A INDIAN COUNCIL OF MEDICAL RESEARCH

v.

T.N. SANIKOP & ANR. ETC. ETC.

(Civil Appeal Nos. 10172-10175 of 2014)

B NOVEMBER 12, 2014

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND ABHAY MANOHAR SAPRE, JJ.]

Land Acquisition Act, 1894 – s. 4, 23, 54 – Land C *acquisition – Compensation enhancement – Acquisition of land measuring 40 guntas for establishment of Medical Research Centre by State Government – Award of compensation at the rate of Rs. 1050/- per gunta by the Land acquisition Officer which was enhanced to Rs. 7,000/- by the* D *Reference Court – Land owners seeking enhancement of the quantum of compensation payable – High Court enhanced the compensation payable to the land owners from Rs. 7000/ - per gunta to Rs. 99,000/- per gunta being the fair market value of the acquired lands on the date of acquisition along* E *with the other statutory benefits – Justification of – Held: Having regard to all the relevant factors, the fair market value of the land reasonably worked out at Rs. 70,000/- per gunta in place of Rs. 99,000/- per gunta which is just and reasonable – Thus, the award modified accordingly.*

F **Partly allowing the appeals, the Court**

HELD: 1.1. Having regard to the total scenario emerging from the record of the case, such as the location of land, its potentiality, surroundings, the rate at G **which the developed small piece of land (4 guntas) in the adjoining area to the acquired lands was sold (Rs. 6,60,000/-) few months prior to the date of acquisition, the condition of the acquired undeveloped lands, the expenditure required to develop the acquired land to start**

H

the construction for the project for which it was acquired, percentage of deduction to be made, its proximity to various places in the town, the fair market value of the respondents' land can reasonably be worked out at Rs. 70,000/- per gunta in place of Rs. 99,000/- per gunta which was determined by the High Court. The High Court was not right in determining the fair market rate of acquired land at Rs. 99,000/- per gunta but instead it should have determined at the rate of Rs. 70,000/- per gunta. [Para 20] [256-B-D]

1.2. The figure of Rs.70,000/- per gunta is arrived at after applying all relevant factors laid down on the date of acquisition. The rate determined is just, reasonable and represents fair market value of the land in question. Indeed in such cases, one can never come to any exact figure of price of lands because in the very nature of things. However, courts in such cases always exercise their discretion within the permissible parameters after appreciating the evidence on record and applying relevant legal principles. [Para 21] [256-E-G]

1.3. All other findings of fact recorded by the High Court on the issues are upheld, which are based on proper appreciation of evidence calling no interference in the jurisdiction under Article 136. [Para 22] [257-B]

Chandrashekar (Dead) by L.Rs. and Ors. v. Land Acquisition Officer and Anr. **(2012) 1 SCC 390: 2011 (15) SCR 414 – referred to.**

Case Law Reference:

2011 (15) SCR 414	**Referred to**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10172-10175 of 2014.

From the Judgment & Order dated 23.03.2007 of the High

A Court of Karnataka at Bangalore in MFAs No. 5723, 5722, 6332 and 6868 of 2005.

WITH

C.A. Nos. 10176-10179 of 2014.

B

Raju Ramachandran, Deepak Yadav, Madhu Sikri, Anitha Shenoy, Neha Singh for the Appellant.

Kiran Suri, S.J. Amith, Dr. Vipin Gupta, C.M. Angadi, Rameshwar Prasad Goyal for the Respondents.

C

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

D 2. These appeals arise out of judgment dated 23.03.2007 passed by the High Court of Karnataka at Bangalore in MFA Nos. 5723/2005, 5722/2005, 6332/2005 and 6868/2005 which arise out of award dated 31.03.2005 passed by the III Addl. Civil Judge (Sr. Dn.), Belgaum in L.A.C. Nos. 11/1999, 12/1999, 13/1999 and 14/1999.

E

3. By the impugned judgment/decree, the Division Bench of the High Court partly allowed the first appeals filed by the respondents herein (land owners) and while modifying the award of the Addl. Civil Judge, Belgaum in respondents' favour F enhanced the quantum of compensation payable to the respondents for their lands which were acquired by the State under the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). Feeling aggrieved by the judgment passed by the High Court, the appellant (Central Government Organization) for G whose benefit the lands in question are acquired has filed these appeals by way of special leave.

