

A THE SPECIAL LAND ACQUISITION OFFICER
BTDA, BAGALKOT

v.

MOHD. HANIF SAHIB BAWA SAHIB

B MARCH 19, 2002

[DORAISWAMY RAJU AND ASHOK BHAN, JJ.]

C *Land Acquisition Act, 1894—Sections 4(1), 6 and 18—Land acquired—Market value—Determination of—In earlier acquisition cases market value of adjacent land fixed at Rs. 3 per sq. ft.—In the instant case determination on base price of Rs. 3 after appreciation in the value of the land at 10% per annum for every subsequent year—Held, the appreciation was appropriate—However, factual error in calculation of the compensation corrected by the Court.*

D CA. Nos. 12515/96, 13370-13371/96 and 2238-2242/2002, relate to the land acquired by Notification in 1985 under Land Acquisition Act. The land was treated as agricultural and accordingly market value was fixed.

E In appeal under Section 18 of the Act, the Reference Court relying on the witnesses and documentary evidence gave the finding that the land was within municipal limits and had a potential for further development. With regard to fixation of market value of the land, the claimants relied on Exhibit P-27 wherein market value of land in proximity of the land in question was fixed at Rs. 3 per sq.ft. in 1979 i.e. seven years before the present acquisition. F The Reference Court taking the base price at Rs. 3 per sq.ft. for the year 1979 granted an appreciation in the value of the land at 10% for every subsequent year and fixed the value of the land at Rs. 6.85 per sq.ft. After making a deduction of 20% towards development charges, the market value was fixed at Rs. 5.50 per sq.ft. Appeal of the State against the order of Reference Court was dismissed by High Court.

G Civil Appeal Nos. 1152-54/2000, relate to lands acquired by Notification in 1991. In this case, Reference Court granted appreciation of 10% for every subsequent year taking the base price at Rs. 5.50 per sq.ft. which was fixed for acquisition of the land in the year 1985. The market value was determined at Rs. 7 per sq. ft. and the same was confirmed by High Court.

H 550

In appeal to this Court on behalf of the appellant it was contended that appreciation of the land at the rate of 10% for every subsequent year was erroneous and that even if appreciation of value of the land was taken at 10% the market value would come to Rs. 5.10 per sq.ft. and not Rs. 6.85 per sq. ft. A

The respondent-claimants conceded that reference Court had made factual error in calculating the value of the land at Rs. 6.85 per sq. ft., however they contended that no deductions could be made for development of the land, because the base price of Rs. 3 had been fixed after deduction of development charges. B

Partly allowing the appeals, the Court

HELD: 1.1. Taking an overall view of the matter, the value of the land acquired by Notification in 1985 in fixed at Rs. 5 per sq. ft. instead of Rs. 5.50 per sq.ft. which was fixed by the Reference Court and upheld by the High Court. It is in addition to the statutory benefits of solatium, interest etc. Reference court wrongly valued the land at Rs. 6.85 per sq.ft. for the year 1985. If the value is correctly calculated, the market value of the land under acquisition in the year 1985 would come to Rs. 5.10 paise. C D

[555-C-D; 555-A; 555-B]

1.2. In the facts and circumstances of the case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for interference. [554-F] E

1.3. Deduction on account of development charges from the price fixed cannot be made, as the base price of Rs. 3 had been determined in the earlier cases after taking into account the development charges. [555-B-C]

2. Since in the Notification for the year 1985 the market value of the land for the year 1985 is fixed at Rs. 5 per sq. ft., on giving an appreciation of 10% in the value of the land for every subsequent year for a period of six years the value of the land would come to Rs. 8/- per sq.ft. with regard to the land acquired by Notification in 1991. As the claimants have not filed either cross appeals or cross objections, the overall value of Rs. 7 per sq. ft. fixed by the reference Court and confirmed by the High Court is thus reasonable and does not call for any interference. [555-H; 556-A] F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12515 of 1996.

From the Judgment and Order dated 3.4.96 of the Karnataka High H

A Court in M.F.A. No. 1926 of 1995.

WITH

C.A. Nos. 13370-13371/96, 2238-42/02 and 1552-54/02.

B Sanjay R. Hegde, N. Ganpathy, S.K. Kulkarni, M. Gireesh Kumar Ankur S. Kulkarni for Vijay Kumar, Mohan V. Katarki, Ashok K. Sharma, Ms. Prachi Bajpai, K.C. Sudarshan, Jayanth Raj for K.K. Gupta and G.K. Bansal (NP) for the appearing parties.

