Supreme Court Of India

Civil Appeal No. 5568-5571 With 5572-5574 Of 1995 (Special Leave Petition (Civil) No. 17933-36 With 19266-68 Of 1994)

Judgment Date:

10-05-1995

Kabbidi Posayya

Vs

Special Tahsildar

Bench :

{ HON'BLE MR. JUSTICE K. RAMASWAMYHON'BLE MR. JUSTICE N. VENKATACHALA }

Citation :

(1995) 5 SCC 233 ; AIR 1995 SC 1641 ; 1995 (2) MLJ 72 (SC) ; (1995) 2 CTC 47 ; (1995) 3 RRR 398 ; 1995 Supp (1) SCR 342 ; JT 1995 (5) SC 174 ; (1995) 2 ALT 44 (SC) ; 1995 (3) SCALE 683 ; (1995) 2 CTC 47 (SC) ;

Judgment

K. Ramaswamy, J.

1. Leave granted.

2. Jelluru and Yerrakaluva Reservoir to prevent inundation of agricultural lands and to control floods, was taken out and 50 acres of land was acquired as a part of Vengalrayasagar project for submersion. Notification under S. 4(1) of the Land Acquisition Act, 1894, (for short, 'the Act') was published on March 22, 1979, 400 acres of land, as a part of that Scheme situated in Alivelu village in Polavaram Mandal in West Godavari District of Andhra Pradesh was acquired, out of which, we are concerned with about 163.80 acres in these appeals. The Land Acquisition Officer in his award dated July 31, 1980, fixed the market value of the lands at Rs. 400/- per acre. The lands are rain-fed in which dry crops were raised prior to acquisition. On reference under S. 18, the Subordinate Judge enhanced the compensation to Rs 22,000/- per acre. The High Court in the impugned judgment in Appeal No. 1341 and batch of 1992 reduced the compensation to Rs. 400/- per acre. Thus these appeals by special leave.

2A. Shri P. P. Rao, learned senior counsel for the appellants, contended that Alivelu village is situated in notified tribal area in which the Scheduled Areas Land Transfer Regulation Act, 1970 is in force which prohibits sale of the lands by the tribals to the non-tribals. The appellants being tribals could not secure any sale deed. In the neighbouring village under Ex. A-1 dated October 12, 1980 when one acre of land was sold for a sum of Rs. 20,000/-, the High Court was not justified in refusing to act upon the same. Equally, it is contended that in another judgment and decree of the High Court, in relation to lands acquired for Vengalrayasagar project, determined the compensation at the rate of Rupees 20,000/- per acre, the appellants are entitled at least to Rs. 22,000/- per acre. Being the tribal, they cannot afford to purchase the lands, elsewhere. The Court, therefore, should grant compensation at "reinstatement value" for rehabilitation of the tribals under Ex. A-5 and A-6, the awards made by the reference Court in OP No. 17-18/80, the Subordinate Judge awarded at the rate of Rs. 22,000/- per acre which became final. The High Court misapplied the principle laid by this Court in Administrator General of West Bengal v. Collector, Varanasi, AIR 1988 SC 943, in reducing the price applying the principle of deduction of 50% to the agricultural lands. The High Court, therefore, erred in wrong application of the principles of law in determining the compensation to the agricultural land.

3. The question, therefore, is, what is the correct principle of law to be applied in determining the market value of vast extent of lands were acquired for a project. Admittedly, Ex. A-1 dated December 31, 1980 is the torch light for the claimants to lay higher claim. It is a post notification sale of the land situated in Chakradevarapalli. According to the claimants, it is situated at a distance of 3 to 4 kilometers from the village Alivelu. According to Land Acquisition Officer, the distance between the two villages is 30 Ks. Possession of these lands, admittedly, was taken between April 15, 1977 i.e. prior to the notification under S. 4(1) and July 14, 1980, shortly after the notification under S. 4(1). It would, thus, be clear that

the sale deed was brought into existence after the notification and possession was taken of the lands. This is the notorious document relied in all the references running into 302. Only the attestor was examined in proof of the documents. It would be obvious that it was a brought up document to inflate the market value of the land under acquisition not only in this village but in the surrounding villages. The High Court, therefore, was right in rejecting the said document and refuse to place reliance for determination of the compensation. Exhibit A-2, judgment of the single Judge of the High Court in AS No. 2500/86 arising out of OP No. 49/84 of the same reference court. The lands therein were acquired for Vengalrayasagar project. They are the wet lands. Since the counsel for the Government did not appear and no material was placed on record and since in earlier cases, award was confirmed for a sum of Rupees 22.000/- per acre, the single Judge enhanced the compensation to Rs. 22,000/-. That is obviously illegal approach adopted by the High Court in determining the market value of project area, large tracts of lands covered by the project. It would appear that the learned Judge was not brought to the notice of other references. Therefore, it cannot be formed the basis to fix the market value at a higher rate, though the judgment may be wrong.