4. The question that arises for consideration in these appeals is whether the High Court was justified in partly allowing the respondents' appeals by enhancing the rate/

H

quantum of compensation payable to the respondents (land owners) for their acquired lands under the Act? A

5. In order to appreciate the controversy involved in these appeals, it is necessary to state the relevant facts infra.

6. The respondents are the owners of the land bearing R.S. Nos. 1323 CTS No. 5435-1B, R.S. No. 1323-1B-2 CTS No. 5435-1B-2, R.S. No. 1323-B1 CTS No. 5435-B and R.S. No. 1323-1B-3 CTS No. 5435-B-3 measuring total 40 guntas situated near Nehru Medical College, Belgaum. In exercise of the powers conferred under Section 4 of the Act, the State Government issued a notification on 19.12.1994 and acquired a large chunk of land measuring 40 guntas for establishment of Indian Medical Research Centre. This acquisition of land was for the benefit of Indian Council of Medical Research (in short "the ICMR") - an Institute wholly owned and controlled by the Central Government, who were desirous of setting up one Medical Center in Belgaum town, for the benefit of public at large. It was followed by the declaration published on 30.11.1995 under Section 6 of the Act. The respondents' lands in question were acquired pursuant to the aforementioned Notification under Section 4 of the Act. This led to initiation of proceedings for determination of compensation payable to each land owner including that of the respondents herein by the Land Acquisition Officer (in short called "the LAO"). Notices were accordingly issued to the respondents as per Section 9 of the Act calling upon them to participate in the land acquisition proceedings to enable the LAO to determine the fair market value of the land on the date of acquisition as provided under Section 23 of the Act so that the compensation is paid to the land owners at such determined rate. The LAO held an enquiry and after affording an opportunity to the respondents passed an award on 06.03.1998. B C D E F G

7. The LAO fixed the compensation at the rate of Rs.1050/- per gunta = Rs. 42,000/- per acre, payable to the respondents for their lands in question as in his opinion, the respondents H

A were entitled to claim compensation for their lands at the rate of, Rs. 1050/- per gunta being the fair market value of the acquired lands in question.

8. Feeling aggrieved by the said award, the respondents sought reference to the Civil Court for re-determination of the compensation made by the LAO. The reference Court, on the basis of the evidence, partly answered the respondents' reference in their favour and by judgment dated 31.03.2005 enhanced the rate of compensation from Rs.1050/- per gunta to Rs.7,000/- = Rs.2,80,000/- per acre. In other words, the reference Court held that the respondents were entitled to get compensation for their lands at the rate of Rs.7000/- per gunta = Rs.2,80,000/- per acre being the fair market value of their lands from the date of the preliminary notification, i.e., 19.12.1994.

9. Dissatisfied with the determination made by the reference Court, the respondents filed appeals under Section 54 of the Act before the High Court challenging the legality and correctness of the award of the reference Court out of which these appeals arise.

10. The Division Bench of the High Court by impugned judgment/decree partly allowed the respondents' appeals and enhanced the compensation from Rs.7000/- per gunta to Rs.99,000/- per gunta. The High Court held that fair market value/rate of the acquired lands on the date of acquisition was Rs.99,000/- per gunta and hence, the respondents were entitled to get the compensation at the rate of Rs.99,000/- per gunta along with the other statutory benefits payable under the Act. It is against this judgment/decree, the ICMR, for whose benefit the lands are acquired, has filed these appeals by way of special leave before this Court.

11. Heard learned counsel for the parties.

12. Shri Raju Ramchandran, learned Senior counsel,

placing reliance on the principles laid down in the decision of this Court in **Chandrashekar (Dead) by L.Rs. and Others v. Land Acquisition Officer and Another**, (2012) 1 SCC 390, contended that the High Court erred in enhancing the rate of land from Rs.7000/- per gunta to Rs.99,000/- per gunta. According to him, there was neither any evidence nor any basis for enhancing the rate from Rs.7000/- per gunta to Rs.99,000/- per gunta. Learned senior counsel urged that when admittedly the acquired land was a large area of undeveloped land, which needed a lot of expenditure for its development requiring deductions between the range of 40 % to 75 %, the High Court should not have relied upon the solitary sale deed (Ex-P-10) because admittedly Ex-P-10 pertained to sale of very small piece of developed land, i.e., 4 guntas which in no case could be compared with the real market value of the acquired lands in question. In other words, the submission was that the lands in question being large and undeveloped could not have been placed at par with the land (4 guntas) sold by Ex-P-10 for Rs.6,60,000/- as the latter was small in size and developed one. Learned senior counsel further urged that it is not appropriate to compare such lands for determining their rates as has been held by this Court in the case relied upon by him. Learned senior counsel further contended that there being no other evidence except Ex-P-10 to decide the comparative sales effected in the adjacent area of the acquired lands, the entire basis of the High Court while determining the rate by giving phenomenal rise does not appear to be legally justified and hence, respondents' appeals should have been dismissed by the High Court by upholding the award of the reference court or in any event, the rate could have been enhanced by giving reasonable rise after keeping in view the law laid down.