The Judgment of the Court was delivered by

C BHAN, J. Leave granted in the special leave petitions.

This order shall dispose of CA No. 12515 of 1996, CA Nos. 13370-13371/1996 and CA Nos. 2238-2242 of 2002 (@ SLP Nos. 21304-21308 of 1996) as common question of law and facts are involved in these appeals. The facts of Civil Appeal Nos. 1552-1554 of 2000 being different would be referred to in the later part of this judgment.

D For the disposal of Civil Appeal Nos. 12515 of 1996, Civil Appeal Nos. 13370-71 of 1996 and CA Nos. 2238-2242 of 2002 (@ SLP Nos. 21304-21308 of 1996) the facts are referred to from Civil Appeal No. 12515 of 1996.

E The brief facts are as follows:

F The State of Karnataka issued a notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') seeking to acquire the plots belonging to the claimants of Village Murnal for a public purpose, namely, Bagalkot new township. The notification was published in the Karnataka Gazette on 19th July, 1985. The declaration under Section 6 was published in the Karnataka Gazette on 14th August, 1987. The Special Land Acquisition Officer, BTDA, Bagalkot passed the award on 3rd June, 1988. He fixed the market value of the acquired plots at the rate of Rs. 3,500 per acre treating the land as agricultural.

G Aggrieved by the award the claimants submitted applications under Section 18 of the Act seeking enhancement of the market value. In the reference application under Section 18, it was alleged by the claimants that before passing the award, the Land Acquisition Officer did not issue any notice; the compensation awarded was too low, meagre and inadequate. The market value of the acquired property was more than Rs. 30 per sq. ft., the

H

method adopted for valuing the property was not proper and legal. The Land Acquisition Officer illegally treated the land to be agricultural. It was stated that the land under acquisition fell within the municipal limits of Bagalkot. On notice being served, respondents put an appearance through the AGP. A

In support of their case, the claimants examined PW1 and PW2. Exhibits P1 to P29 were got marked. Respondents did not produce any evidence. B

The reference Court on appreciation of the evidence came to the conclusion that the acquired plots were on the southern side of the Belgaum-Raichur road at a distance of 200 feet. On one side of the Belgaum-Bagalkot road, plots were situated and on the other side there was engineering college campus and K.I.D. Colony staff quarters etc.. The plots were adjacent to the engineering college. Near about the acquired plots some other persons had carved out plots on which construction was going on. PW1 stated that he was preparing to put up the building on the plot but in the meanwhile the Government acquired the land. Vidhyagiri Housing Colony, BTDA Office, new Circuit House, engineering college hostel and staff quarters were adjacent to the land acquired. From this it was concluded by the Reference Court that the land under acquisition was surrounded on all four sides by buildings and had a lot of potential for further development. A finding was recorded that the land under acquisition was within the municipal limits. C D

No evidence was produced by the parties by way of comparable sale transactions to prove the market value. Evidence was also not forthcoming for adoption of the capitalisation method. On behalf of the claimants, reliance was placed on Ex. P.27, a notification issued under section 4 dated 19th January, 1978 by the Housing Urban Development Corporation and the judgment in Land Acquisition Case No. 240 of 1981 relating thereto which was later confirmed in appeal by the High Court. E F

It was noticed by the Reference Court that the notification, Ex. P.27, was dated 19th January, 1978. The land under acquisition under that notification was in close proximity of the land under acquisition in these appeals. The Reference Court had determined the market value of the land in LAC No. 240 of 1981 at Rs. 3 per sq. ft. which was later confirmed by the High Court in MFA No. 929 of 1987. Notification under Section 4, in the present case, is of 19th July, 1985. Keeping in view that there was a distance of seven years in the earlier acquisition and the subsequent acquisition and the fact that lot of development had already taken place and was continuing G H

A to take place, the Reference Court taking the base price of the land in that area at Rs. 3 per sq. ft. for the year 1979 granted an appreciation in the value of land at 10% for every subsequent year. While giving the appreciation of the value @ 10% for the next seven years the Reference Court fixed the value of the land at Rs. 6.85 per sq. ft. After making a deduction of 20% towards development charges the payable market value was fixed at Rs. 5.50 per sq. ft. which comes to Rs. 2,39,580 per acre. Statutory benefits of solatium and interest, as applicable, were ordered to be paid over and above the market value.

C The State of Karnataka filed appeals before the High Court which have been dismissed by the impugned judgment.

