that though they were the agricultural lands as on the date of notification the respondents who are no other than the builders and developers had, after the purchase obtained sanction under Section 172 of the Madhya Pradesh Revenue Code for conversion of the land into non-agricultural lands, but no sanction from the municipality of construction of E any colonisation, was obtained. Even learned Judge B.C. Verma, J. had noted in his judgment that though the respondents - claimants had entered into the agreement of sales with the prospective purchasers, they had not completed the sale transactions. Those agreements were brought into F existence to bolster the claims. However, the learned Judge found that the lands were situated very near to the Vicky moped factory. They abut the Jhansi Road; Sitholi railway station is one mile from the acquired lands, but they are situated outside the municipal limits of Gwalior Municipal Corporation. Their lands are fit for developing industries, housing colonies, godown, petrol pumps etc. The evidence also disclosed that the land was G not improved and it was not even land. Considered in this background, the learned Judge had accepted the sale deed executed by one of the claimants for a small extent of land at Rs. 0.50 per sq. ft. but having found that the lands were possessed of potential value, determined the compensation at Rs. 0.90 per sq. ft. and, as stated earlier, deducted 15% towards develop- H mental charges. Learned Judge Srivastava, J. relied upon the very sale

deeds put forth by the claimants and held that they could not claim higher than what they had put up, namely, Rs. 0.50 per sq. ft. and, therefore, determined the compensation on that premise and deducted 25% towards developmental charges. As seen, learned T.N. Singh, J. had agreed with B.C. Verma, J. in determining the compensation at Rs. 0.90 per sq. ft.

The question, therefore, is : what would be the reasonable market value the lands are capable to fetch as on the date of the notification had it been sold in the open market to a willing purchaser? It is seen that when 33 and odd bighas of land was sought to be sold in the open market, no willing prudent purchaser would with any credulity agree to purchase it on sq. ft. basis. It is well settled law that the Judge determining compensation in a compulsory acquisition should eschew feats of imagination; sit in the arm chair of a willing purchaser and put a question to himself whether as a willing prudent purchaser, he would offer the same price sought to be awarded for the acquired land. It would, therefore, be clear that the learned Judges did not apply correct legal tests to determine the compensation but determined the compensation on the basis of sq. ft. which is illegal *per se*. We, therefore, hold that the learned Judges had applied wrong principle of law in determining compensation.

The question then arises is what would be the just and adequate compensation which the lands are capable to fetch in the open market? It is seen that the lands are situated beyond the municipal limits and on uneven land. But for the Vicky moped factory, there was no other immediate development. The claimants themselves purchased the lands as builders to develop the lands. They did not file their own sale deeds to show at what rate they had purchased the land which would have furnished best material. Admittedly, no sanction from the Municipal Corporation or any competent authority was obtained in that behalf to construct housing colony. Necessarily when the land was to await some time for development either for industrial or colonisation, the price that could not be secured at the rates was put forth by the claimants. They themselves had sold at Rs. 0.50 per sq. ft. for a small extent of land. The learned Judges, therefore, had not correctly appreciated the correct principles of law in determining the compensation. Having found that the lands were possessed of potential value the compensation could be determined on the basis of the market value on square yard basis. Considered from this perspective, we are of the view that the market value for the land would be Rs. 4 pe sq. yd. and we

- A agree with learned Judge Srivastava, J. that the deduction should be 25% towards developmental charges since it is in evidence that acquisition is for industrial purpose and electricity was immediately available as found by learned Judge T.N. Singh, J. The lands are adjacent to national high-way. It is settled law that normally 33-1/3% should be deducted towards developmental charges. In this case as a special case, 25% is deducted. It will not be treated as pretent.

- The learned Judges were wholly wrong in applying the Amendment act 68 of 1984 since the acquisition was made in the year 1964 and the Collector had made the award on March 14, 1966 and the reference Court itself determined the compensation on May 15, 1975. Under those circumstances, the claimants are not entitled to the additional benefits of enhanced solatium under Section 23(2) at 30%, interest under proviso to Section 28 at 9% for the first year from the date of taking possession and thereafter at 15% till date of deposit on the enhanced compensation and additional amount under Section 23(1-A). The judgment in that behalf also stands set aside. Instead, the claimants will be entitled to solatium at 15% on the enhanced compensation and interest at 4% on the enhanced compensation from the date of taking possession till date of deposit into Court.

- The appeals of the State are accordingly allowed and the cross appeal of the claimants stands dismissed, but in the circumstances, without costs.

R.P.

Appeals allowed.