13. Mrs. Kiran Suri, learned senior counsel for the respondents supported the impugned judgment and contended on the basis of cross objections filed in these appeals that the respondents are entitled for more compensation than what has been awarded by the High Court. According to her, the High

A Court should have awarded more compensation to the respondents because the market value of the lands on the date of acquisition was more than what is determined by the High Court and this, according to the respondents, can be proved on the basis of the evidence on record.

B

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned senior counsel for the appellant and hence we are inclined to allow these appeals in part and accordingly modify the impugned award to the extent C indicated below by reducing the rate of acquired lands and in consequence, the compensation determined by the High Court.

15. Law on the question as to how the Court is required to determine the fair market value of the acquired land is fairly D well settled and remains no more *res integra* by several decisions of this Court.

16. It is apposite to take note of some decisions summarized in the case of **Chandrashekar (supra)** which are E as follows:

"In Brig. Sahib Singh Kalha v. Amritsar Improvement Trust, (1982) 1 SCC 419, this Court opined, that where a large area of undeveloped land is acquired, provision has to be made for providing minimum F **amenities of town life. Accordingly it was held, that a deduction of 20% of the total acquired land should be made for land over which infrastructure has to be raised (space for roads, etc.). Apart from the aforesaid, it was also held, that the cost of raising** G **infrastructure itself (like roads, electricity, water, underground drainage, etc.) needs also to be taken into consideration. To cover the cost component, for raising infrastructure, the Court held, that the deduction to be applied would range between 20%**

H

to 33%. Commutatively viewed, it was held, that deductions would range between 40% and 53%.

.....In Chimanlal Hargovinddas v. Land Acquisition Officer, (1988) 3 SCC 751 while referring to the factors which ought to be taken into consideration while determining the market value of the acquired land, it was observed that a smaller plot was within the reach of many, whereas for a larger block of land there were implicit disadvantages. As a matter of illustration it was mentioned that a large block of land would first have to be developed by preparing its layout plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out, that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages it was held, that these factors could be discounted by making deductions by way of allowance at an appropriate rate, ranging from 20% to 50%. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

.....In Kasturi v. State of Haryana, (2003) 1 SCC 354, this Court opined, that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted,

A depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities, etc. It was also opined, that appropriate deductions could be made for making plots for residential and commercial purposes. It was B sought to be explained, that the acquired land may be plain or uneven, the soil of the acquired land may be soft or hard, the acquired land may have a hillock or may be low-lying or may have deep ditches. Accordingly, it was pointed out, that expenses C involved for development would vary keeping in mind the facts and circumstances of each case. In Kasturi case it was held, that normal deductions on account of development would be 1/3rd of the amount of compensation. It was however clarified D that in some cases the deduction could be more than 1/3rd and in other cases even less than 1/3rd.

.....In Lal Chand v. Union of India, (2009) 15 SCC 679, it was held that to determine the market value of a large tract of undeveloped agricultural land (with E potential for development), with reference to sale price of small developed plot(s), deductions varying between 20% to 75% of the price of such developed plot(s) could be made.

F .....In A.P. Housing Board v. K. Manohar Reddy, (2010) 12 SCC 707, having examined the existing case law on the point it was concluded, that deductions on account of development could vary between 20% to 75%. In the peculiar facts of the case G a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

.....In Land Acquisition Officer v. M.K. Rafiq Saheb, (2011) 3 SCC (Civ) 950, this Court after having

H

concluded, that the land which was the subject-matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50%, ought to be increased to 60%."