D Counsel for the appellant strenuously contended that the reference Court as well as the High Court have erred in giving an appreciation at the rate of 10% per annum for every subsequent year. That the reference Court committed a factual error in calculating the value of the land at Rs. 6.85 per sq. ft.. According to him, even if, appreciation of value of land is taken at 10% on the base price of Rs. 3 for the year 1979, for the next seven years, then the market value of the land in the year 1985 would come to Rs. 5.10 per sq. ft. and not Rs. 6.85 per sq. ft.

E Counsel for the respondents fairly conceded that the Reference court made a factual error in arriving at the value of the land at the rate of Rs. 6.85 per sq. ft. for the year 1985 even taking the appreciation at 10% for the subsequent years. There was no error in giving an appreciation of 10% per year as lot of developmental activities were going on in and around Bagalkot In fact a new township for Bagalkot was being built as the old area of Bagalkot had sub-merged in water. But according to him no deduction could be made for development of the land as the base price of Rs. 3 had been fixed by the High Court in MFA 929 of 1987 after making deductions for the development charges.

G After due deliberations on the contentions raised by the counsel for the parties, we are of the opinion that on the given facts and circumstances of the present case the appreciation of 10% per annum given for the subsequent years is neither excessive nor unreasonable so as to call for our interference. Counsel for the parties did not dispute that after the sub-mersion of the old township area of Bagalkot in water, a new township was being built up. For this lot of developmental activities are taking place. This is evident from the fact that number of acquisitions have been made for the development of the

new township of Bagalkot. In this order, reference has been made to the earlier acquisition of 1979. In Civil Appeal Nos. 1552-54 of 2000 as well as acquisition of the land was made for formation of a link road to the new town. We agree with the counsel for the appellant that the Reference Court wrongly valued the land at Rs. 6.85 per sq. ft. for the year 1985 taking the base price of the land at Rs. 3 per sq. ft. for the year 1979 on an appreciation of 10% per annum for every subsequent years. The appreciation of value of land at 10% on the base price of Rs. 3 per sq. ft. would increase the value of the land @ 0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs., 2.10 paise. If the appreciation in value of the land for the next seven years is taken at Rs. 2.10 paise and added to the base value of Rs. 3, the market value of the land under acquisition in the year 1985 would come to Rs. 5.10 paise. We agree with the counsel for the respondents that deduction on account of development charges from the price fixed cannot be made as the base price of Rs. 3 had been determined in the earlier cases after taking into account the development charges.

Taking an overall view of the matter, we fix the value of the land at Rs. 5 per sq. ft. instead of Rs. 5.50 per sq. ft. which was fixed by the reference Court and upheld by the High Court. The appeal is partly accepted. The market value is fixed at Rs. 5 per sq. ft. In addition, the claimants would be entitled to the statutory benefits of solatium and interest etc. These group of appeals before us shall stand allowed to that extent in view of the notification made in the market value to be adopted.

CA Nos. 1552-1554 of 2000

In these appeals the land was acquired by issuing a notification under section 4 dated 22nd August, 1991, for a public purpose, namely, the formation of link road to the new town, Bagalkot Township. It is not disputed that the land under acquisition is adjacent to the land in Civil Appeal No. 12515 of 1996 and other connected cases. The potential value of the land under acquisition in these appeals is the same as in the earlier cases. The reference Court granted an appreciation of 10% for every subsequent year. Taking the base price at Rs. 5.50 per sq.ft. fixed for acquisition of the land in the year 1985, as in the earlier cases, at the rate of 10% in the value of the land for every subsequent year. As the earlier acquisition was of 1985 and this acquisition is of the year 1991, appreciation for six years was granted. The Reference Court determined the payable market value at Rs. 7 per sq. ft. which was later confirmed by the High Court. In addition statutory benefits

- A of solatium and interest etc. were also granted. In the earlier notification for the year 1985 we have fixed the market value of the land for the year 1985 at Rs. 5 per sq. ft. On giving an appreciation of 10% in the value of the land for every subsequent year for a period of six years the value of the land would come to Rs. 8 per sq.ft. The claimants have not filed either cross appeals or cross objections. The overall value of Rs. 7 per sq. ft. fixed by the Reference Court and confirmed by the High Court is thus reasonable and does not call for any interference.
- B

- For the reasons stated above, the Civil Appeal No. 12515 of 1996, Civil Appeal Nos. 13370-71 of 1996 and CA Nos. 2238-2242 of 2002 @ SLP Nos. 21304-21308 of 1996 are partly allowed to the extent indicated in this judgment. Civil Appeal Nos. 1552 - 1554 of 2000 are dismissed. Parties shall bear their own costs.
- C

K.K.T.

Appeals partly allowed.