4. Equally the judgment in Ex. A-3 dated February 14,1985 in AS No. 232/82 and batch arising out of OP No. 111/80 and batch of the land situated in Tadavai village, the Division Bench determined market value at the rate of Rs. 20,000/- per acre. The foundation for the said determination was the notorious sale-deed Ex. A-1 which was marked therein as A-3. Equally, Ex. A-4 in OP No. 57/84 of the reference Court is founded upon the earlier decision. Ex. A-5 and A-6, namely, OP Nos. 17-18/89 dated November 29, 1990 were founded on the judgment Ex. A-2 etc. in which Subordinate Judge granted at the rate of Rs. 22,000/- per acre. Since the very basis of determination of the compensation is clearly erroneous, Ex. A-5 and A-6 cannot form any basis for determination of the compensation. The Division Bench of the High Court in this appeal, placing reliance on Ex. A-5 and A-6 which arose from the same village Alivelu, reduced the market value to Rs. 12,000/- per acre on the ratio in Administrator General of West Bengal's case (AIR 1988 SC 943). It is true, as rightly contended by Shri Rao, that the ratio therein relates to the urban lands fit for building purpose and the same principle cannot be applied in determination of the market value of agricultural land. The contention that the doctrine of reinstatement value in determination of the market value to the lands of depressed value due to operation of the Andhra Pradesh Scheduled Areas Land Transfer Regulation Act, 1970 prohibiting alienation of the land between the tribals and non-tribals, though, prima facie appears to be alluring but on deeper consideration, it cannot commend acceptance, What is relevant in fixation of the market value of the land under S. 23(1) is prevailing price as on the date of notification under S. 4(1). The reasoning of the High Court that since the tribals have no capacity to purchase the land and the lands, therefore, are not possessed of market value also is not a correct approach.

5. It is settled law that market value is to be determined either on the basis of the prevailing prices of sale and purchase between willing vendor and willing vendee or value of the crops realised applying suitable 10 years multiplier or in case of land valued of expert valuer like urban properties could be considered for determination of the compensation. Market value cannot be fixed with mathematical precision but must be based on sound discretion exercised by the reference Court in arriving at just and reasonable price. It should not be based on feats of imagination or flight of fancy. Determination of compensation for compulsory acquisition involves consideration of the price which a hypothetical willing purchaser can be expected to pay for the lands in the existing use as well as relatable potentialities. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land, location, suitability of the purpose it was purchased,its existing potentialities and likely use to which the land is capable of being put in the same condition would offer to pay the price, as on the date of the notification. In case of acquisition of large tracts of lands for projects situated in several villages, stray sale-deed of small extent here and there would not form the basis to determine the compensation. The reference court should be circumspect, pragmatic and careful in analysing the evidence and arriving at just and fair market value of the lands under acquisition which could be fetched on the date of the notification. The nature of the land, the crops raised and the nature of the income likely to be derived from the lands, the expenditure to be incurred for raising the crops and the net profits etc. would be the relevant factors in

arriving at the net market value and if evidence is produced in that behalf on its basis applying the suitable 10 years multiplier, the market value need to be determined. The owner or claimant should not be put to loss by undervaluation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory duty of the Court to maintain the balance between diverse interests.

6. Claimant stands in the position of plaintiff and the onus is on him to adduce necessary and relevant evidence in proof of the objection for higher compensation. The Court is also enjoined to carefully scrutinse and analyse the evidence and applying the arm chair test of a prudent purchaser and a willing vendor or the realised income on the crops, the true, correct and fair market value should be arrived at. The reference Court has absolutely failed to apply these tests in determining the compensation. Rejecting the evidence relied on by the claimants under Ex. A-1 to A-6, there is no other evidence to enhance the compensation. The doctrine of reinstatement value cannot be applied in determining the market value under S. 23(1) of the Act. The reason is obvious. There will always be a gap between the date of the notification and the date of payment. To recompensate the loss, payment of interest under S. 28, solatium under S. 23(2) and appropriate cases after the Amendment Act 68/84 has come into force, 12% per annum of the additional amount under S. 23(1-A) are provided for. It would, therefore, be illogical and unrealistic to apply the doctrine of reinstatement value in determination of the compensation under S. 23(1).

7. In this view, though the High Court has applied wrong principle but the conclusion reached by the High Court in determining the compensation at Rs. 12,000/- per acre cannot be said to be illegal warranting interference. Before parting with the case, we express hope that the State Government should settle all the claims in a Lok Adalat as was done in respect of acquisition of lands for Srisailam Project and Vishakhapatnam Steel Project. The appeals are accordingly dismissed. No costs.

8. Appeals dismissed.