After taking note of the aforesaid cases and placing reliance upon the principles laid down therein, this Court in Chandrashekar and Others (supra) observed as under:

"It is essential to earmark appropriate deductions out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

As far back as in 1982, this Court in Brig. Sahib Singh Kalha case held, that the permissible deduction could be up to 53%. This deduction was divided by the Court into two components. For the "first component" referred to in the foregoing paragraph, it was held that a deduction of 20% should be made. For the "second component", it was held that the deduction could range between 20% to 33%. It is therefore apparent that a deduction of up to 53% was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by

A **this Court to balance the differential factors between the exemplar land and the acquired land. Recently however, this Court has approved a higher component of deduction.**

B **In 2009 in Lal Chand case and in 2010 in A.P. Housing Board case it has been held that while applying the sale consideration of a small piece of developed land, to determine the market value of a large tract of undeveloped acquired land, deductions between 20% to 75% could be made. But in 2009 in**

C **Subh Ram case, this Court restricted deductions on account of the "first component" of development, as also, on account of the "second component" of development to 33?% each. The aforesaid deductions would roughly amount to 67% of the**

D **component of the sale consideration of the exemplar sale transaction(s)."**

17. Keeping the aforesaid principles in mind, we have perused the evidence. It is not in dispute that total acquired

E land is around 40 guntas. It is also not in dispute that the respondents (land owners) filed only one sale deed (Ex-P-10) in support of their case to prove the market rate of lands in question for claiming more compensation. It is also not in dispute that evidence other than Ex-P-10 is of no relevance. It

F was also not relied upon by the reference Court or/and the High Court while determining the fair market value of the acquired lands.

18. We have seen the evidence and are of the view that Ex-P-10 alone can be looked into to some extent. Though, it

G pertains to 4 guntas and sold for Rs.6,60,000/- on 23.03.1994, it is situated near the acquired land.

19. The finding of the High Court on the issue in question is contained in Paras 8 to 11. It is reproduced infra in verbatim:

H

"8. We are now left with the question of determining the market value of the lands in question. The sale-deed at Exhibit-P10 is dated 23rd July, 1994. It shows that the total sale consideration of Rs. 6,60,000/- (Rupees six lakhs sixty thousand only) is paid for an extent measuring four guntas. That it is a genuine sale transaction; that the property covered under Exhibit-P10 and the lands in question fall within the limits of Belgaum Urban Agglomeration are not in dispute at all. Further the purchaser of the property at Exhibit-P10 is also examined as PW2. He has deposed that the area in question is the commercial area and that the plots therein are not readily available on sale. His further evidence is that the value of the acquired lands is higher than that of the properties situated on the Club road.

9. PW I (Appellant No. 1) has given the evidence that in the vicinity of the acquired lands, a KPTCL office, Dental College, Polytechnic School, High Schools and Colleges are situated. He erected a building and started his business venture of vehicle showroom and an auto garage. It is his further evidence that the water supply and electrical connection were given to the building erected on the land of PW.1. Plant and machinery was installed in the building. On account of the compulsory acquisition of the land, the appellant had to close down his business and pay a compensation of Rs. l,00,000/- (Rs. One lakh only) to his workmen. Totally he claims to have incurred loss of Rs. 2,00,000/- on account of dislocation of his business activities.

10. In our considered view, the sale-deed Exhibit-P10 forms the reliable basis for the determination of the market value of the lands in question. However, the price of Rs. 1,65,000/- given for one gunta of land

A cannot be straight away made applicable for the acquired lands. Because, as revealed by the respondent- Land Acquisition Of?cer's award at Exhibit-D1, the lands in question were agricultural lands as on the date of the issue of the preliminary
B noti?cation. They were not converted into non-agricultural lands. As held by the Hon'ble Supreme Court in a catena of cases, there is difference between a developed area and an area having potential value which is yet to be developed. That the
C lands if adjacent to developed area will not ipso facto make every land situated in the area also developed so as to be valued as a building site or plot. The acquired land is just abutting National Highway-4. In the vicinity of the acquired lands a number of
D commercial establishments, Government offices and educational institutions were already in existence at the time of the issuance of the Preliminary Notification in 1994. Under these circumstances, we have no doubt that the lands in question had
E acquired high potential value; but that by itself does not enable the lands in question to be treated as developed lands. Lot of development activities are to be undertaken like laying of roads and creating facilities and amenities, viz. electricity and water supply, culverts, sewerage, parks, etc. We also give
F our anxious consideration to the submissions made on behalf of the Government that there was not even the preliminary earthwork and that the lands continue to retain their agrarian character for all practical purpose. Thus the appellants are required to incur
G enormous amount of expenditure towards conversion earthwork, formation of layout, etc.

11. Now, we have to provide for deduction of certain percentage towards the cost of development, taking

H

the value of the developed plot at Rs. 1,65,000/- per gunta. There has been a serious contest at the bar regarding the percentage of deduction towards the cost of development of land; it can vary from 20% to 53%. The facts of the instant case are entirely different from the facts of the case of SMT. BASAVVA (supra). None can have any dispute over the well considered position laid down by the Hon'ble Supreme Court that the time-long for real developmental and the waiting period for development are also relevant considerations for determination of just and adequate compensation. In the instant case, one of the acquired lands was already being used for non-agricultural, i.e. commercial purpose. Therefore we are afraid the said reported decision does not come to the rescue of the Government in any way. There is no hard and rigid formula of yardstick for providing the percentage towards the cost of development. It depends on the facts of each case. In our considered view, as the acquired lands have attained high potentiality value and they were acquired for the purpose of setting up a Medical Research Centre, not too many internal roads are required to be formed; hence there is also the likelyhood of utilising more space. We therefore feel it safe, reasonable and just to hold that 40% of Rs.l,65,000/- per gunta has to be earmarked for developmental activities. 40% of Rs. 1,65,000/- comes to Rs. 99,000/- (Rupees ninety nine thousand only). We therefore enhance the market value of the lands in question from Rs. 7,000/- per gunta to Rs. 99,000/- per gunta. Needless to observe that the appellants are entitled to proportionate increase in the solatium and additional market value besides the interest thereon."

A 20. We have given our anxious consideration to the whole issue keeping in view the peculiar facts, evidence adduced and the law quoted above. In our considered view, having regard to the total scenario emerging from the record of the case, such as the location of land, its potentiality, surroundings, the rate at B which the developed small piece of land (4 guntas) in the adjoining area to the acquired lands was sold few months prior to the date of acquisition (Ex-P-10), the condition of the acquired undeveloped lands, the expenditure required to develop the acquired land to start the construction for the project C for which it was acquired, percentage of deduction to be made, its proximity to various places in the town, the fair market value of the respondents' land can reasonably be worked out at Rs. 70,000/- per gunta in place of Rs. 99,000/- per gunta which was determined by the High Court. In other words, in our considered D opinion, the High Court was not right in determining the fair market rate of acquired land at Rs. 99,000/- per gunta but instead it should have determined at the rate of Rs. 70,000/- per gunta.

21. We have arrived at the figure of Rs.70,000/- per gunta E after applying all relevant factors laid down by this case, which we have mentioned above. In our view, the rate determined by this Court is just, reasonable and represents fair market value of the land in question on the date of acquisition. Indeed in such cases, one can never come to any exact figure of price of lands F because in the very nature of things, the prices are bound to vary from land to land and further depending upon the individual buyer-to-buyer, seller-to-seller, reasons behind the sale and purchase etc. etc. However, Courts in such cases always exercise their discretion within the permissible parameters after G appreciating the evidence on record and applying relevant legal principles. We have kept these factors in mind.

22. We have also taken note of other arguments of learned senior counsel for the parties on various issues relating to grant of compensation. However, we do not think that in the light of H

our findings determining the rate at Rs.70,000/- per gunta, any more discussion or/and separate finding is necessary. Even otherwise, we do not find any merit in any of the submissions urged by the learned counsel in support of their stand and hence, we concur with all other findings of fact recorded by the High Court on the issues, which, in our view, are based on proper appreciation of evidence calling no interference in our jurisdiction under Article 136.

23. In the light of foregoing discussion, once we reduce the rate of compensation determined by the High Court partly in appellant's favour then in such circumstances, the question of considering grant of further enhancement in compensation to the respondents does not arise. It is for this reason, the cross objections filed by the respondents become insignificant and deserve to be dismissed as having rendered infructuous. It is accordingly dismissed.

24. We, therefore, decline to examine the legal issue raised by the learned senior counsel for the appellant by way of his preliminary objection that cross objections filed by the respondents under Order 41 Rule 22 of Code of Civil Procedure Code are not maintainable and leave this legal question open for its decision in any other appropriate case provided it is not yet decided by this Court.

25. In view of foregoing discussion, the appeals filed by the ICMR succeed and are accordingly allowed in part. The impugned judgment and decree is modified to the extent indicated above.

26. The concerned LAO is directed to calculate the compensation payable to the respondents (land owners) for their lands at the rate of Rs.70,000/- per gunta and accordingly calculate all statutory compensation such as solatium, interest etc. payable under the Act to every land owner whose land is acquired by the State under the Act.

A 27. Let this calculation be made, as directed above, by the concerned LAO and the amount so calculated be paid to the respondents (land owners) after making proper verification within three (3) months from the date of receipt of this judgment. No costs.

B

Nidhi Jain Appeals partly allowed.